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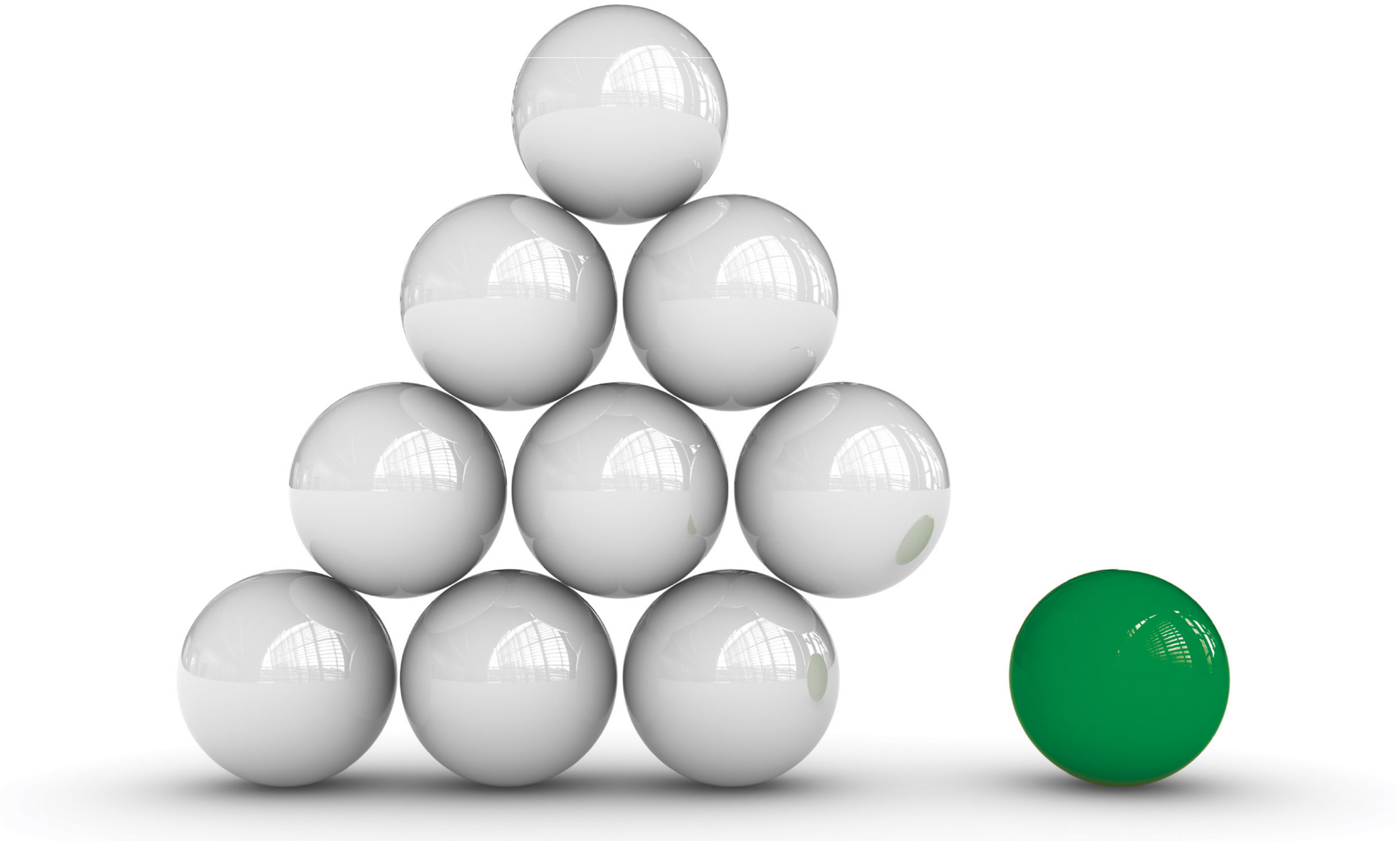
SECOND EDITION



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GENERAL EDITOR

ENCYCLOPEDIA OF White-Collar and Corporate Crime

Second Edition

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Lawrence M. Salinger

Editor

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Contents

Volume 1

Volume 2

List of Articles

Reader's Guide

Business Fraud and Crimes

Companies
A. H. Robins Inc.
Academi
Adelphia Communications Corp.
Allied Chemical Corp.
Allied Irish Banks
American Cyanamid Co.
American Hospital Supply Corp.
American International Group
American Motors Corp.
Amerifunding
Anheuser-Busch InBev
Archer Daniels Midland Co.
Arthur Andersen LLP
AT&T
B. F. Goodrich Co.
Banco Ambrosiano
Bank of America Corp.
Bank of Credit and Commerce International
Bankers Trust Co.
Barings Bank
BASF Corp.
Beech Aircraft Corp.
Beech-Nut Nutrition Corp.
Bendix Corp.
Bernard L. Madoff Investment Securities LLC
BP PLC
Bre-X Minerals Ltd.
Carl Karcher Enterprises Inc.
Cendant Corp.
Centennial Savings and Loan
Chem-Bio Corp.
Chevron Oil Co.
Countrywide Financial Corp.
Crédit Lyonnais
Daiwa Bank Ltd.
Dow Chemical Co.
Drexel Burnham Lambert Inc.
E. F. Hutton & Co.
Eli Lilly and Company
Enron Corp.
Equity Funding Corporation of America
Film Recovery Systems Inc.
Firestone Tire and Rubber Co.
Fisher-Price Inc.
Ford Motor Co.
G. D. Searle & Company
General Dynamics Corp.
General Electric Co.
General Motors Co.
Georgia Pacific LLC
Global Crossing Ltd.
Goldman Sachs Group Inc.
Gulf Oil Corp.
Halliburton Co.
Health Corporation of America
ICN Pharmaceuticals Inc.
Imperial Food Products Inc.
International Business Machines Corp.
International Telephone & Telegraph Corp.
Investors Overseas Services Ltd.
Johns Manville Corp.
Kerr-McGee Corp.
Kidder, Peabody & Co.
Lehman Brothers Holdings Inc.
Lloyd's of London
Lockheed Corp.
Madison Guaranty Savings and Loan Association
Merrill Lynch and Co. Inc.
Metallgesellschaft
Microsoft Corp.
Moody's Corp.
Morton Thiokol Inc.
NASDAQ
National Medical Enterprises Inc.
NatWest Markets Ltd.
Northrop Grumman Corp.
Owens Corning Corp.
Paulson & Co. Inc.
Procter & Gamble Inc.
Rite Aid Corp.
Rockwell International
Salomon Smith Barney Inc.
Standard & Poor's
Standard Oil Co.
Sumitomo Mitsui Banking Corp.
Teledyne Industries Inc.
Tyco International
UBS
Unisys Corp.
United American Bank
United Fruit Co.
United States Steel Corp.
Waste Management Inc.
Wells Fargo Mortgage
WorldCom Inc.

Consumers and Products
Adulteration, Economically Motivated
Automobiles

Criminology and Justice

Financial and Securities Fraud

Government

Laws

Medical and Health Care Fraud

People

Bush, George W.
Butcher Brothers
Carnegie, Andrew
Carson, Rachel
Carter, Jimmy
Clinard, Marshall
Clinton, William J.
Cohen, Albert
Coleman, James
Coolidge, Calvin
Cressey, Donald
Crocker, Charles
Cullen, Francis T.
DeLay, Tom
Domhoff, G. William
Edelhertz, Herbert
Edwards, John
Eisenhower, Dwight D.
Ford, Gerald R.
Frankel, Martin
Friedrichs, David
Geis, Gilbert
Giuliani, Rudy
Grant, Ulysses S.
Green, Mark
Hayward, Tony
Holley, Louis Malcolm
Hoover, Herbert
Hopkins, Mark
Hunter, Rielle
Huntington, Collis P.
Iguchi, Toshihide
Irving, Clifford
Jesilow, Paul
Jett, Joseph
Johnson, Lyndon B.
Keating, Charles
Keating Five
Kennedy, John F.
Kerik, Bernard
Kilpatrick, Kwame
Leeson, Nick
Levi, Michael
Levine, Dennis
Libby, Lewis (Scooter)
Madison, James
Madoff, Bernard L.
Maxwell, Robert
Milken, Michael
Morgan, John P.
Mozilo, Angelo
Nader, Ralph
Nixon, Richard M.
Obama, Barack
Paterson, David
Picard, Irving
Picower, Jeffrey
Pontell, Henry
Porteus, Judge G. Thomas
Rangel, Charles
Reagan, Ronald
Rich, Marc
Roosevelt, Franklin D.
Roosevelt, Theodore
Ross, Edward
Rove, Karl
Short, James F., Jr.
Shover, Neal
Silkwood, Karen
Simpson, Sally
Sinclair, Upton
Small, Gerald P., III
Sorkin, Ira
Spitzer, Eliot
Stanford, Leland, Sr.
Stavisky, Serge
Steffens, Lincoln
Stewart, Martha
Stone, Christopher
Sutherland, Edwin H.
Truman, Harry S.
Vaughan, Diane
Weisburd, David
Wheeler, Stanton
Wilpon, Fred
Young, Andrew

Political Scandals
ABSCAM
Agnew, Spiro
Anderson, Jack
Edwards, John
Hunter, Rielle
Iran-Contra Affair
Kilpatrick, Kwame
Paterson, David
Plame Affair
Rangel, Charles
Spitzer, Eliott
Watergate

Pollution

Regulation

Scams and Swindles

War Profiteering

Work-Related Crimes

Brown Lung
Canadian Mining Scandals
Challenger Disaster
Coal Mining
Embezzlement
Employee Crimes
Employee Safety
Gender Discrimination
Industrial Revolution
Kepone Scandal
Labor Crimes
Occupational Carcinogens
Ocean Ranger Disaster
Racial Discrimination
Sexual Harassment
Unions
Unsafe Working Conditions
Whistleblowers
Workplace Deaths

About the Editor

Lawrence M. Salinger, Ph.D., is associate professor of criminology and sociology at Arkansas State University. He has earned degrees from the University of California, Irvine; Indiana University; and Washington State University. In addition, he attended the Counter-Terrorism Studies Executive Certificate program at the Interdisciplinary Center in Herzliya, Israel. His interest in the study of crime and criminals began at a very early age when, as a first grader, he read *The FBI* (1954) by Quentin Reynolds. Salinger's interests in criminology focus primarily on violent victimization and organizational crime. Organizational crime incorporates three types of criminality: white-collar and corporate crime, organized crime, and, terrorism. While to the average person these types of crime seem quite diverse, when looked at more closely, they actually have much in common with each other.

For example, all three types of crime revolve around hierarchical organizational structures, with defined roles for each type of actor within the organization. Each type of organization, be it a business, an organized crime family, or a terrorist network, has goals or objectives to strive for, although those goals may be different depending upon the type of organization. All three types of organizational crime involve both legal and illegal behaviors committed by the organizations, with both legal and illegal behaviors funding each other. Finally, all three types of crime impact people's lives in everyday society.

White-collar and corporate crime have been of interest to Salinger since he took his first course on the topic from Dr. John Braithwaite at the University of California, Irvine, in the 1970s, and was fueled by the likes of Drs. Gil Geis, Henry Pontell, Paul Jesilow, James F. Short, Jr., and Robert Meier. Salinger's doctoral dissertation, completed in 1992 at Washington State University, analyzed 98 years of antitrust price-fixing violations. While the findings were less than conclusive, some historical trends were noted. For example, the Sherman Antitrust Act was created to reduce restraint of trade and increase competition in the marketplace. However, during the first decade of its existence, the law was used exclusively to prosecute labor union organizers for strikes again corporations, rather than against crooked corporations themselves.

Another example of historical significance was that price-fixing charges against both U.S. and foreign corporations tended to increase in the two to three years before wars, but were then frozen at the request of the Department of Defense (or its predecessor, the War Department) because the companies were crucial to the war effort. After each war, the Department of Justice would drop charges against the American companies, while fully prosecuting the foreign companies.

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Introduction

In the first two decades of the 2000s, white-collar crime has become a topic of almost daily news. The white-collar crime that caused the bankruptcy of Enron Corporation resulted in financial losses exceeding $66 billion to stockholders and likely helped lead to the recall of the governor of California. Massive violations of laws pertaining to improper investments in mutual funds and large banking firms in the United States have resulted in major losses to legitimate investors, whose losses are still being calculated. Under Bernard Madoff's $20 to $50 billion Ponzi scheme, dozens of investors lost their retirement funds, once-wealthy foundations were forced into bankruptcy, and one of Madoff's sons took his own life. The use of shareholders' assets to fund the lavish, private lifestyles of corporate chief executive officers, presidents, and chairs of the board of large corporations are becoming the fodder of the media.

For example, television viewers were treated to an edited version of a videotape of Tyco International Limited head Dennis Kozlowski and friends in a $2-million bacchanal celebrating his wife's birthday, all at the expense of the corporation. The WorldCom bankruptcy that resulted from white-collar crime caused billions of dollars in lost investments. The costs to ordinary stockholders are massive, but costs to employees, collateral business, communities, and society are incalculable. Human lives have been altered forever by the unlawful actions of a few whose insatiable need for power and profit resulted in illegal, unethical, and immoral acts. While one can conceive of the plausibility that the offenders did not define their behaviors as criminal, that in part could be possible because there is no clear definition of what is meant by the term *white-collar crime*.

The concept of white-collar crime was first conceived by Edward Alsworth Ross (1907), and approximately 30 years later, white-collar crime was born in the ideas of Edwin H. Sutherland (1939–40). Sutherland, in coining the term, defined white-collar crime as ". . . a crime committed by a person of respectability and high social status in the course of his occupation." For Sutherland, the white-collar category included "business managers and executives," although in his research he included corporations as offenders as well. He believed that a white-collar offense was a crime if it proved to be socially injurious and punishable. Therefore, an act of white-collar crime could be dealt with in a criminal, civil, or administrative manner (1945). Paul Tappan (1947), a lawyer and sociologist, disagreed with Sutherland's argument. Tappan believed that a behavior could only be considered a white-collar crime if the act was legally defined as a crime and if the offender had been convicted for the offense. That is, he rejected Sutherland's belief that a white-collar crime could be a violation of civil or administrative law without being condemned by criminal law.

Frank Hartung (1950) argued that while legal definitions were important in the general scheme of things, white-collar crimes represented a special case. Whereas in most instances it is possible to distinguish between criminal and civil violations, in the case of white-collar crime, the artificial distinction between civil and criminal laws was blurred and lacking in importance. In response to Hartung's statement, Ernest Burgess (1950) rejected a totally legal definition of crime, arguing for a labeling perspective definition requiring that persons could only be criminals if they perceived themselves as such. From the white-collar offender's perspective, Gilbert Geis' (1967) findings in his study of price fixing in the heavy electrical equipment industry would support Burgess' definition of crime. Geis found that white-collar criminals often do not perceive their acts as crime and therefore do not perceive themselves as criminals. Marshall Clinard and Richard Quinney (1973) replaced the term *white-collar crime* with two other classificatory categories: corporate crime and occupational crime. Corporate crime referred to the criminal behaviors of corporate entities, while occupational crime referred to the criminal behaviors of persons within their occupational status. Laura Schrager and James Short (1978) proposed the term *organizational crime*. They considered such crime in the context of the operative goals of the organization—the actual unstated goals of the organization—which often differ from its official goals. Clinard and Peter Yeager (1980) defined corporate crime as ". . . any act committed by corporations that is punishable by the state, regardless of whether it is punished under administrative, civil, or criminal law."

Albert Biderman and Albert Reiss (1980) withdrew the idea of status from the definition of white-collar crime. They argued that individuals other than those of upper-class status were capable of committing crimes in their occupational roles. As a result, they emphasized the importance of defining white-collar crime as a violation of a position of trust. For example, if a server inflates a customer's bill, the customer is likely to pay both the inflated amount as well as a larger tip without realizing that he or she has been victimized. The server not only profits personally but also violates the trust placed in him or her by the employer. James Coleman (1989) suggested that many of the attempts to redefine white-collar crime in other terms have undermined Sutherland's (1949) position since they "do not include many of the offenses covered in Sutherland's original definition" and/or "are best seen as varieties of white-collar crime." Clinard (1990) suggested replacing white-collar crime with the terms *corporate corruption* and *abuse of corporate power*.

These terms included both corporate and occupational crimes, regardless of whether they violate criminal, civil, or administrative laws. In addition, Clinard included behaviors that may not be explicitly defined as violations of law but that may be unethical and/or immoral in the corporate or occupational context. For example, a scientist who cheats on research by altering the findings of a study may not have violated a law or regulation, but instead has violated an ethical rule or norm of the scientific community. Under Clinard's hypothesis, that individual may have committed a white-collar offense because he or she engaged in an unethical and/or immoral behavior in the occupational context. For the purposes of this encyclopedia, white-collar crime can be defined as any behavior that occurs in a corporate and/or individual occupational context; is committed for personal and/or corporate gain and/or violates the trust associated with that individual and/or corporation's position and/or status; and is a violation of any criminal law, civil law, administrative law, rule, ruling, norm, or regulation condemning the behavior.

This definition is necessarily both sociological and legalistic in nature and therefore includes any behavior that may be socially defined as unethical or immoral, as well as behavior that is not legally defined as an offense. In addition, the definition does not include Sutherland's requisite that the violation be "committed by a person of respectability and high social status." This description was not included because white-collar crimes can be committed by persons who do not hold "high social status." Bank tellers do not usually enjoy high social status in our society; however, they are in a position of trust where they can engage in white-collar crime. Furthermore, John Hagan and Patricia Parker (1985) have suggested that those persons convicted of white-collar offenses are more likely to occupy middle management positions than the high prestige and social status group of the top managers in criminal corporations. Finally, punishability for an act is not an important issue. However, it may be assumed that if an act is a violation of some legal act, then it must be punishable as well. This broad definition of white-collar crime may bother some scholars in the field. However, given the diversity of the behaviors that come to be described as white-collar and corporate crime, it is difficult to create a succinct definition without necessarily excluding some of those behaviors.

History of White-Collar Crime

Laws against those behaviors that have come to be defined as white-collar crimes have existed since ancient times. Usually, such laws were developed in reaction to events in which there was a perception that something had occurred that challenged the moral sensibilities of society. Sharmaine Tapper and O. Oko Elechi's article on hoarding shows that in ancient times, laws were created to protect consumers and guarantee an adequate food supply for the people. While hoarding grain in order to reduce supply and provide large profits might make sense to many, hoarding could also lead to pubic unrest and the overthrow of governments that have chosen to do nothing to guarantee a reasonably priced supply of staple foods.

George Robb (1993) described the cyclical development and repeal of white-collar crime laws in response to specific acts of fraud and immorality in business that brought fortunes to some and ruin to many. Many of these laws were developed to deal with "stock touting," a practice that has existed as long as there have been stock markets and that continues to occur to this day. Stock touting involves creating companies and issuing stock in those companies based on false and/or misleading assets, information, or promises. For example, Robb wrote about persons who created companies to build railroads in far parts of Great Britain, claiming that they possessed government guarantees that when the railroad was built, stockholders would be instantly wealthy. The stock would sell quickly to speculators interested in making money, and the touts would quickly disappear, money in hand, with no railroad ever to be built. Such frauds aimed at unsuspecting speculators can be found in modern times as well. For example, the high-tech "bubble" of the 1990s resulted in the sale of stock in companies with much promise but little if any underlying market value. When the bubble burst, stockholders were left holding shares in companies that lacked any tangible assets.

Compounding the problem, many stockholders had borrowed money using their stockholdings as collateral, bankrupting those were unable to repay their debts and causing their lenders to take losses as well. Robb noted that touting laws were enacted in reaction to such losses and would be repeatedly repealed once the British Parliament decided that there was no longer a risk of such behaviors. Unfortunately, as soon as the laws were repealed, stock touts reappeared. New laws were created in response to their behaviors, and the cycle would continue over and over.

The Interstate Commerce Commission Act of 1887 was enacted in the United States in response to the behaviors of the robber barons in the railroad industry. The robber barons, who included so-called reputable business leaders and politicians such as Leland Stanford, Sr., and Jay Gould, built railroads connecting the east and west coasts of the United States—often without investing a cent of their own—and used their transportation monopoly to their own benefit. Before the passage of the Interstate Commerce Commission (ICC) Act, railroad owners were free to set their own prices for transporting goods, often raising prices to the point that western farmers and ranchers could not make a profit on their goods.

The ICC Act created a commission that was meant to regulate the cost of interstate transportation of goods to guarantee that railroads would receive a fair income for their services, while farmers and ranchers would still be able to profit from their labors and goods. The Sherman Antitrust Act of 1890 was enacted as a response to the growth of monopolies, which threatened to destroy competition in the marketplace. A monopoly occurs when a producer controls an entire market for a product, to the exclusion of other companies that would produce the product for a lesser cost. A monopoly allows the controlling producer to set any price for a product, with no fear of losing business due to competition from other producers. The Sherman Act was enacted because companies in various industry groups were attempting to eliminate their competition in the marketplace, thus hurting the economy. It is noteworthy, however, that for the first decade of its existence, the Sherman Act was used almost exclusively as a tool to harass and criminalize labor unions in their attempts to organize employees of those corporations the act was intended to regulate.

Other acts, such as the Clayton Antitrust Act of 1914, the Federal Trade Commission Act of 1914, the Robinson-Patman Act of 1936, the Celler-Kefauver Act of 1950, and the Hart-Scott-Rodino Act of 1976, furthered attempts to shape and regulate unethical behaviors of business. The Pure Food and Drug Act of 1906 served to rein in industries that produced products that might endanger the welfare of Americans. Prior to its enactment, there were no enforceable regulations over food production in the United States. Authors such as Upton Sinclair, in his 1906 novel *The Jungle,* exposed the abuses in the meatpacking industry. Also, prior to the passage of the act, potions sold as drugs and cosmetics often had little or no positive effect, while more likely having a significant negative effect on the health and safety of consumers. The Sarbanes-Oxley Act of 2002 is a more recent attempt to respond to corporate wrongdoing, requiring greater accountability for corporate boards of trustees for the unethical and illegal behaviors of their executives and corporations.

The academic study of white-collar crime behaviors did not begin until Sutherland used the term *white-collar crime* in his presidential address before the American Sociological Society in 1939. In his 1949 book *White-Collar Crime*, Sutherland presented the results of a study of white-collar offenses. During the next decade, the very limited amount of research on white-collar crime primarily involved the definitional issues discussed previously. It was not until the publication of studies of the descriptions of behaviors defined as white-collar or corporate crimes, or "modus operandi studies" as John Braithwaite called them in 1985, that academic researchers renewed their interest in the topic. These included studies such as Geis's research on the heavy electrical equipment scandal of the late 1950s and early 1960s and Quinney's 1963 study of prescription violations among pharmacists, which used Diane Vaughan's 1983 investigation of the Revco prescription fraud scandal. These and similar research probes have provided a basic description of diverse white-collar and corporate crimes.

The Encyclopedia

This reference is edited to incorporate information about a variety of white-collar crimes and provides examples of persons, statutes, companies, and convictions. It is acknowledged that it does not, and cannot, encompass all behaviors that may be defined as white-collar crimes. The articles have been written primarily for the college library, public library, and high school library markets. Postgraduate academics and law firms may find the reference useful to add to their libraries. As such, the articles focus on the introductory knowledge that students can utilize.

The authors of the articles come from a variety of social science disciplines, although nearly all are current or retired academicians. The articles on laws describe the specific elements of the laws in terms of what types of illegal acts to which they are meant to apply. Articles dealing with individuals give a brief biographical sketch of the individual but primarily focus on how that person relates to the study of white-collar crime.

Criminal events include descriptions of specific cases of white-collar crime, some very current and others that were studied in the past. Both are relevant to our knowledge of white-collar crime. Some of the articles also deal with white-collar crime in countries other than the United States in order to provide the perspective that white-collar and corporate crime is hardly an American phenomenon. As the definitions of white-collar and corporate crime remain somewhat fluid, we have included in this work other articles dealing with organized crime and prostitution, for example, which we acknowledge are not in themselves white-collar crimes but in some cases have been known to be contributory factors in the commission of such crimes. Moreover, elements of organized crime, prostitution, drug trafficking, and human trafficking (for example) are addressed in this encyclopedia, as these are criminal activities intertwined with white-collar crimes such as money laundering, bribery, and government corruption.

The Second Edition

The second edition of this *Encyclopedia of White-Collar and Corporate Crime* represents a major revision from the first edition. Of the almost 500 articles in the first edition, several have been removed for relevancy, and approximately 80 new articles have been added to the collection. Since it has been nine years since the first edition was published, the editors found it prudent to newly assign the articles in order to capture the most up-to-date information. It is truly a new edition and, moreover, a new encyclopedia. Since the first edition of this reference was published, the world has seen monumental economic changes that, in part, can be blamed on acts of white-collar and corporate criminality. To some extent, the severe downturn in the housing market can be tied to fraudulent mortgage practices that resulted in people purchasing homes they were financially unable to afford.

For example, "liar loans" are mortgages that are approved based on false mortgage applications that claim more assets and income than the applicant actually has. While approved for mortgages for high-dollar homes, the new homeowners rapidly find themselves unable to afford mortgage payments representing a larger than normal percentage of their incomes. This practice has resulted in millions of homes being foreclosed on by banks. Added to this financial disaster has been the sale of mortgage-backed securities, often falsely rated as high-quality mortgages, to unknowing investors who actually purchased junk securities.

As the mortgage crisis deepened, many lenders and investors found themselves mired in worthless assets, often purchased with money borrowed from other banks and investment brokers. The borrower banks and investors found themselves without income from the mortgage-backed securities while owing substantial payments to their creditors. Those creditors were in turn insured against losses by large insurers and reinsurers, as well as the government-sponsored enterprises known as Fannie Mae (Federal National Mortgage Association) and Freddie Mac (Federal Home Loan Mortgage Corporation). Faced with claims for losses by bank investors, these insurers and reinsurers collapsed because they did not have enough funds to pay the claims. Dozens of banks were forced to close, with their assets sold to other banks and their losses covered by the Federal Deposit Insurance Corporation (FDIC). Large banks such as Wachovia and Washington Mutual disappeared into the abyss.

Old investment houses such as Lehman Brothers and Merrill Lynch collapsed or were forced to merge with other securities firms. Other investment brokerages such as Morgan Stanley and Goldman Sachs were forced to reincorporate themselves as bank holding companies in order to qualify for federal bailout funds, which were made available only to banks, and be brought under the protection of the FDIC. The U.S. government, along with governments around the world, ended up lending trillions of dollars and euros to keep the economic system solvent. As individuals lost their homes and often their jobs, they lacked the funds to purchase cars and trucks, among other goods, and the automotive industry and associated businesses started to collapse. Daimler-Benz, which had previously purchased Chrysler, was itself purchased by Fiat.

General Motors was forced into bankruptcy, and through the assistance of the federal government it was able to recapitalize and rebuild itself as a new company. Thousands of autoworkers lost their jobs, contributing to the further collapse of housing markets. Much of this market collapse can be attributed to various white-collar and corporate crimes. Few of the perpetrators were ever arrested and prosecuted for their crimes. Some were held civilly liable, but through various legal maneuvers rarely had to pay their fines. The Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted into law in 2010, created a broad new set of regulatory codes meant to prevent a reoccurrence of the illegal market behaviors that led to the collapse of the financial markets. The negative response of businesspeople and their political supporters to this set of regulatory reforms was strong and predictable. The 2012 presidential campaign brought promises to roll back these reforms in the interest of creating jobs, even though many jobs were lost prior to the passage of these new regulations.

In the midst of this financial carnage, Bernard Madoff, a respected investment broker and former president of the National Association of Securities Dealers Automated Quotations (NASDAQ), admitted to carrying out a decades-long

Ponzi scheme in which he stole an estimated $20 billion to $50 billion in lost principal and earnings—earnings that never existed in the first place—from his clients, allowing him and his family to live lives of extreme luxury at the expense of unknowing investors. When the scheme collapsed, dozens of formerly wealthy investors found themselves homeless and financially ruined. Holocaust survivor, author, philanthropist, and Nobel laureate Elie Wiesel lost his life savings, and substantially all of the assets of his charitable foundation, to Madoff. Madoff's two sons, allegedly innocent victims of their father's financial improprieties, lost their livelihoods in a legally operated corporation as well as all of their assets. One son was so broken that he committed suicide after his father was imprisoned for the rest of his life. This white-collar crime was allowed to flourish for decades in part because of the perceived prestige of Bernard Madoff as a titan of the industry and a philanthropist to boot.

The 2010 explosion of BP/Andarko's Deepwater Horizon oil drilling platform in the Gulf of Mexico proved to be both an environmental and financial disaster never before seen in the history of offshore oil drilling. Hundreds of miles of beaches were fouled with oil, and countless numbers of ocean wildlife and birds perished while desperate efforts were made to cap the well. The economies of the states of Florida, Louisiana, Mississippi, and Alabama suffered major losses as beaches were closed and tourist dollars disappeared from the local communities. All of the companies involved in drilling the well spent hundreds of thousands to millions of dollars accusing one another of negligence in the design, operation, and supervision of the drilling operation. The Deepwater Horizon disaster exposed a major failure of the federal agency empowered to regulate the oil drilling industry. Regulators, and employees of the companies they were meant to regulate, repeatedly engaged in parties and interpersonal relationships with each other, often resulting in a lack of actual regulation. Employees of the regulatory agency often moved through a revolving door, at times working for the agency while at other times working for the oil companies, beholden only to the highest-paying entity. In the end, the regulatory agency was broken up into several regulatory agencies with very narrowly defined roles and duties.

The second edition of this encyclopedia deals with all of these events and more. It is hoped that readers will gain a thorough knowledge of the issues involved and causes of white-collar and corporate crime and come to better understand the nature of these offenses as well as ways to combat them.

Dedication

The second edition of the *Encyclopedia of White-Collar and Corporate Crime* is dedicated to the memory of Dr. Gil Geis, professor emeritus at the University of California, Irvine, who died on Saturday, November 10, 2012. Gil (he hated to be called Gilbert) was my mentor, teacher, advisor, and friend. Gil guided my educational and professional career from the time I was a sophomore until his death. He was a wonderful teacher who made every student feel like he was teaching only to him or her, although he regularly espoused after class that he truly despised classroom teaching and could not wait to retire.

Gil was also an incredibly productive scholar who almost single-handedly restored the study of white-collar and corporate crime to the forefront of criminology. I feel honored that some of his last published works appear in this encyclopedia. After retirement, Gil spent 25 years teaching us, his colleagues, friends, and anyone he met about how to live our lives as teachers and scholars, but most important, as human beings. I am in my 26th year as a full-time college professor, and every day I hear his Brooklyn-accented voice gently guiding me as I interact with my students and colleagues, reminding me to live my life and treat everyone with the same level of respect and compassion as he did. Thanks, Gil.

Lawrence M. Salinger
Editor

Chronology

ca. 7th century B.C.E.: The first laws on hoarding food crops and cornering food markets are established in the Book of Deuteronomy.

1473: One of the first pieces of legislation relating to the crime of embezzlement is enacted in England based on a crime known as the Carrier's Case, which involved the theft of bales of wool by an agent who was transporting them to the coast.

1792: The U.S. Congress makes stealing mail a capital offense.

1863: Congress enacts the False Claims Act, designed to deter fraud against the federal government by authorizing private citizens to file charges against any party attempting to collect payment from the government through fraudulent claims.

1865: The U.S. Secret Service is created to detect counterfeit currency. Its responsibilities are broadened in 1867 to including detecting fraud against the government.

1872: The U.S. Congress passes the Mail Fraud Statute to combat the increasing number of crimes carried out through the postal service.

1873: The U.S. Congress passes the Postal Obscenity Statute, sometimes referred to as one of several Comstock Laws, named for Special Inspector Anthony Comstock. This statute prohibits sending materials judged as obscene through the postal service.

1878: Following an anti-Mafia campaign in Sicily, Italy, many Mafiosi emigrate to other countries, including the United States.

1880: The term *boycott* is originated, named after Charles Cunningham Boycott, whose ruthless evictions of tenants in Ireland provoked his employees so much that they refused to have any dealings with him.

1881: Looking to supplement a federal trademark law passed in 1870, Congress passes the Trademark Act, which allows a trademark holder to sue for infringement of a trademarked product.

1886: A U.S. Supreme Court ruling in *Santa Barbara v. California* declares that a corporation is a natural person; that is, a corporation is guaranteed the same civil liberties that a person has bestowed upon him or her.

1890: The Sherman Antitrust Act provides a working definition of corporate crime, stating the following:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

1898–1914: In the first five years following the enactment of the Sherman Antitrust Act, the U.S. Department of Justice files only nine cases relating to antitrust laws and only 16 in the first 12 years. Of the first 10 antitrust cases, the majority are filed against organized labor and labor organizer Samuel Gompers, alleging restraint of trade by organizing strikes and boycotts. This was not the legislative intent stated in the Sherman Antitrust Act.

1904: The International Agreement for the Suppression of White Slave Traffic comes into force; "white slave traffic" refers to white girls or women being forced into prostitution.

1906: The federal government files a lawsuit against Standard Oil Co. and John D. Rockefeller, claiming violation of the Sherman Antitrust Act. The case is debated all the way to the Supreme Court, and in 1911, Standard Oil is divided into 34 smaller companies.

1906: President Theodore Roosevelt coins the term *muckrakers*, referring to a group of journalists who were among the first to expose corruption in American big business. He said of them, "[they have] provided American journalism with what many regard as one of its finest hours."

1906: In response to Upton Sinclair's concerns about the safety of America's meat supply, documented in *The Jungle*, coupled with issues pertaining to the quality of drugs being manufactured and the highly exaggerated claims touted by the producers of health tonics, salves, and potions, Congress enacts the Meat Inspection Act and the Pure Food and Drug Act. The Meat Inspection Act specifies that any meat products sold in interstate commerce are to be inspected by federal regulators, and the Pure Food and Drug Act prohibits the interstate transportation and sale of adulterated food.

1907: Edward Alsworth Ross introduces the concept of economic or financial crimes without giving evidence of the immensity of the offenses that exist at the time.

1909: The Opium Exclusion Act prohibits the importation of smoking opium into the United States.

1914: The Federal Trade Commission Act is enacted. The act states that false advertising, which includes advertising statements that the advertiser has no reasonable basis to believe, regardless of future events that may prove the facts true, is an unfair and deceptive form of commerce.

1914: Because of the vague language in antitrust legislation, the U.S. Congress passes the Clayton Antitrust Act, supplementing and strengthening the Sherman Antitrust Act of 1890.

1915: The U.S. Secret Service is authorized to investigate espionage.

1915: William Sanger, husband of the birth control pioneer Margaret Sanger, is charged with violating the Comstock Laws by distributing information about contraception through the U.S. Postal Service.

1919: The so-called Black Sox scandal ensnares eight members of the Chicago White Sox baseball team, who are banned for life for their involvement in fixing Major League Baseball's 1919 World Series. The gangster Arnold Rothstein, although never indicted, is credited in popular culture with organizing the fix.

1920: The U.S. Congress passes the Truth in Fabric Act, which is designed to ensure that displays of fur or cloth accurately depict what the consumer is buying.

1920: Prohibition begins in the United States as the Eighteenth Amendment comes into effect, making it illegal to sell, manufacture, distribute, or transport alcoholic beverages. Many gangs that were formerly and primarily involved in violent crimes become involved in white-collar crimes related to Prohibition, such as running speakeasies (illegal bars) and distributing alcohol.

1922: The Federal Narcotics Control Board, Prohibition Unit, which is housed within the U.S. Treasury Department, is created. It is responsible for controlling narcotics and the treatment of narcotics addicts.

1922–1923: The Teapot Dome Scandal takes place during the presidency of Warren G. Harding. The scandal involves leasing federal oil fields to private companies without requiring them to go through a competitive bidding process.

1927: The definition of human trafficking, as defined by the Suppression of White Slave Traffic Act, is broadened to include all races as well as both women and children.

1929: Narcotics hospitals are created within federal prisons in Lexington, Kentucky, and Fort Worth, Texas, as part of the Porter Narcotic Farm Act of 1929.

1931: Notorious gangster Al Capone is convicted of income tax evasion, as the mafia boss—whose actual crimes extend far beyond the one he is imprisoned for—kept no record of his finances.

1932: The Uniform Narcotics Act of 1932 promotes collaboration between federal and state authorities in the effort to control narcotics, requiring the states to adopt federal narcotics laws.

1933: The repeal of Prohibition takes place, and with it the lucrative black market trade in illegal alcoholic beverages disappears.

1933: The Securities Act prohibits fraud in the securities market and requires that all relevant information be disclosed to investors.

1934: The U.S. Securities and Exchange Commission is created through the Securities Exchange Act and is granted broad powers to protect the interests of investors and ensure the integrity of U.S. financial markets.

1936: In *United States v. One Package of Japanese Pessaries*, a U.S. Court of Appeals rules that it is legal to mail contraceptive devices.

1937: The Marijuana Tax Act of 1937 effectively makes marijuana illegal by requiring sellers to pay a tax on sales. The American Medical Association opposes this law.

1938: The U.S. Congress passes The Federal Food, Drug, and Cosmetic Act, regulating cosmetics and therapeutic devices.

1939: Edwin H. Sutherland presents his presidential address to the American Sociological Society in Philadelphia, Pennsylvania. For the first time, Sutherland describes "white-collar crime," a term he coined to describe the criminal activities of the upper class and corporations.

1940: The U.S. Postal Service establishes its first forensic laboratory.

1940: The Investment Advisors Act stipulates that investment advisors must register with the U.S. Securities and Exchange Commission and obey its regulations.

1945: Dutch art forger Han Van Meegeren is charged with collaboration with the enemy for selling a supposed painting by Jan Vermeer to Hermann Göring. Van Meegeren admits the painting is a fake, and in 1947 he is convicted of fraud.

1946: The Lanham Act, which lays the groundwork for all future trademark legislation, defines a trademark as "any word, name, symbol, device, or any combination thereof adopted by a manufacturer or merchants to identify goods and distinguish them from those manufactured or sold by others."

1947: The first environmental law in the 20th century is passed. The Federal Insecticide, Fungicide, and Rodenticide Act requires companies to register pesticides used in interstate commerce.

1949: Edwin Sutherland publishes the first edition of *White-Collar Crime*, in which he details the criminal behaviors of the 70 largest U.S. corporations at the time. He does not mention the names of the corporations out of apparent fear of reprisal. (The 1983 third edition of the book, published 33 years after Sutherland's death, gives the names of these corporations that were studied for the first edition.) Sutherland also theorizes that white-collar crime can be explained best by his theory of differential association, which assumes that all behaviors are learned behaviors.

1949–56: Telephone company AT&T is accused of violating antitrust laws by the Federal Communications Commission (FCC). The FCC's intention is the removal of AT&T subsidiaries Western Electric and Bell Laboratories from the company's system. AT&T agrees to a consent decree that allows the company to retain control of the two subsidiaries but forbids it from expanding into other areas of communication.

1950: The Celler-Kefauver Act is passed, strengthening previous antitrust legislation by amending sections and adding provisions to the Clayton Antitrust Act of 1914.

1951: The Boggs Act establishes mandatory minimum sentences for drug offenders.

1956: Congress passes the Federal Water Pollution Control Act. The act creates the Federal Water Pollution Control Administration, which approves and regulates new water quality standards.

1956: Facing mounting lawsuits by thousands of women claiming their children had been born with birth defects, pharmaceutical manufacturer Merrell Dow discontinues the production of Bendectin, a prescription drug that is used to alleviate morning sickness and nausea in pregnant women.

1957–61: Multinational conglomerate General Electric (GE), Westinghouse, and other manufacturers of heavy electrical equipment are convicted of price fixing and other charges for selling electrical equipment valued at $1.74 billion per year. It is the largest price-fixing case in the history of the Sherman Antitrust Act to this date. This is the first time that individual white-collar criminals are jailed for their offenses. GE's $437,500 fine is equivalent to a person earning $175,000 per year having to pay a $3 parking ticket.

1959: The U.S. Senate begins committee hearings into allegations that the largest electrical equipment makers in the United States were conspiring to fix prices. Among the manufacturers were major providers General Electric and Westinghouse.

1960: Congress investigates the meatpacking industry. Investigations conclude that about 15 percent of all commercially slaughtered animals and about 25 percent of all commercially prepared meat products are not being examined by U.S. Department of Agriculture investigators because the meat was distributed only within the slaughtering and packing plant's state.

1960: The International Brotherhood of Teamsters Pension Fund managers loan money from the fund to organized criminals, usually through straw men, for casinos, hotels, and resorts. The recipients of the fund "proceeds" included such noteworthy establishments as Rancho La Costa, Circus Circus, Caesar's Palace, the Dunes, and the Sands.

1962: United States Steel Corp. is accused of violations of the Sherman Antitrust Act, issuing building loans stipulating that the builder/borrower must use materials purchased from the steel corporation at artificially high prices. The case is tried in the U.S. Supreme Court three times before a February 1977 ruling states that the corporation did not violate antitrust laws.

1962: The U.S. Congress passes the Kefauver-Harris Drug Amendments to the Federal Food, Drug, and Cosmetic Act, requiring that drug companies show evidence their products are safe to a relative degree.

1963: In a hearing before the U.S. Senate Subcommittee on Investigations, Joseph Valachi, a member of the Genovese crime family, reveals many details regarding the operation of organized crime in the United States. He brings the term *La Cosa Nostra* (the Mafia) into everyday vocabulary.

1965: The U.S. Congress passes the Federal Cigarette Labeling and Advertising Act of 1965, requiring cigarette packages to carry a label warning consumers that cigarettes are a health hazard.

1966: The U.S. Congress passes the National Traffic and Motor Vehicle Safety Act, mandating the incorporation of safety devices designed to prevent fatalities in automobile accidents. During the next six years, automobile accidents decline at an average rate of 3.5 percent annually. The act also establishes the National Highway Traffic Safety Administration under the U.S. Department of Transportation to oversee safety and consumer programs, including motor vehicle crash testing and automotive recalls.

1968: The U.S. Congress passes the Truth in Lending Act, designed to promote economic stability by protecting the credit rights of consumers. The act announces that consumers will no longer be subject to misleading or fine print on credit applications.

1968: Peter Maas publishes *The Valachi Papers*, based on interviews with convicted mobster Joseph Valachi.

1970: Ford Motor Co. unveils its new Pinto automobile, despite tests revealing that rear-end collisions often cause fuel line ruptures, setting the bulky vehicle aflame.

1970: The Bank Secrecy Act requires banks to report cash transactions of more than $10,000.

1970: In response to rising concerns about worker and workplace safety, the U.S. Congress passes the Occupational Safety and Health Act. Enacted under the federal government's constitutional right to regulate interstate commerce, the legislation aims to guarantee that U.S. workers have a workplace that is free from hazards like dangerous machinery and toxic chemicals.

1970: In response to growing concern for the environment, the Clean Air Act, first passed in 1970 and amended substantially in 1990, introduces a set of guidelines requiring states to regulate sources of air pollution to specific air quality requirements and have regulatory programs designed to attain improved levels of air quality.

1970: The Racketeer Influenced and Corrupt Organizations Act (RICO) comes into force. RICO is a tool to combat racketeering, allowing superiors to be held responsible for acts committed by an agent acting on their orders.

1971: The U.S. Congress bans all broadcast advertising related to cigarettes.

1971: U.S. President Richard Nixon declares a "war on drugs" and calls for a coordinated national and state effort to combat drug use, which he sees as a threat to the country.

1972: The Consumer Product Safety Act is enacted as a response to perceptions that product liability laws do not sufficiently protect consumers from unsafe products. To implement the act, the U.S. Consumer Product Safety Commission is created. The commission is deemed responsible for administering additional consumer protection laws, including the Federal Hazardous Substances Act and the Flammable Fabrics Act.

1973: U.S. President Richard Nixon creates the U.S. Drug Enforcement Administration to enforce federal drug laws and coordinate the work of other agencies in combating drug trafficking and drug use.

1975: Former head of the Teamsters Union Joseph Hoffa disappears. He is believed to have been murdered, but his body is never located.

1976: Amending the Clayton Act of 1914, Congress passes the Hart-Scott-Rodino Antitrust Improvements Act, requiring that certain proposed mergers of assets be approved beforehand by the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice.

1976: The Toxic Substances Control Act is signed into law by the U.S. Congress and directs the administrator of the U.S. Environmental

Protection Agency to establish testing procedures for toxic chemicals, publicize results of tests of chemicals that prove to be dangerous, and set guidelines for controlling toxic chemicals.

1976–85: A report by the U.S. General Accounting Office reveals that 51.5 percent of all drugs introduced on the market must be relabeled because of serious adverse reactions discovered after their release.

1977: Gambling is legalized in Atlantic City, a seaside town in New Jersey, through passage of the Casino Control Act.

1977–79: The Federal Bureau of Investigation conducts a sting operation in which agents pretend to be wealthy Arab sheiks seeking investment opportunities in the United States. Seven legislators, including a senator and six congressional representatives, are videotaped accepting bribes from these agents in return for political favors. The scandal comes to be known as ABSCAM, after the bogus Abdul Enterprise Company.

1979: The Medellín drug cartel begins transporting drugs from Colombia to the United States using small planes that refuel on an island in the Bahamas owned by cartel co-founder Carlos Lehder.

1980: Marshall Clinard's book *Corporate Crime* reveals that that between 1975 and 1976, the country's 582 largest corporations had violated the law a total of 1,553 times.

1980: The Equal Employment Opportunity Commission issues a set of guidelines detailing prohibited sexual behavior in the workplace, which applies to all federal agencies and private businesses with 15 or more employees.

1980–86: Teledyne Hydra-Power, a unit of Teledyne Industries, defrauds the U.S. Navy of $4.5 million on a helicopter contract by inflating the price of parts and hours worked.

1980–90: Legislation is enacted to curb redlining, a process by which real estate agents and insurance companies exclude members of certain socioeconomic groups and/or races from certain neighborhoods. Such acts include the Home Ownership Protection Act, the Community Reinvestment Act, and the Home Mortgage Disclosure Act.

1980–2003: Millions of Americans are affected by advance fee fraud, synonymous with African-based criminal groups. Advance free fraud involves a promise of a large amount of money to be given to the participant in exhanged for providing banking information to the foreign-based entity, which then steals money from the victim's account.

1981: Three General Electric executives are imprisoned for crimes involving a payment of $1.25 million to a Puerto Rican official to obtain contracts to a federally owned electrical plant.

1984: First Lady Nancy Reagan begins the "Just Say No" campaign intended to reduce drug use among children and young adults.

1984: Ten thousand workers and townspeople are killed after a Bhopal, India, industrial plant owned by multinational corporation Union Carbide releases liquid methyl isocyanate, a harmful gaseous chemical, after the company allows a number of the plant's components to rust and decay.

1984: A Louisiana hospital requires that all surgical patients use the services of one of four anesthesiologists. A competing anesthesiologist charges that this violates the Sherman Antitrust Act. The U.S. Supreme Court's decision that this case does not represent an illegal tying arrangement is based on the hospital's lack of dominant position; it houses only 30 percent of the area's hospitalized patients.

1985: Five local crime bosses are indicted in New York City: Gerald Langella, Anthony Corrallo, Philip Rastelli, Anthony Salerno, and Paul Castellano. The prosecution is led by Rudy Guiliani, U.S. attorney general for the Southern District of New York, a future mayor of New York City.

1986: The Money Laundering Control Act of 1986 makes money laundering a federal crime, introduces forfeiture for violations of the 1970

Bank Secrecy Act, and requires banks to monitor compliance with the requirements of the Bank Secrecy Act.

1986: The Anti-Drug Abuse Act of 1986 includes a provision penalizing offenses related to crack cocaine more severely than similar offenses regarding powder cocaine; this provision will later be cited frequently as a primary reason for the preponderance of poor and African American drug users serving time in prison.

1987: Ivan Boesky is sentenced to three years in jail, the longest sentence for insider trading to this date. He also pays $100 million in 1986 to settle civil charges related to insider trading.

1987: Carlos Lehder, a leader of the Medillín cocaine cartel in Colombia, is extradited to the United States and sentenced to life without parole plus 135 years.

1988: The Major Fraud Act is signed into law by President Ronald Reagan, significantly increasing the maximum penalties that can be assessed for certain economic frauds committed against the U.S. government.

1988: Congress updates the Lanham Act with the Trademark Law Revision Act, changing the period of trademark protection from 20 years to 10 years, with infinite renewals. The act also stipulates that after five years the trademark holder is required to file an affidavit showing that the trademark will continue to be used.

1988: The Anti-Drug Abuse Act requires identification of anyone purchasing monetary instruments worth more than $3,000 and requires many institutions besides banks (such as car dealers) to report large currency transactions.

1989: The U.S. government brings criminal charges against Charles Keating for fraud, racketeering, and conspiracy and takes control of Lincoln Savings and Loan.

1989: The U.S. Public Interest Research Group reports that Chevron Oil Co.'s operations in the Gulf of Mexico have had somewhat of a less than admirable safety record. The research firm reports that between 1956 and 1989, offshore rigs operated by Chevron had experienced 10 gas blowouts, 65 fires and explosions, 40 pollution incidents, and 5 pipeline breaks or leaks.

1989: A study by research firm Essential Information reports that between 1984 and 1989, Chevron had spilled a total of 2.8 million gallons of oil, making it the world's largest and most consistent spiller of oil.

1989: Talk show televangelist Jim Bakker is convicted of fraudulently raising more than $158 million. A 28-page indictment includes eight counts of mail fraud, 15 counts of wire fraud use of telephone and television, and one count of conspiracy to commit wire and mail fraud.

1989: U.S. multinational corporation Union Carbide settles out of court, for $480 million, with the families of victims involved in its 1984 chemical spill.

1990: The U.S. Congress passes the Nutrition Labeling and Education Act of 1990, requiring all packaged foods to carry labels with nutrition information.

1990: Problems involving General Electric, such as bribery and mispricing, become so pervasive that the Pentagon's Defense Contract Management Agency takes the unique step of setting up a special investigations office to look into it. The office secures 22 criminal indictments of the company, its subcontractors, and its employees and recovers $221.7 million.

1990: Panamanian General Manuel Noriega surrenders to the U.S. Drug Enforcement Administration following the U.S. invasion of Panama. Noriega is convicted in 1992 of drug trafficking, racketeering, and money laundering and is given a sentence of 40 years.

1990–2000: The Financial Action Task Force, an intergovernmental policymaking body headquartered in Paris, France, calculates that approximately $500 billion is used in money laundering around the world each year.

1990–2002: General Electric is involved in 63 court cases brought against it by the federal government. The sum of the settlements reaches $982 million.

1991: Twenty-five employees are killed in a fire in an Imperial Food Products Incorporated chicken processing plant. The employees are unable to escape the flames because the exit doors are locked for fear of employee theft.

1991: Investment company Solomon Smith Barney's telecom research analyst Jack Grubman falsifies company reports to make some companies appear healthier than they actually are, causing a number of investors to lose substantial sums of money.

1991: One hundred sixty-five members or associates of the Cali (Colombia) cartel and the Sicilian Cosa Nostra are arrested for money laundering and drug trafficking.

1991: The U.S. Postal Service helps crack an art fraud ring marketing forgeries passed of as paintings by master artists such as Pablo Picasso and Salvador Dali.

1992: A lagged time-series analysis of price-fixing offenses between 1890 and 1988, the only long-term longitudinal study of price fixing, finds no significant relationship between price-fixing enforcement and political and economic variables.

1992: The Annunzio-Wylie Anti-Money Laundering Act creates the Bank Secrecy Act Advisory Group, increases sanctions for violations of the 1970 Bank Secrecy Act, and requires recordkeeping and verification for wire transfers.

1992: Carlos Salinas de Gortari, the president of Mexico, issues a number of restrictions affecting U.S. Drug Enforcement Administration offices operating in Mexico. They include denying the agents diplomatic immunity, prohibiting them from carrying weapons, and limiting the number of agents allowed to operate in the country.

1993: Paulo Escobar, head of the Medellín cocaine cartel, is shot and killed in Colombia.

1995: Computer hacker Kevin Mitnick is arrested by the Federal Bureau of Investigation. He ultimately confesses to multiple cases of computer and wire fraud and serves five years in prison.

1995: The U.S. Congress overrides the recommendation of the U.S. Sentencing Commission that the sentencing disparities for offenses regarding crack cocaine and powder cocaine be reduced.

1997: Camel Cigarette Corp. drops its famous Joe Camel advertising campaign amidst mounting lawsuits that claimed the cigarette-smoking cartoon character featured on posters was marketed toward children, a demographic that could not legally purchase the product.

1998: The Money Laundering and Financial Crimes Strategy Act creates the High Intensity Money Laundering and Related Financial Crime Area task forces and requires banking agencies to develop anti-money laundering training.

1998: The designation of the crime of identity theft is created by the Identity Theft and Assumption Deterrence Act.

1999: David Smith launches the Melissa computer virus, which propagates through the e-mail accounts of infected government and private computers. Smith is arrested and sentenced to 20 months in jail and a $5,000 fine.

1999: The pharmaceutical manufacturer Merck introduces the painkiller Vioxx on the market. It is withdrawn in 2004 when studies reveal that Vioxx patients are at increased risk of strokes and heart attacks.

2000: Owens Corning, which sells industrial pipe insulation, is driven to bankruptcy by the settlement of over 243,000 asbestos-related claims.

2000: The Federal Bureau of Investigation and the National White Collar Crime Center create the Internet Fraud Complaint Center to collect complaints about fraud involving the Internet.

2000: Harry Markopolos, a financial analyst, informs financial regulators that the reported investment returns of Bernard Madoff are not possible; however, this warning is ignored.

2001: An Italian court acquits former chemical company managers of charges stemming from a 10-year period in which 150 workers died from exposure to a harmful chemical. The managers are acquitted because it is determined that the company was not aware of the harmful effects of the chemical until after the workers were contaminated.

2001: The Internet Fraud Complaint Center charges 90 individuals and companies with a variety of crimes, including fraud, money laundering, and violation of intellectual property rights.

2001: One hundred child pornographers are arrested in Operation Avalanche, an effort by over 30 federal task forces to identify people using the U.S. Postal Service and the Internet to exploit children.

2001: The Uniting and Strengthening America by Providing Appropriate Tools to Restrict, Intercept, and Obstruct Terrorism (USA PATRIOT) Act, a response to the terrorist attacks of September 11, 2001, includes many measures to prevent terrorism, increase domestic surveillance, strengthen border security, fight cyber attacks, and prevent money laundering.

2002: Two students from Brown University, Katherine Chon and Derek Ellerman, establish the Polaris Project to combat human trafficking after discovering a brothel near their university campus.

2002: The U.S. Securities and Exchange Commission files a lawsuit against former executives of Waste Management Inc., accusing them of inflating earnings by almost $2 million.

2002: John J. Rigas of Adelphia Communications, a cable company based in a small rural town, is accused by the federal government of concealing $2.3 billion in debt from investigators and shareholders.

2002: In response to the growing number of stock fraud cases, the U.S. Congress passes the Sarbanes-Oxley Act, creating a series of oversight measures, and expands and increases the sanctions for illicit white-collar actions.

2003: A study estimates that the common practice of price fixing may cost the American public as much as $78 billion per year.

2003: The Sapphire computer virus, also known as the SQL Slammer, causes an estimated $1 billion in damages and causes significant disruptions across the United States, including outages in emergency response service in Seattle.

2003: Microsoft Corp. offers a reward of $250,000 for information about the creators of the Sobig virus and MSBlast.A worm.

2004: Andrew Fastow, chief financial officer at Enron Corp., pleads guilty to fraud and receives a 10-year sentence, later reduced to four years.

2004: Ukrainian cybercriminal Roman Vega is extradited from his vacation spot in Cyprus to the United States, where he is charged with operating a Web site, www.boafactory.com, that deals in stolen credit cards.

2005: Identification data for over 32,000 students and staff at George Mason University in Fairfax County, Virginia, are compromised as the result of a hacker attack against the university's main ID server.

2005: Attorney General Alberto R. Gonzales establishes the Hurricane Katrina Fraud Task Force to investigate cases of fraud (including identity theft, charity fraud, insurance fraud, and government benefits fraud) related to the storm.

2005: The data aggregation company ChoicePoint admits that over 140,000 consumer records, including credit reports, were accessed by criminals posing as legitimate businesspeople.

2006: According to the Prieston Group, a risk management solutions provider, mortgage fraud in the United States creates about $4.6 billion in losses.

2006: U.S. authorities discover a tunnel between the United States and Mexico that stretches for half a mile and is used to smuggle drugs into the United States.

2006: Kenneth Lay, the chief executive officer of the bankrupt Enron Corp., is found guilty of multiple counts, including bank fraud and conspiracy. He dies before his sentencing.

2007: Federal agents receive over 11,000 reports of fraud connected with Hurricanes Rita and Katrina, which hit the Gulf Coast in 2005.

2008: The U.S. Secret Service reports making almost 29,000 criminal arrests for counterfeiting, financial crimes, and computer crimes over the past five years, and seizing over $295 million in counterfeit currency.

2008: Financier Bernard L. Madoff surrenders to authorities on December 11 and is charged with fraud, money laundering, and other crimes. He pleads guilty to 11 crimes on March 12, 2009, and is sentenced to 150 years on June 29, 2009.

2010: WikiLeaks begins releasing the text of cabled messages sent to the U.S. State Department from various embassies, consulates, and diplomatic missions.

2011: James "Whitey" Bulger, a noted organized crime figure and Federal Bureau of Investigation informant from Boston, is arrested after being a fugitive since 1994.

2011: The pharmaceutical manufacturer Merck enters into a civil agreement to pay $628 million for issuing false statements about the safety of Vioxx, a painkilling drug, and for off-label marketing of the drug.

2011: "House King" Angel Puentes is indicted in Florida on charges of wire and bank fraud involving straw homebuyers and inflated home values. The dollar value of his fraud is estimated at $10.5 million.

2011: Billionaire investor Raj Rajaratnam is convicted of fraud and conspiracy and given a $10 million fine and 11 years in prison. It is the longest sentence to date for anyone convicted of insider trading in the United States.

2012: Barclays Bank admits to fraud and collusion for its role in fixing the London Interbank Offered Rate (Libor), a figure used to establish many other interest rates.

2012: Jon Johnson, a New Orleans, Louisiana, city councilman, pleads guilty to misusing federal funds intended to help victims of Hurricane Katrina.

2013: In February, a report sponsored in part by Citigroup Inc. and Visa Inc. reports that about 5.3 percent of U.S. consumers were victims of identity theft in 2012, many due to data breaches involving social security numbers.

2013: In March, former Detroit, Michigan, mayor Kwame Kilpatrick is found guilty of 24 of 30 federal charges, including racketeering and extortion.

2013: In March, the U.S. Securities and Exchange Commission accuses the state of Illinois of securities fraud, claiming that the state had not properly funded retirement plans from 2005 to 2009, and had concealed this fact from investors.

2013: In April, Wikileaks publishes over 1.7 million U.S. diplomatic records covering 1973 to 1976, a collection of information that Julian Assange of Wikileaks dubs the Public Library of U.S. Diplomacy.

2013: In April, British cabinet minister Chloe Smith revels that the government faces about 33,000 cyber attacks monthly, coming from a variety of sources including criminals, hacktivists, and state-sponsored actors.

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A

A. H. Robins Inc.

Albert Hartley Robins opened an apothecary shop in Richmond, Virginia, in 1866. His son Claiborne attended pharmacy school and opened an offshoot business selling the pharmaceuticals his father manufactured. Claiborne died young, and when Albert retired and closed the apothecary, Claiborne's widow continued to run the pharmaceutical business until her son, E. Claiborne, finished pharmacy school. E. Claiborne took the reins in 1936 and turned the small, three-employee A. H. Robins Company into a large corporation with its own manufacturing plants and international customers. The company's major successes in the 1940s and 1950s included the antirhumatic Pabalate, the digestant Entozyme, and Robitussin, a cough syrup still popular today. It soon acquired the ChapStick brand and expanded beyond pharmaceuticals into pet-care products and French perfume.

In 1970, the company acquired the Dalkon Shield contraceptive intrauterine device from the Dalkon Corporation, a small company that had been formed by the Shield's inventors Hugh Davis and Irwin Lerner to promote and sell the product. Problems with the Shield eventually led to the bankruptcy of the A. H. Robins Company. Later investigations found that A. H. Robins had been warned by researchers that Davis's design was unsound but the company went forward with marketing the birth control device with Davis's claims that its design guaranteed a lower rate of infection or expulsion. In reality, the design encouraged the development of pelvic infections because of the IUD's tailstring functioning as a wick, allowing bacteria from the vagina to enter the uterus—an organ vulnerable to bacteria and made more susceptible by the tissue trauma caused by the presence of the Shield.

The first Dalkon Shield lawsuit was filed in 1972, even as sales skyrocketed after an extensive marketing campaign. When the number of complaints increased, the company responded by discontinuing the Shield in the domestic market, although international sales continued. Mounting lawsuits damaged their bottom line and forced them to halt production completely. They were able to keep the Shield on the market for several years after its dangerous flaws were revealed, collecting as much profit as possible before recalling the product.

By 1985, Robins and its insurer, Aetna Life and Casualty Company, had already paid out $380 million in Shield-related lawsuits, and the number of complaints and actions filed was steadily increasing, including a class-action lawsuit that was filed on behalf of nearly 2,000 Shield users. In 1984, Robins reported its highest-ever earnings of $128 million, but the Shield-related lawsuits proved to be the downfall of the company. In March 1985, Robins set up a reserve fund to pay out Shield claims totaling $615 million, on top of the cost of the lawsuits already settled. The creation of the fund put Robins at a loss for the year. In order to protect the company, Robins filed for reorganization under Chapter 11 of the Bankruptcy Code in August 1985. This froze all monetary claims against the company and caused the company's stock to plummet. In 1989, the American Home Products Corporation acquired A. H. Robins as part of the reorganization plan from bankruptcy.

The bankruptcy reorganization also gave Robins immunity from any further Shield-related civil litigation, but American Home agreed to finance a court-ordered trust to fund Shield claimants. American Home Products put $2.3 billion into the trust, which was responsible for paying claimants against the Shield for the following 20 years. Women who claimed injury from the Shield submitted a claim to the trust, which then decided the amount of the settlement. Instead of Robins's shareholders losing money from the bankruptcy and reorganization, they earned large financial gains because they were now owners of American Home Products stock, which was worth four times the price of Robins' stock. American Home Products later changed its name to Wyeth. Wyeth put the manufacturing and marketing of the brand under its Whitehall-Robins Health Care division. Production was taken over by Pfizer when it acquired Wyeth in 2009.

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See Also: Class-Action Lawsuits; Consumer Product Safety Commission, U.S.; Food and Drug Administration, U.S.; Health Care Fraud.

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ABSCAM

ABSCAM (shorthand for Arab Scam, or Abdul Scam) was the code name given to an undercover sting operation conducted by the New York office of the Federal Bureau of Investigation (FBI) in 1980. Agents working the case recruited a convicted con artist, Melvin Weinberg, to join them in posing as representatives of a fictitious Arab sheikh, called Kambir "Abdul" Rahman, who was in need of Washington political favors. They then offered financial inducements to members of Congress and other politicians and intermediaries for their specific promises of help. Meetings between the sheikh's "representatives" and the legislators were secretly videotaped. Seven members of Congress (six representatives and one senator) were convicted for accepting cash or stock as bribes for the promise to exercise favorable influence on the sheikh's behalf. Only one member of Congress, Senator Larry Presler of South Dakota, declined the bribe when it was offered. Those convicted were given fines and prison terms of various lengths. Senator Harrison A. Williams of New Jersey received a three-year prison term. The mayor of Camden, New Jersey, and New Jersey state senator Angelo Errichetti received the most severe sentences—six years in prison and a $40,000 fine.

The ploy behind ABSCAM was engineered by John Good, an FBI supervisor for the Eastern District Federal Task Force, and the convicted con man and swindler Weinberg. Weinberg was facing sentencing for fraud in a federal court in Pittsburgh. Like many defendants, he was looking to cut a deal with federal prosecutors. Good had been looking for white-collar defendants to help the New York office make criminal cases and offered Weinberg probation for his assistance. Weinberg took to the task with relish.

The scenario they devised involved a fake Arab sheikh, a dummy corporation he had created to funnel money out of his home country (Abdul Enterprises), and the explanation that the sheikh was looking for U.S. "investments" offering a high return because—in accordance with Muslim law—banks in his home country did not pay interest. When word of the sheikh's interest in obtaining political help for his enterprise hit the streets, a small wave of hustlers, middlemen, and influence peddlers descended on the ploy.

Congressman Richard Kelly, a former U.S. attorney and state circuit judge, was caught on a surveillance tape in a hotel room stuffing 250 $100 bills into his pockets during a sting. Kelly was convicted and served 13 months in federal prison.

Although the initial enthusiasm likely arose from the felonious dreams of these everyday scam artists, they were able to supply a steady stream of political figures willing to talk about and readily engage in offering specific promises of political influence for monetary rewards. Every major meeting of "Abdul's" representatives with the various figures offering access to political influence or political influence was videotaped by the FBI, including the final meetings where cash payoffs were made to national and state political figures. The suspects were led into rented motel rooms and were seated on a couch directly in front of the concealed camera, where they were then offered a straightforward proposition to violate the law. This setting produced some memorable footage, including Congressman Richard Kelly (R-Florida), a former U.S. attorney and state circuit judge, caught on tape stuffing 250 $100 bills into his pockets. Kelly was convicted and served 13 months in federal prison.

The defense most commonly raised in undercover law enforcement "stings" is entrapment. Entrapment was raised by many of the defendants caught by the ABSCAM ruse. As a legal matter, entrapment occurs when government agents act in a way that induces and encourages a crime by making false representations and employing methods that create a substantial likelihood that innocent persons will be persuaded to commit a crime that they would not otherwise contemplate.

Although the precise definition of entrapment varies according to state or federal law, as a practical matter, the defendant must generally show that (1) he or she had no predisposition to commit the crime and (2) it was the "creative activity" of law enforcement that supplied the motive force for the crime—a force so powerful that effectively no normal person could have withstood the temptation. Generally, a "totality of the evidence" approach is used to consider the facts supporting an entrapment defense. In ABSCAM, Senator Harrison Williams (D-New Jersey) contended that since he had rejected the initial offer to engage in political acts favorable to the (fake) sheikh for his monetary benefit, he had not shown any predisposition. However, the U.S. Court of Appeals concluded that Williams had demonstrated that he was "ready and willing" to commit a crime as soon as the opportunity first presented itself—even though he may have hesitated for a moment at the first actual invitation to violate the law.

ABSCAM was among the several U.S. political scandals of the late 20th century that lowered the public's trust in government. The Watergate break-in of 1972 resulted in President Richard Nixon's resignation as president in August 1974. It also produced a series of trials for members of his cabinet and lesser government officials that extended through the late 1970s. When ABSCAM broke in 1981, the unseemly involvement of seven members of Congress, among other conspirators, confirmed in the public's mind the unredeemed sordidness afoot in national political circles.

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See Also: Bribery; Corruption; Justice, U.S. Department of; Watergate.

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Academi

Following the attacks of September 11, 2001, the U.S. government outsourced a substantial amount of military and government work to contractors. Academi, formerly known as Blackwater and Xe Services, is the largest and most controversial of the security contractors used by the U.S. government for training, protection, and military support for armed conflicts and natural disasters. Academi became the primary facilitator of training and support services for the U.S. State Department following the 2000 terrorist attack on the USS *Cole*. Specializing in counterterrorism, urban warfare, threat protection, executive protection, weapons, and tactical driving, Academi has been awarded over $1 billion in government contracts since then.

Legal issues have plagued the company, with allegations of illegal shootings, negligence in the deaths of its contractors, money laundering, tax evasion, aviation accidents, and the selling and smuggling of arms to other countries. The company has facilities in North Carolina, California, and Connecticut, and a forward operating base in Kabul, Afghanistan. Academi has also been contracted to the Department of Homeland Security, where it was called to support relief efforts following Hurricane Katrina. The company has secured counter-narcotics enforcement contracts with the Drug Enforcement Administration (DEA), trained Azerbaijan naval commandoes, protected Japanese radar systems, and it was reportedly recruited to track down and kill al Qaeda operatives.

Founded by former Navy SEALs Erik Prince and Al Clark, who envisioned a state-of-the-art training center, Blackwater opened a 6,000-acre facility along the Virginia/North Carolina border in 1998 at a cost of $6.5 million. The company employed former special operations experts from the military, and it offered weapons, tactics, and advanced training to paying customers from the protective services industry. Following the terrorist attack on the USS *Cole* off the coast of Yemen, Blackwater was contracted to train Navy sailors. After the United States was attacked on September 11, 2001, Blackwater was recruited to protect Central Intelligence Agency (CIA) headquarters and other strategic installations of the U.S. government. As the global war on terrorism unfolded, Blackwater became a valued asset to provide training and security resources. Company leadership has come not only from special operations experts but also from high-level officials of the intelligence, justice, and military communities.

Iraq

The war in Iraq overwhelmed the resources of the government to provide protection for the large numbers of officials traveling and working in the region, and Blackwater was one of several companies selected to provide protection under contract to the U.S. State Department's Bureau of Diplomatic Security. In 2003, Blackwater received an almost $28 million contract to guard Paul Bremer, the administrator of the Coalition Provisional Authority in Iraq. In the same year, Blackwater created an aviation wing by procuring Aviation Worldwide Services and a fleet of fixed and rotary wing aircraft. Operators for Blackwater were heavily armed security with military and law enforcement backgrounds who were handpicked to protect high-value assets in fixed and mobile operations. By use of armored vehicles, helicopters, and heavy weapons, the contractors guarded buildings and persons, escorted convoys through Iraqi cities, and flew protective and transportation missions. As the primary protective force for high-risk targets, Blackwater contractors came under attack on many occasions. Since beginning operations overseas, the company has been involved in over 200 shooting incidents.

In 2004, insurgents aided by members of the Iraqi Civil Defense Corps ambushed Blackwater contractors as they drove through the streets of Fallujah. The contractors were killed, burned, and dragged through the streets, and two of their bodies were hung from a bridge over the Euphrates River. The company has dealt with allegations of a drunken Blackwater contractor shooting the Iraqi vice president's security guard, a standoff between Blackwater contractors and Iraqi Interior Ministry soldiers, and a Blackwater sniper killing three guards of the Iraqi Media Network. The most publicized incident outside the Fallujah ambush and hanging was a shooting in Nisour Square in September 2007, in which 17 Iraqis were allegedly killed by Blackwater contractors escorting a U.S. State Department convoy. Blackwater insisted that the contractors had been ambushed, but investigations by the U.S. State Department and U.S. military found Blackwater at fault—firing upon and killing Iraqi civilians without provocation. The FBI investigation concluded that 14 of the 17 deaths were unprovoked, but were unable to provide any ballistic matches to Blackwater weapons.

Legal Issues

Academi has been embroiled in legal issues for many years. The controversies over the company, its mission, and its methods have resulted in strained relations with Iraq's transitional government, criminal prosecution, civil litigation, and congressional hearings. One of the major reasons why the company has been so deeply involved in Iraq is the absence of clearly defined rules, oversight, and accountability. The United States entered largely uncharted territory in the Second Gulf War by using an unprecedented volume of private contract companies to accomplish its mission. Whereas in the First Gulf War, only one in 60 human assets were contractors, the number jumped to an estimated one in three during the Second Gulf War. The legal status and rules for contractors have never been clear, and as private contractors were not subject to military rules of engagement—rules that have often been suspected of contributing to deaths and injuries to U.S. forces—they were more prone to shoot first and deal with the fallout. Contractors were also more likely to be involved in protective details, with a higher risk of ambush than heavily armed military platoons and companies. One of the greatest difficulties facing the United States has been in controlling private companies doing the bidding of the government, and what protections, if any, are afforded private contractors.

Academi has been sued by the families of its contractors killed in Fallujah, families of contractors who died in aviation incidents, former employees, and Iraqi civilians over the shootings at Nisour Square. Outside of litigation involving deaths and injuries to Academi contractors and civilians, the company agreed in 2010 to pay $50 million in fines for violations of U.S. law, including arms smuggling. In 2011, a $60 million lawsuit was filed against Blackwater for mistreatment of employees and the denial of benefits by fraudulently misclassifying Blackwater contractors as independent contractors, rather than as employees of Blackwater, which allowed the company to avoid millions of dollars in taxes. In 2012, Academi settled several open lawsuits with unspecified amounts in an effort to move the company forward. The settlements included the killings at Nisour and the contractor deaths in Fallujah. Though advised that it would no longer be awarded contracts with the State Department, Academi has secured renewed contracts with the CIA and other agencies within the U.S. government, as well as with private companies and other foreign interests.

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See Also: Defense Industry Fraud; Halliburton Co.; Iraq War; War Crimes; War on Terror.

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Accounting Fraud

Accounting fraud exists in many forms and is found under different categories. Fraud schemes and methods are varied, but knowledge by insiders and auditors of prior known fraud schemes and fraud risk factors can serve as deterrents. Particularly notable are the conditions of risk often associated with a "perfect storm" for an individual to perpetrate accounting fraud. This triple set of factors, known for decades as the "fraud triangle," was supplemented in the last decade to include a fourth factor, giving rise to the "fraud diamond" theory. Fraud is pervasive across the globe and exists in some form in most businesses, small and large, as well as in governments and nonprofit organizations. Tips such as those provided by whistleblowers are a useful tool in uncovering fraud.

Accounting fraud is found within the inclusive label created by the Association of Certified Fraud Examiners (ACFE): occupational fraud and abuse. In reality, accounting fraud can exist in any of the three ACFE general classifications of occupational fraud, collectively known as the "fraud tree," which has broad branches: corruption, asset misappropriation, and fraudulent statements. Corruption is defined broadly by the ACFE to include conflicts of interest, bribery, illegal gratuities, and economic extortion. Although conflicts of interest may include schemes related to purchasing and sales that may involve accountants and accounting documents, and bribery can take the form of kickbacks and bid rigging, these specific frauds are not generally included as accounting fraud per se. The categorization of accounting fraud can differ depending on the organization that is viewing it.

For example, according to the American Institute of Certified Public Accountants (AICPA), accounting fraud is generally defined as an intentional act that misstates the financial statements of an entity. Pursuant to the large-scale corporate frauds that occurred around the turn of the millennium, the AICPA revised its approach to fraud in 2002, with the Statement of Audit Standards 99 (SAS 99), an audit standard that more firmly identified auditor responsibilities related to fraud. When looking for accounting fraud, an auditor typically considers two kinds of financial statement misstatements: those related to fraudulent financial reporting and those represented by misappropriation of assets.

Fraudulent financial reporting tends to take the form of overstating net income (sometimes called the bottom line), either by overstating sales or by understating expenses; these techniques are referred to as earnings management or income smoothing. Earnings management is typically perpetrated by individuals at higher levels within an entity, in order to meet previously set targets that have been publicized, which will ensure that stock prices respond favorably. Another management incentive is to meet the threshold that will guarantee employee bonuses. However, there can be incentives in which an entity might want to understate net income; for example, to minimize income tax liability. Misappropriation of assets is more commonly referred to as stealing, theft, or defalcation. Although misappropriation of asset frauds (e.g., stealing inventory) are associated with personnel at lower levels within an entity, this is not always the case. Misappropriated asset schemes are common at higher levels where appropriate internal controls are lacking (e.g., segregation of duties, or a strong "tone at the top" of integrity and accountability). High-level individuals with the "capability" of fraud are also becoming common.

Cash and Related Internal Control Remedies

Typical asset types in asset misappropriation include cash, inventory for resale, and other assets (including such tangible assets as equipment or supplies). The legal term for stealing is larceny, which is an act of taking something unlawfully. Larceny can apply to any asset type, but cash larceny schemes abound. One larceny example is where an individual with occasional access to customers' checks or cash also has the responsibility to maintain accounts receivable. In this fraud-ripe situation, the individual can pocket the cash and record some kind of entry in the accounts receivable. The journal entry might either write off the account as uncollectible or credit the account for merchandise that was supposedly returned (but in reality was not returned). The customer's account would clear, so there is no report of impropriety. A useful control to prevent cash larceny is that a list of receipts be recorded immediately at the initial point of entry to an organization. This simple technique of using a cash prelist showing the cash that has come into the organization is helpful; it serves as the best deterrent when that same list is used monthly during bank reconciliations. A record of cash received should align closely with cash recorded in the bank.

A common example of cash larceny also related to accounts receivable responsibilities is known as "lapping" accounts receivable. In this case, the accounts receivable clerk (with inappropriate access to customers' cash or checks) pockets a portion of the payment received from a customer named Paul, while making a mental note to correct Paul's account in the next day or so. This scheme is sometimes referred to as "robbing Peter to pay Paul." The next day, when a different customer named Peter pays his account, the entry is actually made to Paul's account to bring it to the correct balance, but now Peter's account is pending. This scheme involves much extra effort and internal tracking to keep the fraud perpetuated, and many lapping schemes tend to escalate over time. Lapping schemes can be difficult to uncover, but perpetrators are caught if and when appropriate separations of duties are put in place, or the lapping window is shortened by unforeseen circumstances, such as an unexpected illness.

Larceny may involve situations where individuals using cash registers make fictitious void entries in order to keep cash for selected transactions. Excessive void entries may indicate theft of cash. Other schemes of larceny involve the use of manual cash receipt forms. A simple protective device from this kind of scheme is the appropriate use of prenumbered documents and the follow-up accountability of such documents. The sequence of manual forms must be accounted for, which is an important element of the prenumbering function. Without subsequent accountability, prenumbering is a moot internal control. Control over manual forms is applicable to the restaurant industry, where wait staff fill out the manual form to have the food prepared; subsequent accounting for the form numbers can uncover missing cash.

Misappropriated cash by a wait staff is also known as skimming, which means that the assets are taken prior to any entry on the books. Skimming cash receipts can be as simple as a cashier pocketing sales without recording them. Such off-the-book activities can make skimming difficult to catch. One example is the potential for skimming of cash by a courier who is assigned to pick up cash at several decentralized locations of the entity. Controls need to be in place in three areas, if they can be implemented in a cost-beneficial manner: control over the receipt of cash at pickup, control during the transfer of cash to the bank, and accounting for the record of cash later by each decentralized location.

Fraudulent disbursement schemes exist as a means to steal cash; disbursement schemes include payroll schemes, expense reimbursement padding, and billing schemes that involve nonexistent companies. Fortunately, information technology auditors use tools to match employee data with vendor data to detect such schemes. Other disbursement schemes include check tampering schemes, where either the maker or the payee names may be forged. Check kiting is a fraudulent activity that operates involving multiple banks and locations; an individual engaged in kiting is seeking to maximize the time element of "float" of in-transit items. Auditors who suspect kiting will prepare a schedule of interbank transfers to detect this irregularity.

Income-Smoothing Accounting Schemes

Prior fraud examples illustrate methods that management might use to inflate revenues. One example is known as "channel stuffing"; in which organizations send out their products to customers close to the end of the year, even though the customer has not ordered anything. Coca-Cola was charged with channel stuffing on several occasions; gallon pushing, as channel stuffing is known in Japan, involved SEC action from 1997 to 1999. Within North America, Coca-Cola reached separate settlements for similar charges. Krispy Kreme is another company that suffered accusations of channel stuffing. A variation on channel stuffing is to offer incentives to customers to accept excessive product, for example, unlimited rights to return the product. McAfee, within the software industry, was associated with such ploys, along with other software companies that are less well known. Some employees of businesses involving heavy durable goods admit to channel stuffing; the substantial costs of shipment were seen by those involved as a worthwhile cost. Inevitably, merchandise would be returned, but it would be weeks later, and it was thought that prior documentation of the shipment would satisfy auditor concerns of evidence of the revenue transaction. The incentive was to reach bonus thresholds.

Auditors today are becoming better trained to look for frauds involving overstatement of revenues, thanks to SAS 99, which advised auditors to presume that misstated revenues exist in an audit engagement. Auditors closely scrutinize year-end cutoffs to ensure that contracts and their stated contractual terms afford appropriate recognition of revenue, and that subsequent to the year's end, revenues are not recorded prior to an appropriate time. Company attempts to double book large year-end transactions are scrutinized; these could conceivably be explained away as honest errors, if detected. In addition to attention paid to revenue schemes, auditors must exercise caution in looking at inventory, since changes in inventory are a major expense category impacting the income statement (cost of goods sold). Other expenses of corporations that are closely reviewed include payroll that can be in error for ghost employees or understatement/underpayment of payroll taxes; understated expenses for rent, insurance, or supplies; and depreciation errors. There are literally millions of accounts in which fraud of some magnitude can be lurking.

Pervasiveness, Extent, and Cost of Fraud

Since 1996, the ACFE has reported on occupational fraud; the ACFE "2012 Global Fraud Report" summarized 1,388 cases as reported by the Certified Fraud Examiners between January 2010 and December 2011. The report included the investigation of frauds in 100 countries, and respondents provided an estimate: A typical organization loses 5 percent of its annual revenue to fraud. Using the 2011 gross world product, this estimate translates to more than $3.5 trillion, according to the report. Consistent with prior ACFE surveys, the industries that were hit hardest include banking and financial services, government, and the manufacturing sector.

Ernst and Young, a big-four CPA firm, released its largest-scale report to date in 2012, which utilized a global market research firm to interview 1,758 senior decision makers who have fraud-fighting responsibilities in a sample of large organizations across 43 countries. The report indicated the pressure of the economy in that 39 percent of respondents reported that corruption and bribery occurred frequently, and 5 percent of respondents (up from 3 percent in the prior report) indicated that they might misstate financial results.

Fraud Awareness Frameworks

Sociologist Donald Cressey's work on white-collar criminals (specifically embezzlers) in the 1940s is associated with the fraud triangle. In terms of identifying fraudulent activity, three risk factors are of general interest. The AICPA accepted this model when it incorporated Cressey's work into its Statement of Audit Standards in 2002 (SAS 99), and it discussed separately the factors of incentives/pressure, opportunity, and rationalization/attitudes. The idea is that if all three legs of the fraud triangle exist, a perfect storm exists for someone to perpetrate fraud.

The first factor was originally called a "nonsharable need" by Cressey, and the extent of what was nonsharable differed by individual; today, this risk factor is labeled as incentive/pressure. One example is earnings management, where the perpetrator or the organization stands to benefit. This incentive may take the form of pressure upon the individual from other individuals within the organization. However, this is not the only relevant source of pressure; pressure to perpetrate fraud can stem entirely from one's personal life, exerting intense personal pressure and possibly a sense of shame. Debts, impaired judgment, or a personal life including addiction, poor health, or a sick family member are examples.

Rationalization/attitudes are the second set of risk factors. The most common rationalization associated with misappropriated assets is "I am not stealing these assets; I am only borrowing them. I will repay this money . . . on payday. . . or . . . as soon as I possibly can." Other rationalizations can be the result of an employer that is not treating employees fairly or perpetrators who view themselves as underpaid, and thus entitled to the ill-gotten gains. Rationalization can ensue when a subordinate is instructed by his or her supervisor to make an inappropriate adjustment or journal entry to the financial statements; in such a case, the perpetrator says "I am just doing my job." Alternatively, the work environment could be such that it is the norm to practice aggressive and biased accounting estimates that favor the bottom line (i.e., net income). In such a case, over time, the perpetrators may eventually believe that "this is just the way things are done around here," or "it must be ok, because everyone else is doing it."

The third risk factor is opportunity, the most important one for management and auditors to be aware of, since they can have some control over this risk factor. Opportunity for fraud is heightened when internal controls within an organization are weak; thus, putting into place established internal controls is a strong and best-practice recommendation, so that opportunity exists at a minimum. Policies and procedures include separating duties among personnel so that one person does not have responsibility for asset handling or custody, authorization responsibility to approve transactions, and responsibility to record transactions. Keeping these three areas separate among different personnel strengthens internal control. A precaution is necessary, however; opportunity always exists, because of the possibility that individuals who have been separately assigned to functional areas may join forces and collude to perpetrate fraud. Individuals can be very creative and crafty to thwart even the strongest internal controls.

Building on Cressey's framework, the fraud triangle theory has been supplemented with a fourth dimension, capability, which has led some theorists to reference the fraud diamond. The capability characteristic includes a strong ego, confidence, and intelligence, or placement within the organization to allow the individual's knowledge of the system to exploit existing internal control vulnerabilities.

Combating Accounting Fraud

Accounting fraud fighters turn to several sources to inform themselves. Insights into behavioral cues emerge from theories of the fraud triangle or diamond. Research documenting the monetary costs and pervasive nature of fraud is ongoing by multiple organizations. Guidance of best practices provided by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), the American Institute of Certified Public Accountants (AICPA), and the Association of Certified Fraud Examiners (ACFE) facilitates awareness and provides deterrents to accounting fraud. All of this knowledge is helpful in reducing accounting frauds and informs laws that further deter and punish accounting frauds. The ACFE's "2012 Global Fraud Report" indicated that 43 percent of frauds were detected pursuant to tips; just over 50 percent of the tips came from employees, with 22 percent coming from customers, and 12 percent were anonymous. The Dodd-Frank Act has continued to strengthen the whistleblowing provisions enacted in earlier legislation. It takes the persistent efforts of many to be effective in the battle against accounting fraud.

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See Also: Cressey, Donald; Dodd-Frank Wall Street Reform and Consumer Protection Act; Government Contract Fraud; Government Procurement Fraud; Kickbacks; Whistleblowers.

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Adelphia Communications Corp.

Adelphia Communications Corporation was named for the word *adelphia*, which means "brothers" in Greek. It was founded in 1952 by

John Rigas and became the fifth-largest cable television company in the United States, based in Coudersport, Pennsylvania. The company went into a public offering in 1986 and further expanded during the 1990s. As the company grew, it also expanded into other fields of business. For example, it operated a telephone business (Adelphia Business Solutions), a sports radio station (WNSA-FM), a sports cable channel (Empire Network), and many other smaller subsidiaries. The firm stressed its social responsibility by giving free basic cable and Internet connections to educational institutions and by sponsoring cultural and sporting events.

Band of Illegal Brothers

From a high closing price of over $84 in May 1999, Adelphia's stock fell faster than the industry as a whole and reached about $22 on March 27, 2002, when Adelphia released its 2001 financial statements. Adelphia filed for bankruptcy in 2002 because of incidents of internal corruption, poor corporate governance, and illegitimate accounting policies.

On May 15, 2001, after long negotiations, John Rigas stepped down as chief executive officer in return for a severance package of $1.4 million a year for the next three years. Adelphia filing for bankruptcy according to Chapter 11 has been marked by extensive disputes over the distribution of proceeds. A reorganization plan was accepted on February 13, 2007; at that time, Time Warner Cable was allowed to distribute approximately $6 billion in shares to Adelphia stakeholders and succeed Adelphia as a publicly traded corporation. Consequently, Adelphia would not offer its services as a cable provider, whereas its strong clientele of 110,000 customers of telephone and long-distance services was sold to Pioneer Telephone for $1.2 million. Allegedly, the financial damage incurred to the creditors of Adelphia could very well exceed $150 million. Adelphia still retains 275 employers to handle pending bankruptcy obligations, given that it still exists as a corporate legal entity, settling litigation claims and settlements with the Securities and Exchange Commission (SEC) and the U.S. attorney.

In SEC Litigation Release No. 17627, the major charges against Adelphia included the fraudulent exclusion of billions of dollars in liabilities and the concealed rampant self-dealing by the Rigas family. In particular, between mid-1999 and the end of 2001, John J. Rigas, Timothy J. Rigas, Michael J. Rigas, James P. Rigas, and James R. Brown, with the assistance of Michael C. Mulcahey, caused Adelphia to fraudulently exclude from the company's annual and quarterly consolidated financial statements over $2.3 billion in bank debt by deliberately shifting those liabilities onto the books of Adelphia's off-balance sheet, unconsolidated affiliates. Failure to record this debt violated generally accepted accounting principles (GAAP) requirements and precipitated a series of misrepresentations about those liabilities by Adelphia and the defendants.

The other major accusation that the company faced was that the line of separation between corporate funds and family funds was simply nonexistent. There was a widespread pattern of self-dealing involving Adelphia and Rigas-controlled firms. Since at least 1998, Adelphia, through the Rigas family, made fraudulent misrepresentations and omissions of information. Federal prosecutors presented evidence demonstrating that the Rigases used a cash management system to distribute money around family-owned entities, leading to embezzlement of a total of $100 million. The allegations set forth by the SEC accused the defendants of violating antifraud, periodic reporting, recordkeeping, and internal controls provisions of federal securities laws. The commission requested both civil and criminal penalties.

Two out of the five officers indicted were found guilty—John Rigas and Timothy Rigas. On the other hand, Michael Rigas, who acted as executive vice president for operations, was not found guilty regarding the accusations of conspiracy and wire fraud in 2005. The jurors were deadlocked concerning some other counts, but Michael pleaded guilty to the count of manipulating a financial report, according to many published reports, before the second trial; the guilty plea led to a sentence of 10 months of home confinement and two years probation. Michael Mulcahey was acquitted of all criminal charges. John and Timothy Rigas have served their prison sentence since August 13, 2007. On March 3, 2008, the Supreme Court rejected the final appeal without comment. The case was *Rigas v. U.S.*, 07-494. John Rigas' original release date was September 4, 2020, but a federal judge reduced his sentence by three years, and his new release date is scheduled for January 23, 2018.

A noteworthy difference from other high-profile corporate scandals such as Enron and Worldcom is that the Rigas brothers did not sell their stock. They focused on hiding unpleasant accounting data, trying to buy time in order to rectify the problem in the process. This tactic may not have been aggressive in terms of a typical corporate fraud, but it was nevertheless illegal. Adelphia provides an example of what can happen when high leverage is mixed with an inadequate system of corporate governance.

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See Also: Bank of Credit and Commerce International; Enron Corp.; WorldCom Inc.

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Adulteration, Economically Motivated

Economically motivated adulteration (EMA), a subcategory of product fraud, is an offense that, while seemingly clearly a white-collar or corporate crime, often defies classification. There is evidence of this type of fraud back to Roman times. EMA covers adulteration and applies to all products. There is a wide range of product fraud, including food fraud, that leads to companies closing, industries on the verge of collapse, thousands of lost jobs, and severe public health threats. The awareness of the threat is growing in number of incidents and severity of impact. Although many of the perpetrators are individuals or small groups, links to transnational organized crime groups and even terrorist organizations have been identified. In addition, there are often rogue individuals or small groups within companies that blur the distinction from corporate crime. The distinction between white-collar crime and traditional crime is blurred because the planning and coordination is from afar, while the products are physically consumed by consumers. Regardless of the definition, the increased regulatory and enforcement focus is based on initiatives to protect product safety and intellectual property rights.

Definition

EMA was first formally defined in the federal register notice for the U.S. Food and Drug Administration (FDA) open meeting on the topic in 2009 as: "the fraudulent, intentional substitution or addition of a substance in a product for the purpose of increasing the apparent value of the product or reducing the cost of its production." Although often applied to food, the definition of EMA officially covers all FDA-regulated products. Also, EMA only covers adulteration as defined in the Federal Food, Drug, and Cosmetic Act. Product fraud concepts not included in EMA are misbranding, cargo theft, diversion, and tampering, which are defined in other FDA documents. These other concepts are considered in the broader food fraud category.

Adulteration of products has been going on since the start of recorded history. There is evidence of Roman wine diluted with French wine. Although the EMA term appears to have been first used in this context around 2000, mentions began in FDA literature in 2004, and the concept was formally defined by the FDA in 2009. Although there are no laws or regulations that explicitly address EMA, broader adulteration was the impetus for the first U.S. food and drug laws. Those laws were the Pure Food and Drug Act of 1906 and the Federal Food, Drug, and Cosmetic Act of 1938. Both acts included a significant focus on adulteration and misbranding. These early fraud statements set precedence for the FDA's recent use of the terms *fraud* and *fraudsters*. The Food Safety Modernization Act of 2011 is the update to the Federal Food, Drug, and Cosmetic Act, which includes 11 mentions of "intentional adulteration."

EMA and food fraud are receiving more regulatory and industry attention for a number of reasons. Advanced laboratory technology is allowing more precise identification of contaminants, traceability is allowing more identification back to a source, and global public health alert systems are more rapidly identifying outbreaks from fewer incidents. At the same time, globalization is expanding the supply chain and consolidating production—fewer suppliers shipping more products farther around the world, more quickly. These two concepts converge to create tremendous economic growth, but an unintended consequence is greater crime opportunity for fraudsters.

A political cartoon honors the U.S. Bureau of Chemistry's Harvey Wiley, who fought for a federal law prohibiting adulterated and misbranded food and drugs. President Theodore Roosevelt signed the effort into law in 1906 as the Pure Food and Drugs Act.

Although prevention is a cornerstone of public health and food safety, a strategic shift has occurred for prevention of intentional adulteration and EMA, with the focus including the behavioral sciences and criminology. Situational crime prevention and the "crime triangle" were included in a presentation at the first FDA open meeting on EMA. The literature applies criminology to EMA prevention in 2011 for food, and in 2012 for drugs. Holistic, all-encompassing, system-wide prevention strategies are common in more traditional food and drug areas, such as safety and quality. Proactive processes are mainstays of these industries, including the Six Sigma quality concept and the Hazard Analysis and Critical Control Point (HACCP) programs for food safety. The criminology theory provides a new frame for these types of systems to reduce the threat opportunity or vulnerability. Though the theories apply, the implementation is extremely complex. There are a near infinite number of fraudsters and a near infinite number of types of fraud. In addition, the white-collar or corporate criminals are clandestine, stealthy, and adept at avoiding detection.

The trend for EMA, as with food fraud, is that it will continue to grow in scope, scale, and threat. It is growing for a number of reasons, including the success of brands; the consumer desire for more specialized products; and globalization impacts of wider geographic distribution, consolidated manufacturing, and speed of transportation. The complexity of the products and the supply chains will increase the need for prevention, rather than just intervention. This prevention focus will continue to emphasize the importance of reducing the fraud opportunity through applying the criminology concepts of situational crime prevention and the crime triangle. Even though prevention is logical and supported by industry precedence, such as Six Sigma and HACCP, the shift to prevention will be challenging. Current industry management and agency enforcement have been focused on intervention and response.

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See Also: Counterfeiting; Food and Drug Administration, U.S.; Food Fraud; Globalization.

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Advance Fee Scam

Some of the most ubiquitous e-mails that a person can encounter involve efforts to embroil their recipients in an advance fee scam. The purpose of these scams is to trick and persuade prospective victims into voluntarily parting with their money, because they are supposedly to receive a substantial benefit in return. Most victims fall prey to advance fee scams because they expect a significant windfall in return for a moderate initial payment. This particular scam has been around for a long time—there were cases of these scams in the early 19th century. In contemporary times, these scams are known as Nigerian Advance Fee Scams or the Nigerian 419 Scam. These advance fee scams can have serious financial aftermaths for the victims: many lose their entire savings, and some even lose their lives in the process. Estimates of losses from advance fee scams typically range from about $17 to $54 million, and sometimes even as high as $262 million. One of the reasons why these estimates vary so much is that many victims do not report the crime to law enforcement out of fear of possible media coverage and ensuing shame. Another reason is that many victims initially buy into the scam, even when the mail appears to detail activity of questionable legality, and they may be worried about actually having abetted criminal activity.

Fertile Ground for Fraud

Research has suggested that the social and political background of Nigeria allowed fraudsters to come up with a somewhat credible context in order to ensnare their victims. Since Nigeria became an independent country in 1960, it has been ruled by a series of military dictatorships with periods of brief democratic governance. Many of the dictators were reputed to have amassed several billions of dollars from the national treasury, a major portion of which is still untraceable. This provides a convenient backdrop for sending out solicitations to gullible and naïve people. A typical letter suggests that there are funds in a particular country (e.g., Nigeria or Sierra Leone) that need to be transferred out of that country and into the country where the recipient resides (e.g., the United Kingdom or the United States). In order to obtain the recipients' help with transferring the money, he or she is promised a significant share in the spoils—the share is typically an enormous amount of money, to the tune of many millions. The victim then ends up having to pay an advance fee to secure the transferring of the funds, which the victim then ends up losing because the promised share never materializes.

The advance fee scam is also carried out by informing people that they have recently inherited money that was bequeathed to them. The victim ends up paying an advance fee in order to secure a nonexistent inheritance. Other methods entail victims receiving correspondence of contractual agreements with governmental or corporate agencies. The victims are again asked to supply their bank account details and money to pay legal fees, bribes, bank fees, or taxes. This leads to the victim suffering tremendous financial loss. Some victims suffer more than just financial losses—cases abound where victims traveled to the foreign country to try and recover their money and ended up kidnapped for ransom or murdered. There is also evidence that some victims are sent more solicitations, ostensibly from the authorities this time, informing them that their misplaced funds have been recovered. This sometimes leads to a further round of victimization. Some scholars have also documented that the people or syndicates involved in advance fee scams are tied to credit card fraud, identity theft, forgery, immigration fraud, and money laundering. In some instances, the victims of these scams end up committing illegal activities in order to obtain funds to send to the scammers. It is very hard to detect and prosecute advance fee scam perpetrators; however, advance fee scams can be better controlled through legislative harmonization, monitoring of cyber cafés, and cooperation with technological companies.

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See Also: Fiduciary Fraud; Internet Fraud; Money Laundering; Nigerian 419 Scams.

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Advertising Fraud

Advertising fraud is generally defined as advertising that is misleading in any material respect, either explicitly or indirectly, through representations made in a statement or combination of statements, and any failure to reveal material facts. A statement or representation in an advertisement may also be “false” or “fraudulent” when it constitutes a half-truth. The legal definition is much stricter than common sense, which requires the element of “deception” in advertising to establish the illegality. According to Section 15 of the Federal Trade Commission Act of the United States, deceptive advertisements are “misleading in material respect,” and this has been interpreted by the courts to mean that the deceptive advertisement must affect the purchasing decisions of the customer.

Any form of commercial information or communication, the content of which is contrary, in whole or in part, to actual conditions or to the acquisition conditions of the goods and services offered, or using texts, dialogues, sounds, images, or descriptions that directly or indirectly, or even by omission of essential product information, could mislead, deceive, or confuse the consumer. All forms of fraudulent advertising or abusive advertising are prohibited, as are those leading to error in the choice of the goods or services that could affect the interests and rights of the consumer.

Many economists complain that the extensive and fraudulent use of advertising involves undue costs and is a bar to free competition, with a resultant adverse effect on the operation of the free price system. Experts in home economics charge that it is a poor guide to consumption. Criminologists and legal scholars have noted its far more serious consequences, including death and bodily harm caused by fraudulent advertising.

The history of corporations using blatantly fraudulent claims, as well as exaggerated claims, or puffery, is long. The roots of the tremendous growth in American advertising that took place after the Civil War were laid down over centuries of evolution in Western marketplaces. Ethical issues regarding advertising were seldom raised because advertising was considered merely a matter of announcing the availability of products. Even then, however, manufacturers devised and implemented skillful and boastful advertising to sell harmful drugs and other bad products. By the end of the 19th century, abuses in advertising flourished, along with consumers’ suspicions about advertised food. Pure food regulation, not advertising regulation, was introduced to deal with such a problem in the second half of the 19th century.

In the United States, heightened attention to advertising's credibility in the first decade of the 20th century foreshadowed the appearance around 1911 of an energetic truth in advertising movement, which initiated legislation and established organizations to combat dishonest advertising. However, the criminal nature of the sanction; the inclusion of requirements of intent, materiality, and other restrictive elements; and the failure to provide administrative machinery for enforcement severely limited the effectiveness of these statutes in suppressing false or misleading advertising. More generally, the advertising industry's desire for self-regulation has meant that prosecutions have been infrequent, and convictions rarer still. Private negotiation resolved most complaints.

Regulation

Federal and state laws and the new Federal Trade Commission (FTC) accompanied this self-regulation. In 1914, the Federal Trade Commission Act was enacted, stating that false advertising is a form of unfair and deceptive commerce. Under the act, the term *false advertising* extends well beyond untrue advertisements. It also includes advertisements that make representations that the advertiser has no reasonable basis to believe, even if the representations turn out to be true. An example would be an advertisement for a vehicle that states that the vehicle uses less petroleum than any comparable vehicle. The advertiser would have committed false advertising if it had no reasonable basis to believe the truth of this claim (e.g., through comparative tests), even if it turned out to be true.

Under the law, the government doesn't have to prove deceptive intentions at an administrative hearing or in court. The fact that a statement had a deceptive quality is sufficient. If the ad is deceptive in nature, the defendant faces legal problems, even if he or she has the best intentions. The fact that he or she did not know the information was false is irrelevant. Determining whether or not a statement is deceptive, however, is a much more complex process because one must examine not only the nature of the statement but also the potential effect on the customer.

The Federal Trade Commission Act created the FTC and gave it broad authority to regulate advertising. The FTC is the main federal agency that takes action against unlawful advertising. Under this broad mandate, the FTC has issued regulations prohibiting advertisements that could be misleading, even if they are true. A famous example involves Anacin, a brand of aspirin. The maker of Anacin ran ads claiming that clinical tests showed that Anacin delivered the same headache relief as the leading pain relief prescription. The ad did not mention that aspirin is the leading pain medicine. The FTC determined that the ad was misleading. The ad implied that Anacin was more effective than aspirin, when in fact, Anacin is really just aspirin.

Over the years, the FTC has taken enforcement actions against many businesses accused of engaging in false and deceptive advertising. A significant number of those administrative actions have been tested in court. For the most part, the FTC relies on consumers and competitors to report unlawful advertising. If FTC investigators are convinced that an ad violates the law, it usually tries to bring the violator into voluntary compliance through informal means. If that doesn't work, the FTC can issue a cease-and-desist order and bring a civil lawsuit on behalf of people who have been harmed.

The FTC can also seek an injunctive decree from the court to stop a questionable ad while an investigation is in progress. In addition, the FTC can require an advertiser to correct ads, that is, to state the correct facts and admit that an earlier ad was deceptive. For example, Listerine mouthwash was long touted as a cold and sore throat remedy. The FTC forced the manufacturer to run ads stating that Listerine would not cure colds or relieve sore throats.

The FTC has a further power, known as "fencing in." This enables the FTC to bar misleading ads with respect to a particular product and across all of a business's other unrelated product lines. For example, a testimonial constituting false advertising regarding product A could lead purchasers to believe that products B and C must also be great. In that case, the FTC could bar use of the ad for products A, B, and C.

Court decisions indicated that the judiciary would look favorably on commission action against dishonest advertising. By 1925, advertising cases accounted for three-quarters of the FTC's orders. In the 1920s and 1930s, a consumer movement attacked deceptive advertising. The efforts of the consumer groups generally reinforced earlier notions that truthful information was at the heart of consumers' needs. Consumer advocates in the interwar years showed little faith that advertising, even if regulated, could supply the truthful information that buyers required. Within the advertising industry, however, there were modest moves toward self-regulation, partly to stave off burdensome external controls, and partly to curb what advertising people themselves considered persistent abuses. The American Association of Advertising Agencies, for example, devised a code of ethics for its members in 1924, but it was vague and lacked even the threat of punishment.

Television and Consumerism

Despite the clarification of its authority to take action against deceptive advertising, the FTC in these years was hamstrung by bureaucratic inertia and a cumbersome legal process. A business journalist in 1957 described the FTC as "a headless, drifting agency which acted desultorily and seldom hurt anybody very much." The postwar years, however, saw changes in the nature of advertising and the appearance of new critiques of advertising and consumption. Advertising volume expanded along with the booming economy, but perhaps more crucially, it employed the new medium of television to reach its audiences.

By 1960, advertisers spent over $1.5 billion annually on television. The new medium's fusion of sight, sound, and motion in living rooms forced an expansion of the concept of truth in advertising. In 1970, for example, the FTC took action against Campbell Soup for a commercial for vegetable soup in which the photographers had put clear marbles at the bottom of a bowl to make the soup's ingredients rise to the top and appear more abundant. Campbell agreed in a consent order to discontinue the procedure.

These changes set the stage for a revival of consumerism and new efforts to control advertising during the 1960s. Consumerists had long complained that the FTC and other regulatory agencies shared a revolving door with regulated businesses. Although self-regulation and government control had recognized some of the new problems, the major challenge to policymakers was to find appropriate ways to curtail the fraudulent abuses in advertising.

Awakened from its postwar torpor by some sharp consumerist attacks, the FTC emerged by the early 1970s as a more energetic regulator of advertising practices. The FTC had broadened the definition of advertising fraud from the Progressive Era's fixation on literal truth. It began a program requiring advertisers to provide information substantiating the claims that they made in their publicity. Failure to supply adequate evidence, in the judgment of commission staff, could bring about a charge of deception or unfairness. The FTC articulated a principle stating that advertising claims that lacked a "reasonable basis" for belief were unfair practices.

However, it was nowhere near the solution to the problem because the FTC had not been given the legal instruments or the staff necessary to effectively administer and monitor advertising. Moreover, in many cases, the FTC relied heavily upon making deals with companies, in the form of consent orders, to halt misleading or false advertising. In 1971, consultation among advertisers, the agency, and media interests bore fruit in the creation of a new self-regulatory system. The scheme designated the National Advertising Division (NAD) of the Council of Better Business Bureaus as an investigating body, and it created a National Advertising Review Board (NARB) to evaluate complaints about advertising.

The purpose of the NARB is to "sustain high standards of truth and accuracy in national advertising." In reviewing advertisements, if a panel of the NARB decides that an advertisement is misleading or deceptive, it will request that the advertiser modify or withdraw the ad. If the advertiser "fails to respond or indicates his unwillingness to accept or comply with the decision, the panel will issue a Notice of Intent to the advertiser that the matter will be publicly referred to an appropriate agency of government." The NARB therefore serves as a self-regulatory agency, monitoring the activities of companies and agencies.

Advertising Growth

The use of advertising expanded rapidly after 1970. In 1973, advertising expenditures amounted to $25 billion, and by 2011, they had increased to about $150 billion in the United States. The Internet has recently become the biggest contributor of new ad dollars to the global market. Since the mid-1970s, however, pressure for deregulation has partially stymied governmental and industry efforts to regulate advertising. The FTC has been attentive to business protests against its actions, and hostile to governmental regulation against false advertising. The FTC was reluctant to pursue deceptive and unfair advertising cases during the Reagan years. Chairman James Miller of the FTC in the Ronald Reagan administration, for example, asked Congress to enact a restrictive definition of deceptive advertising. When Congress rejected this path, a majority of the commissioners voted to apply it anyway in FTC work. These standards required a showing of “likeliness to mislead” the “reasonable” consumer about “material” matters, rather than incidental ones.

On the other hand, consumers are becoming impatient with misleading and deceptive advertising, tired of being treated like pawns in a market-grid box and of being intellectually abused by a bombardment of inane and degrading advertisements. For almost every piece of merchandise a consumer buys, he or she is influenced consciously or unconsciously, directly or indirectly, by advertising. Some scholars declared that all advertising is deceptive because it is designed to manipulate. A major part of informative advertising is and always has been a campaign of exaggeration, half-truths, intended ambiguities, direct lies, and general deceptions. In a recent Gallup poll on the honesty and ethics of people in 32 professions, advertising and advertising practitioners ranked near the bottom. False nutritional claims and falsified demonstrations are just two illegal aspects of advertising and product promotion, which is a $100 billion a year business in the United States.

Lanham Act and State Laws

In addition to the FTC under the FTC Act, private parties, such as consumers or competitors, can also bring a legal action regarding false advertising under the Lanham Act. To establish a violation under the Lanham Act, consumers and competitors must prove the following: (1) the advertiser made false statements of fact about its product, (2) the false advertisements actually deceived or had the capacity to deceive a substantial segment of the target population, (3) the deception was material, (4) the falsely advertised product was sold in interstate commerce, and (5) the party bringing the lawsuit (known as the plaintiff) was injured as a result of the deception.

Actual loss is not required to show an injury. All that is needed is a reasonable basis for the belief that the plaintiff is likely to be damaged as a result of the advertising in question. An example of such damage would include ads that deceive consumers who are the target population of both the advertiser and the plaintiff. The penalties for a Lanham Act violation include the plaintiff’s lost profits, the additional profits to the advertiser resulting from the deceptive ad, treble damages, and attorneys’ fees.

In addition to the FTC Act and the Lanham Act, which are federal statutes, most states also have laws proscribing false advertising. For example, Illinois has enacted the Uniform Deceptive Trade Practices Act. Under the act, a “deceptive trade practice” includes such practices as “palming off,” misrepresentation, product disparagement, and bait-and-switch advertising.

Palming off occurs when an advertiser creates the impression that its goods or services are those that are furnished by a competitor. For example, this could occur if someone set up a hamburger stand that looked like a McDonald’s restaurant. Misrepresentation occurs when an advertiser makes false or misleading claims about its goods or services, as under the FTC Act and the Lanham Act. Product disparagement occurs when an advertiser intentionally makes false or misleading negative remarks about competing goods or services, causing its competitor to lose sales. Bait-and-switch advertising occurs when the advertised goods or services are withdrawn from the market, and substitute goods or services are instead offered for sale.

Most states have laws, usually in the form of consumer fraud or deceptive practices statutes that regulate advertising. Under these laws, state or local officials can seek injunctions against unlawful ads and take legal action to achieve restitution to consumers. Some laws provide for criminal penalties, such as fines and jail, but criminal proceedings for false advertising are rare unless fraud is involved.

Consumers often have the right to sue advertisers under state consumer protection laws. For example, someone who purchases a product or services in reliance on a false or deceptive ad might sue in small claims court for a refund, or join with others to sue for a huge sum in another court. A competitor harmed by unlawful advertising, or faced with the likelihood of such harm, generally has the right to seek an injunction and possibly an award of money (damages), although damages are often difficult to prove. Such cases are usually based on one of two legal theories: unfair competition or commercial disparagement.

Despite these laws that deal with advertising fraud, the most powerful tool in the United States is still the FTC Act. Some scholars noted that prosecutions of false advertising cases had proven difficult under the fraud laws because of the absence of major, highly motivated victims, as well as problems of proving intent and damage. Some argue that the FTC action against advertising fraud can be improved if the government facilitates the agency with more staff and resources, as well as political support.

The difficulty of proof and the trend of lenience toward advertising fraud cases can be found in many countries in the world. For example, in Canada, each year thousands of allegedly false, misleading, or deceptive advertisements are reported to the Department of Consumer and Corporate Affairs. However, only a small number of the cases have resulted in recommendations to the attorney general for criminal prosecution. There have been very few convictions against advertising fraud.

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See Also: Federal Trade Commission; Federal Trade Commission Act; Reform and Regulation; Regulatory Enforcement.

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Age Discrimination

Age discrimination is the unfavorable treatment of people based on their age, and it usually affects the elderly or older population. The term is now used to describe differences in treatment for all age groups. A related concept is "ageism," which refers to a set of attitudes directed toward age groups, based on assumed shared characteristics. Ageism sets or influences the context for age discrimination. Over the last century, the vulnerability of older populations has been gradually recognized, principally in the safeguards provided for those of pensionable age. Similarly, there is recognition of the victimization of young people—especially evident in their exposure to criminogenic risk factors and various forms of abuse and threats to their potential. For both groups, unfavorable treatment is inherently structural, and it implicates corporations as well as governments.

Some countries, particularly the United States, western Europe, Australia, and New Zealand, have sought to provide some protection from age discrimination, originally focused on employment but increasingly applied to the provision of public services such as health and social services. The emphasis remains, however, on the alleviation of the harsh consequences of forced exclusion from the labor market—balancing well-being with the capitalist demand for a flexible, dynamic, and productive workforce.

In Western societies, commercial organizations are expected to be the main creators of jobs. With the rise of "new managerialism" or "new public management"—the adopting of corporate management styles and strategies to the public sector—government employees are increasingly subject to similar end-of-career (retirement and pension) regimes as their counterparts in the

Participants in the Self Help for the Elderly's John King Senior Center in San Francisco, California, train at a new federally funded computer lab that features touch-screen computers, large-type keyboards, and multiple-language programs. Computer training can help seniors—many of whom will work well into retirement—have access to Internet job listings and applications. The Older American Act obligates states to access federal funding to provide social care and community services for seniors.

private sector. Discrimination with respect to one's age, as lived experience, is most apparent in the context of employment. This is of added importance where large corporations dominate the employment prospects of large segments of the population. Age is an important social and economic marker in various forms of interaction and relationships, both personal and in business transactions. The young are associated with vitality, vigor, chaos, risk-taking, and crime. The old are associated with wisdom, maturity, responsibility, stability, slowness, and illness. Economic, social, and financial stability are deemed to reflect the age distribution in a given society and organization. On this basis, age discrimination is generally regarded as acceptable, except where the effects are egregious. Organizations and corporations, mindful of commercial imperatives, use age to inform recruitment, progression, redundancy, and retirement practices.

Age-Related Legislation

The rise of industry, commerce, and trade has been accompanied by specific demands from those of working age—good health, dynamism, longevity, and youthfulness. People over the age of 60 would be variously described as less able, slower, or even disabled, as the 1907 veterans' law in the United States declared. A combination of myths about the ideal working age, generic biology of aging, and a sense of duty to the elderly also shaped the notion of the pensionable age—usually for those aged between 60 and 65. In the United States, the Social Security Act of 1935 provided for a guaranteed pension and formalized the point at which people were considered too old to remain in the labor market. As an intended consequence, it provided the grounds for discrimination on the basis of age.

Official attention to age as a form of discrimination has been notable in the United States and

Britain since the 1920s and 1930s. However, it was not until the 1960s that appropriate laws appeared on the statute books in the United States. The Age Discrimination in Employment Act of 1967 (ADEA) made age discrimination in employment illegal and abolished mandatory retirement. The aim is to promote the interests of older people and encourage organizations to focus on individual ability, not on generalizations about particular age groups. It therefore prohibits arbitrary age discrimination and seeks to protect those considered middle aged (originally set at 45–65, and since expanded to 40–65). Failing or refusing to hire and differential treatment with respect to compensation or conditions of employment on the basis of age are prohibited by the act.

With the ADEA confined to employment, there are clear limitations: Wider systemic practices of age discrimination based on misperceptions of the elderly would go unchecked—poverty, loss of livelihood, dependency, marginalization, and social exclusion. The Older American Act, as amended in 2000, places a duty on each state to access federal funding to provide social care and community services (from meals to employment-related assistance) targeted at the older population. The issues tackled in this all-encompassing piece of legislation are related to structural inequalities that make the position of older people excluded from the labor market and state social support systems even worse.

European Union (EU) member states now have an obligation to provide protection from age discrimination under the Directive 2000/78/EC, the equal treatment directive. The focus is on employment, and age is listed among other bases for discrimination such as race, gender, and religion. This directive requires member states of the EU to adopt legislative programs to bring appropriate laws into force that add age as a ground for discrimination. The directive recognizes four ways in which discrimination may take place: direct discrimination, indirect discrimination, harassment, and victimization. Direct discrimination is explicit, unfavorable treatment relative to a comparable member of another group. A neutral policy or practice may amount to indirect discrimination if it has adverse effects on an identifiable group and does not meet the objective justification test. This test requires the relevant policy or practice to be a necessary and proportionate response to legitimate business aims. Harassment and victimization refer to the use of hostility, intimidation, or some action that violates a person's dignity because of one of the grounds listed in the directive. This often takes the form of threats to job security or harassment as a consequence of making complaints about discrimination or expressing some other grievance.

Since age discrimination legislation applies primarily to employment, the labor market, and the provision of goods and services, relevant provisions therefore affect a significant number of organizations and occupations, with considerable differences across different countries. In the United States and Spain, the emphasis is on labor; whereas other countries such as Australia, Canada, and Ireland include goods and services. The distinction between public and private sectors is also a notable difference among countries. In the United States, the emphasis has mainly been on the public sector and selected occupations. In others, given the possibly wider scope of goods and services provisions, that distinction is less significant; age discrimination can be invoked in most contexts of employment or public services.

Age discrimination has yet to be placed on the same level of seriousness as race, sex, or religious discrimination. These are more recognized grounds for discrimination claims and are generally more effective. Race discrimination provides the model through which to judge the robustness of age discrimination legislation. Age is not strictly divorceable from race and gender—the person who suffers from age discrimination may also be subject to either race or gender discrimination, or both. Across these forms of discrimination lie common characteristics among victims: poverty and social and economic exclusion.

Examples of Age Discrimination

Despite the use of law to give some level of protection, age discrimination remains pervasive. It is almost a normal feature of the fabric of society. Being old or young determines one's chances of gainful economic activity. Some fields of employment practice forms of discrimination considered necessary for the health of their profession or industry. The youthful image prevails for media and television, for finance and investment professionals working directly with discerning clients, and in fields such as law and medicine, where the structure of training presumes that the best point of entry is during the typical college age range of 18 to 25. At the same time, young people face discrimination in gaining access to the labor market and victimization more generally. The recent global economic recession has been accompanied by a significant rise in youth unemployment. In Britain, for example, the figure for young people not in education, employment, or training (NEET) was just over 1.4 million in 2011. For the EU, the rate of youth unemployment rose from 14.7 percent of the total population in 2008 to just over 20 percent in 2010. In the United States, the rate has increased by 18 percent, and in Spain by as much as 40 percent since 2008.

Discrimination that affects young people as an identifiable group is more complex. For the most part, this has to do with the absence of agency—the ability of young people to speak on their behalf and be taken seriously—and the association of youth with criminal behavior. Criminological literature generally accepts that the primary age of criminal behavior tapers off in the mid- to late 20s. It is also noted that young people are more likely to be victims of crime, abuse, and social and economic exclusion. Transition to adulthood requires appropriate socialization and the sharing of responsibility among parents or guardians and the state. However, this means that young people are treated differently from older, experienced, economically independent adults. Although age discrimination legislation may be used to address some of these issues, some states have limited the eligibility of claimants to those over 16 (New Zealand) and 18 (Ireland) years old.

Antidiscrimination activity has expanded in recent years to include age as a recognized ground on which claims may be brought. Differential treatment of younger versus older populations has social and economic implications. Whereas the legal mechanisms adopted by states focus on organizational policies and practices, social attitudes to age differences are less amenable to these measures. The level of intolerance to race or sex discrimination is not yet the same as for age discrimination. With this come challenges beyond the immediate and specific issues in employment contexts, or the even more complex problems faced by young people, despite the suggestions that they have less to worry about in the long term.

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See Also: Gender Discrimination; Price Discrimination; Racial Discrimination; Sexual Harassment.

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Agnew, Spiro

Spiro Theodore (Ted) Agnew (1918–96) is best known for serving as vice president of the United States under President Richard Nixon from 1969 to 1973. To date, Agnew is the only vice president in U.S. history to resign because of scandal regarding criminal charges of tax fraud, extortion, bribery, and conspiracy. Spiro Agnew was born in Maryland on November 9, 1918, to Margaret Akers and Greek immigrant Theodore Spiros Anagnostopoulos. He graduated from Johns Hopkins University and later graduated from the University of Baltimore Law School in 1947. Agnew served in the army during World War II, as well as the Korean conflict. He was awarded the Bronze Star Medal for this service in France and Germany. Raised a Democrat, he later switched parties and became a Republican because his law partners were all Republican. Agnew was elected as Baltimore County executive in 1962 and became governor of Maryland in 1966, serving for three years. Agnew went from his first election as county executive in Maryland to vice president of the United States in only six years. This was one of the fastest rises in U.S. political history, similar to that of President Richard Nixon, who became vice president after only four years in the House of Representatives and two years in the Senate.

In the summer of 1973, a scandal unfolded involving Agnew. The U.S. Attorney's Office in Baltimore, Maryland, was investigating allegations that while Agnew was serving as the Baltimore County executive in 1966, he solicited payoffs from contractors doing county business, and that as governor of Maryland, and later as vice president, he accepted kickbacks from engineers whose firms had received state contracts. It was alleged that Agnew had accepted $29,500 in bribes to push through a construction company's project during his tenure as governor. In October 1973, Agnew's lawyers and U.S. Justice Department attorneys cut a deal that would not involve any guilty admission on his part. Part of the bargain involved Agnew's resignation from office. On October 9, 1973, Agnew composed a letter to President Nixon and a formal letter of resignation. The resignation was effective the following day at 2:00 p.m., just as the former vice president entered the federal courtroom to plead *nolo contendere* ("no contest") to one charge of tax evasion for not declaring the bribe as income.

Thereafter, U.S. Attorney General Elliot Richardson read a lengthy statement outlining the government's evidence against Agnew but asking for a plea of leniency as part of the bargain negotiated the day before. The judge decided not to sentence Agnew to jail, pending good behavior for the next three years. He fined Agnew $10,000 for income tax evasion and three years probation. The $10,000 fine covered just the taxes and interest due on his "unreported income" from 1967. The plea bargain was later mocked by former Maryland Attorney General Stephen H. Sachs as "the greatest deal since the Lord spared Isaac on the mountaintop." As a result of his no-contest plea, Maryland disbarred Agnew. Agnew's resignation triggered the first use of the Twenty-Fifth Amendment of the Constitution, in which the president nominates a vice president to take office upon confirmation by a majority vote of Congress. President Nixon nominated House minority leader Gerald Ford as vice president of the United States. A few years later, in 1976, several George Washington University Law School students, under Professor John F. Banzhaf III, later found four residents in Maryland willing to put their names on the case and sought to have Agnew repay the state $268,482, which was the amount that he had allegedly taken in bribes. After two appeals by Agnew, he finally wrote a check for $268,482 to the state of Maryland in 1983 for the bribes plus interest. Agnew attempted to use this reimbursement as an income tax deduction while living in California but was unsuccessful. Agnew died on September 17, 1996.

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See Also: Bribery; Conspiracy; Corruption; Extortion; Kickbacks; Nixon, Richard M.; Public Corruption; Tax Evasion.

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Alien Tort Statute

The Alien Tort Statute (ATS), also sometimes called the Alien Tort Claims Act, is a U.S. law that was passed in 1789. It was rarely recognized or considered significant by scholars or lawyers until a 1980 court case recognized its significance. Today, the ATS allows any person, whether or not a U.S. citizen, to bring a court case in U.S. federal courts against any other person, who also may be a citizen of another country, for a violation of international law. It has been used to bring cases against numerous corporations and businesspeople for violations of contemporary international law that otherwise may have never come before a judicial body. A court of any country usually can hear a case only if it is brought by one of its country's nationals, filed against its country's nationals, deals with an action that occurred in its country's territory, or, at a minimum, has effects that occur within its country's territory. The ATS does away with such requirements; for a U.S. court to hear a case under the ATS, it must merely involve a violation of international law. In legal terms, this broad mandate means that the ATS grants "universal jurisdiction" over violations of contemporary international law. No other law in the United States or any other country grants universal jurisdiction besides the ATS.

Court Cases Involving the Statute

Since 1980, the ATS has been used in various court cases that otherwise could not come before U.S. courts. These claims include violations of international criminal and civil law, but the ATS treats all of them identically: as civil wrongs. Claims have been filed by or against nationals of countries such as Burma, Myanmar, Great Britain, Nigeria, Paraguay, the Netherlands, and the United States.

A number of these cases were quite prominent and were brought against powerful people and businesses. The accused perpetrators include Charles McArthur Emmanuel (Chuckie Taylor), the son of Charles Taylor, president of Liberia; Coca-Cola Company; Yahoo!; the militaries of multiple countries; and a number of oil companies, including Union Oil Company of California (Unocal) (and its parent company, Chevron Corporation), Talisman Energy Inc., and Royal Dutch Petroleum (commonly known as Shell Oil Company).

Many of the claims against corporations and businesspeople are based on conspiracy, facilitation, or other ways that they assisted in the violation. Because of the ATS, international jurisprudence often cites U.S. cases. Since the ATS is the only law that allows a domestic court to adjudicate on most issues of international law, very few other courts have done so. Since international tribunals are still rare and issue few rulings, U.S. courts have dealt with international issues that no other court has. On the other hand, any court case under the ATS must be based on either international treaties or an established custom of international courts.

In *Kiobel v. Royal Dutch Petroleum* (2012), the U.S. Supreme Court considered whether or not the ATS would continue to be such a prominent player in adjudicating violations of international law by corporations. Lower federal courts have disagreed upon whether corporations can be targeted by an ATS suit, and this case should decide the issue. Under traditional U.S. law, corporations can be the object of any suit, whether criminal or civil, but the ATS is at least partially based on international law. The question is whether U.S. or international law determines whether corporations are included, and if the latter, whether international law allows suits against corporations or not. The ruling was expected in 2013; oral arguments were heard in October 2012. In either case, the ATS should remain important in bringing lawsuits against individuals based on white-collar crimes and other violations of international law.

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See Also: Conspiracy; Corporate Criminal Liability; Criminal Facilitation; Multinational Corporations; War Crimes.

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Allied Chemical Corp.

Allied Chemical Corp. is a major international chemical supplier headquartered in Hopewell, Virginia, that received global attention after it was discovered that it was knowingly discharging kepone into the James River. Kepone—a dangerous pesticide—is manufactured as a slightly off-white powder used to kill crop insects (especially on potatoes and bananas). Once discovered in the river, it would take a little over a decade to remediate all of the damage.

A Decade of Dumping

The main Allied Chemical plant in Hopewell had begun on a small plot of land before expanding as demand for its product grew. From 1966 to 1975, the plant contracted with its Allied Chemical subsidiary, Life Science Products Co., which manufactured only kepone and sold exclusively to Allied Chemical. In July 1975, the state health department closed the Life Science facility on the basis of concerns over worker safety. Between 1966 and the issuance of the shutdown, many workers had developed what are now commonly referred to as the kepone shakes, which are tremors associated with overexposure that can lead to both liver disease and sterility. As a result of what was witnessed at the plant, kepone was banned across the United States. The effects on the workers would later appear to be a minimal concern compared to other actions the company had been taking.

After shutting down the plant in Hopewell, the state learned that Allied Chemical had been illegally dumping waste (much of which contained kepone) into the James River, creating a biohazard never before seen in the region. By attempting to dispose of the waste into a sewage system that was not designed to handle toxic waste, Life Science was destroying the river. Although this would be dangerous in any circumstance, the fact that kepone grows in organic tissues made the matter even more serious. Fishing had to be banned in every area within 100 miles of the river because the government worried that ill effects could spread quickly to unknowing citizens. At its peak output, the factory produced approximately 4,500 pounds of kepone per day. However, due to the importance of the plant to the town's economic future, regulators from both federal and state levels appeared willing to overlook many of the safety concerns at the plant. Allied Chemical, too, was aware of the problems.

With fishing banned and the public fearing harm from eating any fish gathered near the St. James, the Virginia fishing industry found itself struggling to stay alive. In a political move designed to save the industry, Governor Mills Goodwin and lobbyists from a series of major chemical manufacturers asked the Environmental Protection Agency to increase the maximum permissible amount of kepone to be considered safe in fish. Ultimately, it was successful in increasing the permissible level from 0.1 parts per million kepone to 0.3 parts per million. Its argument was that research demonstrating a link between the chemical and cancer was methodologically flawed and unreliable.

As this was occurring politically, Allied Chemical was handling the first leg of its legal battle. The company chose to plead guilty to 940 counts of illegal dumping before U.S. District Court Judge Robert R. Merhige. In sentencing, Merhige ordered the company to pay a $13.2 million fine (a record amount at that time). Believing that the management team was actually made up of reasonable men, Merhige did lower the fine to $5 million if Allied Chemical would willingly create an $8 million fund for Virginia's environment.

The U.S. Securities and Exchange Commission (SEC), however, was not nearly as kind to or understanding of Allied Chemical as Judge Merhige. SEC officials believed there was grave indifference in the company's decision, early in its history, not to report to shareholders its decision to pollute. Only two months after Merhige ruled, the SEC charged Allied with failing to inform investors, consequently altering the company's financial risk outlook to potential investors. Allied Chemical—in an agreement with the SEC—vowed to never do so again. A few months later, the state of Virginia went after Allied Chemical for more than $5 million to compensate for the state's costs of cleaning up the environmental hazard left behind. With all of the legal action, it is not surprising that workers—who had been exposed for years—also made claims against the company. In the end, more than 50 workers and family members successfully garnered settlements.

The scandal, which consisted of both environmental and medical aspects, made national news.

Virginia is still trying to fully recover its fishing industry, but the actions of Allied Chemical have created more environmental ripples, both regionally and nationally. In the wake of the case, governments became less willing to turn a blind eye to long-term citizen welfare in exchange for short-term economic gains. Furthermore, the actions demonstrated both a thirst for corporate greed and blatant ignorance toward public health.

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See Also: Corporate Dumping; Environmental Protection Agency, U.S.; Hazardous Waste; Kepone Scandal; Labor Crimes; Legal Malpractice; Negligence; Pesticides; Pollution, Water; Public Corruption; Research Fraud; Securities and Exchange Commission, U.S.; Unsafe Working Conditions.

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Allied Irish Banks

Allied Irish Banks is one of the Big Four banks in the Irish Republic (Eire). On February 4, 2002, it was discovered that John Rusnak, a U.S. currency trader with Allfirst Bank, then a part of the AIB Group, had lost $691 million, creating a major financial scandal. This came seven years after Nick Leeson left Barings Bank insolvent. The Allied Irish Banks Scandal, as it was called at the time, followed from another, unrelated problem after investigations for tax evasion that resulted in the bank settling with the Irish Republic's Revenue Commissioners in 2000. After a second legal settlement in 2006, also in connection with tax evasion, confidence in the bank was eroded when, in December 2010, the Irish government took a majority stake in the company. The Allied Irish Banks had been formed in 1966, with a new company acquiring three banks: the Provincial Bank of Ireland (est. 1825), the Royal Bank of Ireland (est. 1836), and the Munster and Leinster Bank (est. as the Munster Bank in 1864). The Munster Bank had been liquidated in 1885, having run up large losses through fraud and mismanagement, and was re-established as the Munster and Leinster Bank.

Betting on the Yen

In 1997, with the Irish economy booming, the Allied Irish Banks bought First Maryland Bankcorp, which was a holding company for the First National Bank of Maryland. Two years later, it merged with the Dauphin Deposit Corporation and formed Allfirst Financial. Born in 1964, and living in Baltimore, Maryland, John Rusnak started working for Allfirst in 1993. In 1997, he bought heavily into the yen, anticipating that the Japanese currency would recover. It was for the same reason that two years earlier, Nick Leeson in Singapore, expecting a rise in business confidence in Japan, bet on the Nikkei index, which crashed after the Kobe earthquake. Rusnak's losses in the yen two years later led to him faking options to falsely show that he had hedged his positions. Rusnak's moves were accepted by the hierarchy at the bank, and although Rusnak managed to make back some of his losses for a few months in 1999, the losses started to mount.

Two of the bank's executives, David Cronin and Robert Ray, accepted a scheme to make back these losses, allowing Rusnak to open brokerage accounts with both Citibank and the Bank of America. Rusnak then lost even more money, but he managed to hide this by adding several bogus trades. In January 2001, the bank suddenly realized that Rusnak was losing large amounts of money, and Robert Ray ordered Rusnak to limit his losses. This led the trader to start offering discounted currency options to other banks. Some people in the back office raised their concerns, but Rusnak threatened to have them dismissed, ensuring their silence. However, a supervisor spotted two transactions in late 2001 in which there were no confirmations attached. Rusnak then faked several confirmations, using his computer and saving the file as "fake docs." There were some telephone checks, and when these were unable to back up these confirmations, Allfirst became concerned and started investigations. On February 4, 2002, Rusnak, recognizing what had happened, did not turn up for work as investigators tried to assess the extent of the losses. On the following day, Rusnak sought legal help.

The news became public on February 6, 2001, with Rusnak going into hiding after the Federal Bureau of Investigation (FBI) began to search for him in connection with fraud. A number of Rusnak's work colleagues and supervisors lost their jobs for failure to notice his wrongdoings. At the time that the fraud was uncovered, Rusnak was 37 years old and married with two children, and he was described by neighbors as Mr. Middle America, although some of the press called him the Brogue Trader—Nick Leeson having been dubbed the Rogue Trader. The losses incurred by Rusnak were later confirmed at $691 million. He was later charged with fraud and, on January 17, 2003, was sentenced to 7.5 years in jail after pleading guilty to fraud. He was released on January 30, 2008. Although Rusnak caused the Allied Irish Banks to lose a large amount of money, less than two years later, the bank agreed to pay 90 million euros in the highest tax settlement in Irish history, having to pay more in March 2006. There was also a scandal in 2004 when the bank was caught having overcharged customers on foreign exchange transactions. The global financial crisis caused a major decline in the Irish economy, with the Irish government loaning 3.5 billion euros as part of the bank recapitalization scheme in 2009, then stepping in to prevent the loss of the bank, which employed some 24,000 people.

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See Also: Barings Bank; Crédit Lyonnais; Leeson, Nick.

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American Cyanamid Co.

American Cyanamid was a company formed in 1907 by engineer Frank Washburn. It was established to supply fertilizer to the agriculture sector. Washburn named his company after a newly formed compound, cyanamid, a product that combines carbide, lime, and nitrogen. After World War I, the demand for fertilizer decreased, but cyanide, which was used in the extraction of gold and silver from ores, was no longer being imported from Germany. American Cyanamid took this opportunity to manufacture cyanide from cyanamid, thus enabling the company to expand its distribution of chemicals and broaden its marketing base.

Later, the company began production of hydrocyanic acid, a component of rubber. American Cyanamid continued its production of chemical compounds for agriculture, such as herbicides and growth hormones for cattle, while expanding its development of drugs and plastics that were directed to consumers rather than industrial supply. As the company increased its resources and assets, its executives purchased pharmaceutical and surgical supply companies, thus further broadening American Cyanamid's scope within the chemical market. The extended range of the company's sales and acquisitions led to scrutiny, criticism, and labor problems. In 1942, the company was forced to pay a substantial fine for antitrust violations. In the 1950s, there were multiple strikes by workers, reflecting labor disputes between executives and chemical factory workers. In 1967, American Cyanamid, along with large pharmaceutical distributors Pfizer and Bristol-Meyers, was charged with monopolizing the distribution of a common antibiotic, tetracycline. The company paid $48.5 million in fines.

The 1970s proved particularly problematic for the company. In 1973, the state of Georgia ordered American Cyanamid to stop dumping its chemical waste, particularly sulfuric acid, into the Wilmington and Savannah Rivers. This practice had occurred for years and led to fish kills in both freshwater systems. In 1978, 1,300 employees in Bound Brook, New Jersey, went on strike to protest working conditions in which employees were exposed to carcinogens. The chemical plant manager, Eldon Knape, declared "we don't run a health spa" and ordered the employees back to work. In Willow Island, Virginia, it was discovered that the chemical plant emitted lead-based carcinogens that would substantially raise the risk of birth defects for pregnant women. The company responded by ordering women of childbearing age to quit, accept demotion, or become sterilized. American Cyanamid received particularly bad press when five of its employees admitted to becoming sterilized in order to keep their jobs.

On September 8, 1983, the Environmental Protection Agency (EPA) listed the American Cyanamid site in Bridgewater Township, New Jersey, as a Superfund site because a significant load of hazardous chemicals was found in the soil and groundwater. The Superfund site had a history of industrial pollution starting in 1915. For nearly 100 years, American Cyanamid manufactured chemicals and disposed of chemical wastes on the property. Currently, the soil and groundwater are contaminated with volatile organic compounds, metals, and other known carcinogens and toxins. According to the Centers for Disease Control, "Some industries use benzene to make other chemicals that are used to make plastics, resins, and nylon and synthetic fibers. Benzene is also used to make some types of lubricants, rubbers, dyes, detergents, drugs, and pesticides." All of these products were manufactured by American Cyanamid. Benzene causes disruption in cellular activity, particularly in blood cells and bone marrow; causes leukemia and stimulates other cancers.

The Superfund site is located next to the Raritan River and above the Brunswick Aquifer, the second-largest source for drinking water in New Jersey. In 2010, an onsite inspection of the property and groundwater revealed that both contained benzene, necessitating control of benzene seepage into the aquifer and river. The residents

American Cyanamid Company's Warner Plant in the Linden, New Jersey, industrial complex of metropolitan New York on the Arthur Kill River in 1974. At that time it was estimated that the company dumped, by permit, 3.5 million gallons of chemical wastes annually into the New York bight (the indentation along the coast) from the manufacture of chemicals, insecticides, and sulfuric acid.

of the area claim that the region has experienced significant releases of benzene into freshwater systems during floods and hurricanes because the manufacturing waste is located on a floodplain.

The EPA allowed for remediation to entail containment of the waste dumps, with the understanding that the contaminants would still be present. The residents want the toxins eliminated, not contained, because containment in the past has proven temporary. The cost of excavation is more than $1 billion, as opposed to capping contaminants in place, which would cost $10 million. According to Bill Wolfe, a resident of the area, "what happens here is that corporations privatize the profits and socialize the costs every single time. . . . If the down-river cumulative impacts of all of this have impacted all of the ecosystems down the river, including the human ecosystem, who's going to pay for that degradation?"

Karen K. Clark
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See Also: Employee Safety; Environmental Protection Agency, U.S.; Hazardous Waste.

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American Hospital Supply Corp.

American Hospital Supply Corporation (AHSC) started out as a hospital supply distributor in 1922 and was the major supplier of health care products in the United States for several decades. Foster G. McGaw (1897–1986), the founder of AHSC, developed an international production and distribution network. He was an entrepreneur and philanthropist who incorporated the hospital supply company in 1922 in Illinois and created one of the largest medical supply companies in Chicago.

McGaw also enhanced Northwestern University's campus with the construction of McGaw Memorial Hall and Alice Millar Chapel. In the 1930s and 1940s, AHSC dominated the industry and became the nation's largest manufacturer and distributor of medical products. The corporation produced a range of around 28,000 products and distributed to hospitals throughout the United States. Even though AHSC was involved in several legal disputes, the company still dominated the industry and was one of the largest distributors of medical equipment in the United States.

AHSC optimized the way that health care and hospital supplies were delivered. AHSC also distributed the supplies of other companies, such as Hospital Products Limited (HPL), to 19 hospitals across the United States. By 1956, AHSC sales had grown to about $65 million. Sales had increased to $135 million, and the company had about 6,200 employees 10 years later. By 1984, sales were about $3.45 billion, and about $3.6 billion a year later, using a network that could fulfill orders within 24 hours.

AHSC had merged with Hospital Corporation of America, creating the largest industry merger of its time. The new company created more cost-efficient care, managed 422 health care facilities, and distributed AHSC's 130,000 medical products. In 1985, AHSC received a $3.6 billion buyout offer from one of its competitors, Baxter Travenol Laboratories Inc. (BTLI). AHSC was acquired by BTLI, making BTLI both a health care products distributor and a developer of medical technologies.

Most corporations endure legal settlements, including AHSC. The company was sued by White & White Inc. (W&WI) and other competitors. AHSC had an agreement with several hospitals, and the plaintiffs claimed that this agreement was an attempt to monopolize and illegally restrain trade. The decision of the district court was in favor of W&WI, but the appellate court reversed the decision in favor of AHSC. The court found that AHSC was performing no unreasonable restraint of trade, with no attempt to monopolize. Later, AHSC filed before the district court, seeking the costs of trial and appeal from its opponents. The costs were calculated at over $126,000 for the original trial alone. The district court ordered each party to take control of its costs, with AHSC's appeal to be reimbursed by W&WI as the only exception.

Hospital Products, a small firm that manufactured reusable stapling systems for internal surgical procedures, entered into a three-year contract with AHSC. The contract stated that AHSC would act as HPL's only distributor in the United States, and that after three years, the initial agreement would go into automatic renewal for up to 10 one-year periods, unless HPL terminated the contract at least 90 days before the end of the first three-year term. On the final day of the three-year contract, Hospital Products asked AHSC whether the contract would be renewed, and the response was that since the contract was not terminated, the contract would be considered renewed. A day later, Hospital Products issued a statement to AHSC that it was going to consider the contract terminated. AHSC cited a breach of contract and obtained a preliminary injunction against HPL that forced Hospital Products to maintain its contract with AHSC. Hospital Products counterclaimed the preliminary injunction granted by the district court. After the injunction was affirmed, Hospital Products filed for bankruptcy. The preliminary injuction granted by the district court was affirmed for AHSC against Hospital Products, finding a breach of contract.

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See Also: Antitrust, Federal Trade Commission; Cendant Corp.; Chem-Bio Corp.

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American International Group

On September 16, 2008, one of the largest insurance companies in the world, American International Group (AIG), suffered from a major loss in confidence after the global financial crisis, which resulted in a downturn in the stock market and U.S. housing prices. AIG was seen as overvaluing its assets after Joseph Cassano of AIG Financial Products, based in London, had written insurance policies as credit-default swaps, in which companies were able to insure $441 billion worth of securities that had been rated AAA, but after the global financial crisis were valued at far less than that. The company managed to restructure, and it recovered with the help of the Federal Reserve Bank of New York.

Founded in Shanghai, China, in 1919, as an insurance company, AIG was established by Cornelius Vander Starr (1892–1968), an American businessman from Chicago who had gone to work in Yokohama, Japan, and then to Shanghai, where he formed American Asiatic Underwriters—later American International Underwriters. Most of its work was in Asia, but it had business interests around the world. It was forced to move from Asia in 1949, when communists captured Shanghai and proclaimed the People's Republic of China, with Starr having moved the company headquarters to New York just before the city fell. This move to New York City saw the company diversify, with it seeking out new markets throughout the world, especially in Latin America, and later in Europe and the Middle East.

Joe Cassano

AIG gradually became one of the largest insurance companies in the world, going public in 1969. It established an excellent reputation for its financial dealings, with its massive headquarters at 180 Maiden Lane, New York City. From April 8, 2004, until just after the crash in September 2008, it was listed on the Dow Jones Industrial Average.

In spite of an impressive record and history, AIG was sent to the verge of bankruptcy in 2008, as the result of some reckless business deals, basically caused by one employee, Joseph J. Cassano.

Cassano was born on March 12, 1955, in Brooklyn, New York, the third child of a policeman, his family originally from Malta. After completing a degree in political science from Brooklyn College in 1977, he worked with Michael Milken at Drexel Burnham Lambert. This was during its period of issuing what became known as junk bonds. In 1987, when that company crashed—but before it formally went bankrupt—Cassano and some others from Drexel Burnham Lambert managed to find work with AIG, with Cassano establishing its Financial Products Division and becoming chief financial officer. This was based at Mayfair in London, with Cassano living in an $8 million house in London and maintaining a house in Westport, Connecticut.

In 1994, Cassano was promoted to head of the Transaction Development Group of AIG by Thomas R. Savage, and four years later, he decided to embark on credit-default swaps, by which AIG would, for a premium paid in advance, compensate a buyer in the event of a loan default or other credit event. The concept was developed by J. P. Morgan, and Cassano quickly started engaging in massive credit-default swaps. His main problem was that he did not have much in the way of funds as collateral. This was not a legal problem as a result of the Commodity Futures Modernization Act of 2000, which regulated the insurance industry. It was also not an important issue because the stock prices were steadily rising. This saw AIG make hundreds of millions of dollars of profits. Cassano was appointed the chief executive officer of AIG's Financial Products Unit in 2000.

There was a potential problem if house prices fell, but with the portfolio spread around the country, Cassano argued that it was impossible for all house prices across the entire country to fall at one time, pointing out that all the debt had been rated AA.

Lehman Brothers Collapse

The problem came about with the global financial crisis of 2008, which led to the bankruptcy of Lehman Brothers, the largest bankruptcy in U.S. history at that time. Lehman Brothers had held large amounts of stock and debt, valued on the company's balance sheets at precrash prices, but some of which had halved in value. Some analysts compared the stock held by Lehman Brothers and that held by other companies that were still, at that time, solvent. They found that AIG had some stock similar to that held by Lehman Brothers.

This investigation coincided with many companies wanting AIG to bail them out as the stock that they held fell in value. The credit-default swaps meant that they were insured against losses by AIG. By the time of the global financial crisis, it was discovered that Cassano had entered into credit-default swaps worth a total of $441 billion. At the time he did this, the securities were rated AAA. However, some $57.8 billion was in subprime loans.

Upon discovering this, AIG immediately announced on September 14, 2008, that it would sell the International Lease Finance Corporation that had been involved in aircraft leasing to raise money to cover the debt. AIG also received permission from New York regulators to borrow another $20 billion from its subsidiaries. The Federal Reserve became nervous, and it hired Morgan Stanley to investigate the serious possibility of systemic risks from a failure of AIG.

Federal Reserve Bank Rescue

On September 16, 2008, after news spread of a possible collapse at AIG, its stock fell 60 percent in value. Immediately, the credit ratings of AIG were downgraded by Moody's and Standard & Poor's to AA. There was the distinct possibility that AIG would have to file for bankruptcy protection on the following day; however, on the evening of September 16, the board of governors of the Federal Reserve Bank of New York (FRBNY) authorized a credit-liquidity facility for AIG that allowed it to draw on up to $85 billion over the next two years. The share price continued to crash and the company's stock was removed from the Dow Jones Industrial Average. On November 10, after the passage of the Troubled Asset Relief Program (TARP), the U.S. Treasury purchased $40 billion in AIG senior preferred stock, while FRBNY reduced AIG's facility to $60 billion, but extended the life to five years and reduced the interest rate by more than half. Before long, the U.S.Treasury owned more than 90 percent of the company.

Some of the money AIG received from the government was then paid to banks and other financial institutions to which AIG owed debts due to their purchase of credit default swaps; because some of these banks had also received TARP bailouts, many in the public expressed outrage. AIG's reputation had already been damaged by a $444,000 AIG employee retreat event held a week after the bailout and an $86,000 hunting trip for AIG executives held the following month. Both events had been scheduled far in advance but made the company an easy target. Perhaps even more damning were the bonuses paid to executives and employees of the financial services division, totaling nearly half a billion dollars. Such bonuses were exempt from the executive pay limits imposed by TARP bailouts. AIG defended them as contractual obligations.

In order to pay off its government loans, AIG began selling off its assets, beginning with the 2009 sales of subsidiaries Hartford Steam Boiler to Munich Re and 21st Century Insurance to Farmers Insurance Group. Other purchasers of AIG assets included Banco del Pichincha, MetLife Inc., Pacific Century Group, Fortress Investment Group, and Prudential. The U.S. Treasury gradually sold off its AIG shares, selling the last of them in December 2012 at a total profit of about $22.7 billion, and the company is again independent as a result.

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See Also: Commodities Futures Trading Commission, U.S.; Drexel Burnham Lambert Inc.; Lehman Brothers Holdings Inc.; Milken, Michael.

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American Motors Corp.

American Motors Corporation was an American automobile manufacturer based in Southfield, Michigan. The next largest car manufacturer after the Big Three (General Motors Corporation, Ford Motor Company, and Chrysler Corporation), American Motors often struggled to remain viable. During the 1980s, American Motors entered into a partnership with French automaker Renault S.A. in an effort to gain a supply of subcompact automobiles and raise the capital necessary for renovating its aging manufacturing operations. While many in France and the United States were critical of the partnership, Renault chairman Georges Besse continued to promote the partnership as important to the continued viability of both companies. After Besse's assassination in November 1986 by a militant extremist group, however, Renault lost interest in American Motors and the North American car manufacturer was ultimately merged with Chrysler Corporation, which coveted the Jeep line.

American Motors traced its roots to the 1954 merger between the Hudson Motor Car Company and Nash-Kelvinator Corporation, which at that time represented the largest corporate combination in U.S. history. While the newly formed company initially struggled to compete against the much larger Big Three automakers, which had much larger dealership networks and advertising budgets, beginning in the late 1950s, American Motors established itself as the maker of economy cars. Under the leadership of George W. Romney, who served as chairman and president of American Motors from 1954 until 1962, the Rambler was introduced and proved popular. During the mid-1960s, American Motors concentrated on manufacturing larger and more profitable automobiles; however, during the energy crisis of the 1970s, the car maker returned to emphasizing compact cars. During the 1970s, American Motors focused upon an all-compact line, introducing the Hornet, Gremlin, and Pacer. Although these automobiles featured unique designs and were initially popular, sales declined markedly a few years after each model's release. By the end of that decade, American Motors was focusing on its four-wheel-drive Eagle, introduced in 1979, and its popular Jeep line, which had been acquired from Kaiser Jeep Corporation in 1970.

Partnership With Renault

As American Motors struggled to invest in new models, it entered a partnership with Renault in 1980. This arrangement led to Renault increasing its investment in American Motors until it had assumed control by 1983. Under Renault's leadership, American Motors eliminated all models other than Eagles and Jeeps, and it introduced the Alliance, based on the Renault 9. After a $150 million overhaul of American Motors' Kenosha, Wisconsin, plant was completed, Alliances were produced there. The Alliance proved initially popular but quickly developed a reputation as unreliable and prone to breakdowns. These problems, coupled with declining fuel prices, led to deteriorating sales of the Alliance when consumers began looking for larger cars. Because American Motors had eliminated all of its larger model lines, the company seemed poised to continue losing money. Renault chairman Besse remained an advocate for American Motors, although his support was weakened because of the financial difficulties that Renault was experiencing.

By the mid-1980s, Renault insiders were questioning that company's continued involvement with American Motors. Through 1985, the partnership had produced few of the synergies that Renault had expected and had proven increasingly expensive to maintain. There was pressure from within the French automaker to declare American Motors bankrupt or to put the unit up for sale to another buyer. Besse opposed bankruptcy because that would cause Renault to lose its sizable investment, and he was against selling the American automaker because he felt that American Motors was undervalued. Instead, Besse was convinced that Renault's investment in American Motors was about to pay off. In addition to its investment in the Kenosha plant, American Motors had spent $250 million developing a new assembly line in Brampton, Ontario. The Canadian plant employed state-of-the-art technology and was specially designed to build the Premier, a joint effort of Renault and American Motors. Besse's support was persuasive, and the relationship between American Motors and Renault continued into 1986.

As chief executive officer of Renault, Besse held a prominent role in French society and was often quoted in the press on matters pertaining to business and the economy. Before joining Renault, Besse had also served as chairman of the European Gaseous Diffusion Uranium Consortium (Eurodif), a concern that provided fuel to 40 nuclear reactors. For this reason, he was targeted by members of Action Directe (AD), an anarchist group that used military methods to achieve its political goals. On November 17, 1986, members of AD approached Besse's chauffeur-driven automobile by motorcycle as it dropped him off outside his Paris home. As Besse left the car, AD members shot him in the head and chest, killing him. Nathalie Menigon and Joelle Aubron, two members of AD, were convicted of killing Besse in 1987 and were sentenced to life imprisonment. Jean-Marc Rouillan and Georges Cipriani, two other members of AD, were convicted as accessories to Besse's murder and were also sentenced to life imprisonment.

After Besse's death, the new Renault president, Raymond Levy, sought to curtail his firm's involvement with American Motors. To that end, Renault sold its controlling shares in American Motors to Chrysler Corporation in 1987. This acquisition allowed Chrysler to obtain the Jeep, which it wanted to compete with General Motors and Ford.

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See Also: Automobiles; Extortion; Fear of Crime; Ford Motor Co.; Labor Crimes; Political Assassinations; Terrorism.

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Amerifunding

Amerifunding/Amerimax Realty Inc. was the Westminster, Colorado, mortgage brokerage used to conduct bank fraud and identity fraud, beginning in 2002, by a group of conspirators that included owner Gerald Small; his wife, Kelli Small; Chad Heinrich; Charles Winnett; Robert Bichon; and Robert Sigg. The conspirators were indicted in 2004 on multiple charges of false or fraudulent claims, bank fraud, fraud by wire, false statements to a financial institution, fraudulent loan and credit applications, and criminal forfeiture. Matthew T. Kirsch of the U.S. Attorney's Office in Denver prosecuted. Several of the conspirators were known to operate under aliases; authorities identified Gerald A. Spence and Kris Kaas as Gerald Small aliases, and Kelli S. Burkhalter as a Kelli Small alias. Small also controlled a Denver company, 20th Century Mortgage Inc., which was used in some of the fraudulent actions. The conspirators were discovered through a joint investigation by the Internal Revenue Service and the FBI, believed to have begun when identity theft victims reported that mortgages and other loans had been taken out in their names. The FBI investigation was part of a broader initiative called Operation Continued Action, a nationwide enforcement operation targeting financial institution fraud.

Kelli Small pleaded guilty to one count of income tax fraud, receiving probation and community service in return for testifying against her husband. Gerald Small was sentenced to 101 months in prison and was ordered to pay $37 million in restitution. Bichon was sentenced to 35 months in prison and ordered to pay $2.3 million in restitution. Sigg was sentenced to time served and was ordered to pay $141,163 in restitution, which was later reduced to $12,000. Winnett was sentenced to 51 months in prison and was ordered to pay $35 million in restitution. Heinrich was sentenced to 28 months in prison and was ordered to pay $35 million in restitution. The various restitution orders directed payments to be made to Washington Mutual, Flag Star Bank, Impac Warehouse Lending Group, and other victims. A seventh person, Harry Lou Gayle, was arrested and convicted of filing a false tax return for 2002. His involvement in the conspiracy seems to have been limited to signing four false loan applications for Amerifunding.

The Amerifunding scheme obtained millions of dollars in mortgages and lines of credit through an organized identity theft conspiracy. Personal information was obtained from people who believed that they were applying for Amerifunding jobs. The conspirators harvested that information in order to obtain credit under those stolen identities, as well as manufacturing false loan applications, forged employment verifications, and falsified financial documents. False job postings, both online and in newspaper help wanted sections, have been a means of obtaining personal information for the purposes of identity theft and credit fraud for a long time, but they have been a subject of particular concern in the 21st century as identity theft has become more prevalent. Amerifunding applicants were asked to provide copies of their driver's licenses and Social Security cards; some declined to provide one or both. At least one ad, published in the *Denver Post* job listings section, offered a six-figure salary—most likely a means by which the Amerifunding conspirators attempted to target upper-middle-class victims with high credit limits. At least 47 identities were stolen and successfully used to obtain fraudulent loans and lines of credit.

Loans fraudulently obtained were used to buy properties in Conifer, Colorado, and Las Vegas and Henderson, Nevada, as well as a 2004 Jaguar XJR, a 2003 Lexus, and two private jets. About $8 million in cash and bank accounts was seized. Much of the money was never recovered.

In February 2006, Flagstar Bank FSB and Impac Warehouse Lending Group Inc. filed a civil lawsuit against First Collateral Services in Denver district court, over the losses Flagstar and FCS suffered as a result of Amerifunding's fraud. According to Flagstar and Impac's allegations, FCS misrepresented Amerifunding's financial condition and legitimacy in order to obtain repayment of the mortgage warehouse line, and it actively assisted the Amerifunding conspirators in obtaining funding in order to repay its debt to FCS.

Conspirator Robert Sigg went on to face arrests for numerous subsequent crimes throughout Colorado, including first-degree burglary and assault in Jefferson County, driving under the influence in Evans, distribution of illegal drugs in Weld County, assault and battery in Aurora, domestic violence in Parker, habitual traffic offenses in Thornton, and disturbing the peace and resisting arrest in Denver. His son, Austin, was arrested in 2012 at the age of 17 for the kidnapping and murder of 10-year-old Jessica Ridgeway and the kidnapping and assault of an adult woman. He was tried as an adult and charged with four counts of murder, two counts of kidnapping, sexual assault of a child, robbery, attempted murder, attempted sexual assault, and attempted second-degree kidnapping.

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See Also: Credit Card Fraud; Identity Fraud or Theft; Mortgage Fraud; Tax Evasion.

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Anderson, Jack

Jack Northman Anderson (1922–2005) was a muckraker, columnist, and broadcast correspondent, generally credited with revitalizing the field of investigative journalism and inspiring a generation of skeptical reporters. Anderson's career ranged across a wide spectrum of American politics and business for over half a century, and it included such stories as the assassination of President John F. Kennedy and the Watergate scandal. Anderson started his career as a correspondent for *Stars and Stripes* (the wartime military newspaper) and as a war correspondent. His job became a profession and truly blossomed as the result of hiring on as an investigator with longtime columnist Drew Pearson. Anderson rose from the ranks and became Pearson's partner in the late 1950s. Whereas Pearson was widely seen as a "left-ish" journalist, Anderson had the point of view that pretty much anyone—left or right—was fair game for his investigations. One of Anderson's earliest splashes was a series of articles co-written with Pearson on the personal and political failings of Senator Joseph McCarthy, famed "commie hunter" during the Red Scare of the 1950s. Anderson had a lifelong proclivity for going after the most powerful people in American political life, including such "untouchables" as J. Edgar Hoover (head of the Federal Bureau of Investigation [FBI]), Thomas Dodd (a powerful senator from Connecticut), and President Richard Nixon (who included him on several White House Enemies lists).

During his years in Washington, Anderson developed a wide-ranging pool of sources. In 1971, a White House investigator wrote in an internal memo that "Anderson . . . has access to intelligence digests . . . [and] private Presidential memoranda." In the memo, the anonymous writer cited as sources the Office of Management and Budget, Senator Hugh Scott, and agencies associated with the internal memos and briefings. The memo shows that the writer believed that there was also a highly placed source or sources in the White House that had been compromised and developed by the Anderson investigative staff. Anderson's investigation did not avoid backlash from the powerful. Hoover was quick to investigate Anderson in return, and the Nixon White House staff grappled with Anderson's investigative street fighters via wiretaps, FBI investigations, Internal Revenue Service (IRS) inquiries, and at least one alleged murder plot that was cooked up by G. Gordon Liddy. Anderson was squeaky clean in his private life, careful to the point of paranoia with money, and methodical in rooting out and publicly refuting unsubstantiated attacks on his methods or person.

International Telephone and Telegraph

Perhaps Anderson's greatest coup in the area of true white-collar crime was the investigation and exposure of dirty dealing within the ranks of International Telephone and Telegraph (ITT). In 1971, ITT had acquired Hartford Fire Insurance Company, drawing the attention of both the U.S. Securities and Exchange Commission (SEC) and Jack Anderson. What initially tipped off Anderson was the procurement of an internal SEC memo raising the issue of undue interference on the part of Connecticut Insurance Commissioner William Cotter, who had first disapproved the merger, then reversed his stand. The Nixon Justice Department merrily followed suit in approving the merger (a peculiar circumstance, because the U.S. Department of Justice (DOJ) had only recently dropped three antitrust suits against the company). However, some odd peculiarities in the narrative began to emerge, including allegations that ITT would be willing to foot the bill (to the tune of $400,000) for the Republican National Convention in San Diego.

ITT had been under the scrutiny of a number of investigators over the past decade. As the year went on, however, DOJ investigations mysteriously dried up, Cotter cleared the way at the state level, and ITT began to look as though it would not only avoid any legal difficulties for its lobbying techniques but also make the marriage with Hartford. ITT, the White House, and even the SEC stonewalled Anderson, needed information suddenly become unobtainable, and the entire affair seemed poised to drop into a journalistic vacuum. On February 22, Anderson procured what became known as the "Dita Beard memo," a document that instantly exposed a welter of darkly criminal activities within the corporation. The Beard memo revealed direct links between ITT, the Republican Party, and the White House for favorable treatment by the Department of Justice for money handed over for the Republican National Convention. The memo named names, including White House staffer Bob Haldeman, Attorney General John Mitchell, and President Nixon—all of whom were becoming widely known as participants in the Watergate affair. Eventually, the ITT Affair was subsumed by the larger and more critical investigation into the "high crimes and misdemeanors" committed by the Nixon administration. Jack Anderson died of Parkinson's disease in 2005, after a life of uncovering and airing the slimy underside of American politics.

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See Also: International Telephone & Telegraph Corp.; Nixon, Richard M.; Watergate.

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Anheuser-Busch InBev

The Anheuser-Busch company is one of the most enduring business ventures in the history of the

United States. The marriage between two businesses—Eberhard Anheuser's Bavarian Brewery and Adolphus Busch's brewing goods supply—would become the largest and most profitable beer company on Earth. When the family finally lost control of the business in 1998, the venture had spanned five generations of the Busch family, with a near-perfect record of profitable expansion. Beer may have run in their veins, but they generated an almost unalloyed record of sober progress. As the business grew, it proved capable of both diversity and adaptability to changing—sometimes critically reversing—business climates. From the start, the Busch managers were inventive, pasteurizing their product in order to transport it across long distances and manufacturing and employing refrigerated cars to keep the beer cool. When Prohibition hit breweries hard, Busch began to sell brewer's yeast, which experienced record sales to thirsty home brewers.

The Miller Wars

One of the ugliest conflicts in the modern era for Anheuser-Busch was its no-holds-barred battle against upstart Miller brewing. In 1970, Miller had been acquired by cigarette giant combine Phillip Morris, which was determined to rejuvenate the flagging company. It did so in a gamble on a new product: Miller introduced Miller Lite shortly after acquisition, and Phillip Morris poured millions into its high profile campaign to promote the beer. Anheuser-Busch was undergoing one of its periodic generational changes in command, bringing to the fore August Busch III. "Auggie" Busch, as head of the company, was an unremitting workaholic, known well for his "perform or leave" attitude toward business associates, 12-hour days, and unrelenting pursuit of the profitable bottom line. Auggie viewed the advent of the new Miller effort as a direct assault on Anheuser-Busch and its signature brand, Budweiser.

The public advertising war between the brewers told only half the story. Miller brewing attacked Busch's brand via the Federal Trade Commission (FTC), using the argument that Anheuser-Busch was falsely advertising its beers as "naturally produced" because it used tannic acid, a chemical product, in the brewing process. Busch fought back, also through the FTC, by going after Miller's Euro-brand Lowenbrau, which Miller claimed was brewed according to an original German recipe—it was not, Busch claimed, and the FTC agreed. In the midst of the lawsuits, the commercial wars, and the general atmosphere of brutal battle on both sides, a dirtier battle was fought in the trenches of the ground war. Distributors were battling for sales with wholesalers, account wars raged, and millions of dollars were spent.

The Miller War, as it became known, set in motion a corporate culture of massive spending—particularly on advertising. When Auggie Busch first came on board as the Beer King, he brought with him a horde of financial whiz kids and holders of master of business administration degrees (MBAs), along with others almost unknown to the Busch empire of earlier eras to modernize and streamline the company. Auggie tended to attract like-minded types to management. Unfortunately, this brought people of a less savory character. As millions of dollars flowed into advertising, a number of high-level executives at Anheuser-Busch decided that there was no reason why they should not dip into those funds for personal gain. In 1988, as a product of an internal investigation at Anheuser-Busch, two Anheuser-Busch executives, Joseph E. Martino and Michael A. Orloff, along with Mark L. Shyres, an executive at Bingham (Advertising) Group, were hauled into federal court to answer for a kickback scheme that blossomed into outright fraud from the St. Louis advertising group for a bit of extra business. Orloff (vice president of wholesale operations) and Martino (vice president of sales) faked inflated Anheuser-Busch invoices for thousands of dollars, as well as "gifts" of clothing, airline tickets, auto repairs, and club memberships over a five-year period. All three were convicted and were sentenced to three-year terms and large fines.

Though the issues at trial were of note, perhaps the more interesting aspect of the case was the testimony of unindicted Busch executives called to the stand by the defense, revealing the type and kind of gifts that floated on the wave of business that Anheuser-Busch generated with contractors of one sort or another. Martino (hardly an "uninterested party") asserted that the kind of activity that they were convicted of was de rigueur at Anheuser-Busch and had been so for years. August Busch III thoroughly cleaned house after the scandal, firing a number of upper- and middle-management executives, whether touched by the scandal or not. Despite the accusations and cross-accusations, Auggie was never accused of any wrongdoing, or of encouraging such activity—the fraud was uncovered by an internal investigation undertaken at his direction.

Anheuser-Busch was acquired by Belgian-Brazilian brewer InBev in 2008, becoming a wholly owned subsidiary of Anheuser-Busch InBev. New cost-cutting initiatives led to widespread layoffs, new budgeting procedures, reductions in benefits like severance packages and tuition reimbursement, and the cessation of other perks. In 2013 it pursued a plan to merge with Mexican brewer Grupo Modelo.

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See Also: Bribery; Corporate Criminal Liability; Kickbacks.

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Antiquities Fraud

Intentionally creating or manipulating an object to make it look like an ancient artifact from a past civilization, and then selling that fake artifact to a museum, auction house, or private collector, is a form of criminal fraud. Those who purchase fraudulent fake antiquities, such as auction houses, museums, and private collectors, often do so unknowingly, and the intentional misrepresentation and sale of a fake antiquity is a criminally punishable act in most countries, including the United States. Making an exact copy of an antiquity is not a criminal act; the criminality of fake antiquities fraud occurs once such a fabrication is sold under false pretenses as a legitimate cultural relic. The criminal industry is estimated to make billions of dollars annually. Most fraudulent antiquities are passed off as true remnants of ancient Greek, Roman, Egyptian, Chinese, and Japanese cultures; additionally, a significant number of faked antiquities are created to reflect ties to important time periods and events within the Christian, Judaic, and Islamic faiths. Fraudulent antiquities may include everything from fake bronze ceremonial masks to replica Ming Dynasty Chinese porcelain dishes to forged papyrus scrolls.

Art Crimes

Fake antiquities fraud is one element of a larger category of crimes related to art and antiques known as art crimes, which include art fraud, art vandalism, theft of art and antiquities, and archaeological site looting and destruction. Fake antiquities fraud, like other art crimes, is often transnational in scope. Usually, fake artifacts are created in one country and then sold to an auction house, museum, or collector in another country, with this process potentially repeating many times. Sophisticated groups, attracted to fake antiquities fraud by the trade's potentially large profits, also play a role in furthering the production and sale of fake antiquities around the world. The potential profits from selling fake antiquities acts as a corruptive force, capable of influencing individuals and institutions, who would otherwise appear legitimate, to engage in the trade. The corruptive power of the fake antiquities trade thus results in the formulation of complex criminal conspiracies that are focused on profiting from the sale or display of fake cultural artifacts.

The true extent of fake antiquities fraud is difficult to determine for several reasons. First, fake antiquities are difficult to detect. For example, highly skilled fraudsters working in China and other southeast Asian countries produce fake Ming Dynasty Chinese pottery, using a glazing and clay firing technique that produces microscopic cracks in the finished porcelain surface that look almost identical to the cracks found in legitimately ancient plates, bowls, and vases. In many instances, the fake item is so well produced that detection of the fraud is almost impossible, and

The James ossuary, here on display at the Royal Ontario Museum from November 15, 2002, to January 5, 2003, is one of the most contentious pieces in antiquities. For nine years, it was the focus of the Israel Antiquities Authority's campaign against forgers and smugglers, but its authenticity is still vigorously debated. The small stone box is unquestionably 2,000 years old, but its inscription—"James, son of Joseph, brother of Jesus"—is the point of contention. The piece now awaits a verdict in a warehouse near Jerusalem.

many years or decades may pass before the fraud is detected, if it ever. The reluctance of museums, auction houses, and collectors to reveal that they were duped into purchasing a fake antiquity, either because of embarrassment or out of fear that such a revelation may negatively affect their reputation and client confidence, also plays a large role in obscuring the true extent of fake antiquities fraud.

Oscar White Muscarella, an archaeologist specializing in the detection of forged and faked antiquities, published a catalogue detailing the fake antiquities he discovered on display at major museums throughout the world. Muscarella identified over 1,200 fraudulent antiquities, including some purported to be over 4,000 years old. Muscarella noted that the famed Louvre in Paris and the Metropolitan Museum of Art in New York City held over 80 fake antiquities between them. The fakes Muscarella discovered were deemed authentic by curators and other experts when they were first purchased, often for millions of dollars. Muscarella's report is important for several reasons. First, Muscarella noted in his survey of museum artifacts that his was by no means a comprehensive listing of all the fake artifacts in existence, making it likely that the total number of fake antiquities held in museum and private collections was significantly more extensive. Second, the fact that experts originally verified the authenticity of the fake antiquities that Muscarella discovered highlights an important aspect of fake antiquities fraud: Experts sometimes do not agree on what is "real" and what is not.

Other archaeologists and scholars eventually verified Muscarella's findings, but that is not always the case. For example, in 2005, a team of Israeli scientists concluded that a carved ivory pomegranate and a stone ossuary (i.e., burial box) with an inscription that purported to show that the box had contained the remains of Jesus Christ's brother Joseph were both fake. Criminal prosecutions of those involved in the fraudulent conspiracy resulted, but debate among experts about whether or not the objects were truly fakes remains, demonstrating not only how difficult it is to reach any concrete conclusions regarding the nature and extent of fake antiquities fraud, but also how human desires for profit and confirmation of their personal beliefs may cloud their judgment about the authenticity of an ancient artifact.

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See Also: Antiquities Theft; Art Fraud; Conspiracy; Counterfeiting; Organized Crime.

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Antiquities Theft

Few people are aware that the illegal trafficking of stolen antiquities provides financing for criminal and even terrorist operations. By purchasing stolen antiquities, some buyers unwittingly or indifferently help meet the financial needs of countries with which they may even be at war. For example, it is quite possible, if not likely, that the cash used by an American or allied buyer to purchase illegally excavated antiquities is funding the cause of insurgent groups in the Middle East. The buyers do so by participating in the world's black market for unprovenanced (not having proper legal documentation) antiquities, stolen from Middle Eastern countries and smuggled into Europe, America, and other wealthy nations. The international sale of treasures, stolen by grave robbers and archaeological site looters and trafficked through reputable museums and brokerage firms, may exceed $3 billion per year, according to one Interpol analyst. Other estimates place it as high as $5 billion annually. Private collectors of ancient archaeological treasures represent an overwhelming majority of the illegal purchases of humankind's historic iconology. However, over the past decade, some of the world's most reputable museums and brokerage firms have also been found to traffic in stolen antiquities.

Few countries are exempt from this illegal activity, despite a spate of new domestic and international laws designed to curb these practices, referred to as cultural property crimes. The practice of looting, smuggling, and selling ancient antiquities will likely continue as long as there is a market in which they can be sold. People involved in the purchase of unprovenanced artifacts are among the wealthy and powerful within the subject nations. They can both afford the escalated price of the stolen goods and purchase the necessary protection from prosecution because of personal relationships at high levels of government.

Middle Eastern Antiquities Theft

The National Museum of Iraq, in Baghdad, was ransacked after the 2003 Gulf War. Because the United States led the coalition of countries that deposed Saddam Hussein, it also absorbed much of the world's criticism for being unable to prevent the theft of over 25,000 artifacts during the fighting, many representing the oldest and most valuable of their type. The United States has been funding the recovery of these treasures and the rebuilding operations of the Iraqi Museum since the Second Gulf War.

Grave robbing, archaeological site looting, and major thefts of valuable artifacts continue within the borders of several Middle Eastern nations. The sale and resale of ancient treasures, through numerous levels of criminal activity, often leads to an exorbitant price paid by the most recent purchasers. Often, an Iron Age water jar or Byzantine ceremonial vessel can reach a price of tens of thousands of dollars. Because the practice of grave robbing and site looting is so widely practiced in the Middle East, aggregate sums of money exchanging hands in the criminal world are significant.

Pothunters, people who illicitly excavate treasures from graves and other archaeological sites, are often among the poorest people in their regions. A recent study of the population of southern Jordan indicates that many within the first level of artifact thieves are only subsistence looters. These are men and boys who illegally dig treasures for a few dollars in order to feed or support their burgeoning families. Few alternative opportunities are available in the form of adequate jobs, pensions, or even arable land to farm. Bedouin societies of southern Jordan, together with local clans, have resorted to trafficking in stolen artifacts in order to monetize their economies and buy food, shelter, and the basic amenities of life. Without the harvesting of these treasures from the earth, starvation would remain the future of many of these families.

The cycle of looting and smuggling of ancient treasures is deeply embedded in the heritage of desert-dwelling people. The trade is transgenerational, and many young boys are proficient at grave robbing by the time they are in their early teens. Within the multiple small villages in Jordan's southern desert and the remnant cities of the north, looting is a trade practiced by a large percentage of entire villages. As many as one-third of all village families participate in grave robbing and site looting within the area designated as the Five Cities of the Plains, just south of the Dead Sea. It is so widespread that in most villages and small towns, it is a principal source of financing for the town's survival.

Local residents often participate in the looting of ancient artifacts in small groups, as well as individually. National laws, which carry stiff prison sentences as a deterrent, have forced the diggers to ply their trade only at night. While some excavate 3,000-year-old graves, others sweep their eyes across the desert for signs of police or military lights that might mean danger. Guardians of the desert, paid by the local government to mitigate looting, are often bribed by the looters. This is often done by sharing the bounty of a successful grave robbing with the desert guardians. Payment is made to someone, as a matter of doing business, at each level of the antiquities trade.

One particular area of the Levant, at the southern end of the Dead Sea, contains one of the largest concentrations of graves in the entire Middle East. With names like Bab ed-Dhra, Numiera, and Ghor al-Safi, they are the remnants of famous Old Testament cities from the Bible. Many archaeologists now believe that Bab ed-Dhra and Numiera are the ancient ruins of the infamous cities of Sodom and Gomorrah, respectively. Both are found within viewing distance from the Prophet Lot's ancient cave dwelling, high upon the mountain, overlooking the Dead Sea. At Bab ed-Dhra, locally called the City of Bones, there are an estimated 20,000 to 50,000 graves accommodating nearly a half-million bodies from the Iron Age (3800 B.C.E.) to the era of the Byzantines (325 C.E.). Counting these and graves at other local cemeteries, the region may hold well over a million burial sites. A large number of these sites hold ancient pottery, jewelry, coins, precious stones, icons, statues, mosaics, ancient glass, and even toys that will bring tens of thousands of dollars each on the open black market.

Poverty as Motivation

For the locals who risk their freedom to unearth these treasures, the work is hard and the payoff is very small. Local residents who dig for these treasures, in violation of national laws, will be rewarded with only a few dollars. Selling a Hellenistic or Roman coin more than 2,000 years old may bring only enough for a few days' food. However, after changing hands several times between its origin and the world market, these treasures may bring their brokers tens of thousands of dollars. These rare antiquities are readily sold to private collectors, museums, brokerage houses, universities, and other buyers in Europe and America. Private collectors seeking to purchase especially important pieces are known to pay millions of dollars for items representing the ancient development of humankind's genius. These items are then removed from the sight of the rest of the world. Middlemen who broker these artifacts often share with, or represent, organized criminal groups. Occasionally, they may also represent terrorist or insurgent groups, who use the money to pursue even worse crimes against humanity, including the funding of terrorism, human slavery, and other forms of international crime.

Looting archaeological sites not only causes the loss of treasures but also destroys the context within which they are found. Their surroundings often tell the story of how, when, where, and why an artifact was used or developed. When the context of a treasure is destroyed, such stories are permanently lost. Looters of historic artifacts are the greatest purveyors of site destruction and despoliation of archaeological sites. Large-scale looting occurs mostly in third world countries that contain most of the early history of humankind and that can least afford to protect it.

Since the Hague Convention of 1954, nations have agreed to and signed treaties designed to mitigate cultural property crimes and the loss of humankind's historic treasures. Despite historic efforts, little success has been achieved. The answers to questions of how to stop wholesale theft from historic archaeological sites are available; however, governments are hesitant to implement the necessary laws, even if they have already been enacted. Often, this is because of the relationships forged between the wealthy who finance the crimes and the officials responsible for enactment and enforcement of the laws.

If the world's markets for illegally dug antiquities were eliminated, there would be no opportunity to sell them, thereby reduce illegal excavation and grave robbing. By making the ownership of unprovenanced antiquities of foreign countries socially unattractive, as well as a crime, society can mitigate much of the illegal digging. This can be accomplished over time with a strong baseline education program, coupled with the political will to enforce laws against illegal black-market activities.

Subsistence looting of ancient treasures is prevalent in third world and impoverished countries. A root cause is severe imbalances of socioeconomic opportunities. Looting also is a means of supplementing agricultural shortfalls within the region's most arid zones. Both of these economic weaknesses exist in south Jordan, where nearly 85,000 people compete for only a few thousand jobs. The lack of adequate wage-paying jobs in archaeologically rich areas, like southern Jordan, spurs locals to become looters in support of an internationally growing demand for Middle Eastern antiquities. Combinations of population pressures, minimal agriculture, and the absence of mechanization, technology, and education result in aboriginal subsistence behavior. Local needs must be met by national or international assistance in order to eliminate the root causes of archaeological theft.

Alternatives to subsistence grave robbing and archaeological site looting must be provided to economically poor populations in culturally rich areas; otherwise, the looting, smuggling, and private sale of the world's historical artifacts will continue, and more of humankind's history will be lost. At least the criminal process of international black market sales of these treasures must be stopped in order to impede the financing of organized criminal activities, insurgencies, and terrorism. When it is understood that Americans who purchase untitled and unprovenanced antiquities are likely funding some of America's staunchest enemies, such purchases finally become socially unacceptable and illegal. Restricting adversaries' ability to finance their criminal and terrorist activities may not only save humankind's history but also save lives.

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See Also: Art Fraud; Iraq War; Organized Crime; United States; War Crimes.

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Antitrust, Federal Trade Commission

Protecting economic freedom and opportunity by promoting free and fair competition in the marketplace has long been a priority of the U.S. federal government. Since the beginning of the 20th century, the Federal Trade Commission (FTC), an independent government agency, has sought to prevent anticompetitive business practices. Within the FTC, the specialized Bureau of Competition oversees the agency's antitrust activities. Working in conjunction with the U.S. Department of Justice's (DOJ) Antitrust Division, the Bureau of Competition fulfills its mission through civil litigation, with mixed results. Unlike the DOJ's Antitrust Division, the FTC's Bureau of Competition may not initiate criminal suits against firms suspected of violating U.S. antitrust law. Thus, the FTC is often seen as a manager, rather than an enforcer.

Legislative Framework

The FTC's creation resulted from early setbacks in the federal government's attempts to prevent uncompetitive behavior in the marketplace. The 1890 Sherman Antitrust Act established the initial legal framework for the federal government's antitrust activity. However, early experience revealed that the courts were uncertain allies in antitrust enforcement. Between 1895 and 1899, a series of Supreme Court decisions (e.g., *U.S. v. E.C. Knight Co.*, 1895; *U.S. v. Trans-Missouri Freight Association*, 1897) seemingly undermined federal antitrust enforcement. Increasing public concern about the corrupting power of large corporations caused progressive reformer President Theodore Roosevelt (1901–09) to increase direct government action against anticompetitive business practices. In addition to instructing his attorney general, Philander C. Knox, to launch lawsuits against large firms such as John Pierpont Morgan's Northern Securities Company and John D. Rockefeller's Standard Oil Trust, Roosevelt expanded the federal government's antitrust administrative machinery. In 1903, he secured congressional approval to establish the short-lived Department of Commerce and Labor. Located within that department was the Bureau of Corporations, the FTC's predecessor. During its 11-year lifespan, the Bureau of Corporations functioned as an information-gathering agency, collecting and distributing detailed analyses of important economic sectors such as petroleum, steel, and labor. However, the bureau had no direct regulatory power.

The election in 1912 of Woodrow Wilson as president of the United States (1913–21) marked a distinct shift in antitrust policy, at least initially. Unlike Roosevelt and his immediate predecessor, President William Taft, Wilson was less willing to confront large corporations, for fear of threatening the business community's confidence. At first, he advocated refining the Sherman Act and making the Bureau of Corporations independent of presidential control as the best means to address public concern about the power of giant corporations. However, domestic political considerations caused Wilson to embrace a new, two-pronged strategy. In addition to supporting congressional efforts to clarify the definition of anticompetitive business practices (which it did with passage of the 1914 Clayton Antitrust Act), Wilson pressed for the creation of an independent investigative body to observe corporate activity and gather information for legislative initiatives. Wilson's call for an independent agency was fulfilled in 1914, with the passage of the Federal Trade Commission Act, introduced by Oklahoma Representative Dick Thompson Morgan, often called the Father of Antitrust.

The agency's duties and authority to fulfill them were enumerated in Sections 5 and 6 of the act. In broad terms, the FTC was charged with preventing "unfair methods of competition in commerce" by gathering information, holding public hearings, filing administrative complaints, and initiating federal litigation. The act also gave the FTC rule-making power (e.g., promulgating regulations) to address concerns regarding industry-wide practices. Subsequent legislation—including the 1950 Celler-Kefauver Act, 1975 Federal Trade Commission Improvement Act, and 1976 Hart-Scott-Rodino Act—clarified and broadened the agency's powers and scope.

Currently, the FTC fulfills its mission by investigating issues raised by consumers and businesses, premerger notification filings, congressional inquiries, or media reports. The agency's records show that most issues it investigates require no official action. When official action is required, the FTC first seeks voluntary compliance from the offending firm by issuing a consent order—a binding judgment detailing a voluntary agreement to modify or stop behavior. Other options include filing an administrative complaint or initiating federal litigation. Administrative complaints are heard in front of administrative law judges, who are increasingly former FTC commissioners. Judgments are reviewed by the full commission and are subject to the regular appellate process, including review by the U.S. Supreme Court. The agency may also address concerns regarding industry-wide practices by issuing legally binding trade rules.

Organization

Five commissioners lead the FTC, all of whom are appointed by the president and confirmed by the Senate. Ideally, commissioners are selected on a nonpartisan basis. In no case, however, may more than three commissioners be selected from the same political party. Commissioners serve seven-year terms, which are staggered to ensure that no more than one term expires each year. However, resignations may result in more than one appointment each year. While serving their term, commissioners may not engage in another business or vocation.

Supporting the commissioners' work is a sizable staff (roughly 1,100) organized into 11 offices and three bureaus. As of the agency's reorganization in 1970, the latter includes the Bureaus of Consumer Protection, Economics, and Competition. The Bureau of Competition's 300 employees are organized by economic sector, function, and geography. Four units focus on mergers; three oversee the FTC's operations throughout the country; four are responsible for anticompetitive practices, compliance, policy coordination, and operations; and one is devoted specifically to health care issues. Working in conjunction with the Antitrust Division of the DOJ and, when appropriate, foreign competition agencies, these units investigate potential law violations and seek legal remedies as required. The Bureau of Competition, as with the agency as a whole, also serves as a resource for U.S. policymakers.

Historical Evolution

The Federal Trade Commission's central mission is identifying and preventing business practices that restrict trade, defraud customers, inflate prices for consumers, or that lead to diminished product and service quality. The FTC's success in fulfilling this mission has varied since its establishment in 1915.

For much of its early existence, the FTC found itself unwilling or unable to contribute much to antitrust enforcement, and until the late 1960s, the agency played a minor role in federal antitrust activities. This early ineffectiveness stemmed in large part from politicized commissioner appointments and subsequent poor leadership. The judiciary, too, hampered the agency's work, as several decisions in the 1920s narrowly interpreted the FTC's mandate and information-gathering powers. In the 1927 *Federal Trade Commission v. Eastman Kodak Company* decision, for example, the Supreme Court rejected the agency's assertion that it had the power to order a firm to divest its holdings to undo anticompetitive asset acquisitions.

The economically tumultuous 1930s were also marked by considerable ambiguity regarding the FTC's work. At the beginning of the decade, the agency was placed in the awkward position of challenging the anticompetitive policies of President Franklin D. Roosevelt's (1933–45) National Recovery Administration. A promising new role for the FTC as enforcer of the 1933 Securities Act—the first major effort to regulate the offer and sale of securities—was cut short in 1934 with the creation of the Securities and Exchange Commission. Further hampering the agency's work during this time was high turnover among commissioners before and during World War II.

However, not all developments during this decade were detrimental. The 1938 Wheeler-Lea Act established civil penalties for violations of the FTC act, and it included "unfair or deceptive acts or practices" as well as "unfair methods of competition" as proscribed activities, thus eliminating the need to show harm to competitors. Notable FTC cases during this period include its victory in 1930 against Famous Players-Lasky (the forerunner to Paramount Pictures) and nine other Hollywood studios for anticompetitive behavior. However, the 1930 Supreme Court decision that resulted from the FTC's action was never enforced because of presidential intervention.

During the 1950s and 1960s, the agency still struggled to define and execute its role in policing anticompetitive behavior. This era started promisingly with two key developments—one legal and one administrative—that provided the foundation for the modern agency. Legally, the

1950 Celler-Kefauver Act reformed and strengthened the 1914 Clayton Antitrust Act by closing loopholes regarding asset acquisitions and acquisitions involving firms that were not direct competitors, thus enhancing the government's ability to prevent vertical and conglomerate mergers. Equally important was President Harry S. Truman's (1945–53) decision in 1949 to fundamentally alter the FTC's chairpersonship. Until Truman's reorganization, the position of FTC chair was rotated annually, and its holder enjoyed no special administrative responsibilities. From 1950 onward, the FTC chair was designated by the president and functioned as the agency's executive and administrative head. These promising developments and important victories in consumer protection notwithstanding, the FTC was generally seen as ineffective, with groups ranging from the American Bar Association to blue-ribbon presidential commissions critical of its narrow focus, misallocated resources, and what was perceived as mediocre personnel.

The consumer protection movement that peaked in the 1970s affected the FTC favorably. During this period, the agency conducted over 800 official antitrust investigations. The firms scrutinized represented a wide range of economic sectors, from textiles and food distribution to automobile manufacturers and computer companies, and included icons of American business such as Beatrice Foods Company and the United Fruit Company (1970); Georgia-Pacific and Xerox (1973); Exxon and the Kellogg Company (1974); the Avis, Hertz, and National car rental companies (1975); General Motors Corporation and Levi Strauss & Co. (1976); Boise Cascade (1978); and Eli Lilly and Company (1979).

The agency's agenda during the 1970s was ambitious, controversial, and by the end of the decade, increasingly at odds with economic, legal, and public opinion. The ascendency in the 1970s of the theories advanced by the Chicago School called into question the economic basis of the U.S. government's antitrust policies, while a new generation of judicial appointments embraced comparatively narrow preferences for antitrust intervention. President Ronald W. Reagan's administration (1981–89) marked a return of government apathy toward regulation. For the FTC, the 1980s were marked by retrenchment. As the agency's 1981 annual report notes, focus shifted from industry-wide projects to more precisely defined investigations, the resolution of which would result in concrete benefits. This shift was reflected in the issuance of new DOJ merger guidelines in 1982 that laid the foundation for the agency's "fact intensive" approach toward examining potential antitrust violations. The agency's dramatically reduced budget and staff from 1980 to 1992 reflected its declining importance.

Since the mid-1980s, the FTC has pursued a "middle ground" approach toward antitrust enforcement, based on fundamental priorities that include prioritizing the welfare of consumers over that of shareholders of corporations or competitors, accepting as essential the role of economic analysis to inform the design and application of legal rules, and focusing on horizontal rather than vertical mergers. Important cases from 1982 onward, such as those against General Motors Corporation (settled in 1984), Cardinal Health (settled in 1988), the office supply superstore Staples (settled in 1997), Toys "R" Us Inc. (settled in 2000), Bristol-Myers Squibb (settled in 2009), Coca-Cola (settled in 2010), the computer-chip manufacturer Intel (settled in 2010), and the computer hardware manufacturer Western Digital Corporation, embody this middle-ground philosophy.

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See Also: Clayton Antitrust Act; Market Manipulation; Price Fixing; Sherman Antitrust Act.

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Antitrust, U.S. Department of Justice

Since the end of the 19th century, the U.S. federal government has sought to protect economic freedom and opportunity by promoting free and fair competition in the marketplace. Legislatively, the framework for the federal government's antitrust activities was established in the late 19th and early 20th centuries. Administratively, this antitrust mission has resulted in the creation of a specialized unit within the U.S. Department of Justice (DOJ), the Antitrust Division. The division uses criminal suits and civil litigation to fulfill its mission, with mixed results. Early uneven, and often unsuccessful, efforts to thwart collusion within the marketplace evolved into more clearly defined and effective activity by the mid-20th century.

Legislative Framework

In the late 19th century, concentration in the U.S. petroleum, railroad, and steel industries had produced widespread consumer abuse, including open collusion among companies and price fixing. Public frustration with railroad and petroleum trusts caused the passage of the 1890 Sherman Antitrust Act. Articles one and two of the act declared illegal all contracts "in restraint of trade" (i.e., monopolistic practices), including agreements made between U.S. and overseas corporations. Articles six and seven of the act outlined the federal government's main enforcement mechanisms: the power of the U.S. circuit courts to seize property illegally acquired through collusion, and civil litigation.

Two decades of subsequent litigation revealed the need for additional antitrust legislation. While the 1890 Sherman Act left to the courts the task of interpreting and defining illegal behavior, the 1914 Clayton Antitrust Act was more explicit. Designed to prevent anticompetitive practices in their infancy, the act specified prohibited conduct (such as price fixing), provided a specific enforcement scheme, and detailed exceptions to and remedial measures for the federal government's antitrust activities. Subsequent legislation (the 1936 Robinson-Patman and 1976 Hart-Scott-Rodino Antitrust acts) amended, but did not substantially change, the general provisions of the act.

Organization

From humble origins, the DOJ's antitrust operations have increased in size and complexity. Initially, the U.S. attorney general oversaw antitrust actions. In 1903, as a result of President Theodore Roosevelt's emphasis on government regulation as a means to curb abusive business practices, the office of the assistant to the attorney general was created. Until 1933, the assistant to the attorney general handled all antitrust matters. In 1933, President Franklin Roosevelt created the foundation of the current DOJ antitrust administrative structure by establishing the Antitrust Division.

An assistant attorney general heads the Antitrust Division and is assisted by five deputies. The division's antitrust work is divided between 14 litigating and seven specialized components. Seven Washington, D.C.-based sections are responsible for the bulk of the division's civil and criminal investigative activity and litigation, and include the National Criminal Enforcement Section; the Economic Analysis Group; enforcement sections for networks, technology, telecommunications, and media; and a section devoted to transportation, energy, and agriculture. Of the seven current field offices, only three—Chicago, New York, and San Francisco—were to remain open past 2013. The division's specialized components include an Appellate Section, the representatives of which handle all legal appeals, and sections for foreign commerce and legal policy.

Early History

The DOJ's early attempts to prevent multi-firm anticompetitive conduct produced mixed results, in large part because of the Sherman Act's narrow language. For example, in 1892, the American Sugar Refining Company threatened to monopolize the U.S. sugar industry through a merger with the E. C. Knight Company and several sugar firms. Citing the fact that the merger would allow the company to gain control of 98 percent of the U.S. sugar market, President Grover Cleveland directed the DOJ to sue to prevent the acquisition. At issue was whether the federal government could suppress a monopoly in the manufacture of a good, as well as its distribution. In 1894, the U.S. Supreme Court took up the Sugar Trust Case, and it issued a resounding defeat for the government in January 1895. The Court concluded that it was the responsibility of individual states to take action against manufacturing monopolies, not the federal government. The ruling prevailed until the end of the 1930s, when the Court shifted its position on the federal government's power to regulate the economy.

Although the 1895 Sugar Trust Case limited the DOJ's ability to prosecute out-of-state manufacturing monopolies, subsequent antitrust cases challenged this view. The cases of *U.S. v. Trans-Missouri Freight Association* (1897) and *Addyston Pipe and Steel Company v. U.S.* (1899) introduced the idea that the Sherman Act was enforceable whenever a firm's goods crossed state lines. The Court's 1905 decision in *Swift v. United States* confirmed this opinion. In 1902, the DOJ filed charges of restraint of trade against Swift & Company for using artificial bids to inflate meat prices. The company's arguments centered on the fact that its plants operated wholly in three states (Missouri, Nebraska, and Minnesota), and thus were not subject to the Sherman Act. The Court rejected this argument. Even though meatpackers' activities were geographically local, the Court concluded that they had an important effect on the "culture of commerce" because their products shipped across state lines and thus were subject to federal regulation.

The DOJ met with greater success in its early efforts to prevent the creation of potential, or dismantle existing, monopolies. A series of high-profile cases confirmed the federal government's power to prevent one company from acquiring numerous others, even if the company had used legal means to do so. In *Standard Oil Co. of New Jersey v. U.S.* (1911), the Court stated and applied its doctrine of the Rule of Reason, which stated that multi-firm action that unreasonably restrained trade was subject to action under antitrust law, but that possession of monopoly power was not inherently illegal. In the same session, the Court further clarified the scope of the DOJ's authority in *U.S. v. American Tobacco Co.*, deciding that the mere possession of a monopoly was not illegal, but that its unreasonable acquisition and maintenance was.

A final watershed case taken up by the DOJ before the twin crises of the Great Depression and World War II was that of the Appalachian Coal Company, a consortium of more than 100 firms that the DOJ accused of conspiring to fix prices among coal producers in four states. The key point to the case was the fact that the government sought to prevent the consortium's formation, arguing that its creation would reduce or eliminate competition between companies at the expense of the consumer. In its 1933 decision, the Supreme Court checked the DOJ's authority to take preemptive action, ruling that the government had not provided sufficient evidence of detrimental impact on the market. In doing so, the Court reconfirmed its position that the federal government need to demonstrate "a definite factual showing of illegality."

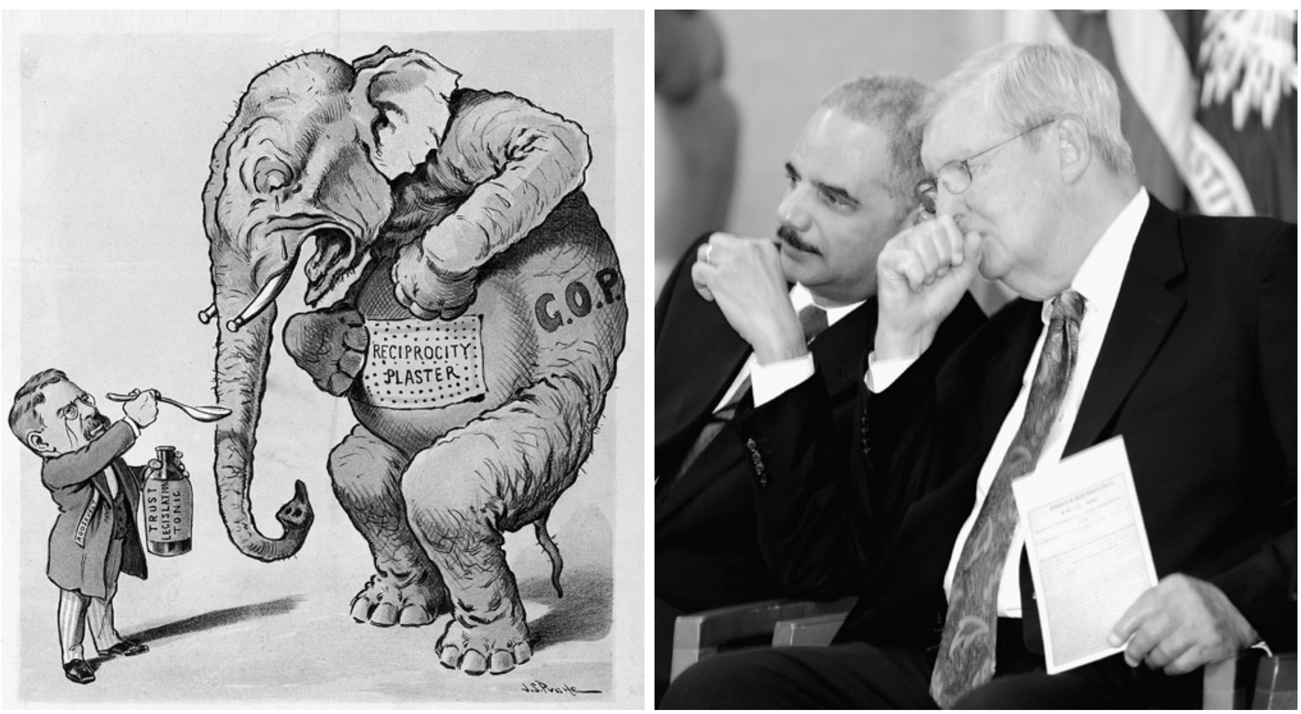
Greater Antitrust Enforcement

After a lull that included most of the 1950s, the DOJ increased its antitrust enforcement in the 1960s and 1970s. The result was a series of high-profile cases in which it brought antitrust action against some of the icons of American business. Among the earliest actions was the 1961 Heavy Electric Antitrust Case, considered the most serious violation of antitrust laws since the Sherman Act's inception. The DOJ's litigation stemmed from the discovery in 1959 of evidence that manufacturers of heavy electrical equipment, including General Electric and Westinghouse, had conspired to fix prices, rig bids, and divide markets on the sale of equipment to the Tennessee Valley Authority, the largest supplier of electricity in the United States at the time. Eventually, the DOJ indicted 45 defendants from 29 corporations on criminal charges, all of whom pleaded guilty or no contest. Sensational at the time, the case nonetheless highlighted the practical limitations that the DOJ faced. Contravening the Sherman Act was deemed a misdemeanor offense, which meant that the legal sanctions for doing so were relatively minor. Moreover, in subsequent congressional testimony, industry executives demonstrated the widespread belief that their actions were not criminal. It was not until the mid-1970s that Sherman Act violations were reclassified as felonies.

The mid-1970s and early 1980s witnessed the high watermark of the DOJ's post-1945 antitrust litigation, as exemplified by its cases against the telephone giant American Telephone and Telegraph (AT&T) and equally iconic International Business Machines (IBM). The filing in 1974 of an antitrust lawsuit against AT&T culminated eight years later in a settlement that resulted in the largest divesture in history, the Bell System divestiture. The result was a fundamental transformation in the nation's telephone services. However, the Justice Department's victory against AT&T proved to be its last substantial victory for nearly two decades. During the administrations of Presidents Ronald Reagan and George H. W. Bush, resources for antitrust enforcement remained static, and the Antitrust Division's workload declined from 377 cases in 1980 to 176 in 1992. This period's political conservatism in federal enforcement was exemplified by the Justice Department's decision in 1988 to drop its 13-year suit against IBM. Faced with limited resources, little political support, and a noninterventionist Supreme Court, the Justice Department spent most of the decade prosecuting large horizontal mergers (firms within the same industry and at the same level of production), while ignoring the greatest increase in corporate acquisitions in U.S. history.

Modern Policies

Vigorous antitrust enforcement resumed in the mid-1990s, but major victories eluded the Justice Department's attempts to revitalize its reputation through high-visibility cases, as the litigation against the General Electric Company (GE) and Microsoft demonstrates. In 1994, the case against GE for conspiring to fix the world price of industrial diamonds was dismissed for lack of evidence. Although the Justice Department's prosecution of the software giant Microsoft resulted in a legal



Antitrust enforcement at the U.S. Department of Justice, then and now: An illustration in the March 4, 1903, issue of Puck *(left) depicts President Theodore Roosevelt giving the Republican elephant a spoonful of "trust legislation tonic." That year, the president's emphasis on government regulation to curb corporate abuse led to the creation of the office of the assistant to the attorney general. At the Sherman Award Ceremony on April 10, 2012 (right), U.S. Attorney General Eric Holder talks with award recipient James F. Rill, a high-profile antitrust attorney who has served as assistant attorney general in charge of the Department of Justice's Antitrust Division.*

victory of sorts, its settlement with the company was criticized by 9 of the 20 states that joined the suit as not going far enough to curb the company's anticompetitive business practices.

The "hands-off" (i.e., antiregulatory) policies of the George W. Bush administration marked a substantial decline in the Justice Department's antitrust activities. From a high of 63 in 2000, the Justice Department filed an average of 39 criminal cases from 2002 to 2009. Major mergers, such as that of Whirlpool and Maytag (with a combined market share of 70 percent) in 2006, went unchallenged. In the rare instances when the Bush administration challenged mergers, such as that between the software companies Oracle and PeopleSoft in 2004, federal courts rejected the efforts. The administration's hands-off approach culminated in 2008 with the Justice Department's publication of official guidelines that detailed its rationale for minimal antitrust enforcement. Anticompetitive conduct was too difficult to distinguish from lawful conduct, according to the guidelines, and enforcement would result in over-deterrence. The single important exception to the administration's reluctance to prevent uncompetitive behavior was its vigorous anticartel enforcement.

Since 2009, the scale and scope of the Justice Department's antitrust activities have increased once again. From a low of 32 in 2005, the department filed an average of 74 criminal cases annually during the first three years of President Barack Obama's administration. Criminal and civil cases have been brought in a range of important industries and high-profile firms, such as air transportation (Air France, KLM Royal Dutch Airlines, EL AL), airline mergers (United Airlines and Continental Airlines), electronics (LG Display Company, Sharp Corporation, and Epson Imagining Devices Corporation), banking and finance (Bank of America, American Express, MasterCard, and Visa), telecommunications (Comcast Corporation and Verizon Communications Corporation), and health care (Blue Cross and Blue Shield of Michigan and New West Health Services Inc). More rigorous enforcement has resulted in dramatic increases in the duration of prison sentences given and amount of fines levied.

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See Also: Clayton Antitrust Act; Hart-Scott-Rodino Act; Sherman Antitrust Act.

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Arbitrage

Arbitrage is a market-based strategy that relies on imbalances between markets to create profit. Most transactions rely on changes in underlying value to create profit. A traditional buy-and-hold strategy relies on growth in the value of the underlying asset, such as a stock or commodity. This exposes the investor to the risk that market value will drop and rewards the investor if the market price rises. Another classic investment strategy is to buy goods in one market and transport them to another market with better prices. A colonial mercantile system exemplifies this strategy. On each leg of the trade, the merchant accepts risks, such as of market change, natural disaster, or government intervention. Most significantly, the merchant physically moves goods from a location of surplus to a location of scarcity. In these cases, the acceptance of risk is necessary for the reward of profit. In the latter case, the investor also adds value through transportation. Arbitrage strategies involve transactions between imbalanced markets to generate profit based on market inefficiencies, rather than underlying value or relative scarcity. True arbitrage involves zero-risk transactions that are structured in a way that does not expose the arbitrageur to market fluctuations during the transaction period.

A true arbitrage strategy can be used on any financial market from currency exchange to stock exchange to sports betting. Consider the following simplified currency triangle arbitrage. A trader with an initial position of $1 million sees an arbitrage condition in the pricing of dollars, euros, and yen in three different currency markets. The exchange rate in the first transaction of dollars to euros is 0.7998, giving a new position of 799,800 euros. The exchange rate in the second transaction of euros to yen is 98.5392, giving a new position of 78,804,454 yen. In the final transaction, the trader converts the purchased yen back to dollars at a rate of 0.0137, giving a final position of $1,000,817. This is a relatively small basis point (BP) increase of 0.817 BPs. Frictional fees imposed by currency exchanges or governments could easily erase this gain; however, in this case, these fees have been built into the exchange rate. Still, even minor market fluctuations during the transaction can produce disproportionate risk to the arbitrageur. The absence of planned risk and simultaneous or nearly simultaneous transactions are chief tenets of true arbitrage.

Risks of Arbitrage

Arbitrage is not illegal; however, it is particularly vulnerable to insider trading because it emphasizes short-term, low-risk transactions. The Securities Exchange Act prohibits covered persons (e.g., directors, corporate officers, and shareholders) from profiting from arbitrage transactions on short-swing speculation. The Securities and Exchange Commission (SEC) defines insider information as “material, non-public information.” The use of such information in covered transactions is illegal under various laws, rules, and SEC regulations. Since the nature of arbitrage is to act in more than one market, market rules—and even single-jurisdiction laws—do not control the activity well. Even informal controls do not restrain arbitrage. Profit without risk is the goal of agents in the market. Actors in the market attempt to make profit without risk and consequently defend arbitrage as a functional part of the market that keeps imbalances to a minimum while richly rewarding the innovators that fulfill the function.

With this is mind, arbitrage is a legitimate goal, infrequently attained through illegitimate means. In his strain theory, Robert Merton defined this convergence as “innovation.” The business world generally agrees with this assessment. It is only the flagrant violations of business norms, or the relatively few clear violations of law like insider trading or illegal schemes used to fund an arbitrage strategy, that are considered white-collar crime.

It is common for business “innovations” to become increasingly regulated as the perception of imbalance or unfairness increase. Until the 1980s, insider-trading rules were rarely enforced. Financier Ivan Boesky was a famous proponent of arbitrage strategies at this time. His basic technique is now called risk arbitrage but is more properly a type of risk arbitrage termed “mergers and acquisitions arbitrage.” He was eventually convicted of insider trading for using tips from sources within the merging companies.

Michael Milken, another well-known financial innovator of the 1980s, pioneered high-yield bonds, also known as “junk bonds,” which proved a successful source of funding for aggressive takeovers of large companies not normally seen as targets for takeover. Milken was implicated in Boesky’s merger arbitrage insider-trading scandal but was eventually convicted of securities and tax violations. Neither Boesky nor Milken was ever convicted for benefiting from arbitrage; rather, they were convicted of crimes facilitating a new, unregulated innovation: arbitrage. Boesky’s innovations allowed a wider domain for arbitrage but allowed risk not previously accepted in arbitrage because in classic arbitrage strategies, risk is held to a minimum. The lesson taken from Boesky’s conviction was to be more careful about information sourcing when planning arbitrage. It was not seen to indicate that innovations like risk arbitrage were wrong.

Types of Arbitrage

Arbitrage manifests itself in many applications, with varying degrees of risk. There are too many examples to enumerate, and it can be difficult to distinguish investment from arbitrage, but a few examples in common use can help establish the range of arbitrage. Time-based or “event-based” arbitrage violates basic arbitrage tenets about nearly simultaneous transactions and brings substantial risk from historical events. Risk arbitrage violates basic tenets about risk to expand the pool of arbitrage conditions. From true arbitrage to the various subtypes, arbitrage stresses rapid exploitation of what are often transient imbalances in markets. Even though true arbitrage is often defined as having no risk, some general risks apply to most arbitrage strategies. Risk can enter before arbitrage begins. Potential arbitrageurs may make incorrect assumptions about the transferability or equivalency of assets between markets. Commodities like coffee may be materially different between markets and not exchangeable. Similarly, bonds and other securities may not be completely equivalent; what appears to be a favorable arbitrage situation may actually be a market-balanced relationship between nearly equivalent items.

Because of arbitrage's inherent risks, arbitrageurs have again innovated and sought synthetic assets rather than stocks, commodities, or simple financial instruments. Synthetic investment instruments are fungible and have determined properties combined with potentially rapid profits. The use of hedging strategies like credit default swaps and short positions is a common risk-mitigation strategy in the trade of synthetic assets, but it exposes the arbitrageur to counterparty risk, the risk that the other side of the deal will default on the deal. Examples include an uncovered margin call, failure to deliver a security, or default on one of the synthetic assets traded or used as a hedge, like a credit default swap.

In one case, Bear Stearns was a highly leveraged investment bank and securities trading company that accepted government bailout funds and was eventually sold to J. P. Morgan Chase because of the systemic shocks. Even hedged risk can actualize during a systemic event. Hedging naturally violates the requirement of nearly simultaneous transactions because a hedge requires failure and a response. This exposes a potential arbitrage transaction to event-based risk, as happened to Bear Stearns, and to counterparty risk.

Given greater risk, the financial markets may lose confidence in an arbitrage opportunity, forcing margin calls or restricting access to capital. There is increasing interest from Congress and the SEC to regulate complex financial instruments and some of the more abusive strategies like naked short selling.

The relatively small margins in arbitrage often necessitate high-volume transactions, which magnify counterparty risk. A counterparty with many transactions pending may face too much risk. If too many credit defaults become due, the counterparty may have no choice but to default. Such a default may leave an arbitrageur with an un-hedged risk, or with an investment stranded on one leg of a triangle trade. This makes systemic shocks particularly risky to arbitrageurs. Systemic shocks can destabilize large players in financial markets. For example, large retirement funds like the California Public Employees' Retirement System (CalPERS) may lend securities to short sellers. Short selling may be part of an arbitrage strategy. If CalPERS decided to change its normally stable position in response to a systemic shock, it could disrupt the ability of an arbitrageur to hedge against certain risks. This may again lead to an arbitrage failure because of margin calls, delivery demand, or restricted access to capital. Another risk faced in arbitrage is simple delay. Again, the high volumes at work magnify this danger. An arbitrageur in a perfectly functional arbitrage deal, with a clear expectation of profit, may be affected by a lack of liquidity or lack of capital. A large arbitrage deal may face delays that leave the arbitrageur unable to make a margin call on a relatively small or temporary price fluctuation.

Risk and Regulatory Arbitrage

The concept of arbitrage has been broadened in common use to include any strategy based on imbalanced markets or financial conditions. This is sometimes called risk arbitrage. The terminology of arbitrage changes rapidly and is often imprecise in common usage. Subtypes of arbitrage are defined by the markets to which they are applied and the types of risk incurred. Merger arbitrage involves balancing the difference between a proposed cash offer for the stock of a target company and the current market price. In a cash acquisition, an offer is made by the acquiring interest. This offer is usually in excess of the current market price. This price differential creates arbitrage opportunities, but the opportunities carry risk. In terms of pure price, it is arbitrage, but events may change the character of the financial transactions. For example, a company with a stock trading at $7.50 is targeted for a cash acquisition. The initial offer price is given at $10. An arbitrageur can purchase stock available at the lower price and realize a profit when the higher price goes into effect. Events surrounding the merger may influence the course of this transaction. If the merger fails, the price may drop or fail to increase. In this case, risk can be reduced through hedging, and even short sale strategies, but risk still applies, making true arbitrage impossible.

The concept of arbitrage has also been popularly broadened to include imbalances in practice or under the law or regulation. In heavily regulated industries, the concept of arbitrage has been applied to practices used to balance resources controlled by regulation. It can also be a euphemism for avoidance of regulation. Regulatory arbitrage is most commonly associated with questionable, but legal, practices used to circumvent capital reserve requirements placed on banks. The nature of the capital reserve (e.g., cash reserves or securities) determines the ratio of reserve requirements, but 10 percent is a good simplification. Banks can both receive deposits and lend money. Regulations require banks to reserve 10 percent of their assets (including deposits). These reserves cannot be lent, which limits the multiplier effect. At 10 percent reserves, a bank can increase the total money supply by 10 times. Starting with a deposit of $100, 10 percent is reserved, but $90 can be loaned out for profit. At some point, that $90 is deposited back into the banking system (any bank, but it is convenient to assume placement back in the same bank). After nearly 100 transactions of this nature, progressively increasing the reserve to the full $100, the amount of capital operating in the financial system has gone from $100 to $1,000. Even small amounts of increases in the bank's initial capital may greatly increase the opportunity to lend.

A bank may move its internal assets into other financial structures through sale or contract to bolster its "reserve assets." This allows the bank to profitably lend the cash equivalent of the asset/security. Regulatory arbitrage also explains the paradoxical actions of outsourcing in some major banks. By selling a division and contracting that same division at a greater amount than was previously paid, a bank creates internal reserves but pays out operating expenses. The result is a greater sum eligible for lending at a potentially higher profit. The reduction of default risk reserve requirements through credit default swaps and structuring bank assets into more favorable categories does not currently violate regulations, but it does increase systemic risk. Default risk reserves are designed to add a buffer against bad loans; regulatory arbitrage often increases systemic risk by spreading risk beyond the balance sheet of the bank.

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See Also: Boesky, Ivan; Insider Trading; Milken, Michael; Naked Short Selling.

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Archer Daniels Midland Co.

The Archer Daniels Midland (ADM) Company was formed in 1923 after the Archer Daniels Linseed Company (founded in 1902 by George A. Archer and John W. Daniels) acquired Midland Linseed Products Company. Based in Decatur, Illinois, the company has become one of the leading food processing companies, primarily producing ingredients used in the food, beverage, and animal feed industries, including cocoa products, corn products like starch and syrup, processed sugars, and oils and oil meal. In 2007, it allocated resources to enter the biofuel industry as that market expanded rapidly.

Price-Fixing Investigation

In 1996, ADM was the subject of the largest price-fixing investigation in history. ADM operated several price-fixing schemes that cost consumers millions of dollars through inflated prices for products such as soft drinks, detergents, and poultry. Senior executives were indicted on criminal charges of price fixing in the international lysine market. Lysine is one of the 20 amino acids normally found in proteins. It is an essential amino acid. Lysine is one of the most widely used feed supplements worldwide.

ADM and four other companies, two each from Japan (Kyowa Hakko and Ajinomoto) and Korea (Sewon and Cheil Jedang Ltd.), produced lysine for the global market. Instead of competing with each other, two executives at ADM talked competitors into forming an "amino acids association." The five companies agreed on how much to charge their customers for lysine and how much each producer was permitted to sell annually, therefore engaging in an extremely lucrative, yet criminal, price-fixing scheme. The businessmen knew that what they were doing was criminal but did not seem to care. The executives involved in the alliance made a rational choice to commit the crimes after analyzing the strategy and circumstances relating to the costs and benefits of their actions. Their meetings were often held at hotels outside of the United States, and company phones were never used to discuss the scheme. They did everything possible to keep the price-fixing conversations and meetings secret until a former president of ADM's bioproducts division, Mark Whitacre, became an informant for the Federal Bureau of Investigation.

Whitacre secretly made audio and video tapes of ADM meetings over the course of two and a half years. Whitacre was arrogant and committed other criminal acts, including embezzlement and fraud, yet refused to accept a plea bargain that would have given him a sentence of only six months. He was sentenced to nine years in prison and had to pay $11.4 million in restitution to ADM. He was also sentenced to serve 30 months for price fixing, on top of his nine-year sentence for fraud. Michael Andreas, vice-chairman; Terrance Wilson, ADM executive; and Mark Whitacre were each fined $350,000. Andreas was sentenced to three years in prison, and Wilson received a 30-month sentence. ADM was fined $100 million, the largest antitrust fine ever at the time. ADM also paid $400 million to settle a class-action antitrust suit. Neither the chief executive officer (CEO) nor the president of ADM was pursued criminally. Even though it was ruled that Whitacre was in charge of the price-fixing conspiracy, the government's investigation identified over 49 executives who had participated. The Japanese and Korean corporations were sentenced to pay fines ranging from $1.25 to $10 million. Three executives from the Japanese and Korean corporations were sentenced to pay fines ranging from $50,000 to $75,000.

On the Rebound

ADM was subsequently the defendant in multiple federal air-pollution lawsuits and has been criticized as being one of the leading commodities traders profiting from rainforest deforestation. In 2003, after government complaints about ADM's attempts to avoid several requirements of the Clean Air Act, the company paid out about $11 million in penalties and environmental donations, while agreeing to a significant overhaul of 42 of its plants. It has since studied the possibility of underground carbon dioxide disposal.

ADM has been criticized for lobbying very aggressively for corporate welfare in the form of price supports and agricultural subsidies, especially for grain, corn, ethanol, and sugar. Its biofuel venture has also been criticized: the fuel may have as much of an environmental impact as fossil fuels, which is only more price-stable than gasoline because of tax subsidies for production.

The company has prospered since the price-fixing case. According to *Fortune's* 2009, 2010, and 2011 lists of most admired companies, ADM is the most admired company in the food production industry. Each year, ADM contributes millions of dollars to various civic and charitable causes, including groups working to eradicate hunger and improve education and relief services in operating communities worldwide. Even Mark Whitacre, the ex-chief executive officer and convicted fraudster, has moved on with his life, holding the position of chief operating officer and president of operations at Cypress Systems Inc., a producer of high-selenium yeast since 1979. His story was the inspiration for the 2009 movie *The Informant* starring Matt Damon.

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See Also: Antitrust, Federal Trade Commission; Class-Action Lawsuits; Food Fraud; Price Fixing.

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Art Fraud

Art fraud is a unique type of forgery, usually defined as the creation and attempted sale of an object falsely purporting to have the history of production requisite for the origin of the work. It is considered the creation of works of art that are falsely attributed to other, usually more famous, artists. Three distinct types of fraudsters are the creator, the medium, and the buyer who is aware of a work's lack of authenticity but fails to make this known. Incidents of artistic imitation have been recorded since the classical period, but the pattern has not been replicated to the same extent or at the same frequency across the centuries. Its motives and methods of execution have evolved. Art fraud can be lucrative; however, modern dating and analysis techniques have rendered the potential identification of forged artwork much simpler.

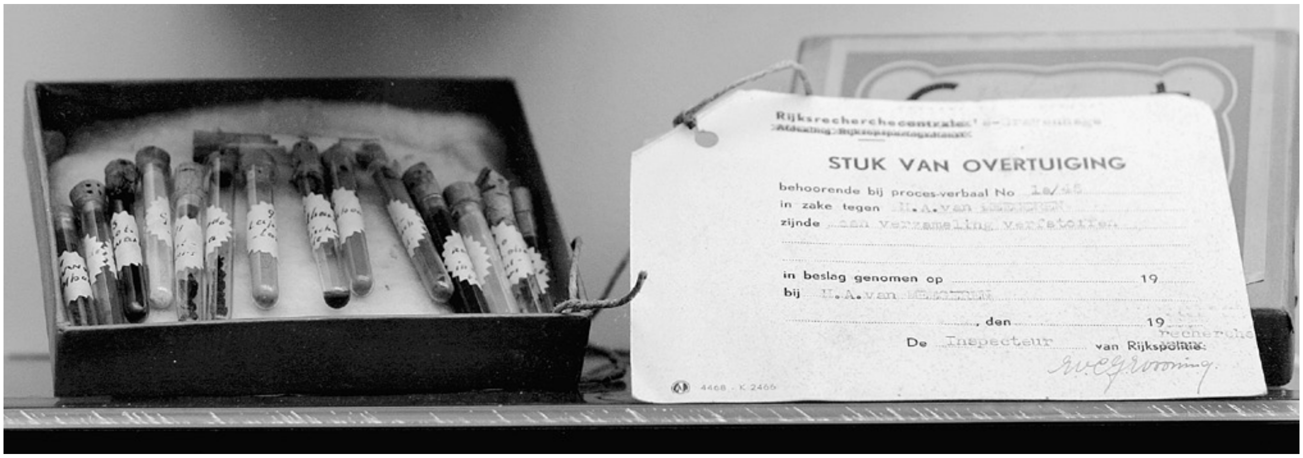
History of Art Fraud

Initially, Romans created bronze and marble copies of famous Greek sculptures, which were in high demand during the 2nd century C.E. The form of this phenomenon as recorded was not to deceive regarding the creator of the item, but rather to admire his creations. During the classical period, art was created for historical reference, religious inspiration, or, more simply, aesthetic enjoyment. Consequently, the identity of the artist was often of little importance to the buyer. The Renaissance led to what is today known as the cultural commodity, through the market's rules of supply and demand. The economies of scale created the first competitive markets, where the authenticity and the uniqueness of the item increased its price. During this period, painters took on apprentices who studied painting techniques by copying the works and style of the master. The master would then sell these paintings as a form of payment for the tutoring, which was perceived as a tribute and an aspect of artistic education.

The world's wealth was greatly redistributed following the Renaissance; this created a fierce demand for art among the prosperous, emerging middle class. At the end of the 14th century, Roman statues were unearthed in Italy, which intensified the populace's interest in antiquities and led to a vast increase in the value of these objects. Through the transformation of art into a commercial commodity, bound by the fundamental economic principles of scarcity and desirability, the monetary value of an item became dependent on the artist's identity. These new conditions required that the artists mark their items, and these marks later evolved into signatures of the items. Consequently, the artist's signature became a crucial mark of authenticity and value.

Present Form and Means of Detection

Allegations regarding the involvement of dealers in incidents of art fraud mention that art dealers and auction houses have been extremely eager to accept forgeries as genuine, then sell them quickly in order to turn a substantial profit. If a dealer finds that the work is a forgery, he may quietly withdraw the piece and return it to its previous owner, giving the forger an opportunity to sell it elsewhere. Forged art may constitute up to 40 percent of the art market. The scale of traffic in looted antiquities is considered second only to that of drug smuggling in terms of annual turnover. Moreover, antiquities are at present relatively easy to market—they are highly fungible assets, and hence are very suitable as a medium for money laundering. The appropriate legal remedies include the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention of 1970 on the means of prohibiting and preventing the illicit import, export, and transfer of ownership



The Museum Boijmans van Beuningen, Rotterdam, the Netherlands, displays evidence—including a collection of pigments—used against Han van Meegeren in his 1947 trial. During the trial, in which he was charged with creating and selling forged Johannes Vermeer paintings, he spent six weeks forging an original Vermeer under the surveillance of journalists and court-appointed witnesses. Van Meegeren's "Vermeers," worth a total of $60 million, became valuable in their own right and in turn attracted other forgers.

of cultural property. At least it provides a framework whereby the government of the country of origin can request the return of looted antiquities.

Forgers are usually proficient in the type of art that they are trying to imitate. Many forgers used to be fledging artists who did not succeed in the market and ended up in forgery. Another common method of forgery is to borrow an original item in order to create a copy, and later return the copy to the owner, keeping the original. A last category of forgers includes the ideologists who wish to demonstrate the fake images that are dominant in the art world. These artists deny that they have performed a criminal act, and they usually define it as a hoax. One theory contemplates that the fact that art crimes are difficult and costly to prosecute means that potential fraudsters will be further encouraged to commit the crime; if one acts as if bound by the rational choice theory regime, it would be irrational not to commit this type of crime.

Depending on the expertise and the talent of the forger, various techniques might be employed in order to detect the fraud committed. The most traditional way to confirm the authenticity (and value) of a work was the artist's *catalogue raisonné* (methodical catalog of the artist's work). Omission from an artist's catalogue raisonné could severely damage the proof of authenticity. The fact that experts do not always agree on the authenticity of a particular item makes the matter of provenance more complex. Some artists have even accepted copies as their work, whereas sometimes work previously declared a forgery is later accepted as genuine. Restoration of items may also be so extensive through the supplement of new materials that the identification of work can be more difficult. Technological means are now used to detect fraudulent items more efficiently. A thorough examination—or Morellian analysis—often reveals various inconsistencies when compared to the original work. Forensic authentication is also used, through X-ray images that reveal any other images underneath the primary surface of the painting, or it may show that particular colors or techniques that were not used in the particular artist's era were used in the painting. Other detection techniques include carbon dating, ultraviolet fluorescence, infrared analysis, atomic absorption spectrophotometry (AAS), inductively coupled plasma mass spectrometry (ICP-MS), and digital authentication.

Famous Case Studies

A famous historical case of this crime is the *Dio d'amore dormente,* or "sleeping cupid," which involved Michelangelo carving a life-size cherubic figure in 1496 and treating it with acidic earth to achieve an ancient result. It was sold to Baldassare del Milanese, who sold it to Cardinal Riario of San Giorgio, who became aware of the fraud and demanded his money back. Another example includes the 16th-century imitators of Albrecht Durer, who copied his style of printmaking in order to increase the value of their prints. In his engraving of the Virgin, Durer added the inscription "Be cursed, plunderers and imitators of the work and talent of others."

Possibly the most famous forger of the 20th century was Han van Meegeren, a Dutch painter who sold what he said was a previously undiscovered Johannes Vermeer painting to Herman Göring. After the end of World War II, van Meegeren was tracked down by the Allied Art Commission. Van Meegeren's initial charge, of which he was innocent, was far worse than that of which he was eventually found guilty, because treason meant possible execution, whereas being guilty of obtaining money by deception incurred a single year of imprisonment. In reality, van Meegeren had forged a total of six additional "Vermeers" worth $60 million. No one believed his works were fakes, which resulted in him spending six weeks forging a painting of an original Vermeer under the surveillance of journalists and court-appointed witnesses. Van Meegeren's work became valuable as well, which attracted other forgers.

In May 1992, a conference was held in Athens to determine the authenticity of the Getty *kouros*. It was originally bought by the J. Paul Getty Museum in California in 1983; the assumed origin of the 6th century was pending verification. The main doubts were that it has no known provenance, and that it was the only piece of its kind that came from the island of Thasos that was made from marble. Eventually, scientific analysis of the marble proved that it originated from the right place; however, the conference failed to solve the problem. Although most art historians and archaeologists denounced it, the scientists present believed the statue to be authentic.

Art fraud greatly evolved during the 20th century, favoring artists such as Salvador Dali, Pablo Picasso, Paul Klee, and Henri Matisse, who were often targets of forgery. A recent case occurred on October 27, 2011, when a group of four German art forgers was sentenced to 15 years in prison. The group was accused of selling 44 fake paintings by Max Ernst and Andre Derain, for a total of 16 million euros over the past decade. Many dealers, museums, and art collectors were deceived, believing that the previously unknown masterpieces had been hidden for years by two Cologne collectors and survived through the Nazis.

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See Also: Antiquities Fraud; Antiquities Theft; Forgery.

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Arthur Andersen LLP

Arthur Andersen LLP was one of the Big Five accounting firms before going out of business in 2002 because of a criminal conviction for obstruction of justice in an investigation of its client, energy company Enron. Arthur Andersen's history of integrity ended in the 1990s with numerous legal settlements for auditing companies engaged in large-scale financial impropriety. In one such case, a court permanently enjoined (prohibited) Arthur Andersen from engaging in misleading or fraudulent audits. In spite of this background, the obstruction case is sometimes seen as controversial because it led to the layoff of 85,000 employees worldwide. The conviction was later overturned by the Supreme Court because of the wording of jury instructions, a decision people wrongly interpret as evidence that Arthur Andersen was innocent.

Shady Clients, Tainted Reputation

Arthur Andersen began as an accounting firm in 1913. The firm's mantra "think straight and talk straight" reflected Andersen's belief in honest accounting and duties to the investing public, rather than to company management. After Andersen's death in 1947, the firm started to change and expand more rapidly, to the detriment of training and adherence to the founder's values. Later changes in the business environment diminished the importance of auditing relative to consulting, which is more focused on client service than on the public interest. Consultants are more willing to go along with client demands in order to retain the lucrative consulting income.

Although all big accounting firms have participated in legal settlements, Arthur Andersen stands out in both the number of settlements and the scope of its clients' wrongdoing. They generally denied wrongdoing while agreeing to the settlements. Benjamin Franklin Savings, a Houston savings and loan (S&L), closed in 1989 at a cost of nearly $1 billion to taxpayers. The government said that Andersen's role involved "extensive malpractice and negligence" in hiding the bank's troubled financial condition. Andersen agreed to a $65 million settlement and an additional $17 million to settle charges of negligent auditing in the collapse of California-based Lincoln Savings. It was the largest S&L failure and cost taxpayers $2.6 million. California's auditing board unsuccessfully moved to revoke Arthur Andersen's public accounting license. Andersen's settlement also resolved claims in three other unnamed failed institutions. The total settlement for these cases, which included 10,000 hours of community service, was the second-largest obtained from an accounting firm in an S&L case.

Colonial Realty declared bankruptcy in 1990 after systematic fraud that enriched the owners. Andersen employees took cash and gifts while approving exaggerated financial projections for investors. The $3.5 million settlement with Connecticut was the largest penalty of a public accounting firm in the state's history, and Andersen paid another $10.3 million to investors. Waste Management overstated its pretax income by $1.4 billion and hid certain expenses from 1993 to 1996 to make the company look more profitable. The $7 million fine was the largest ever against an accounting firm; in 2001, Andersen agreed to the court enjoining it from further misleading audits and U.S. Securities and Exchange Commission (SEC) censure. Sunbeam's executives engaged in fraudulent accounting from 1996 to 1998 and declared bankruptcy in 2001. Andersen agreed to a $110 million settlement with shareholders. The Baptist Foundation of Arizona, a religious investment entity, filed the largest ever bankruptcy of a nonprofit in 1999, costing investors $600 million. For its role in auditing what was a vast Ponzi scheme, Andersen paid a $217 million settlement, the largest in a nonprofit case. Telecommunications firm Global Crossing filed for bankruptcy in 2002 amid charges of manipulating earnings to make the company appear more profitable. Arthur Andersen paid $25 million to shareholders.

The Enron Misfortune

Enron declared the largest corporate bankruptcy up to that time in 2001, restating earnings for 1997 to 2001 to add $2.6 billion in debt and causing investor losses of $60 billion. It had been a lucrative client, and Andersen expected about $100 million in annual fees in upcoming years. Enron's use of more than 3,000 special-purpose entities to keep liabilities off its books created substantial work for Arthur Andersen and triggered an SEC investigation into its misuse.

Before the SEC investigation started, an Andersen lawyer sent an e-mail to the head of Andersen's Enron audit team that suggested deleting the term "misleading" from a memo written to raise concern about Enron's characterization of certain losses. Auditors are required to report any objections to their clients' characterizations, and the deletion would remove evidence of an objection Anderson should have reported. A subsequent e-mail by the same lawyer, also before the SEC investigation, reminded the Houston office (where Enron was based) to comply with document retention policies, which required the destruction of non-audit-related work papers. Andersen engaged in massive document destruction and electronic records deletion until the SEC told it to stop.

When Andersen was charged with obstruction of justice, its clients began to leave. The jury convicted Anderson based on the deletion of the term "misleading" and instructions that impeding an investigation without dishonest intent allowed a conviction under the term corruptly persuading." The conviction ended the firm's license to conduct public audits. In 2005, the Supreme Court overturned the conviction because the statute required "knowing" corruption of an investigation. Even if a retrial under new instructions acquitted Andersen, clients would not return because many cases were in the news. Andersen was also the auditor for WorldCom, which in 2005 declared bankruptcy and took the record of the largest bankruptcy from Enron.

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See Also: Enron Corp.; Keating, Charles; Savings and Loan Fraud; Waste Management Inc.; WorldCom Inc.

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Asbestos

A group of naturally occurring minerals resistant to heat and corrosion, with high tensile strength, asbestos has been mined and used in commercial applications in the United States since the late 1800s. With its ideal properties, asbestos was lauded as a "magic mineral" for the products of the Industrial Revolution. However, throughout the 20th century, the health hazards of asbestos exposure were evidenced by both scientists and the asbestos-related diseases that ravished mine workers. The dangers of asbestos were fully realized in Libby, Montana, near the site of a vermiculite mining operation, where an entire community was devastated by the health effects of the perilous mineral. Although asbestos is not banned in the United States, it is regulated by a number of governmental agencies and has been the subject of numerous court battles.

The fibrous mineral asbestos has two types: serpentine and amphibole. The serpentine group includes chrysotile, identified by long, curly fibers that appear like small bundles, and is most widely used in commercial applications. Varieties of the amphibole asbestos are marked by straight, needle-like, brittle fibers. Asbestos is typically mined from open pits, then sent to mills for processing. To preserve the structure of the mineral, the milling is done without liquids through a recumbent process of crushing and sorting, which generates significant amounts of dust. Deconstructed asbestos fibers are strong, thin, and resistant to fire, heat, and chemicals, and they do not conduct electricity. Asbestos fibers can disassemble into microscopic particles that are hard to see but easy to inhale. Workers often did not receive sufficient respiratory protection, nor did they have protective coveralls. Ventilation systems to remove dust were cost-prohibitive to install. At the end of the shift, laborers took asbestos dust home with them in their clothing, in their shoes, and on their skin.

Commercial Uses

Despite the hazard to workers, the properties of asbestos make it ideal for commercial applications, particularly to strengthen and fireproof products. By some estimates, over 3,000 different types of consumer products contain asbestos. The most common product categories are commercial, corrugated, and specialty paper; floor tile; shingles; pipe; pipeline wraps; clutch facings; disc brake pads; drum brake linings; flooring and roofing felt; ceiling and floor tiles; and paints, coatings, sealants, and adhesives. Asbestos has also been used in garden products that contain vermiculite. In the mid-20th century, toothpaste, tampons, talcum powder, and condoms contained asbestos fibers. Asbestos and asbestos-containing materials were frequently used in the construction of schools and other public buildings from the 1940s through the 1970s. Exposure to asbestos fibers through products is likely only if the asbestos-containing materials are damaged, disturbed, or removed and the fibers become airborne. Asbestos in nonfriable material, such as siding, tiles, and roofing, is less likely to become airborne and to present an inhalation risk.

Health Effects

Asbestos can produce asbestosis, lung cancer, or mesothelioma even years after exposure. Microscopic asbestos fibers can be inhaled and create asbestosis, a gathering of scar-like tissue in the lungs that impairs the ability of oxygen to reach the bloodstream, and can lead to disability and death. Asbestos is also a carcinogen, causing cancer of the lung. Exposure to asbestos can also cause mesothelioma, a rare and insidious form of cancer found in the thin tissue lining of the lungs, chest, abdomen, and heart that usually causes death within 18 months of first diagnosis. Asbestos is the only known cause of mesothelioma, and even a short exposure to the mineral can trigger the disease, as long as 60 years after the exposure. Other cancers, such as gastrointestinal tumors, have also been linked to exposure to the mineral.

The perilous effects of asbestos exposure were first noted in the late 1800s by factory inspectors in the United Kingdom (UK). In 1924, asbestosis was first identified in the medical literature, and seven years later, the UK government instituted regulations to control dust in the asbestos industry. Researchers in the 1940s uncovered a link between asbestos and lung cancer, and in the 1950s, pathologists in South Africa identified a cluster of mesothelioma cases near a Cape Province asbestos mine. While former mine workers are most likely to be afflicted with asbestos-related illnesses, these diseases do not just affect mine employees; community members living near mines suffer alarming rates of asbestosis, cancer, and mesothelioma.

Libby, Montana's Toxic Legacy

In 1881, miners discovered vermiculite while prospecting for gold near Libby, Montana, a small town in the northwest corner of the state. By the 1920s, the Zonolite Company formed to mine the vermiculite, and in 1963, W. R. Grace purchased the mining operation. It managed the mine until it closed in 1990. The Environmental Protection Agency (EPA) estimates that 70 to 80 percent of the world's vermiculite was produced in Libby while the mine was online. Vermiculite, a harmless mineral, can be used as lightweight insulation or fireproofing and is a common ingredient in potting soil. However, the vermiculite deposit at the Libby site was infused with a dangerous form of asbestos.

In response to community concerns leading to a series of articles in the *Seattle Post-Intelligencer*, an EPA Emergency Response Team traveled to Libby in 1999 and began collecting and testing samples from both home and business air, soil, insulation, and dust. The team also investigated the asbestos-related health effects of community members. Jock McCulloch and Geoffrey Tweedale report that when 6,000 Libby residents were screened, only some of whom were previously employed by Grace, nearly 20 percent had lung abnormalities explained by asbestos exposure. Furthermore, 1,500 properties in the town had evidence of unsafe asbestos fiber levels. Documents reveal that the company knew the health hazards of asbestos exposure and the high incidence of lung disease among employees, but kept the information confidential. Faced with billions of dollars of legal claims, government fines, and cleanup costs, Grace's construction division declared bankruptcy in 2001. In 2008, in the largest civil settlement in Superfund history, W. R. Grace paid $250 million to fund cleanup activities. In 2009, the EPA declared a public health emergency under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as the Superfund.

Regulations and Lawsuits

Despite the known health risks and evidence of devastated communities like Libby, Montana, the federal government has been only marginally successful in regulating asbestos. Authors Jock McCulloch and Geoffrey Tweedale argue that the asbestos industry was successful in minimizing and at times hiding the potential health effects of the mineral. The industry was aided by cozy relationships with government officials and lawmakers, and it defended asbestos, asserting that the mineral was safe with controlled usage. The EPA attempted to ban asbestos in 1989 with the publication of "Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions; Final Rule," but the U.S. Court of Appeals, Fifth Circuit, vacated most of the rule in 1991. The ban on new uses of asbestos in products that have not historically contained the mineral, as well as the ban on asbestos in flooring felt, roll board, and corrugated, commercial, or specialty paper, however, was upheld.

Additionally, the Toxic Substances Control Act (TSCA) of 1979 gives the EPA authority to require recordkeeping, reporting, and testing of certain dangerous substances, including asbestos, at the production, use, and disposal stages.

Title II of the TSCA, the Asbestos Hazard Emergency Response Act, requires inspection of school buildings for asbestos and specifies that personnel working on asbestos abatement projects be certified. Under the Clean Air Act, the EPA set emission standards for asbestos as a hazardous air pollutant. The Occupational Health and Safety Administration (OSHA) outlines rules for asbestos exposure in the construction industry, general industry, and shipyard industry to reduce risk to employees by providing monitoring, training, and protective equipment. Some states have additional guidelines in place. Meanwhile, billions of dollars have been paid by the asbestos industry as a consequence of lost lawsuits and civil settlements resulting from scores of claims of asbestos contamination and asbestos-related diseases.

Though the United States, Britain, and Canada have protection for workers and communities, much of asbestos mining and manufacturing has moved to countries with sparse government regulations, such as Kazakhstan, South Korea, India, and Brazil. These countries will likely experience a spate of asbestos-related diseases unless they move quickly to provide protection to workers and others exposed to the dangerous mineral.

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See Also: Clean Air Act; Employee Safety; Environmental Protection Agency, U.S.; Toxic Substances Control Act.

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AT&T

American Telephone & Telegraph (AT&T) was founded after Alexander Graham Bell's invention of the telephone in 1876. The Bell Telephone Company was the first predecessor of companies that would eventually become AT&T. It was not until 1885 that American Bell Telephone Company formed AT&T as a daughter company in order to operate its long-distance network known as the Long Lines division. AT&T became the parent company of the Bell System in 1899, after the company acquired the assets of American Bell Telephone, thus becoming AT&T Inc. Theodore N. Vail became the manager of American Bell Telephone in 1878; he resigned in 1885 to become the first president of AT&T once the company was established. Vail resigned two years later, when a dispute with the board of directors took place. He returned in 1907 to begin a second term as president of AT&T when J. P. Morgan, who had controlling stock in the company, asked him to return. During his second presidency of the company, Vail developed a philosophy, strategy, and structure that would be the basis for the company for several years. Vail's philosophy and universal goal fostered AT&T into a national monopoly through the purchase of the company's competitors.

The Government Is Watching

The Sherman Antitrust Act was created in 1890 in response to concerns over price-fixing abuses of monopolies. This antitrust act gave the government the power to regulate monopolies. Telephone regulations began with the emergence of the Interstate Commerce Commission (ICC), which was established with the Mann-Elkins Act of 1910. AT&T initially was not greatly affected by these regulations. However, when AT&T showed interest in purchasing Western Union, the government began watching AT&T closely. To avoid antitrust action, the vice president of AT&T, Nathan Kingsbury, wrote a letter to the attorney general to end its controlling interest in Western Union. Vail agreed to the Kingsbury Commitment of 1913, which was an out-of-court settlement with the government that established AT&T as a government-regulated monopoly. The commitment prohibited AT&T from purchasing competitor phone companies without Interstate Commerce Commission approval. AT&T also agreed to allow noncompeting local independent phone companies to connect to its long-distance service.

In 1921, AT&T was established as a natural monopoly. With the passage of the Willis Graham Act, telephone companies were exempt from antitrust laws in order to build an infrastructure that would allow companies to deliver low-cost services to its customers. This act made it possible for universal service by merging competing telephone companies.

From the time the act was established until 1934, AT&T had been approved by the ICC to acquire 223 of the 234 independent telephone companies. The Federal Communications Commission (FCC), which resulted from the Communications Act of 1934, took over regulation of wire communication from the ICC and began to regulate telephone services and to control the rates charged by AT&T. The FTC began investigations into the telephone monopoly, and in 1949, it filed an antitrust suit against AT&T that led to a consent decree signed in 1956 by AT&T and the U.S. Department of Justice (DOJ) in which AT&T agreed to restrict its activities to those concerning the national telephone system and projects for the government.

With the advancement of new technologies from the 1940s to the 1970s, the FTC allowed competitors of AT&T to provide long-distance telephone services. The changes in technologies and telecommunications led to the FCC filing another antitrust suit against AT&T, which stated that AT&T had monopolized and conspired to monopolize additional telecommunication markets. The FCC believed that AT&T should eliminate affiliation with Western Electric, and that Western Electric should be divided into several companies. It should also felt that the Bell Operating Companies should be isolated from AT&T Long Lines. This antitrust suit lasted until 1982, primarily because AT&T disputed the suit with the Consumer Communications Reform Act, also known as the Bell Bill, and because of legal tactics. The suit was settled in 1982 when AT&T agreed to sever ties with Bell operating companies that provided local services. In addition, the DOJ agreed to lift the constraints of the 1956 Consent Decree. In 1984, AT&T closed connections with the Bell System, and the Bell System ceased to exist. As a result, seven Regional Bell Operating Companies (known as Baby Bells) and a new AT&T were formed, continuing the parts of the company still valid from the natural monopoly argument, where competition was applicable.

AT&T is organized into AT&T Communications and AT&T Technologies. In 1991, AT&T ceased offering telegraph services to customers and purchased NCR Corporation (National Cash Register), attempting success at computer network markets. The Telecommunications Act of 1996, signed by President Bill Clinton, the bill attempted to promote competition between local, long-distance, and cable companies by eliminating some of the regulatory barriers between the communications industries. AT&T Wireless was created after AT&T purchased McCaw Cellular in 1993. In 1995, AT&T voluntarily restructured into three companies: a service company, AT&T Corporation; a products company, Lucent Technologies; and a computer company, NCR Corporation.

Into the Cable Market

In 1999, AT&T acquired Tele-Communications Inc. (TCI) and Media-One Inc., making AT&T the largest operator of cable television. However, after AT&T outbid Comcast in 1999 for Media-One, Comcast purchased AT&T Broadband. In 2000, the DOJ required AT&T to divest Media-One's interest in Road Runner Broadband, which was owned by Media-One, Time Warner Inc., Microsoft, and Compaq, because acquisition of Road Runner would lessen competition in broadband services. In 2004, AT&T Wireless was sold to Cingular Wireless. In 2005, the FTC approved the merger with Southwestern Bell Corp., and AT&T and Southwestern Bell Corp. adopted the branding and changed the name to AT&T Inc. Upon AT&T's acquisition of BellSouth in 2006, Attorney General Thomas O. Barnett issued a statement claiming that the transaction was not likely to reduce competition. In 2007, the DOJ announced that AT&T must sell assets from Dobson Communication in order to maintain competition in markets where there could be a loss of competition.

The DOJ began looking into telecommunication companies AT&T Inc. and Verizon Communications Inc. in 2009, to determine if the companies were abusing market power and hurting smaller rivals through agreements with handset makers. In March 2012, the United States filed a lawsuit against AT&T under the False Claims Act for allowing international callers who were not eligible to receive the service to use the Internet Protocol (IP) relay and accepting federal payment for its use. The complaint also stated that AT&T utilized this system knowing that it was used by fraudulent international callers, which accounted for a large percentage of AT&T's call volume. On August 2011, the DOJ filed an antitrust lawsuit to block AT&T's acquisition of T-Mobile. Deputy Attorney General James M. Cole stated that if the merger took place, tens of millions of consumers would face higher prices on wireless mobile products when they would normally benefit from competition among carriers. In December 2011, AT&T announced that it would abandon the proposed merger with T-Mobile.

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See Also: Antitrust, Federal Trade Commission; Antitrust, U.S. Department of Justice; Interstate Commerce Commission, U.S.; Interstate Commerce Commission Act; Sherman Antitrust Act.

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Automobiles

When asked why he robbed banks, Willy Sutton is reported to have explained, "Because that is where the money is."

Automobiles are, for most people, the second-most expensive purchase in their lives, so they always have been—in a similar vein to Willy Sutton's—and always will be a natural outlet for the work of white-collar criminals. Some of the criminality involved with vehicles, such as straightforward single theft and "car jacking," can be dismissed as "simple" varieties of theft and robbery. Many other issues involving automobiles bear the hallmarks of white-collar crime, with their reliance on brains, rather than brawn, to achieve the criminal purpose. In these cases, abuse of paperwork and other documentation is often involved. To steal one car may be ordinary theft, albeit nonviolent. To be involved with a car theft ring, often transcending national borders in the 21st century, requires an organization associated with white-collar criminals. While an important part of Edwin Sutherland's original presentation of the concept of white-collar crime involved offenders of high prestige, these crimes also involve financial gain on the part of the criminal without an immediate resort to violence.

Chop Shops and Documentation Laundering

The familiar white-collar crimes concerning cars include various false pretenses with regard to their sale, purchase, repair, and maintenance. This can involve the manipulation of the readings of odometers. The lower the mileage on the odometer, the greater the value of the car. Additional forms of documentary false pretenses include the representation of cars as ordinary used or secondhand, when they are in fact rebuilt wrecks, or cars repaired and rebuilt after having been salvaged from events such as fires and floods. The recycling of cars ruined by the floodwaters of Hurricane Katrina to innocent purchasers is a textbook example.

Closely connected to this is the concept of a "chop shop," where cars are chopped up. Then, parts of various cars can be reassembled to create a car that is a fabrication in the strictest and worst sense of the word. The cars thus re-created often involve the substitution of inferior parts for legitimate ones. Considerable expense and craftsmanship is required to rebuild a wreck to the quality of a new car, but those involved in fraud will save money, and further increase their profit, by not adhering to these high standards. Sometimes this has fatal results, when shoddily rebuilt cars have literally fallen apart on the highway.

For rebuilt wrecks and cars with fraudulently manipulated "salvage titles," it is necessary to forge or otherwise manipulate the supporting documentation known as the title, inspection, and pollution control stickers, and other identifying details such as the vehicle's unique identifier, the vehicle identification number (VIN). Because the United States does not have a national system of assigning titles to cars, there is considerable variety between the states as to the ease with which a car can be titled and otherwise documented with supplementary requirements, such as valid inspection stickers. In recent decades, this documentation has added issues such as pollution control, and thus involves matters of public health beyond any concern of the driver of the car in question.

Crooks take advantage of this lack of complete uniformity by laundering the paperwork through states with reputations as places with documentary standards for titling cars that are more lax than others, places often implicated in crimes involving the titles to cars. For example, in Vermont, a state with otherwise very good, strict regulations, a valid title is not required in the resale of a car manufactured before 1995. This would seem to add an element of risk to someone, for example, buying a choice, low-mileage 1958 Thunderbird.

Other documents that are subject to fraud include driver's licenses, registrations and license plates, and the insurance documents protecting everyone involved in the use of cars. Modern printing technology, available at relatively low cost to any individual, now allows for the production of fraudulent documents of the highest quality, able to fool all but the trained eye. This has led to an automotive "arms race," as the states make it more difficult to create fraudulent items—such as the holograms now seen on driver's licenses and the car's license plates. Crooks try to cope with these developments.

Even old cars, which domestically may not seem to have much dollar value for car-related crooks, are not immune from (organized) car theft. The ironic consequences of the decades-long sanctions and lack of commerce with Cuba have led to cars that would not normally be at risk of being stolen in the United States for the value of their parts. Something as modest in value in the United States as an ordinary nonluxury car, such as the timeless 1958 Chevy, can be worth a small fortune in parts to a service station in Havana. Organization well beyond the ordinary car thief is required to transport the car there.

The Ford Pinto

Beyond the major threat presented by chop shops and unscrupulous repair facilities, an even more perverse form of automobile white-collar crime involves the knowing manufacture and sale of cars that are known to be dangerous from the outset, risking life and limb by the users. The Ford Pinto accidents and court cases that developed in the 1970s are now a subject of textbook analysis and a window into the challenges of successful prosecution through to conviction against a major corporation. The fact that Ford was not convicted on the criminal charges that were filed against it is a window opening into the challenges faced by prosecutors, who may have no more than the limited resources available to them in their county, up against all the legal resources of a major corporation.

The saga of the Ford Pinto involves that small American car, which was built between 1971 and 1980. The Pinto was Ford's entry-level vehicle, with no pretense to quality in any part. Every piece of it was cheap. It was involved in several crashes, with resultant fatalities caused by the car bursting into flames as the result of a comparatively minor rear impact. It became apparent that there was a design defect, one that would have cost Ford very little to fix.

One such accident, in 1972, led to *Grimshaw v. Ford Motor Company*, in which the California court of appeal, for its Fourth Appellate District, upheld compensatory damages of $2.5 million and punitive damages of $3.5 million against Ford. This was in part because of proof, satisfactory to the balance of probabilities probative burden in civil court, that Ford had been aware of the design defects before production began, but had nonetheless decided not to change the design to

The Ford Pinto is a famous example of the willful manufacture and sale of a vehicle that was known to be dangerous from the outset. Now used for textbook analysis, the case of the Ford Pinto involved the sale of a small economy car built between 1971 and 1980 by the Ford Motor Company. Unequivocally cheap and shoddily built, it was subject to bursting into flames during even minor rear-impact collisions. Ford was aware of the design defects before production but opted to ride out any potential lawsuits rather than fix the flaws.

correct the problem. It was shown that Ford considered the balance sheet and concluded that it would be cheaper to settle the occasional lawsuit than to fix the car.

Punitive damages are as close as can be to the idea of a criminal fine, especially in a case against a corporation, where personal liability on the part of individuals, and the possible exposure of those people to prison sentences, is not easily established. In 1978, Michael Cosentino, the Elkhart County, Indiana, prosecutor, convened a grand jury to consider charging Ford with three counts of reckless homicide. Three teenage girls had been killed when their 1973 Ford Pinto caught fire after it was rear-ended and they were immolated. Ford was duly indicted in September 1978. After trial, a Pulaski County petty jury acquitted Ford in March 1980.

Although Ford was able to avoid the enormous expense of a government-ordered recall for the car, it did choose later to correct the problem with the simple fix of a gasket.

The discussion of the Ford Pinto case must remain part of the criminological literature because it epitomizes the challenge of convicting a corporation and imposing an effective sentence on it. It has implications far beyond the specific reference to cars. With no disrespect to his legal skills, Prosecutor Cosentino was over-matched in competition with the world-class, money-no-object defense lawyers on whom Ford could rely. To the extent that the 2010 decision of the United States Supreme Court in *Citizens' United v. Federal Election Commission* appears to have given with corporations more personhood than they had before, it remains to be seen whether this case will inspire a prosecution by an intellectual follower of Mr. Cosentino, one that may prove successful on the issue of personhood that was the back story in the Pinto case.

Volkswagen and De Lorean

In a perfect mimic of the Rochester studies, which posit in victimological theory that there is often little difference between offender and victim, the automobile industry provides more than one example. In 1994, Volkswagen (VW) was accused of industrial espionage by General Motors (GM) through the actions of one of its top executives, Jose Ignacio Lopez, and some colleagues, who had moved from GM to VW, allegedly taking important designs with them. It must seem as if turnabout is fair play in view of the claims in 2012, by Volkswagen, that its Chinese joint venture partner, FAW, has stolen engine designs from it. There is enormous pressure on the automobile industry to keep coming up with new designs. Combined with no great organizational loyalty among the industry's top executives, given the fabulous salaries that can be used to lure one away from a competing company, the automobile industry is prone to industrial espionage and related mischief. A new context is given to corporate crime when corporations are committing criminal acts against each other.

In 1975, John De Lorean, famed for being GM's youngest executive, left to found a company that was to produce one iconic model, the DMC/DMC-12. A persuasive pitchman as well as a brilliant, innovative engineer, De Lorean was able to attract venture capital from a wide variety of sources, both institutional and personal. The British government also showed interest because it hoped to create industrial jobs in Northern Ireland as one way to reduce the sectarian violence that had been plaguing that part of the United Kingdom.

De Lorean somehow became the target of a sting operation, coordinated by the Drug Enforcement Administration (DEA) and Federal Bureau of Investigation (FBI), aimed at drug trafficking. De Lorean was duly tried and acquitted on those charges, after the successful use of an entrapment defense. Even though he was cleared of the charges, De Lorean's reputation as a car manufacturer was ruined, and his personal bankruptcy was to follow that of the company. There is still conjecture that the drug sting and prosecution of De Lorean were in some manner a means for the British government to save some face after an unsuccessful business deal had gone sour for it. It is debatable whether this sting would ever have taken place if De Lorean had not been a high-profile, lightning-rod personality, involved with a car that could have proven a challenge to the established manufacturers and their competing models.

Honda

Without fuel, a car is an expensive ornament in the driveway. With the constant need to refill the tank, the price of fuel is a constant topic of conversation, particularly in the face of sudden and significant price increases that may not seem justified by the economics of fuel supply. It is a small step from that observation to thoughts of conspiracy by way of (collective) price fixing on the part of the producers and retailers. It seems that all the filling stations in town raise their prices within minutes of each other, without being instantaneously subject to the same price increases. This activity has sometimes led to prosecutions, with the most notable the case against Mobil/Exxon. The international nature of the fuel supply, even more than the production of cars, makes this an international problem, further complicating any prosecutions.

While the demand for fuel is relatively inelastic, with most consumers driven by price, the opportunity for mischief by producers and distributors is the classic collective behavior that can be prosecuted as price fixing caused by a conspiracy. By contrast, the purchase of a car can lead to the misbehavior that could be considered a different, yet equally unacceptable form of price adjustment. The competitive nature of the retailing of vehicles, especially cars, is such that retailers fight with each other for customers.

True mischief is shown in those situations, usually quite rare, where a car is, for some reason, so attractive to the consumer that the retailer can charge more than its retail price, and consumers will still queue up to buy it.

In a case of enduring testimony to the quality and attractiveness of Honda's cars, 18 executives of Honda USA were convicted in the mid-1990s for bribery and kickbacks in a scheme concerning (new) dealerships and the allocation of these hard-to-get cars that had gone on since the 1970s. One of the kickbacks was a car—from a different manufacturer, BMW.

The usual problem with corporate criminality is the difficulty of identifying exactly who is responsible for the crimes that have taken place. It is one reason why a fine is so often the most convenient and only criminal penalty against a corporation. The Honda kickbacks case was distinctive in that individuals were convicted and sentenced. Stanley Cardiges, the senior vice president for sales for

Honda USA, was sentenced to 5 years in prison and fined over $300,000. Even this was considerably less than the 35 years in prison and the $1 million in fines that he could have faced. The financial sanction hints at the amount of money he likely made from the illegal behavior. Prosecutors estimated that the amount of bribes and kickbacks paid to Honda executives topped $15 million.

Honda USA's corporate statement at the end of the trial, in August 1995, noted the following:

> The sentencing of these former employees who have admitted to defrauding our company helps bring closure to a difficult period in our history. We maintain confidence in our thousands of loyal and honest dealers and employees.

Such is the law of supply and demand that, for many years prior to the prosecution, consumers were perfectly legally paying far over market value for Honda's products. According to Honda, the corporation was an innocent victim of a behavior that is unacceptable in a country that does not tolerate bribery and other forms of corruption in the marketplace as legitimate means of doing business. It is difficult to believe that the board of directors was not in any way aware of what was going on in the company that they were supposed to give guidance to and watch over.

Joseph R. (Rick) Hendrick, whose name is synonymous with the success of NASCAR racing, was one of the Honda dealers involved in the scheme. In 2007, Hendrick was sentenced to one year of home confinement and was fined $250,000 for his part in the scheme. Hendrick was fighting myelogenous leukemia, which was diagnosed at about the same time that he was indicted. His defense lawyer suggested that he had been punished by a higher authority.

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See Also: Bribery; Caveat Emptor; Consumer Deaths; Corporate Criminal Liability; Ford Motor Co.; General Motors Co.; Kickbacks; Negligence; Price Fixing.

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B

B. F. Goodrich Co.

Benjamin Franklin Goodrich (1841–1888) established the B. F. Goodrich Company in Akron, Ohio, in 1870. He accepted an offer from the town to open a rubber and tire manufacturer after he had purchased the Hudson River Rubber Company the previous year with the returns from his real estate investments.

The factory provided Akron with needed jobs and the company expanded into various rubber products during Goodrich's life, including bicycle and buggy tires, freeze-proof rubber hoses, and water hoses for home gardeners. It was after its founder's death that the company began making automobile tires, the product with which it would be most associated. Over time Goodrich became one of the largest tire manufacturers in the world, while diversifying in other areas, including aerospace and space-suit technology, electrical power systems, and aircraft surveillance systems. The B. F. Goodrich tire brand has since been sold to Michelin in 1988, at which point the company exited the tire business, and after mergers, the original B. F. Goodrich Company became the Goodrich Corporation, which was acquired by United Technologies Corporation in 2012.

Having pioneered automobile tires by developing designs that could withstand the forces exerted on rubber by high-speed travel, Goodrich was well-positioned to take advantage of the growing market for aircraft wheels, landing gear, brakes, and other systems as the commercial aviation industry developed. In the 1960s, the company was contracted to supply wheels and brakes for a new lightweight aircraft for the U.S. Air Force, and its poor handling of a bungled design led to a national scandal.

The contract was awarded on June 18, 1967, to a division of the company—the B. F. Goodrich Wheel and Brake Plant—located in Troy, Ohio. Goodrich's bid was accepted in part because of the design they intended to use. The proposed brake design was lighter in weight and used four rotors instead of the traditional five-disc brake mechanism. John Warren was responsible for the design, while recent hire Searle Lawson oversaw production. In the first round of tests, the linings of the prototypes disintegrated as the brakes reached temperatures as high as 1500 degrees Fahrenheit. Changes to the lining failed to resolve the problem, which led to an internal dispute in the company.

While Lawson believed that the design was fundamentally faulty, Warren stood by it and insisted that only the lining needed to be changed. Company leadership (especially Robert Sink, who was in charge of the project) favored Warren, believing that the designer of the brake had the best informed about the situation. Each of 12 tests on different linings resulted in failure, and with 70 days remaining until the Air Force's flight test, a conspiracy to falsify data was born. Sink failed to report Lawson's concerns to upper management and had instead told them that the testing was going smoothly. Even the changes to the linings had caused delays. Redesigning the entire brake could mean missing the Air Force's test date, and would make the company look bad given the promises they had made regarding the four-rotor design. Those involved began to alter the data of the tests and to adjust the testing conditions in order to produce different results, rather than backing off of the four-rotor design and admitting defeat.

These later rounds of tests were "nursed," meaning that testing conditions were manipulated in order to help the brake achieve the performance that was promised. Fans were set up in order to cool the brakes, preventing the overheating that led to disintegration. According to later investigations, Sink explicitly told Lawson to make sure the brake passed the tests, regardless of any design flaws. Kermit Vandivier, a B. F. Goodrich employee, began to point out irregularities he discovered in the test reports in April 1968, and at the end of May, Vandivier produced a qualification report under duress, after initially refusing to do so.

Vandivier became the whistleblower in a case of conspiracy to defraud the U.S. government. Goodrich claimed that what Vandivier and the government saw as conspiracy was a case of different engineers having different interpretations of results. Vandivier resigned in October, giving six weeks notice, and was dismissed a week later for disloyalty. Lawson resigned as well, and Goodrich recalled the four-rotor brake, providing the Air Force with a five-rotor brake of a more traditional design, without additional charge.

By the following spring, though, word of the falsified and "nursed" tests had reached Senator William Proxmire, who requested an investigation by the Government Accounting Office (GAO). The GAO prepared and submitted a report finding that the Goodrich tests did not comport to federal standards, which was confirmed in a Senate hearing chaired by Proxmire in summer 1969. Much of the case's infamy stems from an article published by Vandivier in 1972, "Why Should My Conscience Bother Me?" which was republished as "The Aircraft Brake Scandal" in the April 1972 issue of *Harpers*.

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See Also: Corporate Criminal Liability; Research Fraud; Whistleblowers.

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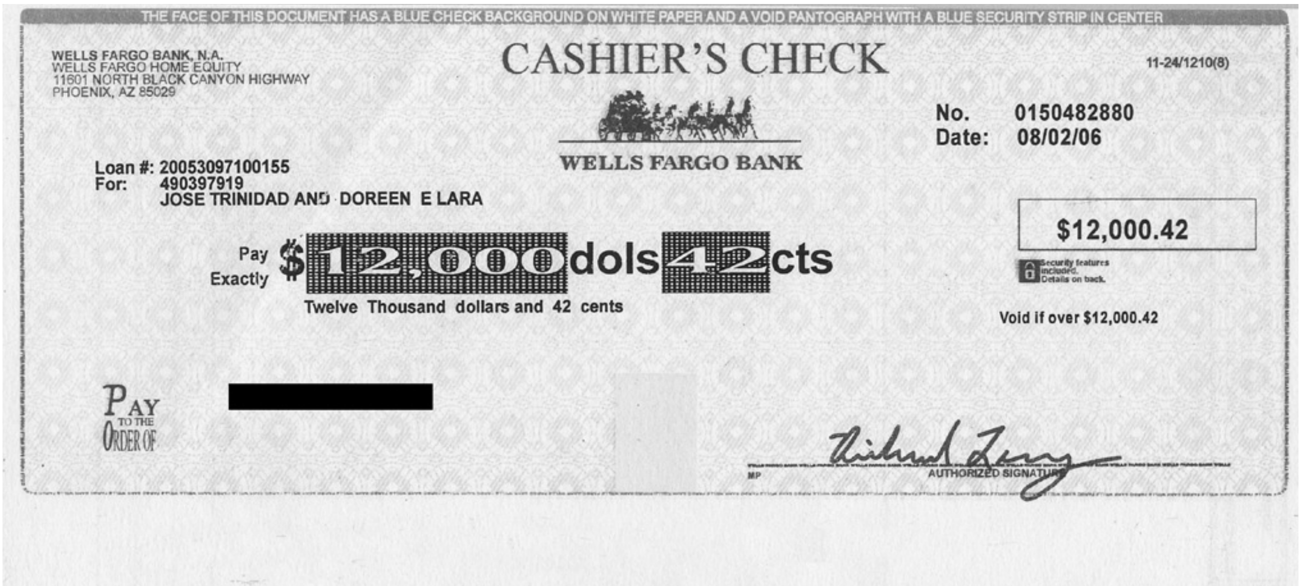
Bad Checks

A bad check, also known as a bounced check or a nonsufficient funds (NSF) check, is a check drawn on a nonexistent account or on an account with insufficient funds to honor the check when presented. There is a presumption by the acceptors of checks that an account is open and that there are sufficient funds available to cover the checks. If the account is closed or nonexistent, or funds are not available to cover the check, the check "bounces."

Passing bad checks is illegal, and the crime can range from a misdemeanor to a felony, depending on the amounts involved and whether the activity involved crossing state lines. It is considered a white-collar crime because of the type of offense



A scan of a counterfeit cashier's check that is made to appear to be issued by Wells Fargo Bank. Some personal information regarding the recipient has been blacked out. According to the Federal Deposit Insurance Corporation, there has been explosive growth in all forms of counterfeit checks, including cashier's checks, as consumers tend to trust cashier's checks, money orders, and other "official" looking checks. The bank on which the check is drawn can confirm that the check is legitimate, either by phone or at a bank branch.

it involves and the economic harm caused. The party who initially wrote and signed the check normally carries primary criminal liability, but liability can also be imposed on the person who fraudulently endorsed the check and passed it on to another.

False Pretenses

The modern crime of passing a bad check is related to the common law offense of false pretenses. At common law, false pretenses required proof of false representations of material past or present facts, known by the wrongdoer to be false, and made with the intent to defraud a victim into passing title in property to the wrongdoer. In the typical bad check situation, the author of the check (known as the "drawer") makes an express or implied representation that the account is open and contains sufficient funds, and the merchant or other property owner releases property or merchandise based upon this representation. In most jurisdictions, the statutory crime of passing a bad check requires proof of intent to defraud. In most jurisdictions, there is a presumption of inaccurate accounting by the check writer, and the check writer is given a prescribed time period to "make the check good" by paying both the face value of the check and a processing fee. If the check is not made whole within the relevant time period, the intent to defraud is established by an evidentiary presumption, and criminal charges become ripe. In the majority of states, the crime is initially classified as a misdemeanor. In states that make a distinction regarding a felony or misdemeanor, the amount of the check and an existing record of one or more prior offenses may determine if the crime is a misdemeanor or a felony. Most jurisdictions treat writing checks on a closed or nonexistent account as a felony, regardless of the amount of the check.

Counterfeiting

Other examples of bad checks include counterfeit checks, altered checks, and "kited" checks. In many cases, these crimes begin with the theft of a financial document. It can be perpetrated as easily as someone stealing a blank check from a home or vehicle during a burglary, searching for a canceled or old check in the garbage, or removing a check that has been mailed to pay a bill from the mailbox. With the advancement of computer technology, it is increasingly easy for criminals to manipulate checks to deceive innocent victims expecting value in exchange for their money. A significant amount of check fraud is because of counterfeiting through desktop publishing and copying to create or duplicate an actual financial document. Alteration primarily refers to using chemicals and solvents such as acetone, brake fluid, and bleach to remove or modify handwriting and information on the check. When performed on specific locations on the check, such as the payee's name or amount, it is called spot alteration; when an attempt to erase information from the entire check is made, it is called check washing. Check kiting occurs when checking accounts at two or more institutions are used to artificially inflate actual balances by using the "float time" of available funds to create fraudulent balances. This fraud has become easier in recent years because of new regulations requiring banks to make funds available sooner, combined with increasingly competitive banking practices.

In some states, there is a criminal offense only when the bad check is given in exchange for property or for present consideration These jurisdictions hold that the giving of a bad check in payment of a preexisting debt does not fall within the purview of the bad check law. Since the debt is preexisting, the maker of the check did not deprive the payee of any right, procure anything of value from the payee, or wrongfully appropriate anything belonging to the payee. In many states, the criminal provisions regarding bad checks do not apply to postdated checks. Section 3-104(2)(b) of the Uniform Commercial Code (UCC) defines a check as "a draft drawn on a bank and payable on demand." A postdated check, since it is not payable on demand, does not satisfy this definition. Consequently, the giving of a postdated check generally does not constitute present fraud, nor is it within the scope of the bad check laws.

Fewer Checks in Circulation

There is a recent downward trend in the number of paper checks processed in the economy. In 2011, the number of checks processed by the Federal Reserve fell at its steepest rate yet, down 17 percent to an average 23.5 million a day, which is one-third of the volume processed 20 years previously. Despite this downward trend, the retail industry loses over $10 billion annually to bad checks. Business owners in the restaurant and hospitality industries run a higher-than-average risk of check fraud. Merchants operating in industries where stolen goods, such as electronics, can easily be resold also run a higher risk of check fraud. The frequency of bad checks accepted as payment by business operations can be reduced through the implementation of various secondary internal control policies. Payment by check is a privilege, not a right; businesses are not required to accept checks. Additional protective policies include the requirement of valid identification, use of check-validation systems (a private service that tracks bad checks), and local registries of formerly received bad checks. Other policies include dollar limits, management approval, verification with a local bank branch, and inkless thumbprints.

Difficulties Collecting

Collecting on bad checks can be difficult. Nationally, fewer than one-third of checks returned for insufficient funds are ever paid in full. However, collection efforts are far more successful if the merchant acts quickly to seek payment. The recipient of a bad check must normally supply proof of notification to the check writer (certified mail with signed receipt) of the failure of the check to originally clear (a statement of nonpayment), or, in the case of a closed account, proof that the account is closed, usually indicated on the check by the bank that refused to honor the instrument. Most local prosecutors' offices have bad check restitution units, and collection rates have improved in recent years. In addition to criminal penalties, most states provide for civil remedies for collection of bad checks. In some states, rules permit recipients to collect double or triple the face amount of the check.

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See Also: Bank Fraud; Check Kiting; Counterfeiting; Forgery.

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Bait and Switch

Bait and switch is a form of fraudulent inducement to buy a particular item at a particular price, followed by a manipulative "switch" in which the seller offers (and pressures the customer to buy) a different item, typically at a higher price. This form of fraud is most commonly used in retail sales.

In the classic bait and switch scheme, the "bait" is an item that appears to be offered legitimately for sale at an unbeatable price. The fraud occurs when the customer attempts to buy the product. At that point, the seller exercises one of several maneuvers to avoid selling the item. For example, the seller may tell the customer that there is no more of the advertised product available because the production line cannot keep up with demand, and none is expected for several weeks. Alternatively, the seller may disparage the product, pointing out that the low price is an indication that this is simply not the quality of product that the consumer wants. Other, similar maneuvers intended to discourage purchase of the advertised item may be used. Then comes the switch: the seller will suggest that a different product is available (and/or is one that will suit the customer's needs better) and attempt to sell the higher profit-margin product. Thus, the misrepresentation is intended to benefit the seller at the expense of the customer.

Historically, bait and switch has not always been perceived as unlawful. In the 19th century, advocates of unbridled free-market American capitalism successfully persuaded many that a vigorous economy depended on unregulated competition in the marketplace. These proponents of free enterprise suggested that the burden of constraining unscrupulous competitors lay with the consumer. This position was succinctly summarized in the Latin admonition *caveat emptor,* or "let the buyer beware." This approach meant that the consumer should understand that the goal of all market activity in a capitalist economy is to make a profit and be on his or her guard against poor quality, exaggerated pricing, and other efforts to separate the buyer from his or her money. Moreover, many of the sales techniques that are collectively mustered to offer the bait are quite legal, making it seem that the bait and switch scenario is hardly more than routine business activity. Thus, it is not unlawful for a store to offer items at below market price to encourage customers to shop at that store in the hope (or knowledge) that once inside, the customer will purchase something in addition to the item advertised. This form of inducement is called a loss leader and remains a common (lawful) practice in merchandising. Similarly, it is not unlawful—and is anticipated by the law—that advertising will exaggerate the positive, beneficial, and/or attractive qualities of any product or service in an effort to sell it. Thus, ads that proclaim to the buyer that "you can't beat this price" or "best quality that money can buy" are deemed permissible by the law, even though one should not (and typically cannot) take the claims as literally true. This is called puffery or touting.

Case Studies of Bait and Switch

Perhaps the best way to appreciate the contemporary attitude of the law toward bait and switch schemes is to examine cases. In one New York case, Electrolux Corporation, a manufacturer of vacuum cleaners, sought to enjoin several companies owned by a single entrepreneur from refurbishing Electrolux machines and using them as lures in a bait and switch scheme. The retailer would re-]build used Electrolux vacuum cleaners, often using parts not manufactured by Electrolux Corporation, and advertise them at a price under cost. The retailer did so in order to sell new vacuum cleaners and strictly ordered its sales personnel to "not let the rebuilt models out of your hands."

In another case, a retailer known as the New York Jewelry Company (NYJC), which served a low-income clientele who made about 85 percent of their purchases on credit, offered eyeglasses "from $7.50 complete." NYJC would sell eyeglasses at that price only if the customer had a prescription; otherwise, it offered prescription services for a price (the switch). Company records showed that of 1,400 pairs sold, only 10 were sales without the added cost of a prescription, and only 9 pairs of the $7.50 eyeglasses were sold.

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See Also: Advertising Fraud; Caveat Emptor; Federal Trade Commission; Marketing Fraud.

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Banco Ambrosiano

Banco Ambrosiano, Italy's second-largest private bank, collapsed in 1982 when it became unable to collect approximately $1.3 billion in loans to foreign shell companies with ties to the Vatican Bank. The scandal disrupted financial markets, damaged the Vatican's reputation, and led to the downfall of the bank's chair, Roberto Calvi, and other senior business and government leaders.

In 1896, Giuseppe Tovini from Valle Camonica in eastern Lombardy founded Banco Ambrosiano in Milan under the patronage of Saint Ambrose, the 4th-century archbishop of the city. Its mission was to offer a Catholic alternative to secular banking by focusing on stakeholders with religious, charitable, and other social missions. Its leadership maintained close ties with the Catholic Church. By the mid-20th century, the bank had expanded internationally, including the establishment in 1963 of Banco Ambrosiano Holding in Luxembourg under senior manager (and later chair) Carlo Canesi. Canesi recruited Calvi into bank leadership in 1967. Four years later, Calvi rose to general manager, and in 1975 he became chair. Calvi continued the bank's global expansion, including companies in the Bahamas and South America, a controlling interest in the Banca Cattolica del Veneto, and financing for Rizzoli Publishing. Calvi also did business with the Vatican's Institute for Religious Works (Vatican Bank) and was close to its chair, American Archbishop Paul Marcinkus. He also involved the bank in politics, funding parties in Italy and Nicaragua. There were also rumors that the bank helped finance the Polish Solidarity Trade Union for Pope John Paul II.

Calvi used Banco Ambrosiano to effect illicit capital flows from Italy, inflate the bank's stock price, and conclude large unsecured loans. The Bank of Italy warned in 1978 about fraud risk in the bank's operations, and this precipitated criminal investigations. However, terrorists killed the investigating magistrate, and the Bank of Italy official who had called for the investigation temporarily went to prison for unrelated reasons. The death of Pope John Paul I that September, after a pontificate of only 33 days, spawned rumors of complicity by Calvi and others to forestall financial and other reforms that the pope had planned.

On March 17, 1981, police raided the villa of Italian financier Licio Gelli and discovered his role in an illicit Masonic lodge, Propaganda Due (P2), along with information about the involvement of almost 1,000 other prominent Italians, including Calvi. Although Calvi received a four-year prison sentence for financial corruption, he gained release pending appeal and retained his position. Carlo de Benedetti, the chief executive of Olivetti, purchased two percent of Banco Ambrosiano later that year and became deputy chair, but he departed after 61 days because of Mafia threats and friction with Calvi. While investigations cleared him of extortion for threatening to expose fraud in exchange for preferential sales terms for his stock, a Milan court convicted him and 32 others in April 1992 for fraud regarding the bankruptcy. The Court of Cassation overturned this in April 1998.

In 1982, the bank became unable to collect $1.287 billion from 10 offshore affiliates in Panama and Luxembourg. On June 10, 1982, Calvi fled Italy with a counterfeit passport, and

Deputy Chair Roberto Rosone moved to transfer control to the Bank of Italy. On June 17, he ousted Calvi. That same day, authorities found the body of Calvi's personal secretary, Graziella Corrocher, beneath her fifth-floor window, and a note from her denouncing Calvi. Despite the suspicious circumstances, authorities ruled it a suicide. The next day, a letter carrier in London discovered Calvi's body hanging from Blackfriars Bridge. During July 1982, the bank cut off funds to the offshore interests, and they collapsed. In August, the Nuovo Banco Ambrosiano succeeded to the bank's assets under Giovanni Bazoli. The Vatican, Banco Ambrosiano's largest shareholder, agreed in 1984 to pay $250 million as part of the bankruptcy settlement but denied responsibility. In 1998, an Italian court held that a treaty between Italy and the Vatican prevented the prosecution of Marcinkus and other Vatican Bank officials for the collapse. Marcinkus retired in 1990 and died in 2006.

In 1994, former prime minister Bettino Craxi came under indictment in the case, along with Gelli. However, Craxi fled to Tunisia, and the judge declined to issue an international arrest warrant. In April 1998, the Court of Cassation affirmed a 12-year sentence for Gelli for the bankruptcy. Craxi died in Tunisia in 2000. The first two investigations into Calvi's death concluded suicide and indeterminate cause of death, respectively. After Calvi's exhumation in 1998, an independent forensic report in 2002 concluded that it was murder, likely because of losses the Mafia and P2 had suffered from the failure of the bank (which had been laundering money for them). On June 6, 2007, an Italian judge ruled that it was murder but that five defendants were not guilty. Appellate courts affirmed the acquittals in 2010 and 2011.

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See Also: Bank Fraud; Bankruptcy Fraud; Money Laundering; Offshore Entities; Organized Crime; Vatican Bank.

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Bank Fraud

A set of white-collar crimes, bank fraud is the use of fraudulent means to obtain money or other assets owned or held by a financial institution, or to obtain money directly from depositors or credit card holders by fraudulently representing to be a financial institution or employee. The term *bank fraud* applies to actions that employ a scheme or artifice, as opposed to bank robbery or theft. In criminal and civil law, a fraud is an intentional deception for the purpose of personal gain or to damage another person or entity. A hoax involves deception without intention of such gain or damage. Fraud can occur through all kinds of media, including the Internet, mail, phone, and wire. Fraudsters may be insiders, depositors, or borrowers, operating through theft, embezzlement, deception, misrepresentation, identity theft, or impersonation.

Bank fraud affects every financial institution; fraud costs are ultimately passed on to consumers. Estimates of bank fraud costs are scattered because of the considerable variety of possibilities, and they are difficult to verify. Bank fraud globally must amount, however, to billions of dollars annually. Banks are typical credit card issuers. One estimate in 2010 of credit card fraud in the United States was about $8.6 billion, perhaps 0.4 percent of some $2.1 trillion in annual credit card dollar volume. The high cost of technology fixes tends to permit such low-proportion fraud to persist.

U.S. Bank Fraud Statute

Each country regulates bank fraud within its jurisdiction. In the United States, there are state and federally chartered financial institutions. Bank fraud in the United States is defined and criminalized by the Bank Fraud Statute, 18 U.S.C. § 1344, effective on October 12, 1984. This federal statute is a reasonable guide to bank fraud criminality generally. An intentional scheme or scheme to defraud a federally chartered or insured financial institution or to obtain the institution's moneys, funds, credits, assets, securities, or other property by false or fraudulent pretenses, representations, or promises can be fined up to $1 million or imprisoned up to 30 years, or both. One may commit bank fraud under either of two subsections of the statute, through defrauding or through false representations. Legislative history asserts explicit congressional intention of extra-territorial reach to handle victimization of an insured financial institution by use of shell or bogus offshore banks. Prosecutions under Section 1344 are analogous to the traditional use of the mail fraud statute to prosecute fraudulent conduct not otherwise the subject of specific criminal statutes.

The U.S. Congress adopted the statute after the U.S. Supreme Court held in *Williams v. United States*, 458 U.S. 279 (1982), that check-kiting schemes did not constitute making false statements under 18 U.S.C. § 1014. Section 1344 criminalized check kiting, check forging, nondisclosure on loan applications, diversion of funds, unauthorized use of automated teller machines (ATMs), credit card fraud, and other similar offenses. Section 1344 was strengthened by the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989, following the savings and loan crisis of the 1980s.

Other provisions of law address money laundering, bribery, and passing bad checks. Money laundering is any scheme by which the true origin of funds is hidden or concealed. Money laundering is committed by criminals or terrorists in order to separate funds from the original criminal activity or ultimate purpose. The crime often occurs in combination with some bank fraud, as are bribery and passing bad checks. The scope of bank fraud is therefore quite broad.

A U.S. federal indictment for bank fraud is typically based on theft or embezzlement by a bank employee, or a scheme to defraud based upon false statements, such as an overvaluation of property or securities. Federal prosecutors will seek an indictment for bank fraud based upon a scheme to defraud, such as false loan applications, and misuses of loaned monies, or nonexistent collateral. The violation of making a false statement to a financial institution is also a commonly used prosecution for making misrepresentations to a bank, including overvaluing property. The crime of making a false statement, under 18 U.S.C. § 1014, is often applied when federal prosecutors are investigating a person for bank fraud or violations concerning a financial institution. The fine ($1 million) and prison sentence (30 years), or both, are the same as under § 1344.

Depositors and Credit Card Users

Bank fraud can be considered to include schemes practiced directly against depositors, because at some point deposits are in bank custody, and against credit card users, because credit cards are frequently issued by banks. There are various schemes and devices for practicing fraud against depositors and credit card users, and those approaches may be used more broadly in other criminal activities.

Impersonation and identity theft are increasing problems. A fraudster obtains information about an individual, then uses that information to apply for identity cards, financial accounts, loans, credit cards, social security benefits, or tax refunds in that person's stolen name. The practice is sufficiently widespread that insurance companies sell coverage against it. Obtaining a birth certificate in the United States may require as little information as name, parents' names, and date and place of birth; these certificates are issued by local jurisdictions. Insiders, such as dishonest bank employees or government employees, may be participants in such schemes.

Internet fraud is a widespread problem. Stolen information is used in other frauds, such as theft of identity and online auction fraud. There are two basic forms. Trojan Horse programs spy on Internet users while online, capturing keystrokes or confidential data, which is sent forward to outside sites. Phishing involves sending forged e-mail that may impersonate an online bank, auction, or payment site. The e-mail redirects the victim to a forged Web site that is designed to look like the login to a legitimate site but that requires that the user to update personal information, including passwords and PINs.

Prime bank guarantee schemes offer extremely high yields in short periods of time. The fraudsters may claim to have access to bank guarantees that they can buy at a discount and sell at a premium. By reselling bank guarantees several times in a "roll program," fraudsters claim to be able to produce exceptional investment returns. The fraudsters often refer to guarantees as issued by the world's prime banks, a term having no real meaning. If a victim sends money to a foreign bank, the fraudster diverts the money to a different account, and the money is stolen.

Fraudsters may impersonate financial institutions or bank employees. They may set up companies with names sounding similar to existing banks or other institutions, or falsely assume employee titles, and then abscond with deposited funds. Sometimes the bank turns out to be uninsured or not licensed to operate at all. There can be offers to sell stock representing ownership of the bank. In an old bank inspector scam, a person claims that the bank suspects employee theft and asks for help from a depositor, who is then bilked or robbed. Other variants include claiming to be a prospective business partner with an investment opportunity or a person in another country holding money in cash who asks for help in transferring funds.

In the United Kingdom (UK), in June 2012, 10 individuals pleaded guilty to defrauding pensioners of over £125,000 by posing as bank employees and couriers. They persuaded elderly victims to turn over bank cards and PIN numbers, committing fraud by false representation.

Fraud Against Financial Institutions

Common techniques practiced against financial institutions include accounting fraud or false businesses, check fraud in several forms, and criminal overdrafts.

A genuine business may use fraudulent bookkeeping to misrepresent sales, assets, and income. False records and documents are used to solicit investment in bond or security issues, or to make fraudulent loan applications to financial institutions. Sometimes, the borrower is a business entity controlled by a dishonest bank employee or accomplice. The borrower may be a nonexistent entity, so that a loan is actually a concealment of theft from the bank. A fraudster may use a company to appear to be a genuine, profitable customer. The company uses the bank to appear to get payments from one or more of its customers. These pretend customers, however, are part of the fraud. Eventually, the company asks the bank to settle its balance with the company before it bills the customers further.

Individuals may steal checks, kite checks, or forge and alter checks. Some fraudsters obtain access to a facility handling large numbers of checks, such as a mailroom, post office, the office of a tax authority or a corporate payroll, or a social or veterans' benefit office. Some checks are stolen; bank accounts are opened under assumed names, and stolen checks are deposited so that money can then be withdrawn. Stolen blank checks are of value to forgers. Check kiting occurs when a check is deposited to a bank account, and the money is made available immediately, even though it should not be removed from the account on which the check is drawn until the check actually clears. A check kiter may exploit several checking accounts at different banks in this way. Most financial institutions now place holds on funds for at least five days, thus allowing enough time for the checks to complete the clearing process. Counterfeit checks are a huge problem. Forged documents are similarly a major problem for the banking industry. Falsified documents may conceal bad credit history and unpaid loans.

A criminal overdraft occurs when a depositor makes a worthless or falsified deposit at an automated teller machine (ATM). The individual withdraws more cash than the actual account holds. One scheme is to deposit an empty envelope. Another scheme is to try to prevent a check from being returned for nonsufficient funds (NSF). Generally, in the United States, the first $100 requested at an ATM is immediately available, without a review of the sufficiency of funds for the withdrawal. Variants include using another person's account or a counterfeit ATM card, or an account opened under another person's name obtained by identity theft. Advanced ATM technology can scan currency and checks without requiring a deposit envelope.

Embezzlement and accounting fraud by financial institution officers or other employees are closely related. In June 2012, a former Citigroup vice president, who had pleaded guilty, was sentenced to eight years for embezzling $22 million transferred to his personal account at another bank. In April 2012, an individual pleaded guilty to a $41 million bank fraud scheme that contributed to the failure of the Bank of the Commonwealth, in Virginia. The bank had applied for Troubled Asset Relief Program (TARP) funds. The scheme helped bank insiders fraudulently conceal nonperforming assets; the individual and a business partner owed the $41 million to the bank. The individual also pleaded guilty to a separate fraud involving a tax credit scheme affecting federal and state governments and investors.

In demand draft fraud, dishonest bank employees remove a few demand draft pages or books from the bank's stock and write them like regular demand drafts. These demand drafts are issued payable at distant locations without debiting an account, so that branch reconciliation may be required to discover the problem.

Wire transfer networks, such as the international SWIFT interbank fund transfer system, may be used in illegal transactions. These networks are used by banks to settle accounts with each other, and rapid wire transfers of large amounts of money are common. Insiders may figure out ways around checks and balances.

A Barclays Bank branch in London, England, at the corner of Fleet Street and Salisbury Court. In 2012, Barclays Bank, which operates globally, agreed to pay a $450 million fine on charges of having manipulated the London Interbank Offered Rate.

Rogue Traders

A rogue trader is an employee authorized to trade on behalf of an employer, such as a financial institution, who makes unauthorized trades. The term is most often applied to financial trading and thus typically describes professional traders who make unauthorized financial transactions. In the most common instances, a rogue trader secretly makes progressively more aggressive and risky investments using the bank's money. The trades are thus basically speculation. When an investment loses money, the rogue trader engages in further market speculation in the hope of a quick profit that would hide or cover the loss. Recent research at the University of Cambridge suggests the possibility of traders overreacting in competition and engaging in pathological risk taking.

Nick Leeson's $1.3 billion in losses bankrupted Barings Bank in 1995, following his unauthorized investments in Nikkei index futures. He received 6.5 years in prison. A 1995 case in Japan caused Resona Holdings a $1.1 billion loss in U.S. Treasury bonds and earned the individual involved four years in prison. The next year, Sumitomo Corporation in Japan suffered a $2.6 billion loss in copper trading, and the individual involved received eight years in prison. In 2002, John Rusnak, in the United States, caused a $691 million loss for Allied Irish Banks in foreign exchange options; he received 7.5 years in prison. A similar foreign exchange options loss in late 2003, involving several individuals receiving varying prison sentences, affected the National Australia Bank. Jérôme Kerviel, during the period from 2006 to 2008, lost about 4.9 billion euros for Société Générale, trading European stock index futures, and he received five years in prison. In 2011, a trader for UBS allegedly lost an estimated

$2.3 billion in S&P 500, DAX, and EuroStoxx index futures. China has reportedly executed some bankers for fraudulent activity.

The May 2012 multibillion-dollar losses reported by JPMorgan Chase appear to have been a failed proprietary trading operation, intended to be a hedging activity using the bank's money. Rogue trading requires unauthorized trading, which does not seem to have been the case in this instance.

Bank Involvement in Ponzi Schemes

Ponzi operators frequently need banks to hold deposits of large sums. Banks could be unwitting participants or legally complicit in some way. There are two basic variants.

Bernard L. Madoff, for instance, had deposits with JPMorgan Chase estimated as high as $5.5 billion in 2008. The Chase account reportedly was the largest deposit location of the Ponzi scheme funds. In November 2011, a U.S. district court dismissed lawsuits against JPMorgan and UBS, for some $21 billion in claims (mostly against JP Morgan), on grounds that the court-appointed receiver, Irving Picard, did not have legal authority to file the cases as presented. Another U.S. district court dismissed in July 2011 a similar filing against HSBC Holdings Plc and other defendants. One study estimates that JPMorgan generated $435 million in after-tax profits from the Madoff account over a period of 16 years. The Madoff customers subsequently filed a class-action lawsuit against JPMorgan. The lawsuit alleges bank complicity in concealing the Madoff Ponzi scheme.

In another reported case, Boston Private Financial Holdings (BPFH) sold a private bank subsidiary, Gibraltar Private Bank & Trust, based in Coral Gables, Florida, in September 2009. Just before the end of October 2009, Scott Rothstein fled on a private jet to Morocco, then turned himself in to authorities. Rothstein later pleaded guilty to a $1.2 billion Ponzi scheme operated over about four years. Important deposits of the scheme were reportedly held at Gibraltar Bank. It turned out that Rothstein held a relatively small equity share in the investor group that purchased Gibraltar Bank from BPFH in September. A study reports that the one-day return upon release of news of the Gibraltar Bank sale was 27 percent, or about $100 million of market value increase. As with the Madoff Ponzi scheme, the issue arises of whether BPFH has legal liability in some form for the Rothstein Ponzi scheme.

R(obert) Allen Stanford, a former head of privately held Stanford Financial Group of Houston, was sentenced in June 2012 to 110 years in prison for bilking investors out of more than $7 billion over 20 years in one of the largest Ponzi schemes in history. A jury convicted Stanford on 13 of 14 counts of conspiracy and wire and mail fraud. Although Stanford was a billionaire, the federal government seized his assets after arrest, and he had court-appointed attorneys. The essential scheme was diversion of funds from certificates of deposit (CDs) purchased by investors from a Stanford bank on the Caribbean island nation of Antigua. Stanford allegedly funded failed businesses, bribed regulators, and financed a lavish lifestyle of yachts, private jets, and cricket tournament sponsorships. It may be years before thousands of bilked investors recover perhaps a fraction of the losses. A federal district court ruled in July 2012 that investors were not eligible for payments reimbursement from the Securities Investor Protection Corp. (SIPC), despite an order in 2011 by the U.S. Securities and Exchange Commission (SEC). The SIPC refused to comply and argued that Stanford payments, in addition to Madoff and MF Global liabilities, would bankrupt the fund and increase brokerage costs. A former Antigua financial regulator was indicted and awaiting extradition to the United States. Three other former Stanford executives were indicted. There is an SEC lawsuit against defendants for fraud.

Barclays Bank Libor Manipulation

In summer 2012, Barclays Bank, headquartered in London, operating globally, and tracing its origin to 1690, agreed to pay a $450 million fine to settle charges of having manipulated the London Interbank Offered Rate (Libor). Barclays reported a 2011 profit of nearly $4 billion. Libor is essentially a measure of how much banks charge one another for interbank loans. Libor thus affects many other interest rates and ultimately consumer borrowing costs through credit cards and adjustable-rate mortgages. Libor is set daily by a survey of 16 London banks, just before noon, by the British Bankers Association. The highest and lowest reported rates are dropped, and the remaining rates are averaged to set Libor for the day. In effect, Barclays was falsifying the reported borrowing costs in a way that skewed Libor and it allegedly benefited from this skewing. Released e-mails suggested that derivatives traders may have routinely asked for daily rate changes.

Three top executives, including Chief Executive Officer Robert Diamond, resigned. On July 4, 2012, Diamond testified before the UK Parliament's Treasury Select Committee. Reportedly, 14 traders at Barclays had manipulated global interest rate benchmarks. In his testimony, Diamond partly blamed regulators, including the Bank of England (the UK central bank). He reported that Barclays had on multiple occasions raised concerns with U.S. and UK regulators about how Libor was set. The bank was apparently not told to stop its practices. There may have been some internal miscommunication at Barclays. A Bank of England official reportedly expressed concern in October 2008 that Barclays had been submitting rates higher than those of competitors. It appears that employees were instructed, on some basis, to keep rate submissions lower, or in line with competitors. The U.S. Commodities Futures Trading Commission (CFTC) has reportedly been leading a multicountry investigation of at least 15 banks. Following Diamond's testimony, the UK Serious Fraud Office opened a formal criminal investigation of the Barclays matter.

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See Also: Accounting Fraud; Bank of Credit and Commerce International; Bank Secrecy Act; Barings Bank; Check Kiting; Credit Card Fraud; Crédit Lyonnais; Madoff Ponzi Scheme; Money Laundering; Mortgage Fraud; Savings and Loan Fraud.

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Bank of America Corp.

In 1904, Amadeo Giannini opened the doors to the Bank of Italy, located in San Francisco, California. From this initial opening, his Bank of Italy has grown to become the Bank of America—one of the largest commercial banking instiutions in the world. Giannini's original intent was to ensure that immigrants to the United States had a bank that would be willing to assist them given the reluctance of existing institutions. As a result, he had a loyal support base of customers and grew as quickly as the immigrant population did. After a little more than two decades, Giannini merged with Los Angeles' Bank of America and began operating under that name. Bank of America has more than 5,000 branches in 150 countries worldwide. Of the current Fortune 500 companies, over 99 percent have a relationship with Bank of America.

In terms of revenue, Bank of America is the fifth-largest company in the United States. After being acquired by Merrill Lynch in 2008, Bank of America became responsible for more than 10 percent of all bank deposits made in the United States.

Controversies Escalate

This huge corporation has had a series of controversies throughout its history. In the past decade, however, there has been an unusually high number of serious accusations leveled against Bank of America, which raises numerous questions about the company's structures and practices. The controversies have occurred at a poor time for the company, given its highly publicized acquisitions of Countrywide Financial Corp. (which was at the center of the mortgage collapse) and Merrill Lynch. Initially, Bank of America received \$25 billion from the federal government in the fall of 2008 to prevent significant distress on the national economy. Later, the company received \$20 billion from the federal government as part of the Troubled Asset Relief Program in January 2009. It also received a guarantee of almost \$120 billion against possible losses. When the hangover from allocating so much money to Bank of America began, many members of Congress voiced concerns regarding how the money had been spent.

The first Bank of America controversy centered on Parmalat SpA, an Italian dairy and food corporation that went through bankruptcy in 2003. The company sued Bank of America for \$10 billion, claiming that the bank knew of Parmalat's financial problems and used the information to turn a profit. Although it never received anything approaching \$10 billion, a settlement was reached in 2009 for just under \$100 million. On an attached note, in 2011, Bank of America was acquitted in an Italian court of assisting Parmalat with concealing the fraud that led to the need to file for bankruptcy in the first place.

In early 2008, Bank of America began a practice that would put it in trouble with the public and its shareholders. The company began notifying customers who had no payment problems that their interest rates were being doubled, without giving cause or reason. For some individuals, this hiked interest rates up to almost 30 percent, despite the fact that they had never been late on a payment. Most important, Bank of America refused to explain its justification for choosing to increase the rates. In the fall of 2009, Ann Minch, a credit card customer of the bank, went to YouTube to voice her displeasure. She posted a video criticizing the decision of Bank of America to double her rate after years of loyalty and on-time payments. The video went viral, and Minch was called by a bank representative, who helped fix the situation. This action did not prevent the same insult from happening to thousands of other Bank of America customers.

Also in the fall of 2009, Julian Assange, of WikiLeaks fame, claimed that his organization had come to possess a hard drive formerly belonging to a Bank of America executive and intended to publish it for the world to see. Assange announced a year later that he planned to publish information that could destroy a large American bank with international power; Bank of America stock dropped over 3 percent in response. After Assange's announcement, the company stated that it would not be able to service money transfers to or from WikiLeaks. Bank of America then purchased hundreds of domain names in an effort to mitigate the potential release of information from WikiLeaks. Any domain that involved the name of top executives at Bank of America and potential derogatory responses were purchased. To date, Assange has not come out with the information, yet Bank of America has still suffered from his announcement.

Bank of America continued to be haunted in cyberspace. In March 2011, members of Anonymous, a decentralized group of hacker activists whose goals revolve around mass awareness of corrupt entities while seeking anonymity, began releasing e-mail communications it claimed were taken from Bank of America's servers. According to statements from Anonymous, the e-mails demonstrate intentional fraud related to improper foreclosures on homes mortgaged through Bank of America. This was not the first time this issue had been raised. Arizona previously launched an investigation into the company's practices for giving incorrect information to individuals seeking to refinance or modify their loans. As a response, Bank of America chose to modify the mortgages of impacted individuals in exchange for their agreement to a gag order regarding the issue.

Foreclosure Troubles and the Libor Scandal

The bank has also been publicly criticized for false foreclosures during the mortgage crisis. In several cases, Bank of America seized properties upon which it had no ownership claims, as the result of incorrect information on internal legal documents. For example, In 2010, Christopher Hamby of Wheelwright, Kentucky, filed a lawsuit against Bank of America, with whom he had no relationship and no mortgage agreement, for repossessing his home by mistake and refusing to compensate for damages—except for replacing the locks. Also in 2010, Jason Grodensky lost his home to a Bank of America foreclosure, even though he had paid cash for the house and had no mortgage. Bank of America acknowledged the error and claimed it would pay to correct it. In 2011, a Sacramento, California, homeowner almost lost his house in a foreclosure auction, despite the fact that he, like many others, had also paid cash for the house. Bank of America attributed the confusion to a "data entry error." Again, public outrage ensued and forced another internal audit of Bank of America records.

In early January 2013, Bank of America was one of 10 major lenders named in an $8.5 billion settlement. The lawsuit, initiated by the federal government, attempted to resolve foreclosure abuse claims spawned by flawed paperwork and bungled loan modifications. Eligible homeowners could get up to $125,000 in compensation.

Most recently—and perhaps most seriously—Bank of America has been questioned regarding the Libor scandal, which is a series of fraud cases involving the London Interbank Offered Rate (LIBOR). This rate is an average interest rate calculated among a series of London-based banking institutions. On June 27, 2012, the scandal broke when London-based Barclays disclosed that it had been fined a record £290 million for rigging Libor between 2005 and 2009, and regulators warned that other banks may have been involved. The involved banks artificially altered their rates to guarantee a higher profit from trade and to demonstrate a higher level of creditworthiness than they actually possessed. Although this would create a problem for international markets, Libor is utilized within the derivative market in the United States; consequently, any company reporting fraudulent numbers is breaking an American law. During an era in which U.S. consumers are facing numerous hurdles in a turbulent economy, fraudulent reports to Libor potentially impact mortgages, student loans, and all other derivative markets in the country. The U.S. Department of Justice, the U.S. Commodity Futures Trading Commission, and U.K. Financial Services Authority served Bank of America with subpoenas and information requests in August 2012. Although the inquiries have not unveiled anything incriminating, a small New York bank filed a lawsuit in July 2012 against 21 banks—including Bank of America—claiming it was owed money as a result of the false Libor rates.

This controversial trend for Bank of America remains problematic, especially given the amount of assistance the corporation has received from the U.S. government in recent years.

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See Also: Bank Fraud; Corruption; Ethics; False Foreclosures; Foreclosure Fraud and Rescue Schemes; Negligence.

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Bank of Credit and Commerce International

The Bank of Credit and Commerce International (BCCI) was an international bank built on securities fraud, money laundering, government corruption, and financing terrorism and illegal arms deals, gaining it the nickname "The Bank of Crooks and Criminals." BCCI was incorporated in Luxembourg in 1972 by Agha Hasan Abedi and originally promised to serve the financial needs of developing nations, a goal that attracted support from world leaders including President Jimmy Carter. Abedi had considerable banking experience when the government of Pakistan nationalized banks, and he started BCCI in response. A bank was needed to assist Pakistani expatriates in sending money home. Initially, this service allowed BCCI to take advantage of the "float," the time it took checks to clear. Today, checks clear instantly through electronic transmittals. Holding funds from Pakistanis working abroad for a couple of days kept millions of dollars in the bank on any given day.

Fraudulent Loans

BCCI's frauds started early. To be qualified as an international bank, BCCI needed deposits and a global reputation. Abedi sought support from leaders and prominent families in Middle Eastern nations to increase the bank's reputation. However, getting anyone to invest in a new bank with little capital was difficult. To give the appearance of oil-wealthy backers, Abedi put false loans on BCCI books in their names. None asked to borrow or invest in the bank, nor were they expected to repay. BCCI issued stock in their name based on the loans. If BCCI could claim that prominent leaders in Abu Dhabi, Saudi Arabia, and other oil-rich nations were shareholders, it was thought, everyone would want to do business with the bank. BCCI offered fake loans as bribes whenever help was needed from influential officials around the world, including the United States. Each was backed by letters of credit from BCCI subsidiaries, giving the appearance of extensive (but nonexistent) assets because repayment was not required.

BCCI and the U.S. Banking System

Abedi spread BCCI operations over many countries, with main operations in the Cayman Islands, Luxembourg, and places with minimal banking laws, so it was virtually unregulated. BCCI needed access to the U.S. banking system to make transactions in U.S. dollars and to trade oil. Bank regulators objected to an unregulated international bank conducting business in the United States, but BCCI desperately needed the privilege. Regulators blocked Abedi's first effort, to secure the Chelsea National Bank of New York. Realizing that he needed help, Abedi approached T. Bertram "Bert" Lance, the budget director for President Jimmy Carter.

Lance was chief executive officer of the National Bank of Georgia, which financed Carter's farming enterprises, and he was also Carter's personal friend. Lance resigned as budget director as a "bent banker" soon after Carter took office as president. Lance had loaned himself $2.6 million without collateral, to purchase National Bank of Georgia stock, which he used as collateral for two more loans. Abedi discovered that Lance was millions of dollars in debt and that he had direct access to the U.S. president. Ghaith Pharaon, working for Abedi, bought the National Bank of Georgia, purchasing Lance's shares at a good profit for Lance. As a gift from BCCI, Lance's $3.4 million loan from the First National Bank of Chicago was paid in full, and he was made a BCCI consultant at a salary of $100,000 per year. These efforts secured BCCI's access to the U.S. banking system and the U.S. president.

BCCI's Capital Flight Operations

To increase BCCI's global outreach, Abedi did banking favors for world leaders with no questions asked. Promoted as a development bank, BCCI positioned itself to loot billions of dollars in government assets from poor nations. Using bribery and fake loans to government officials, BCCI convinced them to turn over government payment transactions to the bank. Once in control of a country's payments, BCCI placed itself between the country and its suppliers. Capital flight into BCCI accounts occurred rapidly once authority to handle payments was obtained. Corrupt officials who granted BCCI the authority got their share. BCCI fudged invoices for everything a government bought. If a truck cost $50,000, BCCI transferred $75,000, paying the truck manufacturer $50,000 and putting $25,000 in its account. Likewise, everything coming into a country was under-invoiced. If an American oil company ordered 10 million barrels of oil at $30 per barrel for $30 million, BCCI stated that 5 million barrels were ordered. The oil-exporting country was paid $15 million, and $15 million went into BCCI accounts. The country supplied 10 million barrels but was paid for 5 million.

Money Laundering

Money laundering was BCCI's specialty. BCCI paid anyone, anywhere in the world, in the currency of their choice, without question. Noted BCCI money laundering transactions assisted the president of Panama, Manuel Noriega, and Colombian drug cartels. Noriega put Panama National Guard funds in his BCCI bank account. The Central Intelligence Agency was aware that BCCI laundered drug money. Undercover operations against money laundering in the United States revealed that BCCI transactions sent funds out of the United States to drug cartels through its branch banks in Florida. In 1987, the Federal Bureau of Investigation raided the BCCI office in Tampa, Florida, arresting 90 people; among them were 11 bank officers. The arrests exposed it as the largest money launderer in the world.

Money laundering techniques were simple. A massive pile of cash from drug sales was deposited in a BCCI account at a branch office. On the other end, a loan was given to whoever was supposed to receive the money, minus the bank's fee. In effect, drug dealers borrowed their own money, but it transferred out of the United States. Once funds were delivered, the loan was marked repaid. BCCI claimed that only its Tampa office laundered money, and it paid $20 million in legal defense fees to Clark Clifford and Robert Altman, who were Lance and Carter's friends. Senior BCCI officers got off, and the fall guys received 20-year prison sentences. The Medellín drug cartel withdrew its funds before U.S. officials terminated BCCI's banking privileges.

Additional Losses

For much of its existence, BCCI was accepted as a legitimate bank that made many charitable donations. When its criminal operations were revealed, everyone with a legitimate account lost everything, most of it taken by employees who knew that the bank would soon collapse. BCCI had approximately 14,000 employees around the world who lost their jobs. Only those near the top knew of its massive involvement in white-collar crime on a global scale. In January 1990, BCCI officials pleaded guilty to money laundering, and the bank failed.

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See Also: Bank Fraud; Money Laundering; Securitization Fraud.

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Bank Secrecy Act

The Currency and Foreign Transactions Reporting Act of 1970 (Bank Secrecy Act, or BSA) is a federal law that requires financial institutions to help the U.S. government prevent, detect, and respond to money laundering. The Money Laundering Control Act of 1986 amended the BSA by criminalizing money laundering. Section 1956 prohibits financial transactions with proceeds from "specified unlawful activities" (SUAs). Elements include intent to conceal the source, ownership, or control of funds, but not a threshold value or success in laundering them. Section 1957 prohibits transactions over $10,000 from an SUA, regardless of intent. The penalty is lower for money laundering, which requires that the money go through a financial institution.

The USA PATRIOT Act of 2001 also amended the BSA and Money Laundering Control Acts. Title III (International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001) enables prevention, detection, and prosecution of international money laundering and terrorist financing by (1) strengthening banking rules against money laundering, particularly internationally; (2) enhancing communication between law enforcement and financial institutions, and broadening requirements for record keeping and reporting; and (3) fighting currency smuggling and counterfeiting, with quadruple the highest penalty for counterfeiting foreign currency.

The American approach to specified unlawful activities became controversial because of the limited set of predicate offenses that could trigger money laundering violations. Loopholes allowed those involved in human trafficking and other illegal activities to transfer money into the United States. On October 18, 2011, Senators Charles Grassley and Dianne Feinstein introduced the Combating Money Laundering, Terrorist Financing, and Counterfeiting Act, which, in part, defined

Juan Carlos Ramirez-Abadia (center), one of the leaders of Colombia's most powerful cartel, known as the Norte Valle, is taken by U.S. agents on August 25, 2008, during his extradition to face federal charges of murder, drug trafficking, racketeering, and money laundering. At least $881 million in drug trafficking proceeds, in part generated by the Norte Valle, were made possible by the failure of HSBC Bank USA to maintain anti-money laundering efforts and conduct appropriate due diligence, as required by the Bank Secrecy Act.

predicate offenses through blanket designation of felonies, without regard to location. The BSA requires financial institutions to compile records and file reports with the Department of the Treasury regarding transactions that could indicate money laundering, tax evasion, or other criminal activities. Some of these reports go to the Financial Crimes Enforcement Network (FinCEN), an interagency task force within the department that cooperates with various law enforcement agencies. The principal reports that financial institutions must file include the following:

1. FinCEN Form 104, Currency Transaction Report: A financial institution must file for each deposit, withdrawal, exchange of currency, or other payment or transfer that it handles involving currency greater than $10,000; it must treat multiple transactions as one if it knows that they are by or on behalf of the same person; and they result in cash receipts or disbursements by the institution of more than $10,000. Attempting to evade this requirement by breaking up transactions constitutes the distinct legal violation of "structuring."
2. FinCEN Form 105, Report of International Transportation of Currency or Monetary Instruments: Each person who physically transports, mails, ships, or receives (or causes others to do so) currency, traveler's checks, and certain other monetary instruments exceeding $10,000 into or out of the United States must file.
3. Department of the Treasury Form 90-22.1, Report of Foreign Bank and Financial Accounts: Each person subject to U.S. personal jurisdiction and having an interest in, signature, or other authority over one or more bank, securities, or other financial accounts in a foreign country must file if the aggregate value of such accounts exceeds $10,000 during the calendar year.
4. Treasury Department Form 90-22.47, Suspicious Activity Report: Banks must file for a suspicious transaction relevant to a possible violation of law or regulation.
5. FinCEN Form 110, Designation of Exempt Person: Banks must file this form to designate an exempt customer for the purpose of Form 104; banks biennially can renew exemptions for eligible nonlisted business and payroll customers.

On July 1, 2012, FinCEN put into effect a rule requiring virtually all of these filings to be electronic and instituted a more elaborate version of the Suspicious Activity Report, effective for March 2013.

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See Also: Bank Fraud; Counterfeiting; Currency Fraud; Financial Crimes Enforcement Network, U.S.; Human Trafficking; Money Laundering; Reform and Regulation; Regulatory Enforcement; Tax Evasion; Terrorism; War on Terror.

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Bankers Trust Co.

Established by a group of major U.S. banks in 1903, Bankers Trust Co. changed its business focus several times over its almost century in operation. Bankers Trust began life as a trust company, then evolved into a wholesale financial services company, changed into a retail banking supermarket, and then returned to wholesale banking. Although smaller than other Wall Street financial firms such as J. P. Morgan, Bankers Trust built a reputation upon its trading expertise, outstanding research, and innovative financial products. In the early 1990s, however, a series of complex derivative transactions resulted in heavy losses for a group of powerful and influential corporate clients. Bankers Trust was never able to recover, and it was acquired by Deutsche Bank AG in 1998.

Background

At the dawn of the 20th century, federal banking laws prohibited those banks with national charters from operating domestic or overseas branches. National banks also had to satisfy strict capital and reserve requirements, and they had no trust powers. Trust services include the institution's ability to act as a trustee that administers financial assets on behalf of another person or organization. As such, a trust department can manage assets and investments, pay bills, make charitable gifts, manage and distribute inheritances, and make other distributions of income or principal. Many national banks felt that the inability to offer trust services placed them at a competitive disadvantage to state-chartered trust companies and other financial institutions. To that end, a group of New York banks formed Bankers Trust to provide a variety of trust services to customers around the United States. The banks were confident in referring customers to Bankers Trust because it was unable to offer interest-bearing deposit accounts, unlike trust companies that were chartered pursuant to state law.

Bankers Trust grew quickly after its founding. Its first president was well-known financier Edmund C. Converse, and its primary shareholder was J. P. Morgan. Bankers Trust's stability during the 1907 bank panic burnished its reputation, and the company soon established an overseas department, began to offer traveler's checks, and increased its deposit base to above $165 million through a series of mergers with Mercantile Trust Company and Manhattan Trust Company. After World War I, under the leadership of Seward Prosser, Bankers Trust became a member of the Federal Reserve System, acquired Astor Trust Company, began retail banking, and became a commercial bank. Services added during this time included a bond department, wire service offices, and a wholly owned subsidiary, the Bankers Company, to underwrite and distribute securities. It grew rapidly before and after World War II, and during the 1960s, it embarked upon a policy of expansion and diversification. The company doubled its number of retail branches, began offering credit cards, and expanded into real estate, international, and construction lending. After it was rocked by the 1970s recession, Bankers Trust again returned to its core businesses of wholesale and merchant banking. This proved advantageous, and by the mid-1980s, Bankers Trust was among the most profitable of U.S. banks.

Derivatives Problems

Having forsaken traditional lending, Bankers Trust became a leader in risk management and trading. Lacking the connections of some of its rivals, the firm developed market data distribution systems and became known for the quality of its research, trading acumen, and product innovation. Bankers Trust was heavily involved in the trading of derivatives, which are used by investors for a variety of investment goals. Derivatives help investors to hedge risk in underlying contracts in the event that value moves in the opposite direction of their underlying position, to provide leverage so that movement in the underlying value can cause a large difference in the derivative's value, to speculate regarding the value of the underlying asset, or to create option ability where the derivative's value is linked to a specific event or condition. Because most of its clients were large corporations, Bankers Trust in theory was involved in derivatives to help them mitigate the risk that certain commodities would increase in value.

In 1994, Bankers Trust was involved in several derivative transactions that caused large losses for four clients: Air Products and Chemical Corporation, Federal Paper Board Company, Gibson Greetings, and Proctor & Gamble Company. After discovering this, all four clients sued Bankers trust, alleging that they had been misled by the bank regarding the riskiness and value of the derivatives that they had purchased. Although Bankers Trust was able to settle all four lawsuits for total payouts of $171 million, the real damage was to the bank's reputation. In what is now considered a classic case of poor stakeholder management, Bankers Trust was seen as having breached its fiduciary duty to its clients to pursue short-term profits at their expense. Regardless of whether Bankers Trust engaged in illegal or dishonest behavior, its reputation with other clients was deeply wounded. In 1997, in an effort to grow its investment business, Bankers Trust purchased Alex Brown & Sons, a venerable investment bank founded in 1800. Unfortunately, this was not enough to rebuild Bankers Trust's reputation, especially after several of its employees were charged with failing to turn abandoned accounts over to state authorities as required by law. After pleading guilty to this crime, a felony, Bankers Trust was no longer able to conduct business with most municipalities and many companies whose charters barred them from dealing with convicted felons. In 1998, Bankers Trust was acquired by Deutsche Bank for $10.1 billion and ceased to exist as a separate company.

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See Also: Arbitrage; Commodities Fraud; Commodities Futures Trading Commission, U.S.; Employee Crimes; Investment Trust Fraud; Regulatory Enforcement.

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Bankruptcy Fraud

Bankruptcy provides for the distribution of a debtor's estate to his or her creditors and discharges the debtor's debt, allowing the debtor to have a fresh start financially. The discharge of debt, however, is not permitted for the dishonest debtor. The dishonest, or fraudulent, debtor is one who attempts to improperly shield assets from the creditors' reach. Bankruptcy fraud has been in existence in the United States since the first Bankruptcy Act of 1800, and it undermines the integrity of the bankruptcy system.

The Bankruptcy Fraud Statute (18 U.S.C. §§151-158) enumerates the fraudulent acts that constitute cause for filing criminal charges against the debtor. Under this statute, bankruptcy fraud includes such acts as concealment of a debtor's assets; lying about a case filed under the Bankruptcy Act, making a false claim against the debtor's estate, fraudulently receiving property from the debtor after filing a Title 11 bankruptcy, transfer or concealment of property in contemplation of a Title 11 bankruptcy filing, or bribery or solicitation of bribery in connection with a Title 11 bankruptcy case.

Prosecuting Bankruptcy Fraud

Prosecuting bankruptcy fraud has become a national enforcement priority for the Internal Revenue Service and the Department of Justice because of the dramatic increase in the number of bankruptcy petitions. Since 1996, over 1 million individuals have filed for bankruptcy annually, with over 90 percent of all bankruptcy petitions representing individual consumer debtors. The Department of Justice estimates that approximately 10 percent of all civil bankruptcy cases are fraudulent. Using the estimated percentage offered by the Department of Justice, there are approximately 100,000 separate acts of bankruptcy fraud each year, totaling about 1.5 million cases of bankruptcy fraud since 1996. This level of fraud translates into a cost to creditors and the government of approximately $1 billion a year.

Bankruptcy fraud can be either federally criminally prosecuted in a U.S. District Court or brought to the federal bankruptcy court for a civil hearing. If the dishonest debtor is criminally prosecuted, he or she can be punished by a fine or by imprisonment for up to five years, or both. Additionally, the Victim and Witness Protection Act (18 U.S.C. § 3663) provides federal courts with the ability to award monetary compensation as a condition of probation, or as a condition of supervised release, in addition to a prison sentence. Moreover, federal sentencing guidelines are increasingly applied to bankruptcy fraud, with sentence enhancement for the more egregious cases.

However, creditors typically seek a civil resolution to bankruptcy fraud in order to recoup at least some of the assets. There are two remedies that can be sought in bankruptcy court. The first is the dismissal of the bankruptcy case, and the second is to object to the debtor's discharge. The elements to prove bankruptcy fraud in civil court and therefore receive a judgment of nondischargeability are that there is a written statement pertaining to the financial condition of the debtor, that is materially false and on which the creditor reasonability relied, and that the debtor published the false statement to the creditor with the intent to deceive. The burden of proof is preponderance of the evidence.

The potential for abuse is great because there is no mechanism that the bankruptcy trustee or the court can use to check the accuracy of the information provided by the debtor on the bankruptcy petition. As a result, in order to protect themselves from bankruptcy fraud, creditors have been developing improved detection methods. For example, creditors are increasingly seeking the assistance of forensic accountants to examine financial data to detect patterns of fraud and asset concealment. Some of the red flags that reveal debtor fraud include poor recordkeeping, heavily revised information, and a spike in insider transactions. However, the civil penalty of a denial of discharge leaves the debtor in no worse position than prior to the filing. Moreover, the creditors are left with collecting the debt from the debtor.

The U.S. Trustee Program is the agency charged with protecting the integrity of the bankruptcy system. The U.S. Trustee Program relies on information from a variety of sources, especially from panel trustees, to detect and refer cases for criminal prosecution. For example, Operation Total Disclosure was a multiagency task force focused on increasing the number and quality of referrals. The result was 134 defendants charged with bankruptcy fraud. The trustees are the first line of defense in protecting the integrity of the bankruptcy system. The dollar amount of the fraud does not determine whether a referral is made.

Concealment of Assets

Debtors who fail to list assets on their bankruptcy petition commit the crime of concealment of assets and false assets. Asset concealment and related false statements constitute more than 70 percent of all bankruptcy crimes. Concealment of assets occurs by omission of the asset from the schedules to gross undervaluation of a listed asset. Common assets that are concealed include personal injury lawsuits and inheritances. Warning signs that a debtor is concealing assets include large medical bill claims, recent job changes, or extended periods of unemployment. Once the assets are discovered, the debtor's strategy is to convert the bankruptcy petition from a Chapter 7 bankruptcy to a Chapter 13 bankruptcy or to dismiss the case in an attempt to remove the discovered asset from creditor control.

A recent example of a case of bankruptcy fraud is the former New York Mets baseball player Lenny Dykstra, who pleaded guilty to three counts of bankruptcy fraud in June 2012. Dykstra had bought a mansion, filed for bankruptcy, and claimed to have owed more than $31 million while only holding $50,000 in assets. The U.S. Attorney's Office found evidence that Dykstra hid, sold, or destroyed more than $400,000 worth of assets after filing for bankruptcy. Dykstra hid baseball gloves, balls, bats, and other memorabilia from the bankruptcy court, and creditors sold them for $15,000. Dykstra was sentenced to six and a half months in federal prison, required to complete 500 hours of community service, and ordered to pay $200,000 in restitution.

Bustout Schemes

Bustout schemes involve acquiring control of a business to establish a favorable credit rating through bribery of credit rating agencies or false financial statements vastly overstating the business's assets and net worth. The business will establish credit and purchase a considerable amount of merchandise, such as diapers, cigarettes, candy, and paper goods, while having no intention of paying for them. These types of goods are easy to sell and difficult to trace. The company will then begin selling the merchandise at substantial discounts, with the proceeds funneled to its owners through intermediary companies owned or controlled by them. They then "bust out" of the business by filing for bankruptcy, leaving the creditors with an assetless business. Common red flags that indicate a bustout scheme include low inventory levels, false credit references, a lack of bank accounts and receivables, and a disproportionate liability-to-asset ratio. There are variations of the bustout scheme such as tax, travel agency, and credit card bustouts. For example, in a credit card bustout, individuals charge large amounts of consumer purchases and take cash advances in contemplation of bankruptcy. The credit is acquired by making false statements on both the credit card application and the petition for bankruptcy.

Other Bankruptcy Schemes

A bleedout scheme is when a company disposes of assets over a long period of time by shifting them to insiders; hence, the bleeding of failing corporations. Bleedout schemes are typically discovered when excessive loan payments are made to corporate officers, employee funds for health care and pension funds are diverted by the debtor, corporate officers receive excessive salaries and bonuses, individuals no longer affiliated with the company receive money prior to the bankruptcy filing, and inventory and other assets are sold prior to the filing of bankruptcy. Serial filers are debtors who petition for numerous Chapter 7 and Chapter 13 bankruptcies for the benefit of the automatic stay. On the petitions for bankruptcy, the debtor fails to disclose the previous filings, uses a false social security number, or uses a variety of names. Detection of this type of fraud is dependent upon collecting information from a variety of sources, including creditors. Credit card bankruptcy occurs when a debtor obtains numerous credit cards in another person's name, running up thousands of dollars in debt. The fraud is both in obtaining the credit and in running up debt with no intention of repayment.

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See Also: Credit Card Fraud; Debt Restructuring Fraud; Identity Fraud or Theft; Small Business Fraud.

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Barings Bank

Barings Bank operated from 1762 as the most senior merchant agent acting as a bank in London. Its downfall occurred in 1995 when an investment made by an employee, Nick Leeson, of a total value of $1.3 billion was lost. The first name by which the bank became known was the John and Francis Baring Company, by the homonymous brothers. Its trading activity was not limited only to wool as was the custom at that time but rather extended to a wide range of goods and financial services. By the end of the 19th century, it was the leading bank in the sector.

Barings was rescued by the Bank of England when it became overly exposed to Argentine and Uruguayan debt during the Panic of 1890. After these incidents, the reputation of Barings was irrevocably harmed, and it did not regain its dominant position; a limited liability company was formed, the Baring Brothers & Co. Ltd., into which the viable part of the previous company was transferred. During World War II, Barings liquidated assets in the United States on behalf of the British government in order to finance the ongoing war. This was the last influential period in Barings' history; after that, it remained in the shadow of other banking houses until its collapse in 1995.

Two world wars and the Great Depression did not lead to the cease of operations for Barings Bank; this came in 1995, when the bank was accused of repetitive incidents involving unauthorized trading. Leeson was supposed to arbitrage in order to seek profits emerging through differences in prices of Nikkei 225 futures contracts listed on the Osaka Securities Exchange in Japan and the Singapore International Monetary Exchange. Arbitrage at this level involves buying commodities at a desirable price and reselling them in other markets, generating profits through this transaction. The limits of profit in arbitrage are usually thin, given the low risk involved in this kind of transaction; therefore, large amounts of money must be invested in order to produce the desired profit. Given the low risk and consequently low profit involved in these transactions, Leeson invested in the future direction of the Nikkei market, a much riskier technique that could yield substantially more money. A domino of unfortunate internal and external effects led to an escalation of the losses that were not repairable for the company.

Auditing Failure

A defective internal auditing system was the main systemic flaw in the control environment of the company. Leeson was both the floor manager for Barings' trading on the Singapore International Monetary Exchange and head of settlement operations. This conflict of interest allowed him to audit the losses that he had caused and hide a great part of them. The lack of supervision from London was fatal to the reliability of the internal control and effective management of the bank. The main technique used by Leeson was manipulating the accounting sheets; he created a secret location where the central office in London had no access and redirected all the losses there. He then reported various losses as profit; this extremely negligent and criminally liable act went undiscovered, given the lack of transparent auditing procedure. By December 1994, Leeson had lost 200 million pounds sterling, whereas he had reported a profit of 102 million pounds sterling to the British tax authorities.

The last hit was the Kobe earthquake, which led to a financial crisis of the Asian market; Leeson had bet on a quick recovery, but he was mistaken, and his losses were soon discovered. Leeson confessed with a note to Barings' chairman, Peter Baring, and almost simultaneously the auditors traced the money's direction. At that stage, the losses of $1.3 billion amounted to twice the bank's available trading capital. The bank declared insolvency by February 26, 1995. The Board of Banking Supervision of the Bank of England held an investigation that led to the conclusion that Barings' collapse was the result of the negligent acts of an individual (Leeson) combined with the failure of management to enforce efficient auditing mechanisms.

Eventually, Barings Bank was bought out by ING (a Dutch bank) for 1 pound sterling along with all pending liabilities. The U.S.-based operations were subsequently sold to ABN Amro for a nominal amount of $275 million and ING's European banking division absorbed the rest of the bank. Leeson's effort to extradite himself to the United Kingdom failed and his trial was therefore held in Singapore. His final sentence was six and a half years imprisonment but he was released early in 1999 due to severe health problems. He nevertheless overcame his problems and was appointed chief executive officer of Galway United FC in 2006.

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See Also: Accounting Fraud; Bank Fraud; Bank of America Corp.; Bank of Credit and Commerce International; Leeson, Nick; United American Bank.

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BASF Corp.

Badische Anilin- und Soda-Fabrik Corp. (BASF) is the largest diversified chemical company in the world. Founded in 1865 as a producer of commercial dyes, BASF now produces a wide range of chemicals, plastics, functional solutions, and agricultural products. It also explores for and produces oil and gas. The BASF Group holds subsidiaries and joint ventures in more than 80 countries, operating almost 400 production sites with a presence on every continent except Antarctica, and employs almost 110,000 people. Its income in 2010 was approximately 63.87 billion euros.

BASF has a long history of harming people and the environment. Its earliest chemical plant was built across the Rhine River because of fears that the air pollution from the plant would negatively impact the inhabitants of the town of Mannheim. On September 21, 1921, an explosion occurred at the fertilizer plant in Oppau, killing 565 people. This was the largest industrial catastrophe in German history.

War Crimes

In 1925, the chemical company was one of the founding companies (with Bayer, Hoechst, and three smaller companies) of IG Farbenindustrie AG (IG Farben). During Nazi rule, from 1933 to 1945, IG Farben played a central role in German industry and the economy more broadly. From the appointment of Adolf Hitler as chancellor in 1933, IG Farben collaborated with the Nazi regime, profiting from guaranteed volumes and prices as well as from slave labor from concentration camps. During World War II, IG Farben constructed a synthetic rubber and oil plant complex, Monowitz, near the Auschwitz concentration camp. Inmates were forced to work as slave labor for IG Farben and were killed in the gas chambers when they became unable to work. IG Farben was also the manufacturer of Zyklon-B, the gas used in the extermination camps.

It has been suggested that the company was heavily involved in the planning, preparation, and implementation of World War II. Because of the close connections between IG Farben and the Nazi government, the Allies ordered the company dissolved in 1945. Following the war, the International War Crimes Tribunal pronounced the company guilty for its responsibility for the war and for participation in the crimes of the Nazi regime. On July 29, 1948, at Nuremberg, 12 IG Farben executives were sentenced for mass murder and slavery. The longest sentence was only seven years, for Dr. Fritz ter Meer, an executive and scientist on the IG Farben board. The postwar period did not start without incident for the separated BASF. On July 28, 1948, an explosion at a plant in Ludwigshafen killed 207 people. BASF was reformed under the same name in 1952. Spurred by the expanding demand for plastics and consumer chemicals in the 1960s, BASF experienced massive growth with moves into North America. BASF has recently made expansion into Asia a corporate priority.

Acquiring and developing businesses producing consumer products, BASF developed a broad but vertically integrated corporate structure. Charges of price fixing against the company quickly emerged, and BASF became a prime target of antitrust authorities in various countries through the 2000s. This would come to a head in numerous antitrust cases involving BASF in the United States during the 1990s. As the decade drew to a close, U.S. antitrust investigators revealed the existence of cartels headed by the two largest vitamin producers in the world, Hoffman La Roche and BASF, organized to fix vitamin prices. In May 1990, the firms pleaded guilty to charges that they were involved in a leading role in a global scheme to raise and fix vitamin prices and distribute market shares for certain vitamins throughout the

The 1920s dye collection from Badische Anilin- & Soda-Fabrik Ludwigshafen (BASF), on display at the Technical University Dresden, Germany. BASF was founded in 1865 as a producer of commercial dyes; today, it produces a wide range of products.

1990s. BASF agreed to pay fines of $22.5 million. The U.S. investigations were followed by antitrust investigations in Australia, Canada, and Europe. Investigations in the European Union led to BASF being fined $296 million for its involvement in a dozen distinct cartels. By the end of the 1990s, BASF had shed all of its consumer product lines.

Environmental concerns have persisted around various BASF production sites, given the nature of chemicals and plastics production. In 2006, for example, BASF reported its emissions at 1.50 million metric tons of waste, a very high level. In May 2009, a discharge of chromium from a BASF Plant in Hannibal, Missouri, into the Mississippi River raised fears that drinking water had been contaminated. The local Department of Natural Resources did not react promptly to properly test the chromium levels. Later tests conducted in December 2009 showed the presence of chromium, but at levels that did not exceed regulatory safety limits. BASF has since worked with the Missouri Department of Natural Resources to address issues concerning elevated levels of hexavalent chromium detected in an outfall into the Mississippi River.

Environmentalists have also raised concerns about BASF plans to test genetically modified potatoes. BASF Plant Science, a subsidiary of BASF, focuses on genetically modified organisms (GMOs). BASF Plant Science produces the Amflora genetically modified potato. BASF has also entered into collaboration with Monsanto, a pioneer of GMO development. In 2012, BASF funded opposition to Ballot Proposition 37 in California, a ballot initiative that would have required clear labels informing consumers whether or not foods are genetically modified. Together, the "big six" pesticide firms—Monsanto, Dow, BASF, Bayer, Syngenta, and DuPont—provided about $21.5 million of the approximately $46 million deployed against the failed ballot proposition. Proponents were only able to raise about $9 million. Prop 37 was defeated by 51.41 percent to 48.59 percent in the November elections.

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See Also: Hazardous Waste; Pollution, Water; War Crimes; World War II.

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Baycol Case

Baycol is a medication released in 1997 by Bayer Pharmaceutical Division. It was part of a group of medications called statins that work to lower cholesterol levels. One of the side effects of the use of statins is rhabdomyolosis, which causes the breakdown of muscle tissue; among other drugs, Baycol had the highest incidence of rhabdomyolosis. The company was aware of this but delayed in withdrawing the drug from the market. Rhabdomyolosis was present with all the other statins only on rare occasions, and only in higher dosages.

Concealing Information

Bayer's approaches to dealing with the adverse side effects of this drug are what brought it to the attention of the civil and criminal litigation arena. It delayed releasing important adverse effect findings to ensure that a stronger dose of the drug was approved by the Food and Drug Administration. It also delayed releasing information showing that the combination of Baycol and another drug, gemfibrozil, increased the likelihood of rhabdomyolosis, especially at the higher doses of Baycol. The delay was motivated by profit because the drug generated high revenues, and withdrawing the medication would affect Bayer's profit margin significantly.

In 1997, the U.S. Food and Drug Administration approved Baycol, which was subsequently released onto the market. In 2001, Bayer withdrew Baycol from the market after patients who took the drug, especially in combination with gemfibrozil, experienced extreme side effects, and in some cases death. At this point, several thousand patients who had taken Baycol filed lawsuits against Bayer. According to a lawsuit filed by Laurie Simpson, a former Bayer strategic research analysis, Bayer used marketing practices that inflated Baycol's effectiveness and did not release information that would have warned the patients and their physicians of the dangers to a patient's health. Simpson uncovered this information while employed at Bayer but was instructed to conceal it. According to her lawsuit, Bayer was aware one year prior to its release that the drug was dangerous and continually received information for three years that outlined the dangers while it was on the market. Bayer ignored the warnings and provided incentives to physicians to prescribe the medication, and (according to the information ascertained from the lawsuit) had fictitious research published in many prominent medical journals that downplayed adverse effects and showed the many advantages of prescribing the medication.

Class-Action Suit

At the time of the recall, 416 cases of rhabdomyolosis had been reported, with 31 of them resulting in death in the United States (52 worldwide). Bayer fought a class-action lawsuit from the start, stating that the lawsuit would be at an "unmanageable size." Numerous plaintiffs were consolidated in a class-action lawsuit by a judicial panel on multi-district litigation, transferring them to a single district court judge in Minnesota. The process of this transfer to the class-action group ultimately was heard before the Supreme Court when discrepancies were encountered within jurisdictions. In West Virginia, two cases (*McCollins v. Bayer Corp*. and *Smith et al. v. Bayer Corp*.) were moving through the courts at the same time but were unknown to each other. The cases were pursued as a violation of consumer protection laws in West Virginia. In 2008, the *McCollins* case tried to group purchasers of the drug in class-action status, and they were denied access. The federal district court stated that the *McCollins* group had failed to show that Baycol was more than they had bargained for; it was exactly what they had thought they were purchasing because the medication worked for McCollins. The *McCollins* group chose not to appeal.

The *Smith* case remained in the West Virginia state courts because it had sued not only Bayer, but other entities as well, and it was argued that they lacked diversity. The cases reached their respective court proceedings at about the same time. The district court ruling was reached prior to the *Smith* case, and *Smith* was dismissed because it was assumed that the cases were equal in merit based on the arguments by Bayer that the litigants had not sustained physical injury.

The Court of Appeals of the Eighth District affirmed the ruling. The Supreme Court granted certiorari because of a violation of the Anti-Injunction Act that prohibits federal courts from enjoining state court proceedings. The Court ultimately found for the *Smith* group, thus allowing them, and other groups like them, to proceed as part of the class-action suit. Bayer has paid $1.17 billion to resolve 3,144 claims of rhabdomyolosis and has continued litigation of all other claims, including cases seeking economic recovery for plaintiffs, such as some of those in *McCollins* and *Smith,* who did not experience physical injury from Baycol. Of the approximately 40,000 plaintiffs who filed cases in relation to the medication Baycol (22,500 in federal court, and 17,500 in state court), only a small number are still pending.

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See Also: Class-Action Lawsuits; Consumer Deaths; Food and Drug Administration, U.S.; Health Care Fraud; Negligence; Pharmaceutical Industry.

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Beech Aircraft Corp.

Beech Aircraft Corporation had worked as a small plane manufacturer for many years and seized the opportunity to begin his own enterprise. It took only 12 years before the company created a popular success—the Beech 35 Bonanza. The Bonanza quickly became regarded as the top small plane on the market, with a plush, luxury interior and advanced external design. The most important element of the new plane was the addition of an innovative V-tail system. Traditionally, planes relied on a T-shaped tail, in which a rudder sat on the vertical portion with two elevators on the horizontal portions. Instead, the new Bonanza design connected the rudder and elevators on two surfaces that extended at 45-degree angles to the remainder of the plane body.

The model 35 Bonanza was designed by Ralph Harmon and was innovative for its speed and low wings. It also had numerous design benefits, including retractable landing gear. Tthe design looked different and made the Bonanza easily identifiable, and it also proved cost-effective. With the combination of a large engine, an aerodynamic design, and the V-tail reducing drag, the Bonanza could reach much higher air speeds than any competition aircraft on the market. The design led Beech to become the main producer of small planes.

Problems Surface

Only three years after the Bonanza entered the market, many pilots reported that the plane had a tendency to murmur during flight, potentially causing disorientation for pilots. It simply did not fly as smoothly as predicted. More important, this irregular movement was likely leading to excessive wear on the tail—a potentially serious hazard. Although the disorientation was a concern, the Civil Aeronautics Board received numerous cases in which the Bonanza broke apart in midair. The Federal Aviation Administration (FAA) took until 1964 to make a ruling on the safety of the Bonanza. In the report, the FAA stated that there was a high incidence of breakup in the model, but it opted not to penalize Beech Aircraft. Many were shocked, while others simply believed that the data were correct: most of the midair breakups occurred during periods of bad weather and were attributed to pilot error. Because of how the Bonanza was designed, it was possible for pilots—particularly novice ones—to exceed the performance standards of the plane during bad weather, leading to catastrophe. Most of the breakups, however, began near the V-tail. Further, a poorly designed baffle system within the wing tanks was leading to fuel sloshing back and forth and stalling the plane—leading to planes possibly falling from the sky.

Despite the FAA not coming down hard on Beech, the company spent much time and energy in efforts to redesign the Bonanza in order to make the plane more structurally sound. In particular, energy was focused on the tail and wings. The company first introduced the Beech 33 Debonair/Bonanza in 1960. This plane was essentially the same as the Beech 35 Bonanza, except it had a straight tail instead of the V-tail. A few years later, Beech rolled out the Beech 36 Bonanza, which was a stretched out version of the 35 Bonanza, with a straight tail instead of the V-tail. With two straight tail models now on the market, consumers saw what impact the V-tail actually had on safety. In 1978, the FAA asked for a study to be conducted examining the safety of the 35 Bonanza because the V-tail continued to fail over the years. The results stated that the Bonanza was overall one of the safest planes in the air, but the V-tail model was 24 times more likely to experience a midair structural failure than the straight-tail Bonanza models. Consumers believed that the V-tail was unsafe, and Beech Aircraft needed to win back consumer confidence if sales were ever to rebound.

The efforts of Beech were too late, however, and in 1982, the company halted production of V-tail model planes. With hundreds of additional reported midair failures, Beech agreed to cooperate with the U.S. Department of Transportation to determine what could have caused the over 200 midair breakups of 35 Bonanzas over the history of the plane. What emerged was bad news for Beech Aircraft. The results found structural design flaws that made it likely that the V-tail could fail during specific maneuvers at high speeds. Since Beech had marketed the plane as having the fastest air speeds at the time, it knew that it could not simply ask pilots to go slower. Beech Aircraft instead created a tail-brace kit for all owners that dramatically decreased the number of 35 Bonanza incidents.

Many have wondered why Beech allowed the 35 Bonanza to continue to be produced, despite the significant incident numbers, or why the federal government continued to allow it. From the Beech perspective, it was well aware that a key selling point of the 35 Bonanza was the unique look that the V-tail gave the plane. Further, if it had admitted to a design fault, the company would have lost everything from the subsequent lawsuits. According to the government, potential buyers were well aware of the safety concerns of the 35 Bonanza if they chose to purchase it.

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See Also: Corporate Criminal Liability; Negligence; Regulatory Enforcement.

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Beech-Nut Nutrition Corp.

Crimes against consumers are some of the largest forms of white-collar crime in the United States, affecting millions of individuals each year. Crimes against consumers negatively impact quality of life and the credibility of government. One major type of crimes against consumers is consumer fraud. Consumer fraud is generally defined as the use of deceit, lies, or misrepresentations that influence customers to purchase goods and services. False advertising is a common form of consumer fraud. Advertising in the United States is a multi-billion dollar industry, regulated by the Federal Trade Commission (FTC). Some companies engage in the illegal practice of false advertising—more specifically, deceptive ads that contain misleading and untrue statements—in an attempt to sell more products and services to consumers. Over the years, consumers have been duped into spending billions of dollars for goods and services that do not deliver the claims of advertisers. One such case of false advertising involves Beech-Nut Nutrition Corporation.

Phony Juice

During the 1970s and 1980s, Beech-Nut was the second-largest manufacturer of baby foods in the United States. Beech-Nut Company had developed a reputation of providing high-quality products that were pure, nutritious, and natural. In the face of financial difficulty, Beech-Nut began purchasing apple juice concentrate from Interjuice Trading Corporation (a company that would be later known as Universal Juice). Interjuice was able to sell the concentrate well below market price, thereby providing significant cost savings to Beech-Nut. Beech-Nut Nutrition Corporation marketed the apple juice product as baby food and as a children's drink with the following qualities: "100% fruit juice," "100% pure," "all natural," and with no sugar added.

All product statements were completely false. The juice was loaded with sugar and contained little to no real apple juice. The cheap concentrate was mostly a mixture of corn syrup, cane sugar, beet sugar, and artificial flavors and colors. Millions of bottles of the juiceless juice were sold around the world to unsuspecting customers. Most of the consumers of this product were babies and children. It is estimated that over a 10-year period, Beech-Nut revenues for this fraudulent product were $60 million. Not only was the intentional false advertising and sale of this adulterated juice concentrate dishonest and illegal, causing considerable financial loss to customers, but the phony apple concentrate also caused physical harm to some consumers (e.g., diabetic babies and children).

In 1978, shortly after Beech-Nut began purchasing apple juice concentrate from Interjuice, Jerome LiCari, Beech-Nut's director of research and development, began testing the Interjuice product for quality and purity. At the time, no conclusive tests for apple juice purity existed. However, chemists used other available procedures that detected impurities such as corn sugar. Results from these initial tests indicated that the apple juice concentrate was in all probability adulterated. Two Beech-Nut employees were then sent to inspect the blending facility where the juice concentrate was produced. Beech-Nut employees were denied access to the Universal Juice Company factory. The Beech-Nut research and development team informed managers Operations Vice President John Lavery and President Neils Hoyvald that Universal Juice Company was an unreliable supplier.

Ignoring Evidence, Advice, and Orders

Rather than return the phony apple concentrate, which would significantly decrease Beech-Nut profits from the apple juice product, Lavery required the owner of Universal Juice Company, Zeev Kaplansky, to sign a "hold-harmless agreement." This agreement simply transferred the financial liability from any consumer complaints or product lawsuits to the supplier, Universal Juice Company. In April and July 1979, LiCari sent samples of the concentrate to an outside laboratory. Although the April tests indicated adulteration, the July tests did not. LiCari concluded that Kaplansky most likely replaced the corn syrup ingredient with beet sugar, an adulterant that current technology was unable to detect. Again, LiCari notified Lavery of his findings, recommending the purchase of a different concentrate, regardless of the cost. Lavery did not follow this advice; rather, he decided that the apple concentrate would be used in other Beech-Nut mixed juices. Blending the fraudulent apple concentrate with other juices made testing for adulteration much more difficult.

Finally, in 1982, the Food and Drug Administration (FDA) began investigating the phony apple juice. Despite warnings from the FDA that adulterations were present, Beech-Nut continued to sell products containing the apple concentrate through 1983. Facing pressure from the FDA, the company eventually agreed to destroy the product to avoid legal action from the government. With approximately $3.5 million of inventory, Beech-Nut officials made a profit-driven decision to ship and sell (rather than recall and destroy) the remaining 26,000 cases of phony apple juice to other countries (i.e., in the Caribbean, Puerto Rico, and the Dominican Republic). This is known as "dumping." Federal and state officials exposed the details of the Beech-Nut apple juice conspiracy, and in 1986, charges were filed against Beech-Nut for selling an adulterated and misbranded product. After several years in court, the company was fined over $2 million. Additionally, Beech-Nut's president and vice president were convicted of violating federal food and drug laws.

In conclusion, the Beech-Nut Nutrition apple juice scandal is a classic example of corporate greed and disregard toward consumers, causing both financial and physical harm. Beech-Nut officials ignored the problem for years, claiming that adulterated juice was common and not harmful to consumers. Profit-maximizing behavior affected Beech-Nut's ability to offer quality and honest products to its customers.

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See Also: Adulteration, Economically Motivated; Advertising Fraud; Corporate Dumping; Food Fraud.

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Bendectin Case

First manufactured by Merrell Dow Pharmaceuticals in 1956, Bendectin was a prescription drug used to alleviate nausea and morning sickness associated with pregnancy. Over 33 million pregnant women worldwide were taking the drug when Betty Mekdeci, a woman determined to find the cause of her son's severe birth defects, linked the defects to the Bendectin she took during pregnancy. The story broke in the *National Enquirer* in October 1979, implicating Bendectin as the cause of birth defects in thousands of newborns in the United States. Women taking the drug panicked; some had unnecessary abortions, and thousands more sued Merrell Dow Pharmaceuticals. At one point, the company was faced with more than 1,800 lawsuits from women whose babies were born with defects. The list of defects included limb and skeletal deformities, brain damage, blood disorders, cancer, and deformities involving different organs such as the lungs, intestines, bladder, and heart. This list was questioned by the scientific community because there are no known agents (teratogens) that cause such a wide range of birth defects. The cost of litigation and insurance premiums exceeded the profit from the drug, and in 1983, Merrell Dow voluntarily stopped manufacturing Bendectin.

Merrell Dow's problem during litigation was a lack of scientific evidence. Specifically manufactured in 1956 for pregnant women, the three ingredients in Bendectin never underwent any reproductive toxicity tests. The only study to look at the teratogenic effects of the drug was performed by Merrell Dow researchers in the mid-1970s, and it was of such poor quality that it did not hold up in court. One of the Bendectin cases, *Daubert v. Merrell Dow*, actually led the U.S. Supreme Court to set guidelines for the admissibility of scientific expert testimony. Another problem was that Merrell Dow also neglected to mention the possibility of birth defects on Bendectin's label until 1981, after it was on the market for 25 years. However, Bendectin is a relatively safe drug; over 30 studies have found that it is not statistically related to birth defects. In fact, the Food and Drug Administration (FDA) continues to call the drug safe and has listed the drug as "discontinued" for reasons other than safety. The Centers for Disease Control also reports no change in the incidence of birth defects in the United States after Bendectin was taken off the market. On the other hand, the number of pregnant women hospitalized for severe nausea has doubled since the drug was discontinued.

Drugs similar to Bendectin are still manufactured and sold by other pharmaceutical companies throughout the world. Duchesnay Inc., a pharmaceutical company in Canada, has continued to manufacture and distribute Diclectin, a drug identical to Bendectin. Duchesnay is currently petitioning the FDA to sell the drug in the United States. The National Institute of Health sponsored a clinical trial for the use of Diclectin in the United States in January 2008–January 2009. Final results, reported in 2010, found the drug effective at reducing nausea, but did not mention the incidence of birth defects. As of 2012, drugs such as Diclectin are still unavailable in the United States. Two of the three ingredients that make up Bendectin are available without a prescription, vitamin B-6 and doxyalmine, an antihistamine found in Unisom. Many doctors have been instructing pregnant women suffering from extreme nausea to find relief by combining specific amounts of these two ingredients.

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See Also: Dow Chemical Co.; Food and Drug Administration, U.S.; Pharmaceutical Industry.

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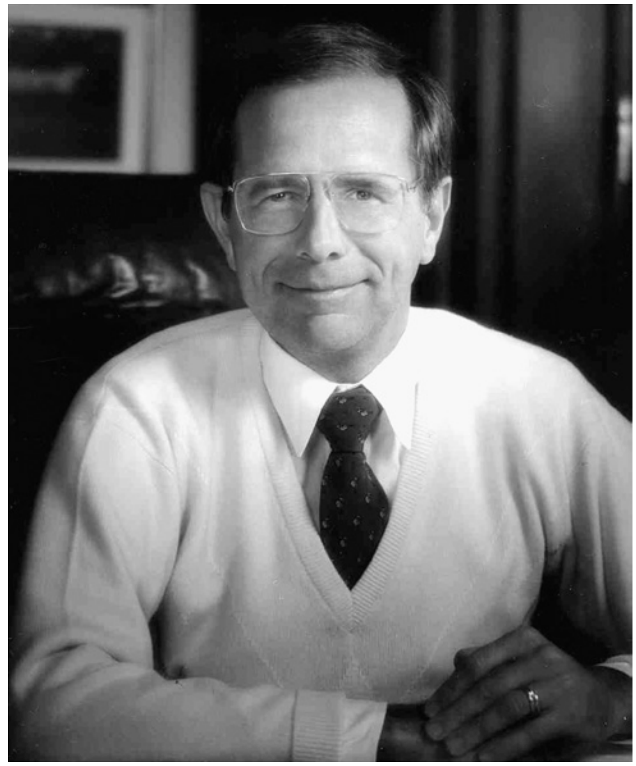
Bendix Corp.

In what turned out to be an epic hostile takeover attempt in the 1980s, Bendix Corporation chief executive officer (CEO) William Agee seemingly misjudged the Martin Marietta Corporation and its top executive Tom Pownall by thinking it could purchase Marietta without permission or resistance. The strategic maneuvers between the key players in this historic acquisition and merger battle left one company standing strong and independent—despite the odds—and the other defeated.

Attempted Takeover

Inventor, manufacturer, and industrialist Vincent Bendix began his career with a series of patents and manufacturing businesses for automobile and aviation engine parts, fueling systems, and (later) home electronics. His entrepreneurial businesses culminated in the founding of the Bendix Corporation, which went on to pioneer myriad products for 60 years (1924–83), until it was absorbed by a corporation in a historic acquisition and merger case.

In 1976, William Agee became president of the Bendix Corporation. Three years later, Mary Cunningham joined Bendix. Soon, reports of Bill Agee favoring Mary Cunningham began to surface, with the Bendix board questioning Agee's professional and personal decisions. Cunningham increasingly became Agee's primary advisor, strategist, and partner. The resulting conflicts between the board of directors, Agee, and Cunningham culminated in her forced departure, the resignation of several key board members, and a more dubiously individualistic role for Agee as the head of Bendix. In the spring of 1982, Agee began to set the stage for an attempted hostile takeover bid for a construction materials and aerospace firm slightly smaller-than-Bendix known then as Martin Marietta (Martin Marietta merged with Lockheed Corporation in 1995 to become Lockheed Martin). Marietta's president and CEO at the time was navy veteran Thomas G. Pownall. Bendix started the war by using its $500 million business divesting monies to begin covertly purchasing Marietta's then-inexpensive stock through Wall Street investment bankers. Agee paused long enough in June 1982 to marry the now-ousted, yet still strongly influential, Mary Cunningham. By late August, the rumors hinting at the Bendix interest in Marietta proved true: Bendix publicly announced its offering for Marietta. While they seemed similar on paper, the respective philosophies, goals, approaches, and CEOs of Bendix and Marietta were at opposite ends of the spectrum. Martin Marietta decided to fight against the Bendix takeover.



William Joseph "Bill" Agee (in 1990, top) became president of Bendix Corp. in 1976. Three years later, Mary Cunningham (photo undated) joined Bendix, and her increased involvement and influence with Agee created conflicts with the Bendix board.

Initially, two significant problems surfaced for Bendix. First, Martin Marietta, in an attempt to rebuff the takeover, countered by attempting to take over Bendix. Second, Bendix was put in a disadvantageous position from this counteroffer because it led the way for Marietta to utilize what became known as the first "Pac-Man" (eat-or-be-eaten) defense strategy. Bendix was not prepared for that move. Bendix did not have a "shark-repellant" armor in place with which it could strategically thwart a rival takeover. On a different playing field, the personalities of Bendix directors and its key takeover players at the Salomon investment firm team were not quite as unified as Martin Marietta and its primary players in the game. Martin Marietta had preempted any strikes by establishing a good rapport with its lender banks and creating the ability to receive credit on short notice (Marietta secured $930 million in bank credit in just one weekend). Marietta also had solid relationships between its executives and key players at the Kidder, Peabody & Co. investment firm (although Martin Seigel of Kidder is believed to have divulged strategic details of the takeover plans to an arbitrageur, Ivan Boesky, who reportedly profited from the inside information). Marietta's preplanning strategies also included the ability to offer "golden parachutes" on short notice to its management members, if necessary.

While Marietta was attempting to obtain a needed 11.9 million shares of Bendix stock through the Salaried Employees Savings and Stock Ownership Plan (SESSOP), Bendix succeeded in convincing a third (larger) company, the Allied Corporation, to act on its behalf as its "white knight." The takeover culminated in Allied acquiring Marietta's holdings of Bendix as long as Bendix agreed to give up its bid for Marietta. By all appearances, Bendix had purchased control of Marietta in September 1982. Yet, Marietta had also found a "white knight," one that could attack the attacker. Marietta's Tom Pownall invited his colleague Harry Gray—of the giant, powerful United Technologies—to step into the fray and come to Marietta's defense.

The chess game between Bendix, Marietta, Allied, and United Technologies resulted in complicated, entangled, back-and-forth maneuvers that, at one point, would see Marietta sacrificing itself in order to keep from being swallowed by Bendix. In the end, though, a small opening through securities laws allowed Marietta enough time to purchase Bendix stock between midnight and 12:01 A.M. on September 22, 1982. There was not enough time for Bendix or Allied to block the transaction. Although Martin Marietta went into debt by billions of dollars in an effort to fend off Bendix, it recovered and began to stabilize financially several years later. In the end, Bill Agee and the Bendix Corporation had misjudged Martin Marietta and its CEO, Tom Pownall. Speculating that Marietta was not in a financial position to refuse its offer, Bendix held firm to the idea that it could purchase Marietta without much resistance. Agee was proven wrong. The mind-set of Pownall and his principled belief in Marietta as the best contractor for the U.S. defense and aerospace business compelled him to refuse to surrender to the Bendix/Agee antagonists. Martin Marietta won the battle and retained its independence.

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See Also: Corporate Raiding; Insider Trading; Kidder, Peabody & Co.; Lockheed Corp.; Salomon Smith Barney Inc.; Securities and Exchange Commission, U.S.

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Benson, Michael

Michael Benson was born in Flint, Michigan, in 1950. He earned his B.A. and M.A. degrees in sociology at Central Michigan University in 1972 and 1976, respectively. He earned a Ph.D. in sociology from the University of Illinois in 1982. After brief employment at Indiana University–Purdue University at Fort Wayne, Benson joined the faculty in the Department of Sociology at the University of Tennessee (UT) in 1986, where he served until 2001. While at UT, Benson was promoted to associate professor in 1989, then to professor in 2000, and served as department head from 1991 to 1998. In 2001, he joined the faculty in the School of Criminal Justice at the University of Cincinnati (UC), where he currently serves as professor. Benson's research agenda from the start focused on understanding the contours of white-collar crime, including issues related to offenders, victims, prosecution, and incarceration.

His first major works involved in-depth interviews with white-collar offenders regarding the motivations, identities, and rationalizations associated with their crimes and regulatory violations. The resulting articles were "The Fall From Grace" in 1984 and "Denying the Guilty Mind" in 1985, both of which were published in the journal *Criminology*. These are two of the most widely cited white-collar crime articles, nearly 30 years after their initial publication.

Following these significant qualitative studies, Benson conducted a quantitative study of how white-collar offenders are sentenced (with Esteban Walker). This study was published in 1988 in *American Sociological Review*. Sentencing of white-collar offenders was just beginning to receive scholarly attention at this time, following passage of new federal sentencing guidelines via the Sentencing Reform Act of 1984. In an effort to make his research on white-collar crime even more comprehensive, Benson studied local prosecutors assigned to white-collar crime cases. This research culminated in the book *Combating Corporate Crime: Local Prosecutors at Work* (with Frank Cullen). This book was published in 1998 and received the Outstanding Scholarship Award from the Society for the Study of Social Problems.

Although Benson would continue to conduct research on white-collar crime, his move to the University of Cincinnati (UC) in 2001 represented a transition toward a life-course approach to understanding white-collar crime and other crime types. Soon after arriving at UC, Benson completed a book on life-course criminology. This book included an entire chapter on understanding white-collar offenders from a life-course perspective. He also articulated the connection between white-collar crime and life-course criminology (with Kent Kerley) in a collection of essays written in honor of Gil Geis. In 2006, he published his second white-collar crime book. This work focused on the criminalization and prosecution of white-collar crimes (with Frank Cullen, Gray Cavender, and William Maakestad). In 2009, Benson published his third book on white-collar crime (with Sally Simpson). This book was not simply an overview or summary of empirical research, but instead used opportunity theories as a heuristic device for understanding all white-collar crimes. Benson is regarded as one of only a few scholars to produce top-notch quantitative and qualitative research on white-collar crime. His research on elder abuse, intimate partner violence, and life-course criminology has distinguished him in the fields of criminology and sociology.

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See Also: Corporate Criminal Liability; Cullen, Francis T.; Sentencing Guidelines; Techniques of Neutralization.

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Bernard L. Madoff Investment Securities LLC

Bernard (Bernie) Lawrence Madoff borrowed $50,000 from his wife Ruth's parents to open Bernard L. Madoff Investment Securities LLC (BLMIS) in November 1960, a year after the marriage began. Bernie's brother Peter B. Madoff joined the company as its legal and compliance officer after graduating from Fordham Law School in 1970. BLMIS was a broker-dealer registered with the U.S. Securities and Exchange Commission (SEC). As a broker, BLMIS would fill orders to buy and sell stock shares and options for clients, many of which were large investment firms such as Fidelity and Bear Stearns.

A dealer trades on its own account, which may include employees with proprietary profit and loss, or "prop" accounts. Bernie would allow some employees to have prop accounts, as long as they showed a profit. Sometime after 1986, BLMIS moved its broker-dealer offices to the 18th and 19th floors of the Lipstick Building in midtown Manhattan, 885 Third Avenue between East 53rd and 54th Streets. The investment advisory business, unregistered for decades until 2006, used half of the 17th floor and had fewer than two dozen employees. The 17th floor generated phony account statements and false stock trade documentation.

BLMIS earned substantial profits by paying buyers and sellers one cent per share for order flow, a legal kickback. On each share, BLMIS was grossing at least $1/8, or 12.5 cents. After payments, the firm netted 10.5 cents per share. Back in the years when bids (buying price) and offers (selling price) had to be phoned in, written down, and taken to the floor of the New York Stock Exchange (NYSE) or American Stock Exchange (AMEX) for an auction, BLMIS's competitive advantage was speed. Peter directed the writing of computer software that automated the buying and selling of shares, bypassing the traditional exchanges. BLMIS was not a member of the NYSE or AMEX; it was a broker that created a "third market" for stocks.

Starting in 1971, the National Association of Securities Dealers (NASD) created its Automated Quotation system, abbreviated NASDAQ. It listed over-the-counter (OTC) companies with shares that were not listed on the larger exchanges, and BLMIS also traded in those shares. Eventually, the Madoffs and some partners bought the regional Cincinnati Stock Exchange, automated it completely in 1980, and renamed it the National Stock Exchange (NSX). NSX competed successfully with the NYSE and AMEX for trading volume. BLMIS was said to trade nine percent of the volume in NYSE shares. Bernie became NASDAQ chairman in 1990, and he was instrumental in preserving payment for order flow. On August 28, 2000, the NYSE began trading some stocks in decimal price increments, not one-eighths, and eventually all stock quotations were decimalized. Broker profits were reduced to one cent a share, but BLMIS was still paying that much for order flow. Authorities estimate that Bernie used hundreds of millions of dollars from investors to subsidize BLMIS operations.

Ponzi Scheme Detected

Bernie's father-in-law, accountant Sol Alpern, started raising money from friends and family for him to invest, beginning in the early 1960s. This continued into Sol's retirement in Florida in the 1980s. In 1987, he turned his Madoff investment account over to his former accounting partners, Frank J. Avellino and Michael S. Bienes. The accounting firm of Avellino and Bienes proceeded to raise funds by issuing "notes" with guaranteed returns to investors, then funneling the money to Bernie on the promise of even higher returns. On November 17, 1992, the SEC brought civil enforcement proceedings against Avellino and Bienes, fearing the unregistered investment brokers were running a Ponzi scheme where earlier investors were paid off with money from later investors. Although Bernie had to redeem some of the $441 million in "notes," most of the investors chose to reopen their accounts directly with BLMIS.

In actuality, no client investment accounts existed, nor did BLMIS trade stocks or options on any investments. Bernie and Peter Madoff deposited all the checks and wire transfers into Bernie's account at Chase Manhattan Bank, later JPMorgan Chase. Bernie's payments to fund raisers and redemptions to investors also came out of this bank account. In 2008, when JPMorgan Chase acquired Bear Stearns, the bank figured out that Bernie was not running a legitimate hedge fund; in September, the bank secretly withdrew its $250 million from Fairfield Greenwich Group's Sentry Fund, a Madoff feeder of $6.6 billion. BLMIS chose its internal auditor, the accounting firm Friehling & Horowitz. This was a red flag, as it had a small strip-mall office in New City, New York, and no other clients. Partner Jerome Horowitz was retired, so the firm had accountant David Friehling and an administrative assistant.

After Bernie Madoff turned himself in, six other BLMIS employees pleaded guilty to various crimes, including a trader (conspiracy to defraud customers), the controller (falsifying BLMIS records and regulatory filings), and second-in-command Peter Madoff. Peter pleaded guilty on June 29, 2012, to conspiracy to commit securities and mail fraud and submitting false filings to the SEC in exchange for a 10-year prison sentence and forfeiture of all his assets. Bernie's sons, Mark and Andy Madoff, were longtime BLMIS employees. Mark worked at BLMIS from 1986 and directed the broker-dealer side in 2008; he committed suicide on December 11, 2010, exactly two years after his father's arrest. Andy worked at BLMIS from 1988 and directed NASDAQ trading, but after a bout with cancer, he worked on an energy trading project. Peter's daughter, Shana Madoff, also graduated from Fordham Law School, and from 1995 she was BLMIS inside counsel and stockbroker rules compliance lawyer. Ruth Madoff had an office near Bernie's on the 19th floor, where she did some basic accounting.

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See Also: Hedge Fund Fraud; Madoff, Bernard L.; Madoff Ponzi Scheme; NASDAQ; Ponzi Schemes; Sorkin, Ira; Wilpon, Fred.

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Better Business Bureaus

The Better Business Bureau (BBB) is a nonprofit organization dedicated to offering impartial sources of information on the trustworthiness of local businesses and charitable organizations. The BBB consists of 116 local, independently incorporated BBBs across the United States and Canada, operating under the auspices of their umbrella organization, the Council of Better Business Bureaus (CBBB), which is headquartered in Washington, D.C. Each bureau, governed by a board of directors, is charged with collecting and disseminating information on all businesses, accredited or not, within their designated service area; processing consumer complaints against companies; and maintaining a regional membership. Each BBB is operated locally and independently, and must meet 23 established criteria to be considered a part of the BBB system. As nonprofit organizations, BBBs are financially supported almost entirely by member dues and national corporate partnerships. The bureaus collect information on millions of organizations—public, private, nonprofit, online, and traditional—and publish the data in the form of business reviews, formerly called reliability reports, in the belief that better-informed consumers are more likely to make wise marketplace decisions.

Origins of Better Business Bureaus

The origins of present-day BBBs can be traced back to 1906, when in response to a government-initiated lawsuit against Coca-Cola, Samuel Candler Dobbs, a Coca-Cola Company sales manager and later president, began lobbying for the elimination of abuse in advertising and the establishment of standards that would require complete truth in advertising. In 1909, Dobbs became president of the Associated Advertising Clubs of America, which is now the American Advertising Federation (AAF). In 1911, he was involved in the adoption of the Ten Commandments of Advertising, one of the first codes of advertising, developed by groups of advertising firms and individual businesses. In 1912, the National Vigilance Committee was formed by Boston advertising executive George Coleman. This self-governing trade organization, charged with identifying and correcting misleading ads, would eventually evolve to become what is now the BBB. This is considered the origination of the modern BBB, and the organization celebrated its centennial in 2012.

Accreditation

Application for BBB accreditation of a company or charity is strictly voluntary, but generally the organization must have been in business in the local area for at least a year in order to be eligible for consideration. Businesses typically apply for BBB accreditation as a manner of demonstrating that they ascribe to rigorous business standards and ethical practices. Businesses may obtain BBB accreditation if they meet and adhere to the eight BBB Standards for Trust. These standards address specific issues that the BBB considers imperative to manage for the formation of an ethical marketplace, where buyers and sellers can trust one another. The doctrine includes, among others, principles for consumer privacy protection, truth in advertising, and overall honesty and integrity.

Companies seeking BBB accreditation must pay an initial fee for accreditation review/monitoring, and then pay annual monetary dues to maintain their accreditation status, varying in amount depending on the size and nature of the organization. Once an organization is accredited by the BBB, it is considered a "BBB accredited business" of the local BBB, a designation that the Council of Better Business Bureaus (CBBB) officially changed from "member" in 2007. In accordance with their ethical ideological philosophy, BBBs forbid businesses or charitable organizations from advertising their accreditation status in order to avoid a mistaken public conclusion that the advertisement indicates a BBB endorsement of the accredited business. Additionally, BBB membership dues are not federally tax deductible, though they may be tax deductible as an ordinary and necessary business expense. In 2011, there were nearly 400,000 businesses accredited through BBBs.

Better Business Bureaus do not advocate for one company over another, but collect and disseminate information about all businesses and charities, regardless of accreditation status, to consumers. Each business is evaluated, based on information in the BBB files, and assigned an A$^+$ through F letter grade. The determination of a grade is dependent on 16 different elements such as consumer satisfaction, response to complaints, longevity of operation, and issues related to licensing and advertising. BBB reviews also generally include an explanation of which grading points contributed significantly to the assignation of a business grade.

In addition, the BBB may assign a Not Rated (NR) designation to an organization that fails to provide basic information, or if there hasn't been sufficient time to assess the organization. In the grading system's original format, there was an additional factor that rewarded businesses for BBB membership. That process was altered in November 2010 in response to criticism from Connecticut Attorney General Richard Blumenthal, who accused the BBB of offering, or appearing to offer, an unfair privilege to organizations that financially subsidized the BBB. Further criticism of BBBs evolved in 2010 from contentions leveled by popular media sources, claiming that the BBB ratings system contained irregularities that favored businesses paying BBB fees over businesses that chose not to pay the fees. In response to the allegations, the BBB's executive committee, in addition to revising the rating system, implemented a system to handle complaints about BBB sales practices. Further, after conducting a review of the accreditation process, the CBBB modified it, making the process stricter and more uniform.

Information Service

The Better Business Bureau's most widely used service is its inquiry and information service. In using this free service, individuals may request business reviews, available online, that offer information about businesses that is updated on a daily basis. The BBB business reviews allow businesses to post details about their company and services online and offer details into any consumer complaints against the business. Consumers are likewise offered an opportunity to provide an immediate reaction, request quotes for service, or connect with a business through a social media platform. Consumers contacted BBBs more than 103 million times in 2011 with requests for information on businesses and charities, the majority of which were fielded through the BBB Web site, which was accessed more than 6 million times per month in 2011. Consumers may also contact BBBs through more traditional means of communication.

Dispute Resolution

Other services offered by BBBs include a dispute resolution service that provides consumers with an efficient, cost-effective means of resolving disputes against a business, without the need for litigation. This service, facilitated by the BBB, allows consumer–business disputes to be resolved through mediation or arbitration, with the BBB acting as a neutral party. Upon receipt of a consumer dispute and verification of its validity, the BBB will contact the business in question and offer to mediate the dispute. This service is offered free of charge to both the consumer and the business, regardless of accreditation status. Using this process, local BBBs aided in resolving nearly one million disputes in 2011. The BBB Auto Line, which is the largest and longest-running dispute-resolution program, is a national service designed to help businesses and consumers resolve automotive warranty or lemon law disputes in a manner that complies with all applicable laws and regulations. The CBBB has contracts with more than 29 automotive companies to provide dispute resolution services through this program.

Self-Regulation

The CBBB also continues to administer multiple advertising self-regulation programs through its participation on the National Advertising Review Council (NARC), its National Advertising Division (NAD), the Electronic Retailing Self-Regulation Program (ERSP), the National Advertising Review Board (NARB), and, most recently, the Children's Food and Beverage Advertising Initiative (CFBAI). Launched in 2007, the CFBAI is a voluntary self-regulation program intended to respond to concerns about food advertising's effect on childhood obesity. This initiative complements another BBB program, the Children's Advertising Review Unit (CARU), which focuses on how all products, including foods, are advertised to children. Additional BBB services address increasing consumer apprehension concerning online purchasing activity. The Online Interest-Based Advertising Accountability Program (the Accountability Program) was implemented in an effort to build consumer trust online by ensuring that companies engage in online behavioral advertising (OBA) in a manner compliant with the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles), developed in 2009 by a coalition of associations and the CBBB.

Self-regulation remains an essential element in BBB doctrine because the organization believes that self-regulation is more efficient, more effective, and less expensive than either litigation or governmental intervention. In fact, Better Business Bureaus will generally refuse to manage disputes that are in any stage of the litigation process or those involving legal issues, such as employment practices, discrimination, or debt collection, or cases that have involved previous litigation. Better Business Bureaus claim to treat all parties equally in disputes and complaint investigations, regardless of accreditation status of the business or consumers. According to the CBBB, its neutrality in the process is what makes it such an effective arbitrator.

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See Also: Advertising Fraud; Charity Fraud; Contractor Fraud; Ethics; Nonprofit Organization Fraud; Small Business Fraud.

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Bid Rigging

Bid rigging is a form of collusion in which conspirators agree to offer bids for goods or services at higher prices than they would offer if they were competing for bids in a normal, open way. These secret agreements usually involve one bidder who is the designated winner, under the assumptions that others will be the winners in future bidding rounds, or that others will be given perks (such as subcontracts), or that the other conspirators will benefit in some way at some future time for their collusion. Since the bids are set at these artificially higher prices, the purchasers end up paying more out, and the winning bidders end up taking more profits in, than they would under normal competitive market conditions. In the most common scenario, when the solicitors are local, state, or federal governments looking to purchase public goods or services, this means that taxpaying citizens become the victims because they end up paying more than they otherwise would. These fraudulent practices have been prohibited as criminal offenses in the United States since 1890, under Section 1 of the Sherman Antitrust Act.

Bid rigging may manifest itself in at least five different forms. In the most frequent form, called complementary bidding (or cover, courtesy, symbolic, or token bidding), the designated nonwinners submit bids that are too high, or that contain conditions they know to be unacceptable to the purchasers, to ensure that the predetermined bidder will be chosen. These token losing bids thus give the appearance that the purchasers made their choice from a fair range of competitive options and bidders.

In another form called bid suppression, the conspirators agree to refrain from bidding, or withdraw a bid that they gestured as offering in good faith earlier. Another form termed subcontract bid rigging ensures that those who agree not to win the main bid nevertheless end up with a subcontract or lucrative alternative deal.

With the form called bid rotation, the conspiring bidders agree to take turns winning the same type of contract (when these are repeated at regular intervals) or agree to divide up related or mutually dependent types of contracts.

Similarly, market allocation (or market division) bid rigging occurs when the conspirators agree to divide and win certain types of customers, market shares, or geographic regions in a prearranged way.

These forms of bid rigging thrive more in environments harboring certain conditions: the industry is narrow (when only a small number of businesses are able to provide the goods or services in question); the businesses have tight industry associations (with ample opportunities and forums for their chairpersons and officials to discuss and negotiate the terms of their bids and "competition"); there is regular, periodic demand for the goods and services, which are homogeneous or offer little room for variety or innovation; and similarly, when the purchasers have few alternative products or few alternative ways to meet their needs.

Such conditions formed the backdrop for the greatest bid-rigging scandals of the last half century, such as the Great Electrical Conspiracy that ranged from the 1940s to 1960. In this case, leaders in the electrical industry, notably General Electric and Westinghouse, colluded to rig prices, bids, and the winning bidders in transactions with the Tennessee Valley Authority (TVA). As Gilbert Geis documented in 1967, this collusion ended up costing the TVA and the taxpayers who received electricity through it many millions of dollars beyond what they would have otherwise paid (if the prices had been set under truly competitive, transparent conditions). Since this time and despite such exposés, however, other industries—especially in construction (e.g., infrastructure construction in rebuilding countries like Iraq) and the provision of municipal services—have continued to be mired with such bid rigging schemes.

The most recent and wide-ranging of these scandals has involved a coterie of major banks (UBS, Bank of America, JPMorgan Chase, and Wells Fargo, working under the aegis of GE Capital) that rigged bonds to various municipalities. As the *U.S. v. Carollo, Goldberg and Grimm* case (2011) revealed, these banks colluded in rigging the interest rates on these municipal bonds, causing the munis to lose billions of dollars. Montgomery County, Alabama, for example, is purported to have lost up to $3 trillion (including future debt incurred) for bonds for its sewer system that were manipulated by Chase. While the federal government received a settlement from Chase for $228 million, the aforementioned banks together paid $673 million in restitution on the heels of *Carollo*. On one hand, fines like this may seem extensive; on the other hand, as Geis and others have argued, recidivist businesses like Chase and GE, which take in untold billions in profit from the combination of their bid rigging deals and legitimate transactions, may pay them with impunity, as a cost of doing business.

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See Also: Clayton Antitrust Act; General Electric Co.; Price Fixing.

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Board of Directors

A corporation's shareholders elect individuals, usually at an annual meeting, to serve on the board of directors. This group holds authority over the firm and its managers. It determines long-term strategy for growth and risk management within the firm. It is also empowered to advise, monitor, and, if necessary, replace the corporation's top executives. Additionally, depending on the corporation's charter and the jurisdiction's law, a board may act to approve bylaw amendments, issue or repurchase stock, set dividends, and recommend to the shareholders significant actions, including a merger or dissolution. In all of their tasks, the board's directors are bound by their fiduciary duties to the shareholders. Nonetheless, corporate boards or their members are at times implicated in a wide range of problematic, or even illicit, corporate activities.

A corporation is required by law to have a board of directors, which can act on behalf of the body of shareholders, many of whom are likely to be dispersed, removed from the firm's operation, and thus generally passive in oversight. Some states—including Delaware, the leading corporate law jurisdiction in the United States—require that the body have only one individual. In other areas, three directors is the minimum requirement. Regardless, most established firms have between eight and 13 board members. In recent years, with increased attention to good corporate governance in the wake of the corporate collapses of the early 2000s, there has been a trend toward having smaller but more engaged boards.

Functions of the Board of Directors

A board of directors has two primary objectives. First, it exists to provide stability and continuity for the corporation and to help develop long-term strategy within it. Second, it advises, supports, evaluates, and compensates the corporation's managers as those individuals lead the firm according to the board's principles and goals. In its normal execution of these efforts, the typical board does little active policymaking. Instead, the board is often occupied with collecting and reviewing reports on the corporation's current operations, and with discussing the potential risks and opportunities ahead of it. Additionally, directors often use meetings to question and critique management's actions or to provide guidance on a new proposal.

A corporate board can take formal action only at its full meetings, which are held an average of eight times a year. However, it is common for many corporations to delegate certain board functions to committees of directors. This is especially true in larger enterprises. Different securities regulators require publicly traded corporations to maintain a nominating committee (to recommend candidates for open board positions), a compensation committee (to consider management pay levels), and an audit committee (to oversee the company's financial reporting and disclosure). Boards might institute other committees to address additional issues, including management succession planning, finance, corporate social responsibility, risk management, and shareholder relations.

Eric E. Schmidt, chairman and chief executive officer of Google Inc., is also a member of the board of directors of Apple Computer. An affiliated director is an outside director with some kind of additional connection to, or interest in, the corporation.

Types of Directors

Historically, the first boards of directors consisted primarily of a firm's significant investors (i.e, its owners). Today, in part because corporate boards are likely to have authority over a much wider range of complex issues, they often include a variety of members. There are three primary types of corporate directors: inside directors, affiliated (or "gray") directors, and independent directors. Inside directors are drawn from among the corporation's current executives. The chief executive officer is most likely to have a full seat on the board, but the chief operating officer or others might as well. A board might include these individuals to have more thorough and current perspective on the corporation's inner workings and day-to-day operations. However, current executives have certain inherent conflicts of interest as directors, and thus may be prohibited from participating in some areas of board business. For instance, securities regulations prevent executives in publicly traded corporations from serving on the board's nominating, compensation, or audit committees. Even absent regulation, corporations are increasingly attentive to insiders' roles on the board. In the past, many boards allowed their chief executive officers to lead the group as chair, a position that afforded them much additional power and influence in developing the board's agenda and pursuing its business. Although many firms still adhere to this practice, many others, particularly large, publicly traded enterprises, have split the powerful positions to provide more checks, balances, and accountability in the boardroom.

An affiliated (or "gray") director is an outside director but has some kind of additional connection to, or interest in, the corporation. This category might include the corporation's former executives, founders' or executives' family members, representatives of the corporation's professional service providers, or executives from the corporation's most significant business partners. These individuals are often valued for their intimate understanding of the corporation, its operations, or its market. They might also be recruited so that the board can build stronger ties with another firm, such as a key bank, supplier, or customer that is of strategic importance to it. Still, affiliated directors might also present challenges to effective governance because they are in some ways less likely to be disinterested, objective, and active in their monitoring of the corporation and its management. Securities regulators recognize this fact. In recent years, the Securities and Exchange Commission, the New York Stock Exchange, and other bodies have adopted rules to prevent affiliated directors, like full insiders, from serving on some board committees that handle particularly sensitive issues.

An independent director is an outside director without any other material or familial relationship with the firm. These individuals are most often current executives at other noncompeting corporations. However, they might also be drawn from the ranks of community leaders, government officials, academics, or other professionals. Independent directors still might be connected to the corporation or its leadership in significant ways. However, they are generally less interested in overseeing the corporation.

Corporate Guidance Role

While there are few, if any, strict prerequisites for serving as a director, boards tend to nominate and shareholders tend to support individuals who might be most valuable to the firm. In general, boards recruit executives or other individuals with strong business experience and the potential to provide helpful guidance and questions. In recent years, many boards have put more emphasis on recruiting technically competent directors. Securities regulators have also moved in this direction, as they now require directors in certain roles to have a base level of financial expertise. But boards might also recruit directors for their prestige, relationships, or other attributes, in order to address key firm needs. For instance, a pharmaceutical company subject to heavy government oversight might recruit a former Food and Drug Administration regulator to the board, specifically for his or her knowledge and connections in that realm. Likewise, a computer manufacturer planning to open retail outlets might benefit from the perspective and expertise of a successful chain-store company executive. Similarly, a corporation might seek outside female or minority executives to bolster its public image or diversity efforts.

In return for their service to the corporation, directors receive a range of benefits. Many of these are intangible. For instance, as a director, an individual might attain new prestige or status, build useful business relationships, or develop new perspectives or skills for management. Other benefits are more direct. The directors of most corporations receive annual fees in the tens of thousands of dollars, as well as additional fees for each board meeting they attend. They might receive further compensation for serving as members or chairs of board committees. Furthermore, it is common for corporations to grant their directors stock shares or options to better ensure that their interests align with those of the value-seeking shareholders whom they are elected to represent.

Directors are required to pursue shareholder interests, regardless of whatever personal pecuniary benefit they might derive from doing so. In managing corporate affairs, all board members, insiders and outsiders, are subject to a general fiduciary duty of loyalty, meaning that they are legally obligated to act in service of the shareholders' and the corporation's interests, instead of their personal interest. They also have a duty of care, meaning that they are compelled to act in good faith, in a reasonably informed and prudent manner. If an individual is alleged to have breached either of these duties in his or her capacity as a director, a shareholder may file suit against him or her. However, courts often grant directors much latitude in their corporate affairs, and may be reluctant to rule against them, absent evidence of fraud, clear conflicts of interest, unreasonable action, or the like. Even if they are found liable, directors may be able to escape personal liability in some situations if the firm carries directors' and officers' insurance.

The more common risk is not that directors will act deceitfully or criminally; it is that they will simply be ineffectual as corporate monitors. If directors are ill-prepared for their position, or only partly committed to their work, a corporation may be mismanaged; likewise if they are too permissive with executives. Such conditions have contributed to poor risk assessment, irresponsible management, shoddy financial reporting, and even outright collapse in some corporations in recent years. For these reasons, the U.S. federal government and other securities regulators have taken a more active role in reviewing governance practices. Also, many investors and activists have pressured corporations to be more attentive to and proactive on these issues.

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See Also: Corporate Capture; Interlocking Directorates; Outside Directors.

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Boesky, Ivan

Ivan Boesky (1937–) was considered Wall Street's leading speculator during the 1980s. Boesky is the son of a Russian immigrant who ran a number of seedy bars around Detroit. He graduated from the Detroit College of Law and bounced from one job to another until 1966, when he was employed on Wall Street as a stock analyst. His father-in-law had made a fortune in real estate and helped Boesky launch an arbitrage firm in 1975. Arbitrage is defined as a transaction that generates a risk-free profit or a leveraged speculative transaction.

In the high-stakes, fast-paced world of Wall Street, Boesky's specialty was trading stock in companies targeted for takeover. This is a legal enterprise as long as the trades are based on public knowledge of imminent acquisitions. If the transactions are done without public knowledge, then this is the crime of insider trading. Boesky would eventually be investigated by the U.S. Securities and Exchange Commission (SEC) for making investments based on tips received from corporate insiders.

Friends in Low Places

Boesky became a close associate of Michael Milken and Dennis Levine, and the three men would go on to make a fortune together. Milken had recapitalized Boesky following a significant loss. Boesky dealt with Milken as a client because of Milken's financial prowess. Levine was an ambitious young man who was no financial genius but who had ready access to inside information from Drexel Burnham Lambert, a successful brokerage firm. As head of the bond-trading department at Drexel Burnham Lambert, Milken was able to raise billions though the sale of junk bonds. He then used the cash to provide financing to entrepreneurs. Milken used Boesky as a front to trade stocks in companies in which Drexel had a confidential interest, thus earning millions for both men and their respective companies. In turn, Boesky was influential in helping Milken earn $1 billion in three years.

By 1986, Boesky had become an arbitrageur who had amassed a fortune of about $200 million by betting on corporate takeovers. These stock acquisitions were sometimes brazen and were clear examples of insider trading because many of the massive purchases occurred only a few days before a corporation announced a takeover. Using an arbitrage fund of capital provided by limited partners, Boesky would pay more than the current trading price for a company's shares, with the expectation of selling them at a higher price once the acquisition was publicly announced. For example, Boesky and others bought a large block of shares in Gulf Western before rumors of a takeover bid drove up the price of that stock. Three days before Maxxam Group officially tendered an $800 million offer for Pacific Lumber, and before this was publicly announced, Boesky bought 10,000 shares of Pacific Lumber stock. Although insider trading of this kind was illegal, laws prohibiting it were rarely enforced until Boesky was prosecuted.

Insider trading prosecutions were rare enough that the conspirators must have felt fairly safe. Indeed, when the prosecutions did come, others in the industry and the financial press accused the prosecutors of being too zealous. Boesky became the public face of insider trading, and his condemnation in the public square was as much an indictment of the culture that had pervaded Wall Street as of the man himself. The government's case against him revealed his agreement with Drexel Burnham Lambert, in which he was contracted as a highly paid consultant in exchange for collaborating on numerous securities violations, including stock price manipulation, illegal trades predicated on inside information, and the destruction of documents in order to hide their tracks. Boesky's capture soon led to indictments of his co-conspirators.

On November 14, 1986, the SEC charged Boesky with illegal stock manipulation based on insider information. Boesky was sentenced to prison, barred from dealing in securities, and ordered to pay $100 million in penalties, the largest amount ever levied by the SEC at the time. Boesky pleaded nolo contendre to civil charges brought against him by the SEC. He also pleaded guilty to one count of insider trading, for which he received a three-year prison sentence. Boesky's plea bargain involved his being wired to help the government indict other Wall Street insiders, including Michael Milken and the Drexel Burnham Lambert investment firm. Boesky handed Milken over to the SEC, but it was Dennis Levine who gave Boesky to the SEC.

The fallout from the these cases, among many others, has shaped many changes in the world of business. Many major securities firms and banks now have new rules of conduct for their employees. Several laws have been implemented to tighten securities laws and curb corporate takeovers. The issue of business ethics, or lack thereof, has sparked much debate and changes in the business environment and curriculum at business schools across the nation.

Boesky's commencement address at the University of California, Berkeley, on May 18, 1986, was delivered shortly before his indictment, and has become one of the most famous speeches of the 1980s. "I think greed is healthy," he said. "You can be greedy and still feel good about yourself." The speech inspired some of Michael Douglas's dialogue as Gordon Gecko in *Wall Street*, the Oliver Stone movie inspired by the financial scandals of the day. Boesky was released from prison in 1989 and in 2012 was living in La Jolla, California.

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See Also: Insider Trading; Insider Trading Sanctions Act; Milken, Michael; Securities and Exchange Commission, U.S.

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Boland Amendments

The three Boland amendments sought to limit the military or paramilitary assistance offered by U.S. governmental agencies to the rebels of Nicaragua—the Contras—in overthrowing the left-leaning Sandinista government. The first attempted to prevent a possible war between Nicaragua and Honduras. Additional amendments were ultimately required to constrain U.S. governmental activities supporting the Contras. Ultimately, because of the Boland amendments, illegal actions were taken by high-ranking U.S. governmental officials to overcome the restrictions of these amendments, and these illegal activities were linked to the Iran-Contra affair. Shortly after President Ronald Reagan took office, he signed an order authorizing the Central Intelligence Agency (CIA) to engage in covert actions supporting the Contras in restricting aid to leftist rebels in El Salvador. However, some members of Congress were concerned that such activities might lead to military hostilities between Nicaragua and Honduras. To prevent this possibility, the first Boland amendment prevented both the CIA and the Department of Defense from using any of their appropriated monies for fiscal year 1983 for military activities (e.g., training, equipment, or advice) to an individual or group interested in overthrowing the government of Nicaragua or that might lead to a war between Nicaragua and Honduras. Congress attempted to prevent, or at least severely curtail, the Reagan administration's support of the Contras in their effort to overthrow the Nicaraguan government.

Despite the fact the first Boland amendment was the law of the land, it failed to have the intended effect. Soon, it became clear that the U.S. government was still engaged in covert activities supporting the Contras. Numerous newspaper accounts discussed the covert support of the Contras by the U.S. government. Moreover, in mid-1983, a U.S. House of Representatives committee found that the first Boland amendment was ineffective in preventing U.S. support for the Contras and their expressed goal of overthrowing the Nicaraguan government. Then, in early 1984, Congress learned that the CIA had mined the territorial waters of Nicaragua. However, Congress learned that these activities were funded using monies other than those prohibited by the first Boland amendment. Congress then passed the second Boland amendment in an attempt to further curtail U.S. support for the Contras.

The second amendment used language expressly preventing the Reagan administration from spending any monies appropriated by Congress, in the past or in the future, for mining the waters of Nicaragua. The goal of this second amendment was to cut off any further covert actions supporting the Contras. The Reagan administration, however, then transferred operational control of these efforts to the National Security Council (NSC). The shift was justified by a legal opinion from within the Reagan administration. This legal opinion posited that the NSC was not an intelligence agency, and therefore the Boland amendments did not apply. Following this opinion, the NSC could secure alternative funds to support the Contras. Some monies came from reserve funds, and others came from foreign governments, private individuals, and profits from the sale of weapons to Iran. The effect of these NSC activities was to skirt the spirit of the first two Boland amendments by supporting the Contras with monies not explicitly prohibited by Congress. After learning of some of these activities, Congress passed the third and final Boland amendment to limit U.S. governmental support for the Contras.

The final Boland amendment took a different approach to limiting the administration's support for the Contras. Here, Congress placed an absolute limit on the amount of money, from any source, in support of the Contras at $24 million. Moreover, Congress sought to prevent further attempts to circumvent the intent of the law by broadening who or what was covered by the amendment. The final amendment prevented any nation, group, organization, movement, or individual from providing support for any activities that would support, directly or indirectly, any military or paramilitary activities within Nicaragua. Ultimately, this final amendment was designed to prevent additional covert support of the Contras, beyond the $24 million limit established by Congress.

The Boland amendments are important because they are linked to the Iran-Contra affair. In response to congressional action limiting the funds supporting the Contras, senior NSC and Reagan administration officials devised alternative avenues to fund the Contras in ways not explicitly prohibited by the Boland amendments. At approximately the same time, the United States was attempting to secure the release of American hostages from a group with ties to Iran. Sales of weapons were coordinated by Reagan administration officials to a second group within Iran that promised to attempt to facilitate the hostages' release in exchange for the weapons. However, the sale of the weapons was problematic for two reasons. First, the sale of weapons to any Iranians was prohibited. Second, despite the illegality, profits from these sales were diverted to support the Contras. When these arms dealings became public, it led to the Iran-Contra affair.

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See Also: Defense Industry Fraud; Iran-Contra Affair; Reagan, Ronald.

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Bond Fraud

Bonds are financial instruments creating a debt from the issuer to the bondholder. The terms of the bond determine when the principal is repaid (when the bond matures) and whether the issuer pays the bondholder interest. Negotiable bonds can be bought and sold on the secondary market; a bearer bonds not only is negotiable, it also is owned by whoever is in possession of it, rather than being registered to a specific owner. Bonds are long-term instruments, designed to raise capital to finance long-term investments or (especially in the case of government bonds) current expenses; certificates of deposit are similar short-term instruments. Unlike stocks, bonds have a defined term (unless they are irredeemable bonds with no maturity) and represent a creditor stake, whereas stock shares confer an equity stake: shareholders are owners of a company, whereas bondholders are lenders to the company.

Bonds can be classified according to coupon (the interest paid) or other factors but are most commonly discussed in terms of their issuer: corporate bonds are issued by corporations to raise money for business expansion and have the highest risk of default; government bonds are issued by national governments and are considered risk-free since a government has the capacity to generate revenue through taxation or mint additional currency in order to redeem bonds (though Russia defaulted on its domestic debt in 1998); and municipal bonds are issued by local governments and government agencies, including public utilities and school districts. The income provided by municipal bonds is often exempt from taxation.

Bond fraud falls generally into two categories: the circulation of forged or useless bond certificates and the fraudulent manipulation of the bond market.

Historical Bond Fraud

The Treasury Department has warned that historical bond fraud is on the rise. Historical bond fraud uses genuine bonds that are worthless, except as collector's items, usually because they were issued by companies—especially railroads—that no longer exist to honor them. Bonds issued by the Chicago, Saginaw, and Canada Railroad Company; the East Alabama and Cincinnati Railroad Company; the Mad River and Lake Erie Railroad Company; the Galveston, Houston, and Henderson Railroad Company; and the Richmond and York River Railroad Company have all been used in frauds, as have bonds issued by long-defunct mining companies. The debts owed by these companies, including those represented by bonds, were resolved as part of bankruptcy proceedings decades ago, often more than a century ago.

In the past, these bonds would simply have been sold off, as is, to an unsuspecting buyer who would discover upon attempting to redeem them that the company no longer exists. In the age of Internet search engines, it is easy for potential buyers to discover the fate of these long-gone railroads, so the sales pitch is packed with a narrative of lies: some con men claim that older bonds, dating from an earlier age of the American currency system, are redeemable in gold; others, that the Treasury Department or the successor railroads will honor the bonds; others, that the Treasury Department maintains a sinking fund to buy and retire historical bonds. Sometimes, the lie is more involved: many scams have falsely claimed that high-yield trading programs exist, sponsored by federal and international entities like the Treasury Department, the Federal Reserve, the World Bank, the International Monetary Fund, the International Chamber of Commerce, or the United Nations. They've further claimed that the trading programs help fund humanitarian missions, to explain these institutions' involvement. Other historical bonds have been sold, coupled with the claim that they are honored by, or may be traded in a program operated by, European banks. This latter variation is an example of the "prime bank scheme," which has circulated for years and relies on claims discredited in numerous 1990s court cases.

Historical bonds are also often sold as collector's items, but with bogus third-party authentications attesting to a value far higher than they could possibly command, with some victims paying $150,000 for $25 bonds.

Redemption Scheme

Another fraudulent bond scheme that the Treasury Department and the Federal Bureau of Investigation (FBI) have warned about is often called the redemption scheme, but is also known by terms such as the straw man, acceptance for value, or offset bond scheme. The central claim of the con is that the Treasury Department controls bank accounts with money accessible by any American citizen who submits the proper paperwork to state and federal authorities. These fictitious accounts are sometimes called U.S. Treasury Direct Accounts. Victims of the scheme are given fake financial documents referred to as offset bonds, indemnity bonds, bills of exchange, sight drafts, or other terms. Victims may also be provided with genuine documents that have no applicability in this circumstance. IRS forms 1099, 1099-OID, and 8300 have all been used for this purpose.

Often, the way that this scheme works is that "kits" are sold to victims to help them claim funds from these fictitious Treasury Direct Accounts, consisting of bonds worth a certain purported amount and the paperwork necessary to redeem them. Failure to redeem the bonds is attributed to the victim not following instructions correctly. This particular fraud has become common in similar circles to the Sovereign Citizen Movement, with which its victims may be politically aligned; there are similar urban legends that writing "acceptance for value" on a document will resolve traffic tickets, tax bills, and other documents requiring payment to the government.

Ponzi schemes and similar frauds often promise the purchase of bonds, while actually depositing the money in the schemer's accounts. In 2012, the Securities and Exchange Commission (SEC) charged Michael Anthony Gonzalez with running such a scheme, having raised $1 million for the purpose of investing in tax-exempt municipal bonds that he never purchased. In other cases, bonds may be purchased and may be legitimate, but the brokerage misstates the risk associated with them and misrepresents the true cost of the bond.

Misstatement of Bond Value and Bid Rigging

Frauds involving legitimate bonds often involve misstating the value of those bonds. In 2012, Credit Suisse trader Kareem Serageldin was charged by the SEC with numerous counts of securities fraud for falsely valuing bonds during the 2008 global financial crisis in order to conceal losses. When Credit Suisse eventually corrected the value of the mortgage-backed securities in question, they had been overvalued by $540 million. Serageldin faced multiple criminal charges as well as a civil action. The two Credit Suisse traders collaborating with him, David Higgs and Salmaan Siddiqui, pleaded guilty earlier in the year. There were numerous similar cases; the same month that Serageldin's extradition hearing began, the SEC charged the Baton Rouge–based hedge fund Commonwealth Advisors with creating phony internal documents to misrepresent the value of bonds held by the fund by $32 million.

Bid rigging is also a common tactic in bond fraud. In bid rigging, a form of price fixing, the parties collude to ensure that the sale goes to a predetermined seller, despite the appearance of a public auction. In 2012, federal prosecutors made public details from a 10-year investigation into bid rigging involving most of the major American finance institutions, including JPMorgan Chase, Bank of America, UBS, Lehman Brothers, Bear Stearns, Wachovia, and GE Capital, the finance arm of General Electric. Representatives of the banks colluded to rig bids on $3.7 trillion worth of municipal bonds, systematically reducing the interest rates the issuing municipalities—and school districts, hospitals, and libraries—earned on those bonds. It was not the bonds themselves that the banks bid on here, which were purchased by the public, but the investment contracts funded by the sale of those bonds. Reducing the interest thus reduced the worth of the purchase made by those bondholders. The case, *USA v. Carollo* (Dominick Carollo, one of three GE Capital employees named as defendant), revealed an elaborate Wall Street cartel, with wiretaps recording conversations peppered with code phrases referring to municipal bond interest rate manipulation. The anticompetitive behavior went beyond bid rigging, with JPMorgan Chase giving Goldman Sachs $3 million to let Chase win a contract with Birmingham, Alabama, rather than underbid one another.

Over a dozen executives pleaded guilty. Bank of America turned itself in, reporting illegal activity to the Justice Department in 2008 and cooperating with prosecutors from that point on, after paying kickbacks to bid on investment contracts with municipal bond issuers. Money for kickbacks was kept in a "kitty," a slush fund of cash used for bribes and other purposes in order to ensure that investment contracts for municipal bonds could be purchased at below-market rates. In some cases, the global financial crisis of 2008 and onward was blamed for the low rates.

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See Also: Bank Fraud; Bid Rigging; Financial Crimes Enforcement Network, U.S.; Milken, Michael.

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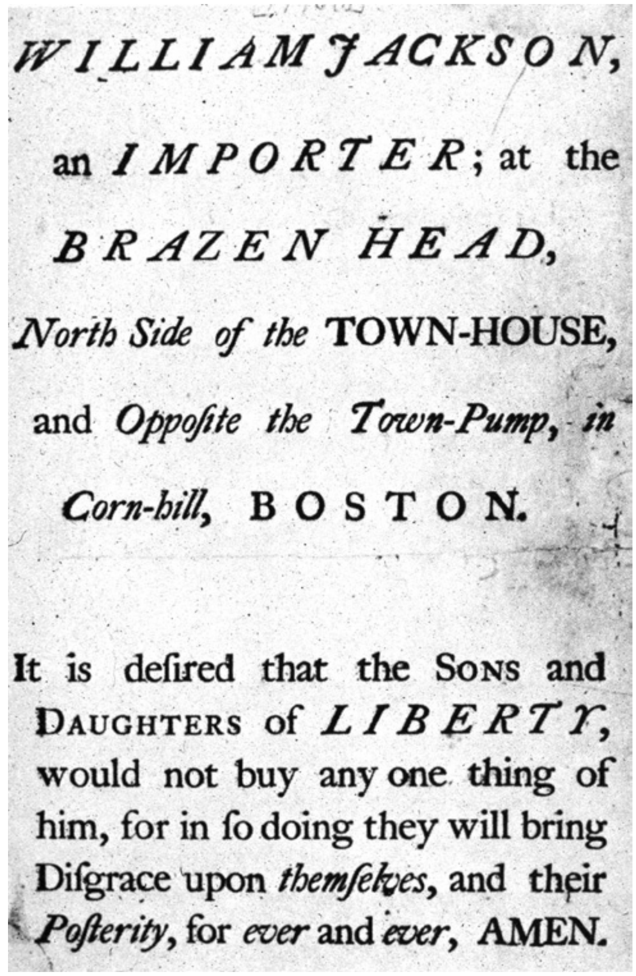
Boycott

A boycott is a tactic involving workers, consumers, and/or suppliers of specific organizations or individuals, typically businesses big or small, refusing to maintain regular or customary social or commercial relations with those organizations or individuals. The boycott usually arises from a specific grievance or grievances, such as unfair or unsafe labor practices, pollution, or injustices such as racial, gender, or sexual discrimination associated with the targeted organization or individual. The boycott is associated with a set of demands presented to the boycott target and is maintained, ideally, until those demands are met.

Advocates of boycotts point to the potential power of moral suasion as a vehicle for social change without coercion. They are particularly popular among those who promote anarchism, libertarianism, and nonviolent direct action, and generally reject the use of force, especially government force to influence society or end social harms. The boycott is a means of eliminating destructive practices from society, largely through the withdrawal of participation, or implied consent, with organizations engaged in or responsible for those harmful or improper activities. The boycott involves both an active withdrawal of participation and the communication with others to explain and expand the boycott. It is a matter of personal principle and communicative engagement, involving discourse and action.

For a boycott to be effective, it must involve people who are actual interlocutors (workers, consumers, or suppliers) with the targeted organization or individual. Those involved in the boycott must also actively communicate to the target of the boycott that they have withdrawn their interaction (labor, purchase, or supply) because of specific stated reasons, and that they will not resume interaction until the specific demands of the boycott are met. A boycott is not simply the act of people who do not interact with the target of the boycott continuing not to interact. For


WILLIAM JACKSON,
an *IMPORTER*; at the
BRAZEN HEAD,
North Side of the TOWN-HOUSE,
and *Oppoſite the Town-Pump*, *in*
Corn-hill, BOSTON.

It is deſired that the SONS and DAUGHTERS of *LIBERTY*, would not buy any one thing of him, for in ſo doing they will bring Diſgrace upon *themſelves*, and their *Poſterity*, for *ever* and *ever*, AMEN.

The term boycott *originated in the 1880s, but similar actions were taken far earlier: A 1770s broadside (top) urges the boycott of merchant William Jackson, who continued to stock English goods at his business on Corn-Hill, Boston, Massachusetts. Still in fashion 200 years later, a boycott is under way outside a KFC restaurant in Royal Oak, Michigan, May 5, 2007.*

example, it is not a boycott if vegetarians or vegans who do not eat meat or meat products avoid Kentucky Fried Chicken or Arby's.

Origins of the Boycott

The term *boycott* emerges from a campaign in Ireland waged in the 1880s against Captain Charles Cunningham Boycott, a much-despised land overseer for an absentee landlord, Lord Erne, in County Mayo. The coinage of the term is attributed to Irish Home Rule leader Charles Stewart Parnell, who along with Michael Davitt, founded the Irish Land League to oppose land control and exploitation by England. The stated goals of the league were known as the three "Fs:" fair rent, free sale, and fixity of tenure. The tactic arose after Boycott refused demands to lower rents for tenants. In response, servants refused to work in his house, stores refused to sell to him, delivery of mail stopped, and farm laborers refused to bring in the harvest. In response, Boycott imported politically supportive Protestant laborers from Ulster County to serve as replacement workers but was overwhelmed by the expenses of this maneuver. Humiliated by this disastrous attempt to break the boycott, Boycott was forced to leave Ireland.

The tactic quickly developed as a regular and effective weapon deployed in the struggle against English landlords. Even further, landlords who evicted tenants typically found that no other family would move into the vacated home. The campaign against Captain Boycott would serve as the league's most notable early victory. The actions of the league developed beyond the initial tactics into a widespread and successful peasant rebellion, what would become the first peaceful mass uprising in Irish history.

Examples of Boycotts

Throughout recent history, there have been numerous examples of, often successful, boycott campaigns waged at local, national, and international levels. Some of these include the boycotts of British goods in India organized by Mohandas Gandhi, the boycotts of goods from Nazi Germany, boycotts of goods from Chile under the dictator Augusto Pinochet, and recent boycotts against goods from Sudan. Perhaps the most notable recent international boycott involves the campaign of boycott and divestment against the apartheid regime in South Africa, which gained global momentum during the 1980s. The boycott against South Africa was conjoined with a movement for divestment. The divestment campaign involved efforts to persuade state, county, and municipal governments, as well as public institutions such as universities and colleges, to sell their stock in companies that had a presence in South Africa. Labor organizations also moved to divest pension fund monies in companies with connections to South Africa. Several states and municipalities passed legislation ordering the sale of such securities, most notably the city of San Francisco. Prominent conservatives, including President Ronald Reagan, opposed the campaign.

In the United States, notable examples of the use of boycott tactics have been deployed within the labor movement and the civil rights movement. Examples of labor boycotts include the United Farm Workers union boycott of grapes and lettuce in defense of migrant workers and against their exploitation. Within the civil rights movement, examples of boycotts include those against companies that practiced segregation or that excluded African Americans, such as the boycotts against restaurants and stores. A recent highly successful labor boycott involved the Coalition of Immokalee Workers' boycott of Taco Bell over pay and working conditions in the fields supplying produce for the fast-food chain. That campaign was launched in 2001, and in 2005, Yum! Brands Inc., the parent company of Taco Bell, agreed to all of the workers' demands. These included (1) the first-ever direct, ongoing payment by a fast-food industry leader to farm workers in its supply chain and (2) the first-ever enforceable code of conduct for agricultural suppliers in the fast-food industry (which includes the coalition as part of the investigative body for monitoring worker complaints).

The most influential boycott of the civil rights movement was the Montgomery Bus Boycott. The boycott was part of a broad social and political protest against policies and practices of racial segregation of the public transit system in Montgomery, Alabama. Under Birmingham's segregation practices, white riders filled the bus from the front backward, while African American riders sat at the back, filling the final few rows. The flash point for the campaign was the arrest of Rosa Parks, a working-class African American woman, active with the

National Association for the Advancement of Colored People (NAACP), who refused to surrender her bus seat to a white man on December 1, 1955. It lasted until December 20, 1956, when a federal ruling, *Browder v. Gayle,* was instituted, leading to a U.S. Supreme Court decision that finally declared as unconstitutional the Alabama and Montgomery laws requiring segregated buses. Solidarity was crucial for the boycott to succeed. In support of the boycott, African American taxi drivers charged 10 cents per ride, a fare that equaled the cost to ride the bus. City officials passed an order to fine any cab driver who charged a rider less than 45 cents in an effort to break this solidarity action. Fund raising efforts across the country and in Birmingham raised money for the campaign, and donations of shoes were made for African Americans who chose to walk rather than bus.

A recent international boycott campaign targets the state of Israel under the banner of Boycott, Divestment, Sanctions (BDS). The campaign emerged on July 9, 2005, when 171 Palestinian nongovernmental organizations put out a call for an international economic campaign against the state of Israel. The campaign has put forward the following demands: (1) ending Israel's occupation and colonization of all Arab lands and dismantling the wall; (2) recognizing the fundamental rights and full equality of the Arab-Palestinian citizens of Israel; and (3) respecting, protecting, and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN Resolution 194 (1948).

In 2011, the Unified Workers' Central (CUT), the main national trade union in Brazil, representing over 20 million workers, endorsed the BDS movement. In May 2010, the Congress of the British University and College Union (UCU) voted to support the BDS campaign and to sever all ties with the Histadrut, Israel's federation of trade unions. The British Trades Union Congress has launched a campaign to implement a boycott of Israeli goods and services. It has signaled plans to develop a more comprehensive boycott campaign against Israel. In Canada, the Canadian Union of Public Employees (CUPE), the largest union in the country, endorsed the campaign.

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See Also: Racial Discrimination; Redlining; Unions; United States; War Crimes; War on Terror.

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BP PLC

BP PLC, formerly British Petroleum Exploration and Oil Company Inc., is a multinational oil and gas company based in London, but it has operations in more than 80 countries; its largest subdivision, BP America, is based in Houston, Texas. Following early oil exploration in Persia, which eventually came to fruition on May 26, 1908, the founder of the Anglo-Persian Oil Company, William D'Arcy, narrowly saved himself from financial ruin. The name British Petroleum was actually created by a German firm in order to market products in the United Kingdom (UK) and was acquired through the seizure of assets at the end of World War I. In 1987, BP was fully privatized by the British government, and that same year BP America was founded, following the acquisition of Standard Oil of Ohio. Later takeovers of Amoco, ARCO, and Castrol would establish BP as one of the world's largest energy companies, able to compete in the search for new reserves in remote locations, including Russia, Azerbaijan, Indonesia, and the Gulf of Mexico. During the construction of the trans-Alaska pipeline in the 1970s, the peak workforce exceeded 28,000 people worldwide. By revenue, it was ranked as the third-largest energy company and fourth-largest overall in the world in July 2011.

Despite its long legacy, BP has been involved in a number of major industrial incidents. The explosion at BP's Texas City refinery in 2005 resulted in the death of 15 and injury to 180 people. Alleged mismanagement of the plant led the U.S. Chemical Safety and Hazard Investigation Board to conclude that "organizational and safety deficiencies [were present] at all levels of the BP Corporation." BP was later fined $87 million for failing to address the safety issues identified by safety experts following the explosion. In 2006, BP's flagship trans-Alaska pipeline encountered problems that led to the shutdown of the Prudhoe Bay oil field. An estimated 5,000 barrels of oil were released into the tundra following corrosion to the pipes. In 2007, a major spill of ethanol was reported by the Alaska Department of Environmental Conservation, and the pipeline has been tampered with by saboteurs and damaged by earthquakes. A much earlier incident in the North Sea led to the death of 13 crew members after a portable drilling rig—the Sea Gen—capsized. Another incident at Texas City in April 2010 resulted in the release of carcinogenic gas (benzene) and other toxic chemicals.

Deepwater Horizon

The most recent and by far the most serious industrial accident involved the Deepwater Horizon drilling rig in the Gulf of Mexico. On April 20, 2010, an explosion in the Macondo prospect led to the spilling of an estimated 50,000 barrels of oil per day until mid-July; the resulting oil slick covered an area of 2,500 square miles and was visible on satellite images. A total of 11 people lost their lives in the initial explosion, and the environmental and economic damage to the Gulf Coast region was considerable. Although a number of companies were involved in the Deepwater Horizon incident—including the rig's owners and operators, Transocean—the U.S. government named BP (the majority shareholder) as having overall responsibility for both the blowout and the subsequent cleanup operation.

Alongside these incidents, the wider environmental damages resulting from the search for fossil fuels have meant that BP has also been challenged over its corporate responsibility. The documented industrial accidents only partially explain the main activities where BP has been called into account. Despite investing relatively large sums in renewable energy research ($5 billion from 2005 to 2010), BP has been at the center of a number of debates regarding its impact and commitment to climate change. In 2005, BP was named as one of the United States' most polluting companies, and the company has also been implicated (but later cleared) of human rights abuses committed by Colombian military personnel against civilians at its Casanare oilfield. BP was also a founding sponsor of the Climate Research Unit at the University of East Anglia, where it was alleged some years later that research supporting the presence of climate change was deliberately denied publication in leading journals.

More recently, environmental groups have challenged some of the developing projects involving BP (among others), including the Mist Mountain and Canadian Sands projects. However, the demand for and reliance on fossil fuels has meant that many governments are willing to push the frontiers of oil and gas exploration. The safety culture (or lack of) highlighted in the Deepwater Horizon spill only goes some way toward addressing the potentially wider environmental implications of these activities, and this is somewhat endemic of the industry as a whole. However, as a company, BP has been involved in a number of safety and environmental incidents that continue to cloud the overall integrity of the corporation as a key player in the energy supply business.

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See Also: Corporate Capture; Globalization; Gulf of Mexico Oil Spill; Halliburton Co.; Hayward, Tony; Minerals Management Service, U.S.; Negligence.

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Braithwaite, John

John Braithwaite is a criminologist whose primary interests include corruption in the pharmaceutical industry and the use of shaming practices and restorative justice as they relate to crime and crime prevention, including white-collar crime. His work has contributed tremendously to our understanding of white-collar crime in a specific industry; Braithwaite has also helped us reimagine alternatives to our current criminal justice system.

Braithwaite's central contribution to the study of white-collar crime comes from a case study of a single industry, pharmaceuticals, in which a range of corporate crimes occur. Drawing from in-depth interviews with over 130 executives from the world's leading pharmaceutical firms, Braithwaite provides detailed examples of white-collar offenses, illustrating the depth and severity of corruption within this industry.

The pharmaceutical industry's record of international bribery and corruption is worse than any other industry; it also has a history of fraud in safety testing of drugs and in the unsafe manufacture of drugs. Through his analysis of the pharmaceutical industry, Braithwaite advances understanding of corporate crime as a social phenomenon, socially constructed by actors within a given organization. Braithwaite contends that rather than conceiving of corporate actors as individual personalities, they should be regarded as actors who assume roles within corporations.

From his study of the pharmaceutical industry, Braithwaite argues that corruption can be reduced via the law. He recommends the following strategies: a focus on deterrence (white-collar criminals tend to have more at stake, and more to lose than blue-collar), rehabilitation for corporate offenders, and restitution to victims of corporate crime and reparation to the community. Even more important, Braithwaite insists, are changes to the structural preconditions that allow such crimes to occur in the first place. Another significant contribution Braithwaite makes to the field of criminology is his work on shaming practices and restorative justice.

According to Braithwaite, shaming practices involve a community expression of social disapproval that is intended to invoke remorse on the part of the offender. There are two primary types of shaming: disintegrative and reintegrative. Disintegrative shaming consists of punishing the offender in such a way that he or she is stigmatized by, or rejected and ostracized from, conventional society. Reintegrative shaming consists of the offender experiencing feelings of guilt, while others offer them understanding, forgiveness, and respect. Reintegrative shaming seeks to reintegrate the offender into mainstream society; it is more common in communitarian societies (e.g., Japan), whereas disintegrative shaming is more common in individualistic societies (e.g., the United States). Braithwaite argues that the United States can reduce crime if it emphasizes reintegrative shaming over disintegrative shaming.

Braithwaite suggests that Americans rethink the current dominant system of jurisprudence and consider the alternative of restorative justice for white-collar and street criminals alike. Restorative justice is an alternative to both retribution and rehabilitation, a third option that expands the dichotomous traditional model. The most widely accepted definition of restorative justice, set forth by Tony Marshall, is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future. However, Braithwaite notes that this definition is limited in that it does not identify who or what is to be restored, nor does it address the core values of restorative justice that include healing, rather than hurting; moral learning; community participation and caring; respectful dialogue; forgiveness; responsibility; apology; and making amends. To the issue of who is to be restored, Braithwaite contends that restorative justice is about restoring victims, offenders, and communities. To the issue of what is to be restored, Braithwaite contends that whatever aspects of restoration are important to victims, offenders, and communities should be restored.

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See Also: Giuliani, Rudy; Justice, U.S. Department of; Sentencing Guidelines; United States.

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Breast Implants

The Chinese philosopher Confucius once said "Everything has its beauty but not everyone sees it." External beauty is an objective for many and an obsession for some. Hence, the number of Americans having plastic surgery procedures has steadily increased since the mid-20th century. Designed to ensure safety and fairness in the conduct of business, regulatory offenses are one category of white-collar crimes. Additionally, one specific type of regulatory offense is a manufacturing violation. Sometimes, these violations are lethal. The Food and Drug Administration (FDA) makes and enforces the regulations regarding the safety of medical devices. Dow-Corning was the largest manufacturer of silicone implants before it stopped manufacturing them in 1992. Simply stated, in cases involving silicone breast implants, plaintiffs claimed that manufacturers, such as Dow-Corning, produced an unsafe product that caused a variety of autoimmune diseases and disorders. In these cases, autoimmune diseases or disorders became an umbrella term encompassing a variety of diseases such as lupus, scleroderma, rheumatoid arthritis, Sjogren's syndrome, fibromyalgia, and Raynaud's disease.

Product liability lawsuits are filed by individuals alleging that they suffered injuries after using a product that was unsafe as the result of a product defect. There are three categories of product defects that may result in liability for manufacturers, including design defects, manufacturing defects, and defects in marketing. Product liability claims are usually considered a strict liability offense. Thus, the plaintiff only has to prove that there is a defect in the product. However, this may be a difficult and require expert testimony, as was the case with the litigation involving silicone breast implants. However, after proving this by a preponderance of the evidence, the manufacturer or supplier responsible for causing the damages is 100 percent liable regardless of any degree of caution on their part or any lack of caution by the consumer.

Silicone implants were first used on a patient in 1962. By 1976, the FDA had acquired the authority to evaluate and approve both the safety and usefulness data of all new medical devices. However, silicone implants were exempt because they had been on the market for well over a decade. The first lawsuit alleging health problems caused from silicone breast implants was filed in the late 1970s. In the end, the manufacturer of the implants settled for well under a million dollars. This settlement received little attention. However, retrospectively, this case was just the first of many of litigation battles involving silicone breast implants. By the mid-1990s thousands of lawsuits were filed and juries had awarded millions of dollars in damages. Specifically, in the majority of the lawsuits, plaintiffs alleged that the implants caused pain and suffering; resulted in the need for multiple operations; and a link between certain autoimmune diseases and silicone breast implants.

By the early 1980s, plaintiffs wanted to sue manufactures such as Dow Corning and Baxter/Heyer-Shulte for manufacturing a defective product. In early 1982, the FDA proposed to classify silicone breast implants into a Class III category. Thus, manufacturers would be required to prove the safety of these devices to keep them on the market. In 1984, during discovery in *Stern v. Dow Corning*, the defendant, a subsidiary of Dow Chemical, was ordered to grant access to certain internal documents and the supposed connection between autoimmune disorders and silicone implants was introduced in the case. Specifically, memos were discovered that sought approval to look into the long-term health effects of silicone gel in the human body. Other memos stated that no valid long-term implant data existed to substantiate the safety of silicone gels implanted in humans. Moreover, documents were uncovered that revealed a controversy within Dow Corning over such side effects related to saline implants. Corning contended that the documents represented an ongoing internal debate and that the majority of science supported the notion that silicone gel implants were safe. The plaintiff prevailed in this case *Stern* *v. Dow Corning*. However, all evidence in *Stern v. Dow Corning*, was sealed via a court order.

After investigating medical complications related to saline implants, the FDA re-classified breast implants as a Class III medical device in 1988. Thus, the FDA demanded that the manufacturers such as Dow produce evidence proving the efficacy and safety of their products. Therefore, premarket approval applications (PAAs) from silicone breast implant manufacturers were due to the FDA by the summer of 1991. Specifically, The PAAs needed to affirmatively show via valid scientific data, evaluated by the FDA, that their devices were safe and effective. Following the submission of the PAA's by the manufacturers, the FDA had 180 days to assess the safety data.

Breast Implant Litigation

With public concern intensifying in the early 1990s, breast implant litigation began to receive far more attention from major news outlets, and the stage was set for a major influx of silicone implant litigation. In one case from the early 1990s, a plaintiff who claimed her implants had made her ill was awarded $7.3 million from Dow Corning, of which $6.5 million was in punitive damages. By the early 1990s, the media began to focus more attention on the safety of breast implants. In late 1990, Congress conducted a hearing on the safety of silicone breast implants. At the hearing, the ramifications of the court order from the *Stern* verdict were discussed. More precisely, it was acknowledged that the court order limited public scrutiny about what information the manufacturers had at their disposal. In 1991, an Alabama jury awarded a plaintiff exhibiting just preliminary symptoms of systemic autoimmune problems over $5 million from Baxter/Heyer-Shulte, the manufacturer of her implants, because according to the plaintiffs' witnesses, she had silicone in her lymphatic system. As a result, the plaintiff's counsel argued that she had an increased risk of developing autoimmune diseases.

During the summer of 1991, Dow Corning released in excess of 300 studies to the FDA. However, the FDA was unsatisfied and asked for more information by early fall. The agency felt that the data failed to convincingly show either the danger or safety of saline implants. In November 1991, the FDA brought together its General and Plastic Surgery Devices Panel (GPSDP), made up of a broad range of experts, including representatives from the fields of plastic surgery, oncology, epidemiology, internal medicine, immunology, radiology, pathology, gynecology, toxicology, and biomaterials, as well as individuals from private industry and consumer groups. The diverse panel's task was to study all of the safety data from the manufacturers' PMAs. The GPSDP's purpose was to instruct the FDA as to what it could say to the public regarding the effectiveness and safety of the silicone breast implants. The panel concluded that there was not enough data concerning the dangers and benefits of the implants. Hence, the GPSDP recommended that the devices remain on the market, but with limited availability. Additionally, the panel stated that there was a need for more safety data. In December 1991, several documents, including internal memos and studies from the *Stern* lawsuit and new studies recently obtained from Dow Corning, were turned over to the FDA. By the end of 1991, over 100 lawsuits had been filed against Dow Corning alone. During this period, certain segments of the scientific community questioned the allegations regarding the efficacy and safety of silicone implants. These individuals argued that irrational decisions were being made based on hysteria, not science, and that evidence was absent on both sides of the debate. Additionally, in early 1992, a class-action lawsuit was filed to compensate plaintiffs more quickly.

In early 1992, the FDA commissioner asked that manufacturers voluntarily halt the distribution of silicone breast implants, until the FDA and the advisory panel had a chance to evaluate recently obtained data. The manufacturers agreed. By February 1992, the GPSDP met again to assess the new information regarding the safety of saline implants and recommended that the further use of implants be restricted to only breast reconstruction. Additionally, the panel stipulated that individuals receiving the implants participate in scientific protocols and that epidemiologic studies be undertaken to evaluate the dangers of autoimmune disease. The panel stated that no causal link had been established between autoimmune disease and silicone breast implants. That same month, many of the internal Dow documents were released publicly. That April, the FDA lifted the moratorium on silicone breast implants, but with restrictions. The only individuals permitted to receive silicone implants were those having breast reconstruction, and all of these individuals were mandated to participate in a scientific protocol.

By late 1993, over 12,000 cases had been filed against Corning, and by the end of 1994, that number would swell to almost 20,000. As the class-action suit moved forward, damages in one case amounted to $5 million in actual damages, and $20 million in punitive damages. Unlike actual damages, which compensate a plaintiff for the losses suffered because of the harm caused by the defendant, punitive damages are different. Punitive damages are monetary compensation awarded to a plaintiff in excess of that which is necessary to compensate the plaintiff for losses. These damages are awarded by the jury, intended to punish the defendant for outrageous misconduct, and are designed to discourage the defendant and others from similar misbehavior in the future. These damages are based on the theory that the interests of society and the individual harmed can be met by imposing additional damages on the defendant.

The nature of the wrongdoing that justifies punitive damages is not an explicit stipulation under the law. Rather, the usual terms that characterize conduct justifying punitive damages include fraud; malice; oppression; outrageous, wanton, or reckless behavior; and bad faith. These aggravating circumstances usually refer to situations in which the defendant acted with malice, intent, and/or with total disregard for the rights and interests of the plaintiff. Unless otherwise required by statute, the award of punitive damages is left to the discretion of the jury. In early 1994, a jury awarded three women who claimed that they were suffering from atypical lupus, neurological impairment, and autoimmune problems related to silicone exposure a total of $27.9 million. The damages were awarded as follows: $15 million in punitive damages and $12 million in compensatory damages for illness. In 1994, the major breast implant manufacturers, including Corning and Bristol-Meyers Squibb/MEC, settled the class-action litigation for $3.4 billion. At the time, it was the largest class-action lawsuit in history. By 1995, Dow Corning, facing close to 20,000 lawsuits, filed for bankruptcy.

The manufacturers and certain segments in the scientific community attacked the expert witnesses utilized by plaintiffs as well as the methodology that they relied upon and the causal conclusions that they reached. These individuals argued that the evidence was circumstantial and failed to show that the implants caused the autoimmune disorders. In June 1994, the *New England Journal of Medicine* published a study conducted by the Mayo Clinic that found no increased risk of certain autoimmune diseases in women with silicone implants. Moreover, the American College of Rheumatology made a powerful public statement in 1995 that silicone implants did not cause systemic disease.

By early 1996, more than 20 abstracts and (non–case report) studies had come out in the United States and internationally. Every one failed to sustain a causal relationship between autoimmune diseases and silicone implants. By this time, the judiciary was also refining the permissible scientific standards utilized in this type of litigation, which hindered plaintiffs. Specifically, several federal judges appointed unbiased, expert panels to evaluate the scientific issues involved in breast implant lawsuits. In the late 1990s, several judges ruled that the cases could not proceed because they lacked valid scientific evidence. In 2006, the FDA conditionally lifted its restrictions for two corporations to use silicone-gel breast implants for breast reconstruction and augmentation mammoplasty.

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See Also: Consumer Deaths; Dow Chemical Co.; Food and Drug Administration, U.S.; Health Care Fraud; Medical Malpractice; Pharmaceutical Industry.

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Bre-X Minerals Ltd.

Bre-X Minerals Ltd. was a small Canadian gold exploration company that committed the world's biggest mineral stock fraud in history. Bre-X became the star of investors in the gold industry after it announced a major gold deposit discovery—perhaps the largest ever discovered—in properties it was mining in the Busang area on the island of Borneo in East Kalimantan, Indonesia. It was later discovered that little, if any, gold was actually found on these properties. Some people, including insiders, became quite wealthy from the stock play. The Bre-X fraud has been the subject of at least six books published about the scandal.

Fool's Gold: A Tale of Deception

Early in 1988, David Walsh, a volatile penny stock promoter, founded Bre-X Minerals Ltd. and listed it on the Alberta Stock Exchange at 30 cents per share in 1989. In 1993, in desperate need of raising money, Walsh flew to Indonesia and met John B. Felderhof, a Jakarta-based mining consultant, who recommended exploration of gold at the Busang Creek in Indonesia. Walsh appointed Felderhof as Bre-x'S chief geologist and general manager, who later hired his friend Michael de Guzman as the project manager. In August 1993, Bre-X started its gold exploration in Busang and soon claimed promising results.

Bre-X kept raising the amount in the potential deposit each year. By 1995, the company was claiming that the deposit could contain more than 30 million ounces of gold. By early 1997, it claimed to have proven the existence of 71 million ounces of gold, worth about CAD$25 billion, and estimated that there were at least 200 million ounces present at Busang. On the basis of these claims, Bre-X stock increased in value from a worthless penny stock to CAD$28 per share (CAD$280 presplit of 10-for-1) by May 1996. At its peak, the company had a net market worth of over $6 billion. To produce such a huge deposit, the Indonesian government required that Bre-X share some of the excess with the people of Indonesia and with Barrick, a firm tied to President Suharto's ambitious daughter, Siti Rukmana. In February 1997, with Suharto's close confidant Mohamad "Bob" Hasan stepping into the deal, the American firm Freeport-McMoRan Copper & Gold was eventually selected as Bre-X's partner in the Busang project. Under the agreement, Bre-X was allocated 45 percent, Freeport 15 percent, and the Indonesian government and well-connected private Indonesian interests the other 40 percent.

In March 1997, Freeport first undertook its due-diligence drilling and reported that its analyses of seven core samples "indicate insignificant amounts of gold." That news came one week after the announced death of Bre-X's geologist Michael de Guzman, who reportedly fell to his death from a helicopter while traveling to Busang to meet with Freeport's due diligence team to discuss Freeport's assay results. Forensic Investigative Associates was hired by Bre-X to conduct an independent investigation into the salting scam and concluded that de Guzman and a fellow Filipino, Cesar Puspos, had salted the samples from the time they were collected until they were turned over to a downriver lab for analysis. The next day, the CAD$6 billion Bre-X stock lost almost all of its value. Investors lost about CAD$3 billion; some Canadian pension funds were out tens of millions of dollars.

An independent company, Strathcona Mineral Consultants, was also commissioned to conduct an independent study of the situation. On May 4, 1997, Strathcona concluded in its report that "an economic gold deposit has not been identified in the South East Zone of the Busang property, and is unlikely to be." Strathcona confirmed that the samples had been salted with gold from other parts of the world. Walsh died in 1998 from a brain aneurysm in a Bahamas hospital. In 1999, the Ontario Securities Commission (OSC) accused Felderhof of four counts of illegal insider trading and four counts of authorizing misleading news releases. The Royal Canadian Mounted Police decided not to charge Felderhof because of its difficulty in finding evidence. Felderhof's trial began in October 2000 but faced lengthy delays because of legal battles. Felderhof's lawyer argued that the former chief geologist was unaware that the core samples had been salted, whereas the OSC stated that Felderhof ignored many signs of problems at the Busang site.

On July 31, 2007, Felderhof was found not guilty of insider trading and misleading investors. Judge Peter Hryn ruled that the "red flags" were not obvious to Felderhof and the evidence was not strong enough to convict him. The OSC decided not to appeal this decision. Although the scandal is over in criminal and quasi-criminal proceedings, investors are not satisfied by the ruling and keep pursuing civil litigation. Two lawsuits are making their slow way through the courts in Canada, while another class-action suit in Texas was dropped in 2005. The Bre-X saga has caused a massive shattering of investor confidence and has tarnished the reputation of Canada's mining industry and securities market.

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See Also: Canadian Mining Scandals; Insider Trading; Stock and Securities Fraud.

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Bribery

Bribery is one of the most ancient and well-established of white-collar crimes. Prohibitions on bribery can be found in the Bible and in virtually every criminal code that has been enacted since; it is hard to imagine a modern judicial, legislative, or other governmental system in which bribery is not criminalized. The offense reflects many of the key factors that tend to characterize white-collar criminality: Its perpetrators (whether those who give bribes or take them) are typically upper-income professionals, and bribery is normally committed in the context of sophisticated governmental or commercial activities. At the same time, bribery's harms are subtle and often attenuated, its victims are difficult to detect, and it can be difficult to distinguish from lawful gifts, campaign contributions, "rent seeking," and political horse trading. Bribery norms also differ significantly from society to society: What may be considered deviant or criminal in the West may be regarded as common practice in Russia or Africa, essential for "getting things done." Although bribery has traditionally been restricted to cases in which money or other things of value were given in return for official government acts, there is a significant modern trend toward criminalizing commercial bribery.

The precise definition of bribery varies from jurisdiction to jurisdiction. A loose characterization suggests that bribery, or corruption more generally, involves the abuse of public office (or perhaps commercial position) for personal gain. A more precise working definition can be offered, so that *X* (a bribee) is bribed by *Y* (a briber) if and only if (1) *X* accepts, or agrees to accept, something of value from *Y*; (2) in exchange for *X*'s acting, or agreeing to act, in furtherance of some interest of *Y*'s; (3) by violating some duty of loyalty owed by *X,* arising out of *X*'s office, position, or involvement in some practice.

Commentators have frequently noted the practical difficulty of distinguishing bribes from gifts, tips, rewards, and campaign contributions. In theory, the distinction is clear. Bribes involve an agreement to exchange something of value in return for influence. Gifts, tips, rewards, and donations are unilateral; they are given without any agreement to reciprocate. This is not to deny that gifts are also often given in return for some service that has already been rendered (as in the case of tips or rewards), or in expectation of receiving something in return (as in the "exchange" of family gifts at holiday time). Bribes should also be distinguished from extortion and blackmail. Bribes involve an "offer" in which the bribee is given an inducement to action: If the bribee accepts the offer, the briber will be made better off in relation to a baseline position (e.g., what the briber "deserves"). This is in contrast to extortion and blackmail, which involve a coercive threat to make a victim worse off in relation to the relevant baseline, if the proposal is not accepted.

Bribery Under American Law

The American law of bribery consists of a complex web of often overlapping statutory and regulatory provisions at both the federal and state levels. The most venerable federal bribery statute is 18 U.S.C. § 201, originally enacted in 1962, to consolidate several separate provisions. There are two separate offenses contained in Section 201: Section 201(b) covers bribery proper (punishable by up to 15 years in prison), whereas Section 201(c) covers the lesser offense of illegal gratuities (punishable by up to two years' imprisonment). To prove bribery under subsection (b), the government must show that (1) a thing of value was offered or given to, or solicited or accepted by, (2) a public official, (3) for an "official act," (4) with corrupt intent or intent to influence (or be influenced). The term *thing of value* has been read broadly to refer to a wide range of things both tangible and intangible, such as offers of future employment, unsecured short-term (and subsequently repaid) loans, restaurant meals and tickets for athletic events, ostensibly valuable (but actually worthless) stock certificates, and even sexual favors.

Another major federal antibribery statute is the Hobbs Act, 18 U.S.C. § 1951, originally enacted in 1946. The act criminalizes three distinct forms of criminal conduct: (1) robbery; (2) extortion by force, threat, or fear; and (3) extortion under color of official right. Only the third is relevant here. Extortion under color of official right constitutes the defendant's use of his or her official position to extract something of a value from the alleged victim—understood as the taking of a bribe. It is punishable by up to 20 years in prison. The most significant difference between Section 201 and the Hobbs Act is that the former applies only to bribery and gratuities involving federal officials and others exercising federal responsibilities or dealing with federal funds. Thus, a local mayor or state legislator who received a bribe not involving federal funds would not be liable under Section 201 but could be prosecuted under the Hobbs Act.

A third major federal antibribery provision is the Foreign Corrupt Practices Act (FCPA), codified in various provisions of 15 U.S.C. §§ 78m, 78dd, and 78ff. It was originally enacted in 1977, in the wake of post-Watergate efforts at government reform. The act makes it a crime to bribe foreign public officials for business reasons, and further mandates corporate recordkeeping that would reveal the payment of bribes. The statute contains both civil and criminal penalties (with a maximum penalty of 20 years in prison). In addition to these federal statutes, there is extensive state law making it a crime to offer, give, solicit, or receive bribes. As in the federal system, the main focus of state bribery enforcement is on bribes taken by governmental officials, including judges, legislators, and executive officers. State bribery law is exemplified by (and often modeled on) Section 240.1 of the Model Penal Code. The precise formulation of these laws varies significantly, as do the sentences authorized, from a maximum of up to 25 years in New York to as little as one year for misdemeanor bribery in California.

Commercial Bribery

In addition to all of the provisions criminalizing payments to government officials made in return for what are termed "official acts," recent years have also seen a trend toward broader criminalization of commercial bribery, in which payments are made to employees of private firms. Such broadening has occurred at both the federal and state levels, as well as internationally. Under federal law, the practice has been to criminalize commercial bribery only in particular industries—such as those involving subcontractors, investment advisors, television quiz shows, bank employees, alcoholic beverages, labor union officials, railroad employees, and radio disc jockeys. The practice is generally the same in the states, though there are some exceptions, most notably in New York and Texas, both of which have broad-reaching provisions that make it a crime for any employee, manager, or fiduciary to accept a benefit with the understanding that such benefit will influence the person's conduct in his place of employment.

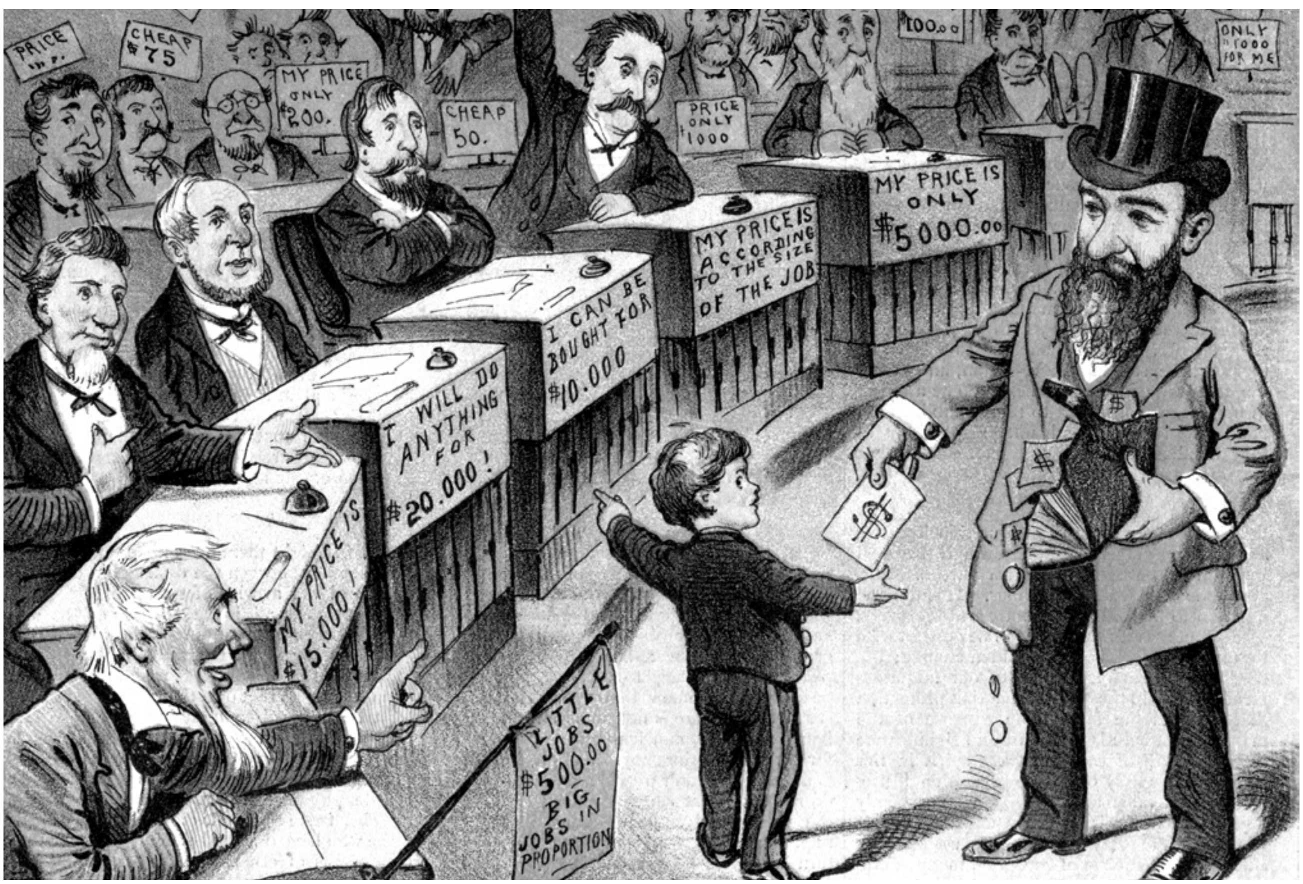
As a recent study by the International Chamber of Commerce demonstrates, commercial bribery provisions have also become more common outside the United States. The most far-reaching such statute is the U.K. Bribery Act 2010, which in referring to the various "functions and activities" within which bribery can occur, makes mention not only of functions of a "public nature," but also of activities "connected with a business" (a term defined to include trades and professions), "performed in the course of a person's employment," or "performed by or on behalf of a body of persons (whether corporate or unincorporate)." As yet, there are no reported case laws interpreting these provisions, but they would apply to a broad range of cases of what has traditionally been understood as commercial bribery.

The trend toward criminalizing commercial bribery turns on a blurring of public and private functions that has occurred in recent years. Functions that were once thought of as exclusively governmental—such as operating prisons, schools, the post office, and various utilities—have increasingly been taken over by private entities. Meanwhile, functions once viewed as exclusively private—such as banking and insurance—have in many instances become "nationalized," or at least subject to extensive government involvement. Without a genuine distinction between public and private spheres, a sharp distinction between official and commercial bribery would be unsupportable.

Harms of Bribery

Bribery is said to "corrupt" political and commercial life by inviting inappropriate grounds for decision making. It makes the decision maker unable or unwilling to determine what is in the best interest of his or her principal. Bribery creates political instability, distorts markets, undermines legitimacy, retards development, wastes resources, creates cynicism, undercuts confidence in decision-making institutions, and potentially leads to injustice, unfairness, and inefficiency. The precise nature of the harm that a given act of bribery causes will vary depending on the bribee's office, the nature of the official act that is compromised, and the constituency affected.

Cross-cultural surveys, such as those that make up Transparency International's Corruption Perceptions Index, suggest that different cultures practice and tolerate bribery and other forms of corruption to widely differing extents. There are a number of factors at work here. In some



In this illustration from the January 9, 1884, issue of Puck*, a man hands money to a congressional page to purchase the legislative services of a member of the House or Senate chamber. Congressmen display signs advertising their prices, such as, "I will do anything for $20,000," "I can be bought for $10,000," "My price is according to the size of the job," and "My price is only $5,000." Today, American bribery law, both federal and state, consists of a complex web of often overlapping statutory and regulatory provisions.*

countries, public employees are so poorly compensated that accepting bribes may be the only way for them to make a living wage. Attitudes about what is necessary to "get things done" also vary widely. For example, there are communities in which the only way to ensure police or fire protection, or to see that roads are paved, is to pay bribes to the responsible officials. One of the major goals of legislation such as the FCPA and the Organisation for Economic Co-operation and Development's (OECD) Anti-Bribery Convention is to encourage the proliferation of antibribery norms that will apply universally.

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See Also: ABSCAM; Campaign Finance; Corruption; Foreign Corrupt Practices Act; Hobbs Act; Kickbacks.

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Brown Lung

Brown lung, or byssinosis, is a form of pneumoconiosis that develops from inhalation of cotton dust. Other forms of pneumoconiosis include black lung (from coal dust), silicosis (from crystalline silica dust), and asbestosis (from asbestos fibers). Although brown lung typically results from inhalation of cotton fibers, it may also result from inhalation of flax, hemp, jute, sisal, or other plant dust fibers. In many textile factories, the fibers may also be mixed with other airborne particles such as pesticides, fungi, and bacteria. Brown lung is known by a number of other names, including occupational asthma, mill fever, Monday fever, cotton workers lung, or bract disease. Because symptoms can be similar, it is often confused with other lung diseases such as chronic obstructive pulmonary disease, asthma, or bronchitis. Symptoms include difficulty breathing, wheezing, coughing, pain, and tightness in the chest. In the early stages of the disease, workers experience mild symptoms, such as tightness in the chest on the first day back to work after a weekend, hence the name Monday fever. Increased exposure during the week results in the symptoms becoming more severe by the end of the week.

Repeated exposure over a number of years causes brown lung to become irreversible. When the disease reaches its advanced stage, the worker will be unable to perform any physical activity without experiencing acute breathing difficulties. Diagnosis is usually confirmed via X rays and by wearing pulmonary testing apparatus during the workday. The specific cause of brown lung among cotton workers is not known with certainty, but bacterial endotoxins found in cotton bract at the base of the cotton boll is the most likely cause, hence the name bract disease. Treatment usually involves eliminating exposure to cotton dust and drug therapies similar to those used to treat asthma, including antihistamines, bronchodilators, corticosteroids, nebulizers, and home oxygen therapy. Reducing exposure may lead to full recovery, provided that the disease is diagnosed before permanent damage occurs. The effects of inhaling cotton fibers have been known since the 17th century.

By 1830, medical researchers observed that textile workers were suffering from a respiratory illness that was similar to, but different from, other lung diseases like bronchitis. By the mid-1800s, medical researchers recorded unusually high death rates among textile workers. Researchers in France were calling the disease "Monday feeling" as early as 1845. By 1908, the medical evidence was mounting, although it was still referred to as cotton dust bronchitis or pneumonia.

Medical Studies

During most of this time, the textile industry strongly opposed recognition of the disease as an occupationally related illness. The condition was often attributed to tobacco smoking among workers. By 1930, other forms of occupationally related lung diseases were recognized by both the medical profession and the law. Both silicosis in 1918 and asbestosis in 1930 were recognized under the Workmen's Compensation Act in Britain as compensable occupational illnesses. In the years that followed, labor unions in Britain lobbied the British government to make brown lung a compensable occupational illness. They were emboldened by the release of two British government-sponsored Medical Research Council studies released in 1930 and 1932, showing a connection between cotton dust and brown lung. The British government resisted adding brown lung to the list of compensable diseases under the act because it feared that the Great Depression left it unable to spend public money on compensation for a disease that could not be shown to be a result of any on-the-job accident. After yet another study in 1939, the British government made brown lung a compensable illness under the Worker's Compensation Act.

In the United States, public health officials campaigned in the 1930s in Georgia and North Carolina to expose unsafe working conditions in textile factories. Their efforts were unsuccessful when they failed to gain entry to the factories to collect evidence. Despite the efforts of medical researchers and union campaigners from the 1930s onward, brown lung did not became a compensable occupational illness in the United States until 1977. The person most responsible for creating a climate to reform the law was social reformer and activist Ralph Nader. Nader is also credited with coining the name *brown lung*. Relying upon evidence compiled by U.S. medical researchers, Nader began a campaign in 1969 to create concern about brown lung.

The campaign met with strong resistance from the textile industry, which argued that the medical evidence linking cotton dust to brown lung was still inconclusive. The industry said that the disease was attributable to other causes, including smoking. During the 1970s, the textile industry contested almost 60 percent of all workers' compensation claims, and almost 90 percent of claims were dust-related. One exception to this trend was Burlington Industries. Burlington Industries cooperated with researchers, enabling research to establish a clearer link between cotton dust and brown lung, and to find more effective ways to reduce the dust hazard. With growing medical knowledge and greater pressure from the labor movement, the federal Occupational Safety and Health Act was amended in 1978, making brown lung compensable. Several states, including North Carolina in 1979, soon followed.

Reduction in the United States

The 1980s saw a dramatic reduction in new cases of brown lung in the United States. Even more dramatic reductions were seen in the 1990s. In 1990, the National Institute for Occupational Safety and Health reported that there were 36 U.S. deaths in which byssinois was a contributing factor or major cause of death. By 1999, the number had declined to 14. Overall mortality rates for deaths caused at least in part by byssinosis also dropped in 1999 to one-third of the rate in 1990. The legal battle for recognition of brown lung as an occupational disease did not end with the passage of these laws. In both Britain and the United States, the cotton industry continues resistance to the law. Brown lung also continues to be a problem in countries such as India, China, and Pakistan, where compensation is rare. Despite the mounting evidence linking cotton bract to brown lung, the Philippines Department of Agriculture advocates that rather than burning cotton bract after they harvest the cotton, cotton farmers should harvest and sell it to increase their incomes. Cotton workers still sometimes find it necessary to take companies to court in order to get compensation, and the fight continues to be an irritant, as are the small payments that they receive as compensation for their illnesses.

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See Also: Asbestos; Employee Safety; Globalization; Industrial Revolution; Nader, Ralph; Occupational Safety and Health Act; Unsafe Working Conditions.

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Buffalo Creek Disaster

In late February 1972, a coal waste impoundment dam along Buffalo Creek in Logan County, West Virginia, collapsed. The resulting flood killed 125 people and caused over $50 million in damage. The disaster at Buffalo Creek remains one of America's most costly and deadly mining-related catastrophes. Following the Buffalo Creek flood, three separate investigative commissions were established. The investigations revealed that Pittson Coal Company—owners of the Buffalo Creek mine—improperly constructed the impoundment dam, known as Dam No. 3, and willfully disregarded safety concerns about Dam No. 3 and two smaller dams. The commission reports noted that West Virginia's lax regulations, inspection policies, and penalties for mine safety violators contributed to the Buffalo Creek disaster. Although Pittson Coal avoided criminal charges, three civil lawsuits filed by the flood survivors were successful. The Buffalo Creek flood led to the development of more rigorous state and federal mine safety regulations.

Coal mining was a staple in Logan County, West Virginia. The Lorado Coal Company opened the coal mine on the middle fork of Buffalo Creek in 1945. Standard practice for coal mine operations was to dispose of mine refuse, excess water, and other debris wherever was most convenient. Thus, Lorado Coal constructed a single dam, Dam No. 1, across the middle fork of Buffalo Creek to contain the wastewater, sludge, and refuse from their mining operation. In 1965, Lorado Coal sold the Buffalo Creek mine to the Buffalo Mining Company. A year later, Buffalo Mining constructed a second dam, Dam No. 2, behind Dam No. 1 to hold back additional wastewater and refuse. Investigations and complaints in the late 1960s revealed that Dam No. 1 and Dam No. 2 were both constructed without permits. However, West Virginia authorities did not shut down the mining operation. In 1970, Buffalo Mining was sold to the Pittson Coal Company, which took over the Buffalo Creek mine. Pittson Coal set to work building a larger dam, Dam No. 3, upstream from the previous two. Upon completion, Dam No. 3 stood 50 feet high and was over 450 feet across. Partial dam failures during Pittson Coal's ownership of the Buffalo Creek mine occurred in 1971 and 1972; however, the mine remained open.

The Dam Breaks

Around 8 A.M. on February 26, 1972, after several wet winter days, Dam No. 3 collapsed, releasing 132 million gallons of water, coal waste, silt, and other debris. The torrent of sludgy water destroyed Dams No. 1 and 2 and obliterated the small town of Saunders, West Virginia, located just south of the mining site. The floodwater funneled downhill through the narrow Buffalo Creek Valley, causing massive destruction to 15 additional towns before eventually emptying into the Guyandotte River, three hours and 17 miles later. In the wake of the flood, 125 people were dead or missing, including entire families; 4,000 people were injured or homeless; and over $50 million in damage had been caused. Seven people, including six children—the youngest of whom was only 3 months old when the flood occurred—were never found.

Tempers and public outrage increased following the flood, when officials from Pittson Coal deflected responsibility for the flood, deeming it an "act of God." As a result, three commissions—federal, state, and citizen—were organized to determine the cause of the dam collapse. The commissions arrived at similar conclusions: The Buffalo Creek flood was not an act of God, but was a preventable human-made disaster. The commissions determined that Pittson Coal utilized improper dam engineering and construction techniques, and failed to adequately inspect or maintain the three dams along Buffalo Creek. The commissions also determined that mining safety regulations and enforcement at the state level were lacking, likely contributing to the disastrous flood.

A West Virginia grand jury failed to criminally indict Pittson Coal. Nevertheless, two civil lawsuits filed against Pittson by flood survivors yielded favorable verdicts and damage awards of $13.8 million and $4.8 million, respectively. A third civil suit, *State of West Virginia v. Pittson Coal Company,* sought $100 million in damages on behalf of the citizens of the Buffalo Creek Valley and the state, hoping to recoup funds spent on recovery efforts following the flood. However, three days before leaving office, Governor Arch Moore, who had close ties to the coal industry within the state, agreed to an out-of-court settlement with Pittson Coal for just $1 million. The Buffalo Creek disaster encouraged the state of West Virginia to bolster oversight and mine safety regulations, culminating in passage of the Dam Control Act. Following the Buffalo Creek flood, nationwide inspections of similar waste impoundment dams were conducted. Federal mining regulations and inspections were strengthened, as were the penalties for safety violations.

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See Also: Canadian Mining Scandals; Coal Mining; Mine Safety and Health Act.

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Bureau of Consumer Financial Protection, U.S.

The Bureau of Consumer Financial Protection is an agency within the Federal Reserve System that safeguards consumers who use financial services through education, enforcement, and research. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Title X (Consumer Financial Protection Act of 2010) established the bureau on July 21, 2010; its enforcement powers commenced one year later. To distinguish itself from its legislative designation, it adopted the name Consumer Financial Protection Bureau (CFPB). The bureau consolidated duties from the Federal Reserve, Federal Trade Commission, Federal Deposit Insurance Corporation, Department of Housing and Urban Development, and elsewhere to focus on consumers, rather than financial institutions and macroeconomic policy. Although independent within the Federal Reserve, the CFPB takes its funding from that entity rather than congressional appropriations.

Challenges to the Bureau

The CFPB concept came from Harvard law professor Elizabeth Warren, and expectations were that the president would appoint her as its first director. However, many Republican senators disapproved because of perceptions about her political views and objections to the CFPB's centralized governance structure, without the board oversight typical of other agencies. When her appointment became untenable, President Barack Obama named her a special advisor for the bureau and, on July 17, 2011, nominated former Ohio Attorney General Richard Cordray as its first director. Cordray's nomination failed under filibuster on December 8, largely along party lines and because of similar objections. President Barack Obama then made a controversial recess appointment of Cordray on January 4, 2012. Republican members of Congress attempted legislatively to limit the scale and scope for the CFPB's operations, without success. On June 22, 2012, the State National Bank of Big Spring, Texas; the Competitive Enterprise Institute; and the 60 Plus Association filed suit against the CFPB to challenge the constitutionality of Cordray's appointment and the regulatory authority and funding for the bureau, on grounds of separation of powers.

The CFPB's mission is to safeguard consumer interests in using financial services by educating, enforcing, and studying issues relating to this sector. These roles promote transparent, fair, and functional markets for such services by engaging efficient and effective pricing mechanisms and safeguarding consumer autonomy. The director serves for a five-year term. Six main divisions report to him or her: the Office of the Chief Operating Officer; Consumer Education and Engagement; Research, Markets, and Regulations; Supervision, Enforcement, Fair Lending, and Equal Opportunity; General Counsel; and External Affairs. There also is an advisory board that assists in researching emerging market trends. Jurisdiction extends to banks, credit unions, securities firms, payday lenders, mortgage-service companies, foreclosure relief services, debt collectors, and other financial companies, but not to auto dealers.

The CFPB's core functions include making rules for, supervising, and enforcing federal consumer financial protection laws; restricting unfair, deceptive, or abusive practices; receiving and tracking consumer complaints and whistleblower reports; promoting education about consumer financial services; researching consumer behavior; monitoring consumer financial markets for new risks; and enforcing laws against discrimination and other unfair practices in consumer financial services. The CFPB is subject to audit by the Government Accountability Office, and jurisdiction of the Senate Banking Committee and House Financial Services Subcommittee. Its directives are subject to (an appealable) stay by a two-thirds vote of the Financial Stability Oversight Council.

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See Also: Dodd-Frank Wall Street Reform and Consumer Protection Act; Federal Deposit Insurance Corp.; Financial Industry Regulatory Authority; Reform and Regulation; Regulatory Enforcement; Truth in Lending Act.

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Bureau of Ocean Energy Management, Regulation, and Enforcement, U.S.

Inaugurated in October 2011, the Bureau of Ocean Energy Management (BOEM) is responsible for the safe and responsible exploration and development of the United States' offshore resources. It seeks to use scientifically based decision making to balance economic and environmental concerns regarding conventional and renewable energy activities on the Outer Continental Shelf (OCS).

Interior Secretary Ken Salazar signed a secretarial order in May 2010 to split the Minerals Management Service (MMS) into three independent organizations: the BOEM, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue. Before the division, the MMS oversaw the functions of the newly created BOEM. Critics claimed that the MMS was unable to sufficiently fulfill its mission to protect natural resources because of close ties to industry and pressure to generate and collect revenue from offshore drilling and development activities. Criticism increased after the tragic 2010 BP Gulf oil spill in the Gulf of Mexico created unprecedented environmental damage and disruption to economic activities on the coast. Given pressure to maximize revenue from offshore leases, critics argued, the MMS failed to adequately fulfill its duties to promote safety and protect the environment. With three independent bureaus, the competing missions would no longer be housed, and possibly undermined, in a single agency.

The BOEM reviews oil and class exploration and development plans, conducts auctions for offshore leases, conducts environmental studies, and supports the New Energy Frontier initiative to promote the use of renewable energy resources and decrease the country's dependence on foreign oil supplies. Additionally, the bureau performs National Environmental Policy Act (NEPA) analysis. Three primary divisions constitute the BOEM: the Office of Strategic Resources, Office of Renewable Energy Programs, and Office of Environmental Programs. The Office of Strategic Resources tracks inventories of oil and gas reserves, determines resource potential, and develops leases and permits for geological and geophysical activity. These functions help provide the country access to energy and necessary resources and ensure that developers provide fair compensation for access to OCS resources.

The Office of Renewable Energy Programs promotes environmentally friendly energy resources, such as wind farms off the Atlantic Coast, and facilitates the development of new renewable energy activities. The Office of Environmental Programs, led by the Chief Environmental Officer, conducts and oversees environmental impact assessments to ensure that renewable and conventional resource development is conducted in an environmentally responsible manner. Three regional offices, in New Orleans, Louisiana; Camarillo, California; and Anchorage, Alaska, support the work conducted by the BOEM in Washington, D.C., its primary headquarters. Although the BOEM and BSEE are independent, they carefully coordinate their operations and share some administrative functions to ensure efficiencies and reduce costs.

Although the nascent bureau is still establishing its scope, Director Tommy P. Beaudreau anticipates that the BOEM will continue to focus on three priority areas: managing the OCS Oil and Gas Leasing Program, which provides new offshore areas for exploration and development; increasing the rigor of scientific and environmental analysis; and reducing the use of categorical exclusions. These categorical exclusions allowed offshore sites exemption from post-lease environmental assessments. The bureau also ensures that U.S. taxpayers receive a fair return for the exploration and development of OCS areas. It has reviewed and increased bid rates for leases and has created incentives for timely drilling, as well as provisions for early relinquishment of leases if the lessee is unlikely to undergo development of the area. The BOEM also reviews exploration and development plans rigorously, efficiently, and transparently while maintaining strong standards. Furthermore, the bureau intends to focus on greater leasing and development for renewable energy resources. Focus on these primary areas, the BOEM contends, will allow it to successfully promote development of the OCS while protecting the ocean environment, marine life, and the coast.

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See Also: Bureau of Safety and Environmental Enforcement, U.S.; Gulf of Mexico Oil Spill; Minerals Management Service, U.S.; Office of Natural Resources Revenue, U.S.; Regulatory Enforcement.

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Bureau of Safety and Environmental Enforcement, U.S.

An agency of the Department of the Interior, the Bureau of Safety and Environmental Enforcement (BSEE) is mandated to foster safety, safeguard the environment, and conserve resources in the exploration and development of energy activities on the U.S. Outer Continental Shelf. It has regulatory and enforcement authority that outlines the legal expectations for companies operating offshore, and it imposes civil and criminal penalties for violations. The BSEE was created in 2010 by Ken Salazar's Secretarial Order 3299 in response to the tragic explosion at BP's Deepwater Horizon drilling platform that killed 11 men working on the rig and injured 17 others. In addition to the human cost, the explosion caused the largest oil spill in U.S. history, a leak of almost 200 million gallons of oil in the Gulf of Mexico, creating an unprecedented environmental catastrophe that affected marine life and industries along the coast, the consequences of which were still unfolding more than two years later.

Prior to Salazar's order, the Minerals Management Service (MMS) had responsibility not only for offshore safety and environmental protection, but also for energy development and royalty and revenue collections. Critics of the MMS observed that the three distinct missions of the agency conflicted and compromised its ability to create and enforce safety and environmental standards. An *ABC News* audit of federal records showed an alarming record of worker injuries and deaths, as well as violations of safety protocols with little to no punishment levied on the oil companies involved in the transgressions. When fines were imposed by the MMS, the amounts were so small that they had little punitive affect, and often it took the agency years to collect them. The *New York Times* reports that the MMS allowed oil companies to drill offshore without the necessary permits from the National Oceanic and Atmospheric Administration that assess the impact of drilling on endangered species and marine mammals. Furthermore, agency scientists who expressed concern about drilling activities were overruled by agency officials. Observers noted that the demand to generate and collect revenue through energy development activities undermined the agency's ability to effectively and vigorously regulate safety, health, and environmental standards.

To correct these deficiencies, the reorganization of MMS outlined in Secretarial Order 3299 created three independent agencies with separate, distinct missions. In addition to the BSEE, the order established the Bureau of Ocean Energy Management, which is responsible for resource evaluation, planning, and other leasing-related activities; and the Office of Natural Resources Revenue, which is responsible for all royalty and revenue management, including collection and distribution of revenue, auditing and compliance, and asset management. With independent charges, each of the three new agencies has a clear focus with consistent responsibilities.

A worker cleans up oily waste on Elmer's Island, just west of Grand Isle, Louisiana, May 21, 2010, after the blowout of the Deepwater Horizon oil rig a month earlier. The U.S. Bureau of Safety and Environmental Enforcement was created in response.

The BSEE, charged with safety and enforcement, provides oversight of safety and environmental protection in all offshore energy activities through several key programs. The Offshore Regulatory Program develops standards and regulations in offshore exploration and development of oil and natural gas; the Oil Response Division creates guidelines for oil spill response plans, helps produce and review the agency's oil spill response activities, and oversees oil spill drills; and the Environmental Compliance Division provides oversight and ensures that operators on the Outer Continental Shelf comply with regulations and specifications outlined in leasing permits. Finally, the National Training Center offers training for new inspectors and continuing education for experienced personnel. Regional BSEE offices are housed in New Orleans, Louisiana; Camarillo, California; and Anchorage, Alaska, and these offices review permits to drill, confirm that operators comply with safety requirements, conduct inspections with the authority to issue fines for any regulatory infractions, and investigate accidents related to offshore energy activities.

Since BSEE was formed, it has issued new regulations, conducted announced and unannounced drills, and hosted forums with representatives from government agencies, the oil industry, consultants, trainers, and equipment manufacturers to share knowledge and best practices. The agency is particularly concerned with instituting procedures and promoting practices that will prevent or contain future oil spills like the disaster in the Gulf of Mexico. Many of its exercises and activities contribute toward this goal. However, the agency has also been criticized for issuing controversial permits, such as those that allow Shell Oil Company to drill in the ecologically fragile region off the coast of Alaska.

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See Also: Bureau of Ocean Energy Management, Regulation, and Enforcement, U.S.; Gulf of Mexico Oil Spill; Minerals Management Service, U.S.; Office of Natural Resources Revenue, U.S.; Regulatory Enforcement.

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Bush, George H. W.

George Herbert Walker Bush (1924–) rose to the presidency through the ranks of American national government. After he served as a U.S. Navy pilot during World War II, Bush soon embarked on a sterling career in national politics spanning some 25 years. He started as a Republican in the late 1960s, culminating in his election in 1988 as the 41st president of the United States. However, Bush's alleged involvement in some white-collar criminal activities during the latter part of his career stirred some controversy regarding his service in government. Bush attended Yale University, like his father Prescott, and was a member of the secret society Skull and Bones. Bush's first foray into national politics was as a U.S. congressman from Texas, serving two terms. From there, he went on to become ambassador to the United Nations (UN), chair of the Republican National Committee during the Watergate scandal, an unofficial ambassador to China, director of the Central Intelligence Agency (CIA), vice president under Ronald Reagan, and president of the United States.

Bush's public record vis-à-vis white-collar crime, particularly his alleged involvement, stems in many ways from his unique background and his ability to avoid responsibility. For instance, when Bush was director of the CIA, the agency engaged in drug trafficking and political assassination. When a Chilean dissident leader was killed by a car bomb in Washington, D.C., in 1976, the CIA—under Bush—prepared a false report that intentionally misled an investigation by the Federal Bureau of Investigation (FBI). In 2000, a report to Congress found the architect of the assassination to be a Chilean intelligence chief who was on the CIA payroll during Bush's directorship. Upon Bush's election to the vice presidency in 1980, he began receiving intelligence reports and participated in President Reagan's daily briefings and cabinet meetings. Such a central role, however, did not bode well for Bush once the Iran-Contra scandal unfolded in 1986. This scandal concerned illegal funding of anticommunist rebels in Nicaragua, but an ensuing investigation was unable to unearth enough evidence to indict Bush. His ability to impede the investigation and disregard certain unenforceable laws helped shield him from prosecution.

After the fall of the Berlin Wall in 1989, a summit was held in 1991, at which Bush and Mikhail Gorbachev signed the Strategic Arms Reduction Treaty (START I). The treaty, which took nine years to formulate, reduced both countries' strategic nuclear weapons as well as the Soviets' land-based intercontinental ballistic missiles. Once the Soviet Union dissolved in 1991, Bush and Gorbachev affirmed a strategic partnership between their respective countries, capping an end to the Cold War. At about the same time that the Berlin Wall came down in late 1989, Bush ordered an invasion of Panama to depose its leader, General Manuel Noriega. A dictator and a drug trafficker, Noriega had a history of ties to the U.S. government. As vice president in the 1980s, Bush had worked with Noriega, who was on the CIA payroll—being paid more than $100,000 a year—during the Iran-Contra scandal for use of his drug trade in order to provide arms to the U.S.-backed Contras. Disclosure of Bush's criminal ties to Noriega played a key role in the decision to invade Panama. Once Noriega surrendered, he was tried and convicted in 1992 on racketeering and drug trafficking charges.

In August 1990, another dictator, named Saddam Hussein, invaded his oil-rich neighbor, Kuwait. Bush condemned the invasion, forming a broad coalition of over 30 countries in opposition to Iraq. With the UN Security Council opposed to Iraq's aggression, Congress authorized the use of military force. Coalition forces began a four-week aerial assault in January 1991, followed by a ground offensive (led by General Norman Schwarzkopf) that Bush stopped after a mere 100 hours. Before leaving office after his defeat to Bill Clinton in the 1992 presidential election, Bush pardoned seven high-ranking government officials who were all involved in the Iran-Contra scandal. Four of the officials were pardoned after they were convicted of felony and misdemeanor counts of crimes ranging from perjury to obstruction of a congressional grand jury investigation. Two others had been indicted and were awaiting trial when they were granted rare pretrial pardons from Bush. A final official was indicted but protected from prosecution because of Bush's refusal to release classified information regarding the official's involvement in the scandal, leading to dismissal of the case.

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See Also: Criminal Facilitation; Iran-Contra Affair; Political Assassinations; Racketeering; Reagan, Ronald.

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Bush, George W.

George Walker Bush (1946–) was the 43rd president of the United States, from 2001 to 2009, and the 46th governor of Texas, from 1995 to 2000. He is the second president to have been the son of a former president, the first being John Quincy Adams. Bush was elected president in 2000 in a close and controversial election, becoming the fourth president to be elected while receiving fewer popular votes nationwide than his opponent. He received 543,895 fewer individual votes than opponent Al Gore nationwide but won the election by receiving 271 electoral votes to Gore's 266. In 2004, Bush commanded broad support in the Republican

Party and did not encounter a primary challenge. In the election, Bush carried 31 of 50 states against John Kerry, receiving a total of 286 electoral votes. He won an outright majority of the popular vote (50.7 percent to his opponent's 48.3 percent). The last previous president to win an outright majority of the popular vote was Bush's father, in the 1988 election. Bush's 2.5 percent margin of victory was the narrowest ever for a victorious incumbent president, breaking Woodrow Wilson's 3.1 percent margin of victory against Charles Evans Hughes in the election of 1916. Bush set out to be the "enforcer" against white-collar crime during his time in the White House. During Bush's terms, the Corporate Fraud Task Force was created, and the Sarbanes-Oxley Act was passed. Despite these efforts aimed at combating white-collar crime, many of Bush's opponents still accused him of letting the "big fish" of corporate crime go free.

Heightened Interest in White-Collar Crime

Public interest in white-collar crime increased astronomically following the 2001 exposure of Enron executives' illegal activities. Increased public awareness of white-collar crime acted as a catalyst for action in Washington. Bush led the attack against white-collar crime with the creation of the Corporate Fraud Task Force. Corporate fraud is defined by the U.S. Department of Justice as including criminal and civil violations relating to securities and commodities fraud, financial institution (bank) fraud, money laundering, tax offenses, and bribery of foreign officials. Officially established through the issuance of Executive Order 13271 of July 9, 2002, the Corporate Fraud Task Force created a union between a wide array of agencies, including the Department of Labor, the Commodities Futures Trading Commission, and the Federal Reserve, with the goal of using the full weight of the law to expose and root out corruption. According to Department of Justice records, the Corporate Fraud Task Force obtained 1,236 corporate fraud convictions, including those of 214 chief executive officers/presidents, 53 chief financial officers, 23 corporate counsels, and 129 vice presidents.

Bush also supported passage of the Sarbanes-Oxley Act (also known as the Public Company Accounting Reform and Investor Protection Act in the Senate and Corporate and Auditing Accountability and Responsibility Act in the House) in July 2002, which created new offenses, mandated severe penalties for criminal offenses, and held corporate executives criminally responsible for their companies' accounting. The new guidelines from the Sarbanes-Oxley Act immediately reduced the possibility of probationary sentences, increased prison time, and decreased judges' discretion during sentencing. The Sarbanes-Oxley Act and the Corporate Fraud Task Force are valued by many as effective tools in the attack against white-collar crime.

Republican administrations have long been accused of being lenient toward corporate crime. Though the creation of the Corporate Fraud Task Force and the passage of the Sarbanes-Oxley Act were both steps in the direction of accountability, both have their critics. The Corporate Fraud Task Force was criticized of being merely a think tank, not able to take action. The Sarbanes-Oxley Act added stronger punishments for those convicted but also faced the issue of enforcement. States have highlighted this fact by beating the federal government to prosecution because of the federal government's lack of manpower. Detractors of the Sarbanes-Oxley Act have also contended that it was an unnecessary and costly government intrusion into corporate management that places U.S. corporations at a competitive disadvantage with respect to foreign firms, driving businesses out of the United States. The Bush administration's struggles with prosecution left many questioning whether the Corporate Fraud Task Force and the Sarbanes-Oxley Act had any effect on white-collar crime.

On the flip side of Bush's desire to be an enforcer against white-collar crime was his potential involvement in certain political controversies. The passage of the USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) following the terrorist attacks of September 11, 2001, had been plagued with controversy from the start. Opponents of the act were vocal in asserting that it was passed opportunistically after the 9/11 attacks. Provisions of the act, opponents say, violated many of the basic rights guaranteed under the Constitution—namely, the protection under the Fourth Amendment against unreasonable search and seizure. There was particular consternation about this with regard to National Security Letters, which allowed the Federal Bureau of Investigation to search telephone, e-mail, and financial records, without a court order. Another controversy that plagued the Bush administration was the government response to Hurricane Katrina. Although President Bush was criticized for not returning directly to Washington, D.C., after Katrina hit, the main criticisms the administration faced were about the Federal Emergency Management Agency (FEMA). FEMA was heavily criticized from both sides of the aisle, primarily for its slow response and inability to coordinate efforts with other federal agencies and relief organizations. FEMA was accused of deliberately slowing down the relief effort to ensure that all assistance and relief workers were coordinated properly. For example, warehouses in New Orleans burned while firefighters were diverted to Atlanta for FEMA training sessions on community relations and sexual harassment, and water trucks languished for days at FEMA's staging area because the drivers lacked the proper paperwork.

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See Also: Bush, George H. W.; Corporate Criminal Liability; Enron Corp.

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Butcher Brothers

Brothers Jake (1936–) and C. H. Butcher (1939–2002) became well known in the late 20th century for perpetuating massive bank fraud in their home state of Tennessee and in the neighboring state of Kentucky, ultimately leading to the failure of 12 banks, forced sales of other banks, prison terms, and destroyed lives and fortunes.

Rags to Riches

The brothers grew up in Dotson's Creek. Their father, Cecil H. Butcher, Sr., served as president of the Union County Bank and managed a general store. Their early years were spent on a farm that had no indoor plumbing, and Jake Butcher later blamed that experience for his desire for a lavish lifestyle. The more flamboyant and older of the brothers, Jake was a prominent figure in Knoxville and in Tennessee more generally. As the chair of the board of the Knoxville International Energy Exposition, he was the key figure behind the World's Fair held in the city in 1982. He was also a major figure in state political circles and unsuccessfully ran for governor in 1978. He was accused of trying to buy the election, spending $2.5 million in the primary. He flaunted his wealth, and his supporters sported T-shirts proclaiming "IT'S NO SIN TO BE RICH." Much was made of his close ties to key Democrats such as Jimmy Carter of Georgia even before Carter became president of the United States.

After attending the University of Tennessee and Hiawassee College and serving in the Marines, Jake Butcher returned to Tennessee, where he founded the Bull Run Oil Company and engaged in commercial farming before going into the banking business. He married actress Sonya Wilde in 1962 and had four children. As head of United American Bank (UAB), he eventually owned 39 percent of all banking reserves in Knoxville, and half of all business loans in Knoxville were financed through UAB, which had taken over the Hamilton National Bank, the largest bank in Knoxville, in 1974. The Butchers created a $3 billion banking empire that exsisted chiefly on paper. Jake Butcher built the 27-story United American Plaza, which is still the highest building in Knoxville. C. H. erected the 23-story Riverview Tower to house his City and County Bank.

Riches to Rags

The Butcher brothers' banking empire began to crumble as the World's Fair ended its successful six-month run. On November 1, 1982, 100 federal regulators simultaneously descended on 29 banks and branches owned by the brothers, who had previously avoided detection by transferring loans from one bank to another just ahead of upcoming audits. The simultaneous investigations prevented the practice, and examiners uncovered entrenched patterns of fraud involving unsecured loans, forged documents, and paper corporations. Jake Butcher was accused of channeling $11.5 million in loans to himself, his brother, and their associates, and of lying to his creditors. By February, Jake Butcher's UAB had failed, and other Butcher banks followed. Losses were estimated at $382.6 billion. Jake Butcher was also bankrupt, reporting liabilities of $32.5 million and only $11.9 million in assets. Those assets including his beloved mansion, Whirlwind, were sold at public auction to offset his liabilities. Both brothers were ordered to continue paying restitution for the rest of their lives.

After pleading guilty to bank fraud in 1985, both Jake and C. H. Butcher were sentenced to 20 years in a federal penitentiary. C. H.'s wife, Shirley, was sentenced to three years for bankruptcy fraud, but served only three months. Jake Butcher served seven years before returning to Tennessee and making his home in the Chattanooga area, working for a friend at a Toyota dealership and developing real estate. C. H. Butcher was paroled in 1993. Attempting to maintain a low profile, he moved to Canton, a city north of Atlanta, where he worked in a law firm. He died in 2002 after a fall at his home. In addition to wiping out the Butcher brothers' business and personal assets and sending the brothers to jail, the scandal had major repercussions in Tennessee and Kentucky, destroying the lives and fortunes of a number of people and sending several of their confederates to prison. Those indicted included Tennessee congressman Harold Ford, who was later acquitted, and prominent attorney Karl A. Schledwitz, who was convicted of mail fraud. Several individuals committed suicide as their lives unraveled in the wake of the scandal. The scandal continues to draw public attention.

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See Also: Bank Fraud; Carter, Jimmy; Forgery; United American Bank.

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C

Campaign Finance

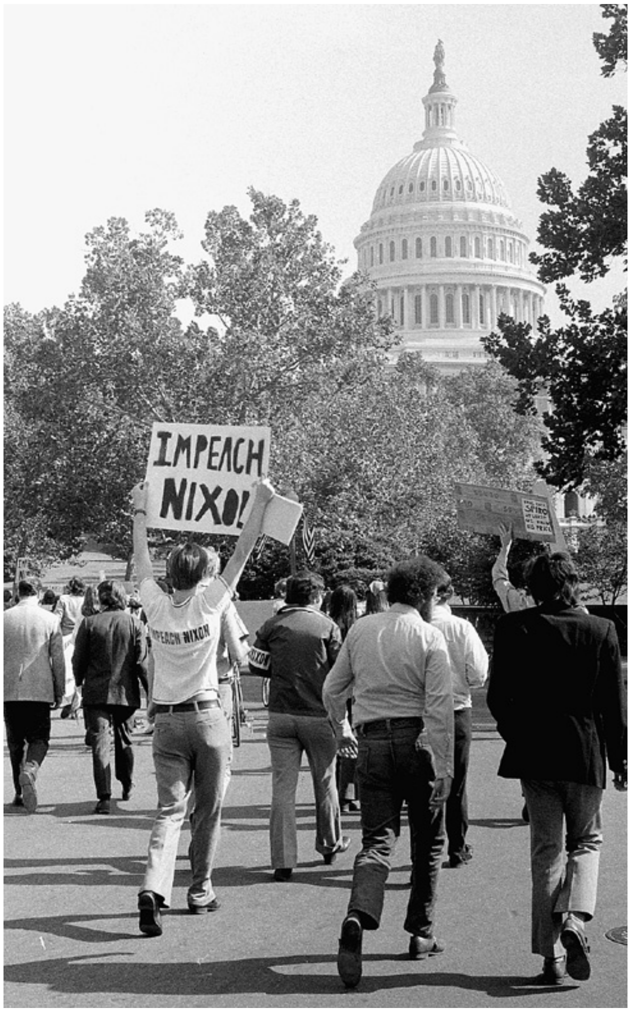
Campaign finance encompasses the process whereby campaign contributions are raised and spent to support or oppose candidates for political office, as well as particular issue positions. Campaign finance, which is integral to the democratic process, has undergone a series of reforms throughout history.

Beginning in the mid-19th century, various political figures have spoken openly about the potential for money to corrupt the political process and have set out to tackle the problem. The earliest federal campaign reform occurred in 1867, with the passage of the Naval Appropriations Bill. A provision in this bill prohibited government workers from asking naval yard employees for campaign donations. Subsequently, restrictions were placed on the types of entities that could contribute to political campaigns. The Civil Service Reform Act of 1883 set out to ease the pressure on federal civil servants to contribute to campaigns, and the Tillman Act of 1907 stated that corporations and interstate banks could not make direct contributions to federal candidates. In 1943, the Smith-Connally Act expanded the scope of the Tillman Act to include labor unions. In 1947, these restrictions were expanded to encompass contributions made during the primary season, as opposed to just the general election.

Federal Election Campaign Act

The Federal Election Campaign Act (FECA) became law in 1971 and was amended in 1974, 1976, and 1979. The act had a number of far-reaching goals, ranging from the public disclosure of campaign finance records to establishing the use of public funds in campaigns. The original act of 1971 limited the amount of money that candidates and the family members of candidates could infuse into their campaign coffers. The act also made it legal for labor unions and corporations to establish political action committees that could be used to raise and spend funds on candidates running for office. However, these organizations were still prohibited from using funds in their general treasuries for the same purpose. In the same year as FECA was passed, the Revenue Act established a public campaign fund whereby taxpayers could voluntarily check a box on their federal income tax returns in order to make a contribution toward eligible presidential candidates.

Subsequent amendments to FECA were generated in reaction to the Watergate scandal, which involved the misuse of funds from Richard Nixon's Committee to Re-Elect the President, and in response to the U.S. Supreme Court ruling in *Buckley v. Valeo* in 1976. These amendments established contribution limits on individual donors and political action committees. In addition, public funds were made available for



A demonstrator in Washington, D.C., holds up an "Impeach Nixon" sign, October 22, 1973. President Nixon's misuse of campaign funds was one major impetus for the subsequent amendments to the Federal Election Campaign Act.

presidential nominating conventions, as well as the primaries and general election. However, candidates who agreed to accept these public funds also had to accept spending limits during the campaign process. A six-person bipartisan Federal Election Commission was established to enforce the various restrictions and provisions.

Bipartisan Campaign Reform Act

Following the passage of FECA, the next major campaign finance reform was the Bipartisan Campaign Reform Act (BCRA). This act was passed by Congress in 2002 and is often referred to as the McCain-Feingold law for the two senators, John McCain (R-Arizona) and Russ Feingold (D-Wisconsin), who sponsored the legislation. This act prevented national party committees and federal candidates from soliciting soft-money contributions. The BCRA also restricted state and local party committees and candidates from using soft money on campaign communications that support or oppose political candidates. The act raised federal contribution limits to candidates and parties in an effort to offset the loss of soft-money funds. These reforms came in the wake of political parties increasingly directing soft-money funds away from voter mobilization and voter registration efforts, and toward issue advertisements that promoted party positions and implied support for particular political candidates. These reforms were intended to regulate this practice and were largely upheld in *McConnell v. Federal Election Commission* in 2003.

Recent Judicial Rulings

In 2009, the U.S. Supreme Court heard oral arguments in the case *Citizens United v. Federal Election Commission.* In this case, Citizens United, a nonprofit organization, produced a documentary film titled *Hillary: The Movie* that portrayed Hillary Clinton's record and character in a negative light. The group intended to use funds from its general treasury to pay for advertisements promoting the film during the presidential primaries. The case reached the U.S. Supreme Court on appeal from a 2008 lower-court ruling that declared this promotion a violation of the Bipartisan Campaign Reform Act. The lower court held that these advertisements were electioneering communications. Electioneering communications are defined as broadcast communications that occur within 30 days of a primary election or 60 days of a general election and discuss a candidate for federal office. In a reversal of earlier Supreme Court precedents and the lower-court ruling, justices of the Supreme Court ruled 5–4 that prohibiting these expenditures was a violation of the First Amendment right to free speech. This ruling gave corporations and labor unions the same political speech rights as individuals. As a result of this ruling, labor unions and corporations can now use their general treasuries to fund these advertisements, whereas earlier, they were limited to using their organizations' political action committees. In addition, nonprofit organizations can now use corporate or union funds to air electioneering communications, whereas earlier this was prohibited.

Another major change to the campaign finance landscape involves the creation of Super PACs, or independent expenditure-only committees. This development stems from a ruling by the federal court of appeals for the District of Columbia circuit in 2010. In *SpeechNow.org v. Federal Election Commission*, SpeechNow.org, an unincorporated association, wanted to create advertisements that would call for the election or defeat of candidates for federal office. In addition, SpeechNow.org also wanted to be granted the power to raise unlimited donations from individual donors to fund these communications. The appeals court ruled that limiting contributions to these groups was a violation of the First Amendment. Following these rulings, a new type of political action committee was created, known as a Super PAC. A Super PAC can raise and spend unlimited amounts in order to fund materials that advocate for or against a candidate. However, these groups cannot donate money directly to nor communicate directly with a political candidate. At the inception of these organizations, 80 Super PACs were formed, and by 2012, the number of registered groups had grown to just over 800.

Questionable Campaign Finance Practices

A number of political candidates and officeholders have been embroiled in controversy over dubious campaign finance practices. In some cases, former candidates have been brought to trial or charged with campaign finance violations. For instance, Tom DeLay, the former U.S. House majority leader, was charged with money laundering for using a political action committee to illegally guide corporate contributions to state house candidates in Texas.

The last three U.S. presidents, Bill Clinton, George W. Bush, and Barack Obama, all returned contributions when it was revealed that some of their total campaign receipts came from donors who had criminal backgrounds or questionable business practices. In addition, each of these presidents received a great deal of negative press for rewarding campaign contributors with access to state dinners and coffee meetings, trips to Camp David, and overnight visits to the White House. In addition, major campaign contributors and campaign workers historically have been appointed to positions of influence within the executive branch when their candidate was successfully elected to office. These practices have led some to decry the influence of money in politics and to push for a new series of reforms.

Opposition and Support for Reform

Opponents of campaign finance reform argue that campaign donations are a form of political speech and that they give individuals, corporations, labor unions, and other donors an opportunity to express their preferences and to become more politically involved. They argue that this involvement might be manifested in two ways. First, if political donations are concentrated on efforts to get out the vote, turnout rates may increase, leading to higher levels of citizen participation in the democratic system. Second, when money is used to communicate ideas and information about policies and candidates, citizens may become better informed and more capable of voting in a manner that is consistent with their beliefs. On the other hand, proponents support reforms to the system of campaign finance because they feel that money distorts the democratic process in a number of ways. Proponents argue that campaign finance has become too central to the campaign process and officeholding. The need to raise money may distract politicians from other tasks, such as the creation of good public policy. Proponents are also concerned that the increasing centrality of money in campaigns has created a climate of political inequality. They argue that candidates who lack financial resources are at a genuine disadvantage in the electoral process and that donors with greater financial resources may be able to provide undue influence on election outcomes. Thus, proponents advocate greater reform in the hope of eliminating loopholes and reducing the appearance of corruption.

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See Also: Bush, George W.; Clinton, William J.; Corruption; DeLay, Tom; Nixon, Richard M.; Obama, Barack; Unions.

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Canadian Mining Scandals

Canada has one of the world's largest mining industries, and mining is a significant component of the country's economy, contributing almost $40 billion to the country's gross domestic product. Canada is the world's largest producer and exporter of potash and uranium, and one company, Barrick Gold Corporation, is the world's largest gold producer. The Canadian mining industry is also among the world's leading producers of aluminum, asbestos, cadmium, coal, cobalt, gypsum, nickel, titanium, and zinc.

However, this international dominance in the industry has come at great environmental, social, and human costs, both domestically and internationally. Although it generates great wealth for a relatively small number of people, the Canadian mining industry causes considerable hardship and suffering for many people through financial crime, corporate crime, environmental crime, state-facilitated and state-initiated corporate crime, and human and labor rights abuses. An industry that was built on the exploitation of child labor in the 19th century has continued the legacy of crime into the 21st century through deadly corporate violence, financial wrongdoing, and environmental degradation.

Workplace or industrial "accidents" are perhaps better understood criminologically as a form of corporate violence. Deaths at work, or as a result of work, are often not accidents but rather the predictable outcomes of unsafe and/or unhealthy work environments resulting from dangerous conditions, insufficient or nonexistent safety precautions, or improperly maintained equipment. Mining involves some of the most dangerous jobs in Canada. The mining industry's fatality rate of 46.9 per 100,000 workers ranks above that of other industries, such as forestry (33.3), construction (20.2) and transportation (16), and is considerably higher than the national average of 5.8. The greatest loss of life in a single Canadian mine occurred as a result of an explosion on June 19, 1914, at Hillcrest Mines in Alberta, in which 189 miners, almost half of the company's employees, were killed. In 1956, 39 miners were killed in an explosion, and in 1958, an additional 74 died as a result of a series of collapses in the mines of Springhill, Nova Scotia.

Death, Financial Scandals, and Pollution

The worst loss of life in the modern era of mining occurred at Westray Mine in Plymouth, Nova Scotia. On May 9, 1992, less than a year after it began operation, an explosion killed all 26 miners. Notorious for its disregard of safety procedures and equipment, the company was frequently cited for safety violations, some less than a month before the explosion. As a result of the deaths, the company was charged with over 50 counts of operating an unsafe mine, and two managers each faced 26 counts of manslaughter and criminal negligence causing death. Although neither the company's executives nor the managers were criminally convicted, these acts of corporate violence resulted in subsequent amendments to Canada's Criminal Code in 2003 that strengthened the requirements of corporate liability. However, this law does not apply to instances in which Canadian companies operate mines outside Canada.

The Canadian Mining industry's greatest financial scandal resulted from stock manipulation involving Bre-X Minerals Ltd. Bre-X was incorporated in 1989 as a subsidiary of Bresea Resources Ltd., and by early 1993, it had purchased a site in East Kalimantan, Indonesia, on the Busang River. By the end of 1995, it announced the discovery of significant gold deposits, driving its share price up from less than $1 to more than $50. The stock peaked at over $200 by early summer 2006, following reports in *Fortune* magazine that the Busang site was the largest gold discovery ever made. The suspicious death of Bre-X's chief Busang geologist, Michael de Guzman, in March 1997, following controversy over a core sample result, led to widespread suspicion regarding the veracity of the company's reports on its gold reserves. Later that year, it was revealed that Bre-X's gold samples were a fraud—salted with placer gold. Bre-X thereafter collapsed; its stock worthless. The revelations rocked the Canadian and global business communities as investors lost billions of dollars in not only the biggest stock manipulation in Canadian history but also one of the biggest scandals in mining history.

The mining industry is a notorious environmental polluter. In some instances, the substance that the mining company extracts is hazardous, such as chrysotile asbestos. Canada is the world's largest producer of this substance, a known carcinogen. The extraction, processing, and export of chrysotile asbestos puts populations at risk for pleural abnormalities, lung cancer, and other diseases. Because it is a highly profitable export, industry groups have pressured the Canadian government to obstruct the inclusion of chrysotile asbestos to the United Nations Rotterdam Convention's list of hazardous substances.

Waste produced in mining is an even more significant factor in pollution. Mine waste, known as "tailings," contains many dangerous chemicals, including acids, arsenic, cyanide, lead, and mercury that contaminate the air, soil, and water. Water pollution is the single biggest environmental casualty of the mining industry, with mining companies "disposing" of millions of tons of waste in rivers, lakes, and oceans. For example, dumping by Canadian companies such as Barrick Gold and Placer Dome in Papua New Guinea has poisoned rivers and destabilized the foundations of local homes. While much of this dumping by Canadian companies occurs in least developed and developing nations, it also occurs at home. For example, the Iron Ore Company of Canada is responsible for considerable pollution in Wabush, Labrador, and there are at least 250 de facto toxic waste sites among the abandoned mines in Ontario, leaching contaminated drainage into water courses and aquifers.

Mining is one of Canada's most profitable industries. However, this financial windfall for executives and shareholders comes at a great price to workers, residents of the communities located near mines, and the environment. Although numerous government bodies are said to have jurisdiction over certain aspects of the mining industry, the regulations are weak, enforcement is lax, and the penalties are financially minimal and rarely criminal. The result is that private profits come at a great social cost. Mining is one of Canada's most scandalous, quasi-criminal industries.

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See Also: Asbestos; Bre-X Minerals Ltd.; Coal Mining; Hazardous Waste; Occupational Carcinogens; Unsafe Working Conditions.

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Capitalism

Capitalism is an economic system of relatively free markets in which the means of production and distribution are privately owned and operated for profit by the owners of capital (i.e., capitalists). There is no such thing as completely free (laissez-faire) markets. Although the theory of capitalism predicts producer responsiveness to consumer demand, there can be serious market failures because of externalities requiring public provision or regulation.

Monopolization, dishonesty, fraud, and other forms of misconduct undermine market efficiency. The neoclassical economic theory of capitalism focuses on resource-allocation efficiency, not on distributive equity. The relative freedom of markets, size of the government, roles of state-owned enterprises, and approach to public regulation define varieties of capitalism. The United States, Germany, Japan, and the United Kingdom (UK) are different national constellations of these elements.

The essential feature of capitalism is relatively free mobility of capital to move to the highest available return on investment. Such mobility improves the efficiency of resource allocation in an economy. Capital is defined as an existing stock of wealth, from which the owner seeks to derive an income (an increase in wealth). Income is defined as a set of services derived from wealth. Capital is a resource not found in nature (e.g., unimproved land or raw minerals), other than labor or knowledge. Capital may thus be financial or physical (e.g., plants and equipment). A business combines capital, labor, knowledge, and natural resources in producing goods and services for sale. Capital may be specialized. Banking, industrial, and service firms deploy different combinations of capital assets and knowledge.

In the classical liberalism of western Europe and North America, capitalism is strongly linked with individualism, free markets, private property, and political democracy. In direct contrast, socialism advocates that government (the state) owns, or at least dominates, those means of production and distribution in the collective interest. In Marxism, socialism is strongly linked with collectivism, central planning, and command economies. Socialists advocate nationalization of privately owned means of production and distribution.

In 1776, Adam Smith published the first systematic exposition of capitalism and the market system. His work, *The Wealth of Nations,* criticized the then prevailing mercantilist theory of economic nationalism and protectionism that evolved with the rise of European nation-state monarchies and overseas imperialism from the 16th century through the 18th century. Mercantilism was a set of crown policies based on an assumption that national prosperity depended on increasing the nation's holdings of bullion. This mercantilist theory advocated government accumulation of bullion by combining a positive foreign trade balance of exports minus imports and tariff protection against imports. The mercantile system had succeeded medieval feudalism in western Europe. Mercantilism was associated with royally chartered monopolies, reflecting increasing crown control of the economy. Such monopolies were economically inefficient. Smith expounded the national benefits of relatively free trade and mobility of resources. These benefits included more goods and services, more employment, and higher wages and profits.

Capitalism Versus Socialism

In the 19th century, Marxist socialism grew in importance and popularity as a critique of capitalism and a political reaction to its negative effects and excesses. Industrialization and urbanization had profoundly disruptive effects on what had been agrarian and commercial economies. What had been absolute monarchies became constitutional governments. There was considerable violence associated with the long struggle after 1865—during what were known in the United States as the Gilded Age and the Progressive Era—to develop labor unions, obtain workers' rights, and establish democratic welfare states.

Prominent among defenders of capitalism were the 20th-century Austrian economists Friedrich A. Hayek, Ludwig von Mises, and Joseph Schumpeter. Hayek emphasized the impossibility of effective central planning. A decentralized market economy requires millions of choices daily by buyers and sellers, based on detailed local information. No central planning system can possibly duplicate, or even approximate, this complicated set of choices and details. Schumpeter emphasized the role of entrepreneurial innovation in capitalist economic development.

The collapse of communist command economies by the 1990s is impressive evidence of the functional superiority of capitalist market economies. Even well before the crisis of the 1990s, some countries in eastern Europe, led by Hungary and Yugoslavia, had moved toward market socialism, in which the state-owned economy operates as much as possible in accordance with market principles. However, socialism is far from dead as a competing ideology. China is experimenting with retaining communist control of a decentralizing market economy in a large-population country. Venezuela and Bolivia have moved toward socialism and an executive branch with a strong role in economic policy. Russia's two-term president

Vladimir Putin reasserted the Russian government's control of its natural resources, such as oil and gas. The Russian government has not, however, reinstituted central planning.

Varieties of Modern Capitalism

These historical developments have resulted in quite different outcomes by country. It is conventional to distinguish among at least three varieties of modern capitalism.

One variety, most closely associated with Adam Smith's original conception, is Anglo American market capitalism, although there are significant differences between the United States and the UK. This pattern most strongly emphasizes relatively free markets, private property, investors, and consumers. The United States has been the prototype country and is arguably the world's most strongly capitalist market economy. In recent years, some evidence suggests that inequalities are widening in the United States and that real income for many Americans may be declining, or at least not making gains. Post-1945 Labour governments in the UK instituted major elements of socialism in the form of nationalization of certain key industries (e.g., steel, coal, and transportation) and a National Health Service. However, there was no central planning, and most property ownership remained in private hands. The UK in recent decades has been moving back toward the American market model while retaining aspects of the European welfare state, such as its National Health Service.

A second variety, found in much of the rest of western Europe, is European welfare-state capitalism. Pioneered by Chancellor Otto von Bismarck in Germany, who introduced social insurance programs in the 1880s (e.g., old age pensions, accident insurance, health care access, and unemployment insurance) as measures politically intended to blunt the appeal of socialism, this pattern assigns a stronger role to the state and emphasizes worker-oriented social welfare policies. The pattern is most strongly established in Scandinavia, the Low Countries, and Germany. In Anglo American capitalism, corporate governance is effectively exercised by an investor-elected board of directors. In the German approach, there are dual boards: a management board operates the company, and a supervisory board represents investors and workers. Government regulation and the welfare state, while forms of collectivism, help mitigate the harsher effects of the market mechanism operated by economic self-interest, and thus promote the perceived legitimacy and popular acceptance of capitalism.

The third variety, found in east Asia and differing by country, may involve state-led capitalism or family-controlled enterprises. Since 1945, Japan has had a capitalist market economy, but there are key differences from Anglo American or European welfare-state capitalism. The Japanese government has had a strong role in guidance of private companies. Japan's unions tend to be organized on the basis of the employer, rather than craft oriented, and Japanese companies in the post-1945 era practiced lifetime employment until quite recently. Family firms are important in South Korea and some other east Asian countries.

It is an open question whether these varieties of capitalism will continue to diverge or converge over time. The evidence tends to suggest that relatively free markets outperform welfare models, but the performance differences may not be great enough to conclude categorically that the latter will disappear. European societies tend to have views of capitalism that are more oriented toward corporate social responsibility, ecological sustainability, and stakeholder participation than the views held in countries adhering to the Anglo American pattern. During the recession beginning in 2008, the United States and western Europe were in serious disagreement over the proper balance of regulatory reform and direct stimulus. European countries favored the former, the United States the latter.

Capitalism, meaning the privately owned market economy, and political democracy are closely intertwined. In 2007, Benjamin Friedman estimated that the count of politically free countries was about 90. The December 1991 disintegration of the Soviet Union demarcated the failure of socialist central planning intertwined with totalitarian communist rule. Privatization of state-owned assets and deregulation of market economies was an important movement of the 1980s and 1990s. The standard of living in South Korea, according to Friedman, is now more than half that of the United States, and is more than double that of Russia. The historical record of the last 200 years demonstrates that, as predicted by

Adam Smith, relatively free markets permitting mobility of capital and other resources work better than alternative economic systems at increasing aggregate material wealth.

Corporate Social Performance

Capitalism presumes that capital is the key organizing element on the supply side of the market economy. Businesses deploy equity and debt capital in response to or anticipation of consumer demand, in order to increase their rates of return on investments. A key continuing debate is about the social performance of corporations and the role of stakeholders other than investors and managers. Corporate social performance is the broad set of effects of business activities on societies. One question is whether, in the aggregate (net), this set of effects is positive. Relatively free markets tend to increase total material wealth, but the equitable or just distribution of this total wealth is a different matter. Not everyone automatically gains when an economic system's wealth overall increases. There may be costs of growth, such as ecological deterioration, that are properly accounted for in defining and measuring corporate social performance. Some stakeholders of a corporation may gain, while other stakeholders of the corporation may lose, as a result of specific business decisions and strategies. On the whole, today's market economies arguably tend to shift relative power from employees toward investors and consumers.

At issue are the relative roles of business profit, community benefit, corporate social responsibility, ecological sustainability, and stakeholder participation. One movement in the United States has aimed at increasing economic or workplace democracy, as discussed by Robert Dahl. The essence of the movement is that employees should own businesses in which they work. A variant of this argument is that modern businesses are more dependent on knowledge than on capital. Since knowledge is embedded in people, compensation and corporate governance arrangements should reflect the reality of knowledge-based, rather than capital-based, firms. One theory is that knowledge workers should receive nonvoting shares in the firm. A capital-based firm emphasizes physical and financial assets as the source of profits. A knowledge-based firm emphasizes people and their skills as the source of profits. A theory based on this distinction argues that "ownership" and "compensation" concepts should reflect the reality of how the specific firm makes its profits. The basic argument is that knowledge is more valuable than financial capital.

Global Capitalism in the 21st Century

Capitalism and democracy have assumed both an intellectual and a real-world ascendancy since 1991, as socialism and central planning have tended to collapse virtually everywhere. The emergence of global capitalism reinforces the importance of older questions concerning capitalism and raises new questions. Capitalism is spreading to societies where there is no foundation of constitutional democracy and rule of law. One scenario is that successful markets will tend to stabilize those societies. In the transition economies of the old communist bloc, reformers have emphasized rapid movement to markets to ensure democratic government. An alternate scenario is that economic transition may worsen social conditions. The resulting turmoil may result in the return of oligarchs in new clothing as in Russia, Belarus, and Turkmenistan.

Amy Chua has argued that free market democracy may tend to generate ethnic conflict, other forms of conflict, and global instability. The reason is that a free market, dominated by multinational corporations from abroad, may disrupt traditional economies, and democracy may tend to promote corruption, demagoguery, and strongman rule. Although her work has its critics, and conflicts are multidimensional phenomena, Chua's basic thesis is that free-market democracy can exacerbate backlash against wealthy ethnic minorities. The much poorer majority in a country may feel envy and bitterness toward successful minorities. Political demagogues can capitalize on this hostility. Chua cites, for example, the Chinese engaged in commercial activities throughout southeast Asia, where they are regarded as outsiders. In the 21st century, religious fundamentalism is growing in importance. One dimension of this growing fundamentalism is likely a reaction to modernism and liberal democracy. The United States, the hallmark of free-market democracy, may be regarded in various countries as a global minority seeking to dominate other cultures, as Chua points out.

The moral status and responsibility of capitalism is a continuing debate. One view is that the marketplace is an amoral mechanism. Adam Smith was concerned not with motives but with outcomes (or consequences). If relatively free markets tend to alleviate poverty more efficiently and effectively than alternative economic systems—such as socialism or state capitalism—then the outcome justifies the mechanism. The alleviation of poverty and want is a profoundly moral outcome. At the same time, Smith expected that rising material wealth would liberate the natural sympathies of people for the plight of others less fortunate.

Another view holds that businesses can and should practice corporate citizenship and social responsibility. Although globalization is often regarded as a morally neutral process at work, international business scholar John H. Dunning advocated "responsible global capitalism" as a process of defining moral standards for participants in the marketplace. The drivers of this process are likely to be a combination of enlightened self-interest, an emerging universal consensus on global business ethics, and a variety of religious faiths, which tend to overlap on certain essential moral considerations. In this view, capitalism in practice rests on certain virtues and values of business managers, which can provide an enlightened self-interest with a positive moral content. These virtues include creativity, cooperation, and compassion for others. Advocacy, example, and education can help improve moral standards for business conduct over time. Other scholars take a very dim view of business citizenship or responsibility, and urge reliance on relatively free markets. The available empirical evidence does not strongly support either position. That circumstance, however, would seem to give moral discretion to business managers to decide what they believe is right and good.

In the 21st century, capitalism has become the dominant economic ideology and the dominant economic system in the world, and evidence suggests that it is spreading globally. In North America and western Europe, capitalism and democracy occur in combination. The key questions concerning capitalism in the 21st century, in addition to the costs that economic growth impose on ecological sustainability and the distributive equity of wealth creation, are the roles of corporate social responsibility and citizenship. There are defects in capitalism because the marketplace is basically an amoral machinery of demand and supply interactions. One school of thought advocates letting relatively free markets operate because they are superior in economic performance relative to government interventions. Another school of thought contends that businesses should operate in accordance with some morally informed conception of enlightened self-interest. This conception should take some account of stakeholders other than managers, investors, and consumers, and of the relationship between business profit and community benefits.

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See Also: Carnegie, Andrew; Caveat Emptor; Conflict Theory; Corporate Criminal Liability; Critical Theory; Illegal Competition; Industrial Revolution; Market Manipulation; Price Discrimination; Price Fixing.

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Carl Karcher Enterprises

Carl Karcher Enterprises is named for founder Carl Karcher, who began his career in restaurants with just a hot dog cart before opening Carl's Drive-In Barbecue in 1945. By the time his enterprise reached its peak, he controlled over 2,000 restaurants that returned almost $3 billion per year. Although Karcher was long rumored to be involved with the Ku Klux Klan, his true crimes were more of the financial variety. In 1984, Carl Karcher Enterprises (CKE) began offering franchises, which led to the development of many restaurants in Texas. From the beginning, however, the Texas franchisees failed to turn the expected profits. Carl and his brother Don (who was running day-to-day operations for CKE at the time) saw internal reports and told family members what was happening. In response, the family members sold their shares in the company. The decision saved them from losing over $300,000 but was entirely illegal under insider trading statutes.

Insider Trading and Other Legal Battles

In 1988, during the height of the Wall Street insider-trading scandal, the Securities and Exchange Commission turned its attention to the Karcher family and ultimately convinced its members to pay $664,000 in fines and reparations. Most important, however, was that no one had to admit guilt. Money was paid both to the government and to shareholders who were damaged as a result of the family's decision to sell before the share values tanked. By not admitting guilt, the family avoided being charged criminally. Civil cases that had already been filed were dropped, and criminal charges were largely undermined by effective defense counsel strategies (such as portraying the CKE attorney as being too unorganized to successfully commit fraud).

Although they survived this insider-trading incident, a later expansion into Arizona led to further battles. In this case, Wendy's—a chief rival to CKE's Carl's Jr.—brought legal action over what were described as unfair business practices. In Arizona, Carl's Jr. stores were experiencing millions of dollars in losses annually. In response, CKE bought 10 Wendy's locations from a franchisee with the sole intent of shutting them down and eliminating the competition. Wendy's responded by suing CKE and the franchisee for over $100 million, claiming that the sale was made without their consent. Eventually, the case was settled for an undisclosed amount. The Karcher family members turned on one another. Frank Karcher sued his older brother for $10 million, stating that CKE had used deep discounts to artificially increase sales and profits of 12 stores in Arizona before he agreed to purchase them as a franchisee.

By 1993, Carl Karcher was no longer in charge of running CKE. He had made a series of poor decisions in previous years, and they had finally caught up to him. First, he tried to privatize the company, which left him nearly bankrupt. He then tried to remove his board of directors as a result of their decision to reject a proposal to share marketing budgets and outputs with Green Burrito, a Mexican fast-food restaurant. The problem with the proposal was that percentages were written to benefit the Karcher family, but they would harm shareholders. In 1995, Green Burrito became CKE's next legal hurdle when it sued for $100 million. After opening a series of Carl's Jr.–Green Burrito restaurants, CKE authorized opening a Carl's Jr.–Picante Grill. Green Burrito believed that it had rights to the concept and sued CKE for using it with another company. After working through the suit, CKE bought the parent company of Green Burrito in 2002. CKE believed that the partnership would help carry both companies forward.

Legal trouble still followed the company, however. Managers successfully sued after they were deprived overtime pay. A class-action lawsuit emerged after litigators began working through the company's annual reports. It took until 2003 for CKE to return to profitability. It appeared that it achieved this by moving toward premium menu products designed to attract a higher-end clientele than most fast-food restaurants.

Carl Karcher and CKE grew even more estranged in the years before his death when Carl's Jr. launched a series of ads featuring direct sexual overtones (and starred celebrities such as Paris Hilton and Hugh Hefner). The goal to attract a younger male clientele ultimately was not met.

Harassed Over Politics

Although his political beliefs were not criminal, Karcher was boycotted for them nonetheless. In 1978, he contributed $1 million to California's

Proposition 6 initiative, a ballot measure that aimed to prohibit gays and lesbians from employment in public schools. However, the measure was defeated by over 1 million votes. Because of his support, his hamburgers were dubbed "bigot burgers." Karcher also supported candidates who belonged to the conservative John Birch Society. He was viewed negatively by supporters of abortion rights because of his donation history and his personal story about how he once talked an employee out of having an abortion. Karcher died in 2008 from Parkinson's disease. In February 2010, CKE accepted a $693.9 million takeover by Apollo Management.

Although Karcher is well regarded in the restaurant industry for his rags-to-riches story, legally he is better remembered for insider trading and his removal as chief executive officer of his company after feuding with the board of directors.

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See Also: Accounting Fraud; Board of Directors; Boycott; Illegal Competition; Insider Trading; Securities and Exchange Commission, U.S.; Trademark Infringement.

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Carnegie, Andrew

Andrew Carnegie once said "Do not look for approval except for the consciousness of doing your best." Carnegie's story personifies the capitalist ideal of the individual rising above the masses to profit from their perceived deficiencies. Often regarded as one of the richest men in history, Andrew Carnegie was born on November 25, 1835, in Scotland, Carnegie's father owned and operated a handloom business. After his father's business began to falter, the family immigrated to the United States in 1848. Upon arrival, they settled in Allegheny, Pennsylvania, and Carnegie, at age 13, got his first job in a cotton factory. Mostly self-educated by reading books, Carnegie next worked as a Western Union messenger boy. From this position, he was hired as a telegraph operator, then took a series of positions that resulted in his eventually becoming the superintendent of the Western Division of the Pennsylvania Railroad. During this time, Carnegie invested in a new company manufacturing goods such as railway sleeping cars. After a time, he expanded his business ventures to include the construction of locomotives, rails, and bridges.

Carnegie created his first company the Keystone Bridge Company in 1865, but Carnegie earned most of his fortune in the steel industry. By 1873, he entered this industry, founding the Carnegie Steel Company. Over the next decade Carnegie Steel continued to grow. Carnegie utilized business practices that transformed the production of steel. Specifically, Carnegie's produced steel more cheaply and efficiently than his competition through new technologies and vertically integrating the supply of raw materials needed for steel production. By the 1890s, the company was the largest and most profitable industrial enterprise in the world.

In 1892, Carnegie and his business colleague, Henry Clay Frick, found themselves enmeshed in a labor dispute that would leave 10 individuals dead. This dispute involved Carnegie Steel's main plant, located in Homestead, Pennsylvania. Specifically, a disagreement between the National Amalgamated Association of Iron and Steel Workers of the United States and the Carnegie Steel Company over how much the workers' pay should increase in relation to the company's profits morphed into the Homestead strike. Lasting almost five months, this labor dispute was one of the most intense in U.S. history. Some of the workers demanded that their individual pay increase by the same percentage that overall profits had increased. In response, the management at Carnegie Steel locked the union out. Thus, the union workers viewed this not as a strike, but as a lockout. At this time, the labor movement was gaining momentum in the United States. The workers protested. Frick brought in thousands of strikebreakers to replace the protesting workers and used Pinkerton for security purposes. Before heading to Scotland for a trip, Carnegie put his business associate and partner in charge of negotiating with the workers. Henry Clay Frick was not particularly empathetic to the workers' concerns. On July 6, 1892, a fight between Pinkerton agents and strikers resulted in hundreds being injured and several strikers, as well as three Pinkerton agents dying. After events in Homestead stabilized, Carnegie returned to the United States. Although Carnegie helped create a pension fund for former employees, his reputation was tarnished because of the events surrounding the Homestead strike.

Carnegie sold Carnegie Steel to J. P. Morgan in 1901. Carnegie's company was merged with several other steel companies to create U.S. Steel, which still exists. Carnegie Steel was then valued at more than $400 million. Carnegie wrote numerous articles on various issues including philanthropy, class, and labor. In an article titled the "Gospel of Wealth," Carnegie argued against attempts by the government to recirculate wealth and the need for philanthropic giving. Later in life, Carnegie married and fathered a daughter, Margaret. Carnegie donated large sums of money to many philanthropic causes. He donated money to establish many libraries and educational institutions such as the Carnegie Institution of Washington, Carnegie Corporation of New York, Carnegie Endowment for International Peace, the Carnegie Museums of Pittsburgh, and the world renowned Carnegie Mellon University.

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See Also: Capitalism; Morgan, John P.; Standard Oil Co.; United States Steel Corp.

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Carson, Rachel

Rachel Carson (1907–64) was born in Springdale, Pennsylvania. She was a biologist who obtained her education at the Pennsylvania College for Women (Chatham University). She earned a master's degree in zoology from Johns Hopkins in June 1932. After earning her degree, she took a temporary position at the U.S. Bureau of Fisheries (now the U.S. Fish and Wildlife Service). As part of her duties, she wrote several publications on marine life as well as a series of weekly educational broadcasts. She eventually took the civil service exam, outscoring all other applicants, and became the second woman hired full time as a junior aquatic biologist. She worked for the agency for 17 years.

Through her work as a governmental biologist, she studied fish and wildlife, and she became very knowledgeable about the environmental impacts of pesticides on animal populations. Carson's main responsibilities were to analyze and report field data on fish populations. Given her success with previous publications, she was also responsible for writing brochures for the public. Carson's first book, *Under the Sea-Wind,* was published in 1941 by Simon & Schuster. Her second book, *The Sea Around Us,* was published in 1951 by Oxford University Press. It remained on the *New York Times* bestseller list for 86 weeks. It was later abridged for *Reader's Digest* and won many awards. Carson was awarded two honorary doctorates and made the book into a documentary. In 1952, Carson quit her job at the Fish and Wildlife Service to write full time. Her third book, *The Edge of the Sea,* was published by Houghton Mifflin in 1955.

DDT and *Silent Spring*

Carson was particularly interested in the effects of dichlorodiphenyltrichloroethane (DDT) on the environment. Through her biological and zoological background and negative reports about DDT and other chlorinated hydrocarbons, she began researching and writing her fourth book, *Silent Spring*. DDT was first used as an insecticide in 1939. It was highly effective in eradicating colonies of mosquitoes and their eggs. During World War II, DDT was used by B-25 bombers, which sprayed areas of the Pacific prior to invasions. It was effective in eliminating malaria. It was widely used across the United States to kill mosquitoes,

Author and researcher Rachel Carson and national wildlife artist Bob Hines, circa 1955, search in the Florida Keys for marine specimens for Hines to illustrate in Carson's third book, The Edge of the Sea. *Carson's book* Silent Spring *(1962) alerted the public, upset the pesticide industry, and invited criticism, and ultimately inspired a movement.*

beetles, caterpillars, and moths. The problem with DDT was not its effectiveness but its indiscriminate effectiveness; it killed everything that it came into contact with. This was especially disturbing to Carson because DDT was killing wildlife and negatively affecting ecosystems.

Carson's book, *Silent Spring*, was published by Houghton Mifflin in 1962, and created an open debate between the public and the pesticide industry. This book helped educate the public on the potential dangers and effects of pesticides on humans and wildlife. The public started to question the use of pesticides, their effect on the environment, and became more critical of the industry and the government. Yet, not everyone was convinced of the veracity of Carson's claims, especially those in the pesticide industry. Many in the industry criticized her book and attempted to discredit her knowledge of science. This was done in a very public manner. She was criticized because she did not have a Ph.D. and she was a woman. These two factors alone were used against her. Carson did not advocate a complete ban on pesticides, but wanted them to be used in a responsible manner that would not negatively influence entire ecosystems. Soon after the book was published, President John F. Kennedy formed a government group to investigate the dangers of pesticides.

In 1963, the president's Science Advisory Committee announced that the claims made by Carson's *Silent Spring* were correct. Her work helped promote an environmental movement and was influential in the creation of the Environmental Protection Agency. In 1972, DDT was banned from sale in the United States. Carson died of breast cancer in 1964 and was never able to see the outcome of her efforts in relation to the banning of DDT. Although her life was cut short, she is credited for starting the modern environmental movement. *Silent Spring* has been called one of the most influential books of the 20th century. Former Vice President Al Gore, in the introduction to a 1994 reprint of it, wrote “Without this book the environmental movement might have long been delayed or never have developed at all.”

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See Also: Environmental Protection Agency, U.S.; Greenpeace; National Environmental Policy Act; Pesticides.

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Carter, Jimmy

A peanut farmer and former governor of Georgia, Jimmy Carter (1924–) won the presidency in 1976 by defeating Republican Gerald Ford, Richard Nixon’s former vice president. Ford had succeeded to the presidency in 1974 upon Nixon’s resignation, in light of the Watergate scandal. Carter, who campaigned as an outsider—untainted by Washington politics—with a strong moral reputation, pursued ethics in government laws and ramped up white-collar criminal prosecutions once in office. With an ambitious domestic and foreign policy agenda, Carter, however, faced huge obstacles—a poor economy, high energy prices, a hostage crisis in Iran, and incursions by the Soviet Union—that served to define much of his presidency. Carter’s status as an outsider served him well in the presidential election, but once president, this became problematic because he did not engage in the political gameship often required of an effective executive. Thus, he received pushback from his party, which controlled Congress, on a number of his initiatives. In addition, attempts to set up amicable relations between congressional members and his staff went nowhere, and Carter’s disdain for earmarks did not sit well with many members of Congress. In the aftermath of the Watergate scandal, Carter’s Justice Department aggressively monitored ethical activities on the part of government agencies and departments. Carter’s attorney general also revamped and depoliticized the Department of Justice to avoid any perceptions of potential abuse by the president for political purposes, as happened under Nixon. The attorney general also coordinated with the Federal Bureau of Investigation and the Central Intelligence Agency in order to enhance endeavors in pursuing white-collar criminals for a variety of crimes, including money laundering and securities fraud.

Carter also sought early on to streamline government and cut back on waste through a reorganization of the bureaucracy. Such efforts led to mixed results, and Carter’s attempts to control inflation fared even worse. His set of anti-inflation programs involving cutbacks in spending and regulatory reform accomplished little, and inflation—along with the deficit—rose considerably. In a subsequent bill submitted to Congress, Carter sought conservation efforts for gasoline, wage and price controls, and a balanced budget. Carter’s efforts to make government more efficient and to control inflation represented only the start of his litany of domestic initiatives. Other measures included welfare reform, greater focus on education, and ethics in government laws. In addition, Carter made energy policy his top domestic concern, eliciting from Congress two pieces of energy legislation and a new Department of Energy. Other energy measures included synthetic fuel development, solar power, and gasoline rationing procedures.

Carter viewed his election as an important step toward relieving the public of the nightmare of Watergate. In a similar fashion, he sought to mend wounds from the Vietnam War by granting amnesty to those who had eluded the draft. Such compassionate policies also informed Carter’s worldview, where he placed greater emphasis on human rights in U.S. foreign policy than any previous administration. His international reputation for pursuing peaceful relations helped facilitate the Camp David Peace Accords in 1978. This peace agreement—which is still in place—between two former Middle East foes, Israel and Egypt, led to the awarding of the Nobel Peace Prize to Carter in 2002 for this and other international peace efforts since his presidency. Carter also pursued reductions in nuclear weapons, leading the way in negotiations of the SALT II Treaty, signed in 1979 by the United States and the Soviet Union. However, the Soviet invasion of Afghanistan later that year cut short the agreement between the countries (the treaty was never ratified), leading to a decision by Carter to employ economic sanctions against the Soviets and to boycott the 1980 Winter Olympics in Moscow.

Iranian Hostage Crisis

Another foreign policy setback for Carter in late 1979 was the Iranian hostage crisis, when 65 U.S. embassy officials were taken hostage. This led Carter to impose an oil embargo on Iran, which worsened the energy shortage in the United States—gasoline supplies decreased nearly 15 percent—and further enraged the populace (an accident in a reactor at Three Mile Island earlier that year had already decreased public confidence in nuclear energy). Media attention on the plight of the hostages served to reinforce public perceptions of a powerless president who was unable to rescue the embassy officials. TV news relentlessly relayed the number of captive days night after night, dropping Carter's approval ratings to a historic low of 21 percent. The hostages, held captive for 444 days, were finally released just minutes after Ronald Reagan was sworn in as president. The perceived failures of Carter's domestic and foreign policies contributed to his defeat in the 1980 presidential elections.

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See Also: Ford, Gerald R.; Justice, U.S. Department of; Nixon, Richard M.; Stock and Securities Fraud; Watergate.

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Caveat Emptor

The doctrine of caveat emptor is a property law doctrine to indicate the recourses of a buyer of a piece of real property after the sale. Caveat emptor is part of the larger phrase, "let the buyer beware, who ought not to be ignorant of the amount and nature of the interest he is about to buy, exercise caution." The doctrine was used in 16th-century England (and adopted into American common law) for real property sales that were mostly agrarian, with only simple structures. The doctrine worked because buyers and sellers had equal access to a physical inspection and typically had the same skill sets to determine the land's value. Defects were easy to discover. Today, caveat emptor is all but abolished (in real estate transactions) because property is much more complex, buyers cannot easily discover defects, the parties do not have equal access to information, and the doctrine is riddled with exceptions (by statute, caselaw, and contract) that require specific disclosures by and guarantees from sellers.

When considering caveat emptor, a few assumptions occur. The first is that both parties in the exchange or the sale of real property are autonomous, competent individuals. Under current U.S. law, one assumes autonomy and reaches the age of majority at the age of 18. Therefore, those under the age of 18 are not considered autonomous, competent individuals and cannot be held under the strict property law of caveat emptor because they do not have the capacity to make a contract. Other individuals who may not be recognized as autonomous individuals in the eyes of the law are the mentally challenged and the elderly. The individuals completing a transaction of real property are assumed to be on equal mental footing. Skills of selling and buying and education are not considered under the doctrine, whereas mental competency is. Second, caveat emptor assumes that information about the product has been disclosed or, at the least, the seller will respond truthfully when asked about the product by the buyer. For instance, when selling a motor vehicle "as is," the buyer can ask questions such as, "Does it run?" and the seller must respond truthfully with a simple "yes" or "no." The buyer should also have an opportunity to drive the vehicle. If the buyer does not drive the vehicle, buys the vehicle, and the vehicle does not work, the buyer could then state that the seller was lying in legal redress for fraud if the seller had stated before the transaction, "Yes, it runs."

The doctrine of caveat emptor occurred before the Internet made purchasing of products more convenient than face-to-face shopping. Therefore, to put the buyer and seller on nearly equal footing, the Uniform Commercial Code (1952) was developed as a "model code" that would govern the sale of goods and property, including property that may or may not have been seen or handled. All 50 states have adapted some or all of the Uniform Commercial Code to provide a uniform system of information disclosure and legal redress. Purchasing items on the Internet poses particular problems for the buyer regarding personal information and identification. Information provided to the seller to complete the transaction on the Internet is far more detailed than a simple exchange of goods or sale of goods when conducted face-to-face under caveat emptor. The buyer must read and understand the future use of his or her information before approving the sale. Under the caveat emptor doctrine, if the seller has disclosed all pertinent information, the buyer must take care to conduct second-order thinking. The buyer must determine whether he or she can afford the item for sale, and what a fair price for the item is. Also, the buyer and the seller must determine (along with the UCC) what implied warranties go along with the sale of the merchandise, or whether the item is for sale "as is."

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See Also: Advertising Fraud; Bait and Switch; Internet Fraud; Truth in Labeling Act.

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Celler-Kefauver Act

The Celler-Kefauver Act of 1950 sought to plug loopholes in the 1914 Clayton Antitrust Act, which aimed at shoring up the pioneering 1890 Sherman Antitrust Act, which was designed to halt the expanding number of business monopolies gouging customers. The measure, sponsored by two Democrats—Emanuel Celler of New York and Estes Kefauver of Tennessee—expanded the definition of antitrust violations to include vertical acquisitions, such as the purchase of a supplier who was essential to the acquiring business and/or its competitors. It also prohibited obtaining the assets of a competitor or a supplier in lieu of absorbing its business by purchasing its stock.

The impetus for the Celler-Kefauver Act was expressed by Chief Justice Earl Warren of the U.S. Supreme Court in *Brown Shoes v. United States*. "The dominant theme pervading Congressional consideration of the 1950 amendments," Warren wrote, "was a fear of what was considered to be a rising tide of concentration in the American economy." Such fear had been reinforced by a Federal Trade Commission report that offered evidence of dangers to the American economy in unchecked corporate expansion through anticompetitive maneuvers. The report noted that corporate acquisitions between 1940 and 1947 had led to the disappearance of 2,500 business enterprises, with assets that equaled 5.5 percent of all manufacturers in the United States.

Chief Justice Warren pointed out that the law stated that purchase or amalgamation was illegal if it "may . . . substantially" lessen competition. Warren noted that the absence of a clear statutory guideline indicated that the law was not intended to deal with "ephemeral possibilities." A further consideration that underlay the Celler-Kefauver Act was the desire of members of Congress to protect local businesses from going out of business because of the emerging giant corporations. Justice Learned Hand, an eminent jurisprudent, offered a romantic vision of the goal of antitrust measures in the case of *United States v. Aluminum Corporation of America.* "Throughout history," Justice Hand wrote, "it has been constantly assumed that one of the purposes [of antitrust laws] was to perpetuate and preserve, for its own sake and in spite of possible cost, an organization of industry in small units which can effectively compete with each other."

The holes in the Clayton Act that prompted the remedial congressional effort had been pointed out for almost four decades. Between 1943 and 1949, for instance, 16 bills seeking to amend §7 of the Clayton Act failed enactment, despite public hearings in 1945, 1947, and 1949. The roadblock was Howard W. Smith, a conservative Democrat from Virginia, who ruled the House Rules Committee as if it were his fiefdom. In 1948, however, the Democrats went from being a minority by 57 seats to holding a majority of 92 seats in the House. This led Celler to bypass the Rules Committee and bring the bill to a floor vote, where it needed a readily acquired two-thirds vote for passage.

The Celler-Kefauver Act led Harvard law professor Derek C. Bok to consider the implications of the antitrust movement for the relationship between law and economics. Bok noted that enforcement of antitrust legislation (law) could muddle along without relying on empirical contributions from economists, but only teamwork between the two disciplines would allow what had been proscribed to come to pass. The key difficulty that Bok observed then, and that makes antitrust enforcement often highly contentious today, is that economists and lawyers lack the knowledge to make predictions concerning the probable consequences of many mergers. The Celler-Kefauver Act made a considerable difference in the Federal Trade Commission's campaign against antitrust offenses. The pace of enforcement was slow at first but then became a priority item. In an analysis of the first 27 years of Celler-Kefauver, economist Willard Mueller tallied 427 cases that were filed under the act. His conclusion at the time applies today: "Nonetheless, the great majority of mergers, even large ones, have gone unchallenged."

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See Also: Antitrust, Federal Trade Commission; Antitrust, U.S. Department of Justice; Clayton Antitrust Act; Illegal Competition; Sherman Antitrust Act.

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Cendant Corp.

Cendant Corp. is a provider of business and consumer services, primarily within the real estate and travel industries. Cendant provided shopping, dining, travel, mortgage, and real estate brokerage services and was the owner of several hotel franchises. In 1997, Cendant was formed by a merger between Hospitality Franchise Systems and CUC International Inc. The company was based in New York City. Henry Silverman led Hospitality Franchise Systems before the merger and was the last chief executive officer (CEO) of Cendant. After the merger between Hospitality Franchise Systems and CUC International, an accounting scandal occurred because CUC International's revenue had been artificially inflated. The accounting scandal led to the settlement of a class-action shareholder lawsuit, with what was the largest recovery awarded in a securities class-action case at that time. However, after the accounting fraud, Cendant bounced back under Silverman's leadership by the early 2000s. As one of the largest hotel franchisers during this time, Cendant acquired several franchises, allowing it to become a leading corporation once again. In 2005, Cendant split into four independent companies.

Accounting Fraud

Henry Silverman, the last CEO of Cendant, was a business executive and an investor. He established Hospitality Franchise Systems, which was among the fastest growing companies in the 1990s. Cendant was created through the merger between Hospitality Franchise Systems and CUC International, a marketing company. After the merger, accounting improprieties at CUC International started to appear. A report describing the accounting fraud at CUC International was released to the public, causing damage to the market value of the company. The report established that CUC International's revenue was overstated over a period of three years. By the early 2000s, Silverman re-established Cendant as a leading consumer services firm. Later, Cendant split into four independent companies. The four categories of business were real estate, travel distribution, hospitality, and vehicle rental, each led by senior leadership from Cendant.

Cendant was associated with a class-action shareholder lawsuit, the result of CUC International's revenue being artificially inflated. In 1998, Cendant filed an annual report that included its 1997 financial statements. A month later, Cendant announced that it had discovered accounting irregularities in the former CUC business. Cendant announced that the annual and quarterly financial statements for 1997 would be corrected, as well as financial statements from earlier periods. This announcement caused the company's stock to plummet. In 1998, the audit committee of Cendant's board of directors hired the law firm of Willkie Farr & Gallagher to conduct an independent investigation into the irregularities. Willkie Farr & Gallagher hired accounting firm Arthur Andersen LLP to assist in the investigation. In December of the same year, a comprehensive consolidated class action on behalf of purchasers and acquirers of all Cendant and CUC publicly traded securities was filed. A motion for partial summary judgment seeking a liability against Cendant for the false statements made in the registration statement for the merger was also filed. After this, Cendant announced that the financial statements of CUC International for 1995 and 1996 would be restated. Following this announcement, the company's stock fell even more.

Cendant filed a report prepared by Willkie Farr & Gallagher, which stated that the financial statements reported by CUC International during the previous three years before the merger with Hospitality Franchise Systems were misleading. Shareholders filed a suit against Cendant for accounting fraud. By 1999, Cendant reached a settlement in the shareholder class-action lawsuit. The settlement stipulated for the shareholders to receive one-half of any net recovery if any settlement occurred from Ernst & Young (accounting firm) and Cendant. Cendant filed a suit against Ernst & Young, and later an agreement was reached. The agreement stated that Ernst & Young would make a payment to Cendant The other feature of the Cendant settlement required Cendant to institute corporate governance structural changes. The largest accounting fraud of the 1990s was led by former chairman of Cendant Walter Forbes.

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See Also: Accounting Fraud; Arthur Andersen LLP; Financial Accounting Standards Board.

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Centennial Savings and Loan

Centennial Savings and Loan is a classic example of fraud and all that went wrong during the savings and loan crisis of the 1980s. The combination of deregulation and inflation opened the door for fraud on an unprecedented scale. Many saw opportunities for illicit gain, whereas honest executives were the victims of economic circumstances. Not all institutions that failed did so because of fraud. Many became insolvent after making bad investments, and because of rising interest rates, virtually every savings and loan was insolvent by the early 1980s. However, criminologists emphasize fraud as a major factor in the crisis. Centennial represents an extreme in terms of fraudulent actions and the extent to which they were carried out. By the early 1990s, the crisis in the savings and loan industry had cost the Federal Savings and Loan Insurance Corporation (FSLIC) at least $150 billion. The financial disaster was the result of many economic factors that put all savings and loans in a precarious position in terms of survival. To cope with the primary problem of inflation, the thrift industry was deregulated, allowing thrifts to operate more like banks. Since the 1930s, savings and loans had been tightly regulated and confined to making local, low-interest home loans. Deposits were safe and backed by the FSLIC.

Into the 1960s, the savings and loan industry fulfilled its primary purpose of increasing owner-occupied housing by extending long-term, usually 30-year, low-interest loans, while keeping depositors' money very safe. By the late 1970s, double-digit inflation had drastically impacted savings and loans, which had virtually all assets tied up in single-digit-interest, long-term loans. Depositors quickly withdrew savings, seeking better returns. Thrift assets fell by billions of dollars because thrifts could not call in the long term loans. Even if they could, they could invest only in owner-occupied real estate. Thrift industry deregulation by the Garn-St. Germain Act of 1982 eliminated decades of conservative regulations that had kept savings and loans conservative, solvent fiscal institutions. It opened the door for massive fraud. Deregulation allowed very small savings and loans to rise within months to institutions controlling billions of dollars. Many dishonest savings and loan executives totally ignored fiscal duties to shareholders and depositors and looted their institutions for personal gain. Centennial was a leader.

Assets in Centennial Savings and Loan of Guerneville, California, rose from $43 million to nearly $500 million within months after deregulation. This was accomplished through brokered deposits. Because of constantly rising inflation, thrift institutions had to offer ever-higher interest rates to attract deposits. Brokered deposits were pools of funds with managers who sought high interest rates for depositors. Savings and loans competed intensely for them. Centennial attracted large brokered deposits by advertising in eastern newspapers, offering higher interest rates than others. In addition, money from pension funds and government reserves flowed in. Instead of investing brokered deposit funds, Centennial executives squandered them on exorbitant executive salaries, parties, and perks for executives and employees, including limousines and plush offices, a private jet, and expensive items for personal use. Centennial executives mastered frauds to increase personal wealth.

In addition to already high salaries, which regulators noted were many times those of other savings and loan executives, they had bonus clauses in their contracts entitling them to immediate bonuses on profits. Centennial executives would assist with the purchase of a small company at an inflated price. The buyer, usually a friend or associate of someone at Centennial, made a very small down payment, and Centennial financed the rest with a large loan. Interest on the loan was immediately booked as profit, even though it would be years before it was collected. Executives got their bonus immediately on a purely paper profit. Regulations forbade savings and loans from making loans to employees over $100,000. To work around this, Centennial executives partnered with executives at other savings and loans who also wanted large loans. Centennial granted them loans far in excess of $100,000, and they returned the favor. Land flips bilked lenders out of millions of dollars. Centennial purchased pieces of next-to-worthless real estate. It then sold them at higher prices to other savings and loans, which in turn sold them back to Centennial at even higher prices. After the value of the real estate on paper was inflated, it was used as collateral for a large loan that was never paid back. Centennial attracted the attention of regulators, and reporters were aware of its illegal transactions. To keep them at bay, Centennial hired regulators at double their government salaries to keep others away.

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See Also: Bank Fraud; Federal Deposit Insurance Corp.; Loan Origination Schemes; Real Estate Investments; Savings and Loan Fraud.

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Challenger Disaster

The space shuttle *Challenger* exploded midair on January 28, 1986, killing its crew of seven after a rubber O-ring seal in a solid rocket booster joint failed. Investigations revealed how design flaws and organizational conflicts contributed to the disaster. In January 1985, scientist Roger Boisjoly and shuttle contractor Morton Thiokol inspected *Discovery*'s solid rocket boosters, noting that combustion "blow-by" during liftoff had compromised at least two rubber O-ring seals, blackening the joint. Boisjoly hypothesized that the cause was the unseasonably cold temperature at launch, 53 degrees F. Boisjoly, an accomplished engineer with high-profile service in many aerospace companies and the leading authority on O-rings, reported this to superiors and the National Aeronautics and Space Administration (NASA). The latter asked him to participate in the flight readiness review (FRR) on February 12, 1985, for the next launch. He faced skepticism regarding his hypothesis and worked with colleagues to gather additional evidence before the next FRR on July 1, 1985, which he presented to engineers and management at Morton Thiokol and NASA.

Morton Thiokol established a task force to research the issue, but little happened, and Boisjoly expressed disappointment. In a July 31, 1985, memo to Morton Thiokol Vice President of Engineering Robert Lund, Boisjoly expressed fear for loss of a shuttle, crew, and launch facilities. At NASA's request, Boisjoly solicited suggestions for improving the O-ring seals at an engineering conference, to little effect. A launch in 75 degrees F on October 30, 1985, resulted in incremental blow-by consistent with Boisoly's hypothesis, but his superiors interpreted this to mean that temperature was irrelevant. With no substantive response to the problem, preparations proceeded for the launch of *Challenger* on January 28, 1986. Leadership at NASA eagerly anticipated this flight to renew public support for the space program through inclusion of civilian crew member Christa McAuliffe, a teacher.

The day before, the forecast for an overnight freeze set off communications between Boisjoly and his colleagues and superiors at Morton Thiokol and NASA officials. Boisjoly and his colleagues strongly pressed the case against launching in an evening conference call, and Morton Thiokol management at first stood with them. NASA officials were displeased. When Boisjoly persisted, Morton Thiokol Vice President of Space Booster Programs Joseph Kilminster requested a caucus. The tone of

Morton Thiokol management changed in this private conversation, with Senior Vice President Jerry Mason counseling Lund to "take off his engineering hat and put on his management hat." Attempts by Boisjoly and colleagues to counter the shifting sentiment met with abusive statements that eventually silenced them, and the executives then unanimously agreed to launch. Instead of following precedent of proving that launching was safe, they impeached objections that it was unsafe. They communicated their approval to NASA. No other parties participated in these deliberations and decisions, including the astronauts, who perished the next day when the shuttle exploded similarly to Boisjoly's predictions (not on the launch pad, but 73 seconds into flight).

President Ronald Reagan appointed a 14-member commission under former Secretary of State William Rogers to investigate and recommend changes. Members included Neil Armstrong, Richard Feynman, Sally Ride, and Charles Yeager. Tension emerged between Feynman and other commissioners over his independent testing of seals for sensitivity to cold, with hints from contractors and/or NASA. Feynman became critical of the O-ring design, NASA's low estimates of risk of failure, and poor communication within and among NASA and contractors, including in launch preparations. He dissented from other commissioners by recommending suspension of launches, pending dramatic changes to NASA culture and safety procedures. During testimony before the commission, Boisjoly shared his memo of July 31, 1985, and other documents to reveal the extent of his research and concerns. The commission made nine recommendations to improve safety, and President Reagan required NASA's response within 30 days. The agency redesigned the solid rocket boosters under independent oversight, established an office of safety, replaced the *Challenger* with the *Endeavour,* discontinued launches of commercial satellites, and modified the schedule to reduce the risk of accidents. Boisjoly believed that the modifications to the seal joints made no appreciable improvement in safety. The 2003 *Columbia* Accident Investigation Board determined that cultural and procedural dysfunctions within NASA persisted, including safety processes.

Exhaust plumes from the space shuttle Challenger*'s main engines and solid rocket booster entwine around a ball of gas from the external tank a few seconds after the accident, January 28, 1986. An O-ring had ruptured in the right solid rocket booster.*

The *Challenger* case has focused on the meaning of responsibility and ethical duties of members of professions to challenge superiors when significant risks to life, health, and property loom. There has been debate about framing the analysis in terms of responsibility of individual decision makers within Morton Thiokol and NASA, or a complex array of routine systems susceptible to communication and execution failures because of human factors. Under either analysis, the lack of informed consent from the astronauts and others was problematic and made it difficult to defend the process or results. Boisjoly was not a traditional prospective whistleblower; rather, he spoke up retrospectively to avoid a deceptive official record. This case has figured in analysis of whistleblowing as avoidance of complicity rather than mere avoidance of harm.

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See Also: Contractor Fraud; Defense Industry Fraud; Employee Safety; Government Contract Fraud; Government Procurement Fraud; Morton Thiokol

Inc.; Risk Analysis; United States; Unsafe Working Conditions; Whistleblowers; Workplace Deaths.

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Charity Fraud

Each year, billions of dollars are donated to charities across the United States by individuals who desire to make a difference. These funds are used to provide for causes as diverse as assisting the poor, underwriting the fine arts, and contributing to learning. Despite these benefits, billions of donations are lost through charity fraud. Although fraudulent acts directed toward charitable organizations or the public hoping to support them have always taken place, improvements in mass media and technology have greatly increased public awareness of such misdeeds over the past three decades. Charity fraud not only deprives worthy organizations of much-needed funds but also discourages the public from giving to legitimate charities as they become more skeptical regarding the use of their donations. For this reason, federal, state, and municipal regulatory agencies, as well as legitimate charities, work to make the public aware of the risks of charity fraud. Law enforcement agencies also work to respond to consumer complaints and proactively stop fraudulent activity. Despite these efforts, charity fraud continues to grow, depriving many worthy causes of needed financial support.

Background

Fraud has been defined as those acts, concealments, expressions, or omissions that are intended to deceive another. The deception can disadvantage the intended victim as well as affecting other third parties, such as charitable organizations that are the supposed beneficiaries of the defrauded individual's largess. Fraud can be directed toward an individual or an organization, toward one's employer, toward a third-party entity with which one has a relationship (i.e., an insurance company), or toward a government agency (i.e., social security fraud). Charity fraud generally consists of one party with no connection to a charity collecting funds from the public, ostensibly on the charity's behalf; or actions by one party working for or associated with a charity that diverts funds in an unauthorized manner.

Pursuant to common law and statutes to prevent consumer and charitable deception, four separate elements are necessary to initiate a charge involving fraud. These four elements include the following:

1. A materially false statement is made;
2. The statement is made with knowledge of its falsity;
3. The statement is relied upon by the victim; and
4. The victim suffers damages as the direct result of relying on the false statement.

In the event of charity fraud, the perpetrator of the fraud must have made statements to a third party that caused that individual to turn over funds believing they were to go to a legitimate charity when they did not do so, or funds must be taken from a charitable organization with the false understanding that they were to be used for a legitimate purpose.

In most aspects, charity fraud differs in very few ways from fraud perpetrated against private individuals or for-profit organizations. As fraud in the for-profit sector has increased over the past three decades, so too has fraud against charitable organizations and other nonprofits. Although steps to prevent such fraud have intensified, these attempts have been insufficient. A variety of law enforcement and government agencies work to prevent charity fraud, including state and local police departments, the Federal Bureau of Investigation, and the Federal Trade Commission. Private organizations, such as the Better Business

Bureau and the American Institute of Philanthropy, also work to prevent money from being diverted from charities, establishing public information campaigns, Web sites, and other resources to help protect consumers. To combat internal fraud, many charitable organizations use their accountants, lawyers, and other internal controls that are helpful in combating illegal behavior.

Types of Fraud

The simplest form of charity fraud involves an individual or group of individuals (con artists) soliciting funds on behalf of a real or fictional nonprofit organization, with the con artists having no intention of turning over the donations. Such fraudulent solicitations may take place face-to-face, over the telephone, online, or as the result of advertisements for submissions. Over 75 percent of charity fraud is believed to take this form. In addition, fees collected from charities by solicitors, which can often be larger than the amount funneled to the nonprofit organization but reported as program expenses, can also be considered charity fraud. Many organizations also report less fundraising on their federal Form 990s than they do on their audited financial statements, suggesting that they are spending more on overhead than they are indicating to the public. Although such a discrepancy may seem inconsequential, such behavior is an intentional deception of the public, who often select charitable organizations based on the percentage of revenue that is directly applied to charitable purposes.

Finally, theft or embezzlement from a charity or nonprofit by employees or other trusted insiders such as officers or directors also deprives organizations of funds. Many organizations also report less fundraising on their federal Form 990s than they do on their audited financial statements, suggesting that they are spending more on overhead than they are indicating to the public. While such a discrepancy may seem inconsequential, such behavior is an intentional deception of the public, who often select charitable organizations based on the percentage of revenue that is directly applied to charitable purposes.

Details are often incomplete regarding schemes that solicit funds for a fraudulent charity or collect money for a legitimate nonprofit with no intention of turning over the assets. It is easier to determine the frequency and scope of frauds committed by an organization's officers or directors. The scale of this type of fraud has increased. In the five-year span from 1998 to 2002, for example, over 125 cases of fraud were executed by officers or directors, with the median losses in excess of $130,000. The following year, however, 32 published accounts of charity fraud were reported, with the average loss totaling nearly $220,000.

The scope of charity fraud in the United States is believed to be enormous. The Association of Certified Fraud Examiners (ACFE) "Report to the Nation on Occupational Fraud and Abuse" study for 2008 applied the total losses in the 959 cases of fraud to the 2008 U.S gross domestic product (GDP), resulting in a whopping $994 billion in GDP that is lost to fraud. Since nonprofits typically account for about 8.5 percent of the GDP, therefore, it is assumed that as much as $84 billion was lost to nonprofit fraud in 2008, with a median loss of $109,000 per incident. Because smaller charities have fewer internal accounting systems to prevent fraud, it is also estimated that they suffer a disproportionate share of this loss.

Examples of Charity Fraud

Charity fraud is not a recent phenomenon. In 1918, for example, George Ryder, the secretary of the Cripples' Welfare Society, was convicted of defrauding that group for his personal gain. Specifically, Ryder was convicted of using "mite boxes" (collection boxes left in stores, post offices, and other public spaces) and the U.S. Mail to make heartrending appeals on behalf of disabled children. Rather than turning the collected money over to the Cripples' Welfare Society, however, Ryder appropriated the funds for his own personal use. As a result, he was charged with using the mails to defraud the public, to which he pleaded guilty.

A Ponzi scheme represents a financial operation in which investors are paid "returns" from their own investments, or the investments of investors who come to the operation at a later date, rather than from funds generated by the legitimate operation of the organization. In the 1990s, an organization known as Greater Ministries International (GMI), a church ministry headquartered in Tampa, Florida, was involved in a Ponzi scheme that defrauded 18,000 individuals of approximately $500 million. Led by Gerald Payne, GMI bribed church leaders across the United States to allow it to raise “donations” from members of various congregations. Donors were cited biblical scripture and promised that they would receive double their donations in return for their current contributions. The collections were used by GMI to finance its leaders’ lavish lifestyles, a newspaper, the Greater Bible College, and a line of herbal supplements branded Greater Live. As a result, almost all of the funds collected were lost. Once this fraud was discovered, GMI leaders were convicted of fraud and sentenced to prison.

Many successful charity frauds are able to flourish from connections that permit their leaders to appear to be engaged in legitimate activities and instill confidence in the public. During the 1980s, for example, the scale of the failure of Banco Ambrosiano was in part the result of the connections enjoyed by the bank’s leadership. An Italian bank, Banco Ambrosiano had as its largest shareholder the Vatican, and its general manager, Roberto Calvi, was often termed “God’s banker.” Through a series of offshore transactions, unsecured loans, and other questionable transactions, Banco Ambrosiano was ultimately unable to account for approximately $1.3 billion, causing its failure. Calvi fled Italy using a false passport and was later found hanging from London’s Blackfriars Bridge under mysterious circumstances in 1982. The great losses are believed to have been partially the result of the trust that investors put into the bank, a result of its connections with the Vatican and Italian political parties.

Preventing Charity Fraud

Although a variety of government and private-sector organizations work to prevent charity fraud, experts agree that the best prevention is for prospective donors to take steps to protect their gifts. First, donors should be proactive in their giving, directly contacting organizations that they are interested in helping rather than responding to telephone, mail, or personal solicitations. Next, donors should discourage telemarketers, as even legitimate ones are often third-party contractors. All donors should be wary of sound-alike names, as many disreputable organizations will devise a name that is similar to that of a legitimate charity. Confirming a charity’s 501(c)(3) status is helpful, as is investigating an organization’s dedication to accountability and transparency, perhaps through groups such as Charity Navigator or GuideStar. Information on the capability of an organization, ensuring that overhead costs and executive compensation are not excessive, can often be gleaned through copies of financial records. Finally, making a stronger commitment to an organization and giving one’s time as well as money helps ensure that a charity’s goals and objectives are what they appear to be.

To prevent embezzlement or misuse of funds by a charity’s employees, directors, or officers, it is wise to have certain systems in place. All new employees should have their references checked, including a criminal background check. Conduct guidelines should be communicated early and often, giving employees a chance to ask questions when they are unsure of proper procedures. Regular audits and strong accounting systems will also help prevent fraud, especially if they are communicated organization-wide. Finally, establishing a businesslike environment where combating and preventing fraud is a priority that is taken seriously will assist in establishing an environment where such actions are less likely to occur. Although it imay be impossible to prevent or eliminate all charity fraud, taking a few conscious steps to protect an organization will greatly reduce its likelihood.

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See Also: Accounting Fraud; Banco Ambrosiano; Dream Homes Scam; Internet Fraud; Madoff, Bernard L.; Mail Fraud; Nonprofit Organization Fraud; Ponzi Schemes; Religious Fraud; Telemarketing Fraud.

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Check Kiting

Check kiting is a type of fraud that involves the circulation of worthless checks between two or more financial institutions. This type of fraud is typically perpetrated on an array of financial institutions, including banks and credit unions, amounting to millions of dollars of losses annually. According to the American Bankers Association, check fraud accounted for $893 million in losses for 2010. Check kiting is distinguishable from writing bad checks in that there is an intent element to the white-collar crime of check kiting that may be prosecuted under federal statute. Bouncing a check, or writing a check from an account with insufficient funds, may occur as an error in balancing checking accounts, whereas check kiting is an intentional act by the check kiter to defraud the bank, which results in a crime. Issuing bad checks may also constitute a crime, but prosecution varies by state, and the crime may be difficult to prove without intent. Investigation and prosecution for check kiting often involves law enforcement from several federal agencies, including the U.S. Federal Bureau of Investigation, the Secret Service, the Department of Justice, and the Department of the Treasury.

Check kiting comes in different varieties. Circular check kiting occurs when checks are written back and forth between several checking accounts controlled by the perpetrator, usually at different banks, to cover withdrawn amounts at each corresponding financial institution. The continuous loop created in depositing checks, withdrawing the amount credited, and then depositing more checks to cover the withdrawals to prevent an overdraft and artificially inflate account balances creates an interest-free line of credit. The check kite may be sustained for years as checks go back and forth between accounts, typically at unrelated financial institutions to evade detection. Retail check kiting occurs when a check is issued for a larger amount than a purchase with a retailer that permits customers to receive cash back when the account that the check is drawn from actually has sufficient funds at the time of purchase to cover the entire amount of the purchase and advance. Corporate check citing occurs when large amounts of money are strategically transferred between corporate accounts to unfairly benefit the business entity in earning more interest or obtaining increased credit, unknown to the financial institution that maintains the corporate account. Check kiting may also be referred to as paper hanging, a situation in which the offender writes a check with no intention of eventually replenishing the account.

Check kiting may be perpetrated against two or more financial institutions to obtain unauthorized payday loans, lines of credit, or interest-free loans. Check kiting may also be manipulatively used to earn unjustified interest on accounts or increase the appearance of liquidity. By artificially inflating bank account balances in exchanging one bad check for another, check kiters may abscond with millions of dollars over a relatively short period of time before the check kite crashes. When the check kiting scheme collapses, banks often suffer the loss. The risk of loss from check kiting is generally placed on the banks, while the offender may escape with illegally obtained funds. Check kiters may be held civilly liable and are criminally prosecuted, resulting in imprisonment and restitution. Remaining losses accrued from check kiting are generally absorbed by the bank, and eventually the cost is borne by all customers in the form of increased bank fees.

Check Processing Regulations

Check kiting exploits the check float time between when a check is issued and when it clears, a time gap that is inherent in the check collection process. Prior to the enactment of the Expedited Funds Availability Act in 1987, banks exercised discretion as to the clearance of checks. After the enactment of the Expedited Funds Availability Act, banks were on a federally mandated timeline of when funds from checks had to be made available. Regulation CC of the Code of Federal Regulations issued by the Board of Governors of the Federal Reserve System provided a detailed time schedule for banks to make funds available from checks deposited by their customers, ranging from next-day availability for low-risk items such as government checks and cashier's checks, to several business days depending on the amount of the check, type of deposit, and method of withdrawal. Under Regulation CC, there are exceptions to the funds availability schedule that permit banks to hold customer funds longer as protection from potential losses. Banks may legally extend the funds' availability schedule under Regulation CC for new accounts, large deposits, redeposited checks, repeated overdrafts, emergency conditions, and reasonable cause to doubt collectibility.

The tight deadlines implemented by Regulation CC pressured banks to clear checks sooner. In many instances, the Regulation CC funds availability guidelines provided adequate time for depositary banks to ensure that checks cleared before releasing the funds to customers. Financial institutions are permitted to maximize the legal time frame for clearing checks, without offering customers a provisional credit on checks deposited prior to clearance. With increasing bank competition, some financial institutions make funds available immediately and allow customers to withdraw money faster than the deadline required under the federal guidelines. To satisfy customers, banks may permit customers to withdraw cash from a deposited check immediately, thereby increasing bank vulnerability to check fraud schemes.

A quick turnaround between deposit and withdrawal, without receiving verification that checks have cleared, places banks in a precarious situation. Traditional check collection involved several checks and balances over the course of several days in the check clearing process, where a depositary bank generally utilized intermediaries such as clearinghouses to transfer and present the check to the payor bank, which ultimately decided whether to honor the check within deadlines articulated in the Uniform Commercial Code. Such procedures were truncated by the enactment of the Check Clearing for the 21st Century Act, or the Check 21 Act.

The Check 21 Act, enacted in 2003 and effective in 2004, reduced the time it took to clear checks. In truncating and using substitute checks, banks could clear checks instantaneously by electronic means. This capability minimized the float time, thereby requiring sufficient account funds at the time of issuance. Bank customers no longer have two or more days to deposit additional funds to cover a potential shortage before it results in a bounced check.

Safeguarding Against Check Kiting

The crime of check kiting, which thrives on intentionally exploiting the float time for monetary gain, has greatly decreased in number of occurrences. However, check kiting still persists where financial institutions do not safeguard systems to detect this type of bank fraud.

Credit unions and smaller community banks may lack capable security devices and procedures to track and prevent check kiting. Larger banks tend to utilize complex and sophisticated systems and software to detect check kiting patterns to prevent or lessen losses. Warning signs of a check kiting scheme may be detected by bank employees in examining accounts with high deposits but low average daily balances and reviewing large dollar amount checks frequently deposited from multiple accounts of the same customer at different banks.

The declining use of checks as a result of the proliferation of debit cards has dramatically reduced the number of check fraud cases. As technology continues to develop, bank employees are trained to recognize suspicious activity, banks implement tighter internal controls, and check cards become more mainstream, check kiting may become less of an issue. Check kiting continues to exist, as credit crunches and financial hardship experienced in an economic recession may perpetuate the prevalence of bank fraud. Insurance may be available to protect financial institutions from bank fraud. A check kiting fraud rider may be included in a financial institution bond to insure banks against losses and limit their liability.

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See Also: Accounting Fraud; Bad Checks; Bank Fraud; Credit Card Fraud; E. F. Hutton & Co.

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Chem-Bio Corp.

Chem-Bio Corp. was founded in the 1980s to develop products used in medical diagnostic labs. In 1995, the company provided laboratory services to the Family Health Plan, a health maintenance organization (HMO) based in Wisconsin. Chem-Bio Corp. was prosecuted and found guilty of reckless manslaughter in cases involving the deaths of two Family Health Plan enrollees, Karin Smith and Delores Geary. The company is the first HMO convicted of a criminal homicide in connection with a case involving the death of a medical patient. The criminal case *Wisconsin v. Chem-Bio* involved specific charges that related to the laboratory's repeated failure to detect abnormalities in the Pap smears of both Smith and Geary. Smith, for example, had suffered for years from severe vaginal bleeding. She had seen her HMO doctor 15 times and underwent three separate Pap smears under the direction of her doctor in an attempt to discover the cause of her chronic vaginal bleeding. Chem-Bio's diagnostic lab screened each Pap smear and reported normal test results. Smith eventually elected to pursue a second opinion from a provider not affiliated with her HMO, and doctors detected that she had advanced cervical cancer. The cancer eventually led to her death, and medical experts testified at trial that Smith would have had a 90 to 95 percent chance of a full recovery had the cancer been detected earlier by the lab operated by Chem-Bio.

A criminal inquest recommended a prosecution against Smith's doctor; however, the district attorney elected to charge Chem-Bio, as a criminal, with reckless homicide. At trial, the state argued that Chem-Bio operated the lab in a manner that contributed to Smith's death. More specifically, the company was characterized by prosecutors as the "Family Death Plan" because it paid technicians on a per-slide basis that encouraged shoddy lab reviews. The company was convicted of reckless manslaughter for the deaths of patients Smith and Geary. The maximum penalty of a $10,000 fine for each death was imposed. The violent victimization of medical patients resulting from reckless or negligent physician care has traditionally remained beyond the reach of the criminal law, and a criminal prosecution against an HMO associated with negligent care had not occurred prior to the Chem-Bio case. Scholars have argued that the Chem-Bio case and a handful of other criminal prosecutions against doctors beginning in the late 1980s represent a shift in the social control of medical practice. The professional nature of the doctor–patient relationship and the existence of civil and peer-initiated sanctions within the medical domain have traditionally insulated doctors from criminal prosecutions in cases of medical negligence.

The criminal prosecution of Chem-Bio is indicative of one of the socio-legal factors that have altered the social control of medical practice and have made criminal prosecutions of doctors more likely in cases of negligent or reckless medical care. Since the 1980s, health care has become increasingly corporatized with the advent of HMOs. These large-scale bureaucratic networks have gained wider control over the manner in which doctors practice medicine. Doctors and patients have been replaced by "providers" and "enrollees" in the new managed care environment. Physicians must now divide their loyalties between the patient and the corporate interests of the HMO, with the patient sometimes assuming a secondary role. Doctors report diminished gratification from patient relationships, and they see patients as more critical and adversarial. HMOs have worked to depersonalize the doctor–patient relationship that has traditionally helped insulate doctors from criminal prosecution in cases of medical negligence or recklessness. The HMO movement ties the medical profession more clearly to money and has led to public outcries and debates about the rights of medical patients. HMOs employ a variety of procedures designed to increase the economic productivity of physicians, including incentives to reduce costs, limiting access to specialized care, and mandatory case reviews by nonphysicians. The use of financial incentives by some HMOs has been found to significantly alter physician treatment decisions. The Chem-Bio case illustrates the limits of corporatized medicine and the possibility of criminal charges against companies operating within the medical field that have balanced fiduciary concerns against the cost of human lives.

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See Also: Health Care Fraud; Health Corporation of America; Medical Malpractice; Medicare and Medicaid Fraud.

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Chevron Oil Co.

Chevron Oil Company is based in San Francisco. It began on September 10, 1879, as the Pacific Coast Oil Company. Discovery of oil at Pico Canyon north of Los Angeles provided the incentive for organizing the company. In 1900, Pacific Coast was purchased by John D. Rockefeller's Standard Oil Company and Trust. In 1906, Pacific Coast's operations were combined with the west coast operation of Standard Oil. However, in 1911, the U.S. Supreme Court ruled that Standard Oil Company and Trust had violated the Sherman Antitrust Act. The decision convicted the company (and thereby its subsidiaries) of four illegal activities: discriminatory freight rates, discriminatory treatment for private tank cars, discriminatory classification and rules for shipment, and secret and semi-secret railroad rates. The decision made Standard Oil of California a guilty party to the decision for its unreasonable monopoly practices. Standard Oil Company and Trust (New Jersey) was broken into 34 small corporations; Standard Oil of California was one of the new companies.

By 1926, Standard Oil Company of California was called SoCal. It began overseas oil exploration after World War I. In the 1920s, it sought oil in the Philippines, Alaska, and Colombia, with little success. Its first discoveries began in 1932, on the Persian Gulf island of Bahrain. In 1933, it gained a 60-year concession to explore for oil from Saudi Arabia's King 'Abd Al-'Aziz. A major find in 1938 opened the Saudi oil fields that would become the source of "black gold" after World War II.

To market its growing oil resources, SoCal joined with Texaco to form the California Texas Oil Company (CalTex), which had extensive marketing operations. During World War II, SoCal was a major oil supplier to the Allied war effort while thousands of its employees served in the military or in other capacities. It was also aided by the lend-lease aid that President Franklin D. Roosevelt sent to King Saud to keep him on the Allied side. In the postwar years, the establishment of the state of Israel with the aid of President Harry Truman concerned SoCal enough that it invited Exxon and Mobil to join it in order to increase the economic and political strength of the company. In 1948, SoCal discovered the enormous Ghawar oil field in Saudi Arabia. Its Saudi Arabian resources were joined by Texaco in the new company, ARAMCO. It also entered markets and joint exploration ventures in the United States, Canada, and Indonesia. The California-Arabian Standard Oil Company grew into the Arabian American Oil Company (ARAMCO). Faced with King Saud's continuing demands for money, the U.S. State Department and ARAMCO agreed in 1950 to allow the money that ARAMCO gave King Saud to be deducted from the company's tax bill. This scheme deprived the U.S. Treasury of $50 million or more in taxes each year.

Following the Arab-Israeli War of 1973, the Saudi government began purchasing shares of ARAMCO, using its enormous profits gained from price hikes through the cartel practices of the Organization of the Petroleum Exporting Countries (OPEC). By 1980, the company was owned entirely by the Saudis, who changed the name to the Saudi Arabian Oil Company. Between the 1920s and the 1950s, automakers in the United States quietly worked to eliminate electric public transportation. E. J. Quinby, president of the Electric Railroaders' Association, charged General Motors, some tire manufacturers, and oil companies including SoCal with conspiracy in restraint of trade. Eventually, the automotive forces were able to eliminate most railroad streetcars in the United States, replacing them with gasoline-operated buses. SoCal changed its name to Chevron in 1984, after it acquired Gulf Oil Company. In 2001, it acquired Texaco, and in 2005, Unocal Corporation. The acquisition saved Gulf Oil from a greenmail scheme.

Through the decades, Chevron has engaged in legal battles involving business disputes. Some cases involve criminal actions, such as the 2011 judgment of an Ecuadorian judge who ordered Chevron to pay billions in damages and cleanup costs for polluting an area of the Amazon jungle. Among the controversial issues surrounding the suit is the charge that Chevron tried to bribe Ecuadorian officials. Whether that case involved a bribe or an Ecuadorian shakedown, Chevron has had to deal with corruption in foreign countries where bribery is acceptable and with the Foreign Corrupt Practices Act, which makes it a crime to engage in bribery. Allegations in such cases, where private accusers can get up to 30 percent of an awarded judgment, are difficult to prove and defend against. In Indonesia, employees of a Chevron subsidiary were accused of fraud involving a green project that may have been fictitious. The charges amounted to $270 million in damages.

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See Also: Automobiles; BP PLC; Bribery; General Motors Co.; Standard Oil Co.

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Cigarette Advertising

On June 11, 2009, Congress passed the Food and Drug Administration's (FDA) Family Smoking Prevention and Tobacco Control Act (FSPTCA), which provides the federal government with expanded power to regulate tobacco products. This legislation granted the most expansive authority over the industry to date. It gave the FDA powers to control ingredients and overrule new products. Most

A Camel cigarette billboard features a soldier confidently puffing away over Times Square in New York City, February 1943. Major tobacco companies, ostensibly in an act of kindness, actually germinated a postwar crop of customers by giving away free cigarettes to U.S. soldiers during World War II. As market competition built up to its heyday in the 1950s, endorsements were drawn from every possible source, including babies, doctors, athletes, and dentists. Cigarette makers even sponsored television shows like Gunsmoke.

important, from an advertising angle, the legislation eliminated misleading labels (including "light" and "mild") and increased the size of warning labels on packaging. No strangers to regulation due to its affiliation with the tobacco industry, cigarette manufacturers have spent the better part of eight decades having to regularly reinvent marketing strategies to avoid violating various restrictions.

Background

Prior to public realization of the hazardous health effects of cigarettes, companies were able to advertise without any regulations. In 1789, the first advertisement appeared in a New York newspaper. The ad, for snuff, was run by what today is the Lorillard Tobacco Company. Because of manufacturing and transportation constraints, branding was not a strong possibility at the time, which limited advertising. If the market was just local, most advertising was seen as unnecessary. It took until the end of the Civil War for a national brand to emerge, and even this came about accidentally. As Union and Confederate troops waited for the surrender to be complete, they raided a North Carolina tobacco farm. Once the war ended, they continually asked that farmer for more of his product. This led to the establishment of the Bull Durham Tobacco Company.

Toward the turn of the 20th century, new innovations helped further the national prominence of cigarettes. First, manufacturers launched a cigarette-making machine that increased production exponentially. Output went from roughly 40,000 cigarettes to 4 million cigarettes per day. From the advertising perspective, the greater development was color lithography, invented in the late 1870s. Through this invention, companies were able to do more with advertising and packaging—creating a push for stronger brands. Cards were included in packages as premiums. The cards depicted everything imaginable; athletes and movie stars were the most popular.

At the onset of World War II, soldiers were given free cigarettes, courtesy of major tobacco companies. Originally seen as an act of kindness, the giveaway ended up being a boon for manufacturers. By the time soldiers returned home, many were addicted to nicotine and looking for cigarettes to purchase to feed their habit. The 1950s were the heyday of cigarette advertising, as companies worked to stand out from their competitors. Popular slogans were used by companies like Winston, Lucky, and Camel. Cigarette makers began to sponsor television shows. During the show *Gunsmoke*, Winston's ad went as far as to replace the word *cigarette* in its ad with the sound of two gunshots. Ads featured endorsements from everyone imaginable: athletes, doctors, babies, and dentists all sang the praises of cigarettes. However, trouble was brewing, as growing evidence of health concerns would eventually decimate the cigarette industry. As evidence became clearer linking smoking to lung cancer, manufacturers were forced to introduce filters. Even when testing showed that filters made no difference for safety, ads continued to claim filtered versions they were lower in tar and nicotine.

In 1964, U.S. Surgeon General Luther Terry released the "Advisory Committee Report on Smoking and Health." The report was based on over 7,000 scientific studies that linked smoking with lung cancer, emphysema, and a host of other diseases. In response to the report, there was an immediate growth in regulatory legislation aimed at protecting the general public. Companies were forced to include warning labels on packages and were no longer permitted to advertise on television or radio. While the legislation was well-intentioned, the unintended consequences were quite dramatic. Tobacco companies began targeting younger markets, using candy cigarettes and cartoon characters. One 1991 study found that more 5- and 6-year-olds could identify Joe Camel than Mickey Mouse.

New Federal Powers Over Tobacco

In 1996, the FDA labeled cigarettes an addictive drug and attempted to gain even more control over the industry. President Bill Clinton supported its efforts, but the Supreme Court ultimately ruled against the FDA because it had never been given authority by Congress to serve as the regulator of tobacco. A 2009 bill signed by President Barack Obama gave the FDA the official regulatory power it had previously lacked. It enacted a tobacco advertising ban within 1,000 feet of schools and playgrounds. Further, warning labels were to cover more than half of the front and back of cigarette packages. The law also prohibited flavored and sweetened cigarettes. Backed strongly by President Obama, the legislation was expected to dramatically alter the potential for success of cigarette companies in advertising their products.

On August 31, 2009, Commonwealth Brands introduced a lawsuit against the federal government and the FDA. The justification for the suit was that advertising restrictions were unconstitutionally infringing on First Amendment rights. The different requirements included dictating the appearance of text on packaging, the products that could or could not be advertised, the locations where advertising could be placed, and the ability to sponsor major events, alongside a ban on providing free sample cigarettes. In 2011, four major producers (Liggett Group, Commonwealth Brands, R.J. Reynolds, and Lorillard) filed a separate lawsuit against the FDA regarding the same string of issues. On February 29, 2012, U.S. District Judge Richard Leon, in *R.J. Reynolds et al. v. FDA et al.*, granted the plaintiffs' motion for summary judgment and held that the FDA's regulations violated the First Amendment, granting a temporary injunction that delayed the implementation of the new rules. On August 24, 2012, a three-judge panel of the D.C. Circuit affirmed, noting that the FDA's regulation and authorizing statute might not be constitutional, as follows:

> [H]ow much leeway should this Court grant the government when it seeks to compel a product's manufacturer to convey the state's subjective—and perhaps ideological—view that consumers should reject this otherwise legal, but disfavored, product?

The packaging rules therefore unfairly stacked the deck against tobacco companies. If the FDA had simply tried to force companies to disseminate factual information, the restrictions likely would have been upheld. However, the judge ruled that the motive went beyond that. It is believed that the issue will ultimately be decided by the Supreme Court in the coming years.

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See Also: Advertising Fraud; Consumer Deaths; Food and Drug Administration, U.S.; Pure Food and Drug Act; Research Fraud; Tobacco Industry.

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Civil Forfeiture

Originating under the ancient fiction that the property involved in an illegal activity has violated the law, civil forfeiture proceedings advance *in rem;* that is, against any property that is employed as an instrumentality of crime, or that is engaged in facilitating criminal behavior, or that results from criminal activity. Today, although property is designated the defendant, the in rem construction of civil forfeiture proceedings is a matter of prosecutorial and administrative expediency. Casting proceedings in rem, and so civil in nature, allows asset seizure, regardless of a criminal conviction or even a criminal charge, according to *The Palmyra, Escurra, Master,* 25 U.S. (12 Wheat) 1 (1827). Other advantages of civil forfeiture as a prosecutorial device include proof by a "preponderance of the evidence" or "clear and convincing" evidence, depending on the jurisdiction, resort to discovery, the deposition of those with an ostensible interest in the subject property, and the compelled disclosure of personal records.

Although the Fifth Amendment may be asserted, those claiming property interests while criminal charges are pending against them may be compelled, by threat of contempt, to reveal incriminating evidence. Regardless of whether criminal charges are pending, discovery is likely to provide useful information for impeachment, should a property claimant testify at forfeiture proceedings. Consequently, such proceedings often go uncontested, regardless of the weight of proof available to the government. Additionally, double jeopardy defenses may be precluded if the forfeiture proceedings can be shown to be "solely remedial," as in *Austin v. United States*, 509 U.S. 602, 609-10 (1993), and the court may order the forfeiture of third-party property involved in the offense, subject only to the statutory "innocent owner" defense. Administratively, proceedings in rem obviate separate civil actions against every individual and entity possessing actual and potential property interests of various kinds in the subject property. Indicating the real and personal property subject to forfeiture and the grounds for the proceeding against the property provides an opportunity to everyone with a property interest to come forward at one time and contest the forfeiture action, as ruled in *United States v. Ursery*, 518 U.S. 267.

Goals of Civil Forfeiture

The goals of civil forfeiture are equitable, deterrent, preventive, protective, and compensatory. It is meant to deprive wrongdoers of the benefits of their crime, to alter the calculation of potential wrongdoers as to whether the crime is worth their capture, to remove criminals from the sources of their economic power, to remove corrupt influences from the channels of commerce, and to compensate victims (U.S.C. § 981(e)(6)). Toward these ends, civil forfeiture proves effective against organized crime because the heads of crime syndicates employ their resources to preclude direct involvement in the crime they control and to conceal the criminal origins of their assets. Consequently, economic resources derived from criminal activity are often effectively beyond the reach of traditional criminal proceedings, and remain available to finance ongoing and future criminal enterprises. For these reasons, criminal forfeiture regimes, such as the criminal forfeiture provisions of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. 1963), often prove inadequate. The Civil Forfeiture Reform Act also includes a provision authorizing criminal forfeiture for any offense for which Congress has authorized civil forfeiture (Section 16, 28 USC 2461[c]).

Civil forfeiture proceedings require that the government demonstrate three things. First, the property must be shown to be subject to forfeit either as the proceeds of criminal activity, or as property employed substantially in the facilitation of a crime, or property employed as an instrumentality of crime (18 U.S.C. §981[2006]). This may include unlawful goods and services, lawful goods and services provided in an illegal manner, and fraud in the process of obtaining loan or extensions of credit. Second, the government must demonstrate that the law allows forfeiture. At the federal level, a plethora of statutes comes into play toward this end, including the civil forfeiture provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 301); the Trading With the Enemy Act (50 U.S.C. App. 1); the Neutrality Act of June 15, 1917 (22 SC 401); the Civil Asset Forfeiture Reform Act (CAFRA); and a host of others. Third, the government must show that the forfeiture does not constitute an excessive fine in violation of the Eighth Amendment's prohibition against cruel and unusual punishment, as ruled in *United States v. Bajakajian*, 524 U.S. 321, 330-34 (1998).

Concerns persist over civil asset forfeiture's reduced procedural safeguards, reduced standards of proof, reverse onus, and tendency to encourage abuse where state and federal law permits enforcement agencies to fund their operations from the proceeds of seized assets. In many cases, police seize property with little to no oversight. While the federal Civil Asset Forfeiture Reform Act provides some procedural safeguards, it does little to address the lack of agency accountability that might be secured were it subject to review through the budgetary process. Exacerbating concerns is the fact that states have expanded the use of the procedure to deal with local concerns including unsafe housing, prostitution, and drunk driving.

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See Also: Federal Gambling Regulation; Money Laundering; Racketeer Influenced and Corrupt Organizations Act; Racketeering; War on Drugs.

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Class-Action Lawsuits

Class-action lawsuits were developed in the United States as a means of permitting a group of plaintiffs to collectively bring a claim to court, and also to allow an assemblage of similar defendants to be sued together. Although class actions were made possible in 1938, only recently have such lawsuits become common. Class actions provide a means for aggregating a large number of claims into a single lawsuit, lowering the costs of litigation. These lawsuits also permit recovery in situations where an individual suit would be financially unviable and can change the behaviors of defendants, allow all plaintiffs to receive relief, and promote consistent standards of conduct for defendants. Critics of class-action lawsuits suggest that class members frequently do not receive any benefit from participating, with most monetary benefit going to the attorneys who bring the cases. Courts and legislative bodies have worked to ensure that class-action lawsuits that are settled are done so equitably, and without harming those not present in the courtroom.

Background

From about 1200 onward, courts in England had a type of group litigation that involved groups of individuals suing or being sued under the common law. The groups most often comprised accepted societal structures such as guilds, parishes, towns, and villages. The issue of standing, or whether a party has sufficient connection to the case before the court to bring an action, never arose in medieval courts. The common law courts' willingness to allow group litigation to proceed was probably a tacit acknowledgment of poor transportation, abysmal communications, and administrative shortcomings that made this easier than concentrating on individuals. Since the crown imposed judicial obligations through the use of force, it was simpler and less problematic to turn this effort upon groups rather than individuals. The group-oriented society in which most medieval lawyers and judges operated also reinforced the efficacy of permitting group litigation.

Over time, the development of better transportation systems, communication networks, and administrative processes made group litigation less desirable. By 1700, group litigation had disappeared in the common law courts, although chancery cases were still heard. By 1850, the British Parliament had enacted statutes dealing with issues regularly facing particular categories of organizations, such as partnerships or joint stock companies, and group litigation disappeared. In the United States, the case of *West v. Randall*, 29 F. Cas. 718 (1820), written by U.S. Supreme Court Justice Joseph Story sitting on the U.S. Court of Appeals for the First Circuit, held that class actions could exist as a matter of equity. This right to proceed as a class action was later promulgated under the Supreme Court's Equity Rule 48, which later became Equity Rule 38. When the federal courts combined equity and law in 1938, this became Rule 23 of the Federal Rules of Civil Procedure (FRCP).

FRCP Rule 23 delineates the procedure for class-action lawsuits. Pursuant to Rule 23, one plaintiff, or a group of plaintiffs, is able to proceed with litigation on behalf of an entire class of plaintiffs constituted of those allegedly harmed by the defendant's actions. For a lawsuit to proceed, the U.S. District Court judge before whom the case appears must certify the class. This certification is required to protect potential members of the class, whose rights will be subsumed in the proceedings of the class action. Multiple state statutes also allow for class-action lawsuits under state law. In 1966, a major revision of the FRCP took place, and Rule 23 added what has since been referred to as the "opt-out clause." Until 1966, many federal courts had been reluctant to certify a class because of the severe consequences for members of the class—all members of the class were bound by the decision. The 1966 revision of Rule 23 permitted potential members of a class who objected to proceed to appear in court and opt out of membership in the class. This change greatly expanded the use of class-action lawsuits.

Uses of Class-Action Lawsuits

Certain 20th-century developments led to the expansion and growing popularity of class-action litigation. After the Great Depression, many understood the value of government regulation of corporations, banks, and other financial institutions. Such regulation, however, was expensive insofar as it required government employees to monitor the corporations, banks, and other financial institutions; and bringing the lawsuit necessitated the use of lawyers. Using class actions to advocate for and protect consumers' and shareholders' rights, however, could accomplish many of these goals, without any added expense for taxpayers. Additionally, changes embraced by many during the 1960s, such as those involved in the civil rights movement, consumer advocacy, and environmentalism, made class-action lawsuits more appealing. Those interested in civil rights, consumerism, or environmental activism increasingly used class-action lawsuits as a means of achieving their goals.

For a class-action lawsuit to be recognized by a court, specific procedures must be followed. First, an individual plaintiff or small group of plaintiffs must be found who have suffered a common injury as a result of a defendant's actions or negligence. The individual or small group must have suffered injuries that are representative of the proposed class. The injury or injuries often result from the action of a business, such as an oil leak; or from a product's design, such as a toy with small pieces that resulted in a child choking. Then, a complaint is drafted and filed with the court and served on the defendants in the case. Next, the attorneys for the plaintiffs must make a motion with the court to have the class certified. Since a class-action lawsuit may results from product defects or damages that can be dealt with in a similar manner, the plaintiffs' attorneys must show the expected size of the class, and whether it will meet the standards set forth for class certification. When defendants object to class certification, it is often on the grounds that there is a lack of commonality in the plaintiffs' factual or legal claims, that the named plaintiffs are not sufficiently representative of the class as a whole, that the number of potential plaintiffs is not so large that individual suits are unfeasible, or that the named plaintiffs have an inappropriate relationship with the attorneys handling their case.

Independently, the court will also consider the adequacy of the attorneys' ability to prosecute the plaintiffs' claim, and whether the firm seems to have adequate resources for a class-action lawsuit. If a class is certified, the court next requires that the plaintiffs' attorneys provide notice of the class action. This notice must be disseminated, published, sent, or broadcast in such a manner that class members are reasonably able to receive it, and then are provided a chance to opt out of the class if they desire to proceed with a personal lawsuit. For an individual to opt out, he or she must provide timely notice of this intent to the court or the plaintiffs' attorneys. If a settlement between the parties is proposed before the case goes to trial, the court will also require plaintiffs' attorneys to promulgate this to all members of the class and inform them of the details of the proposed settlement.

Class-action lawsuits theoretically provide parties and the courts a variety of benefits. Aggregating a large number of individual claims into a single, representative action increases the efficiency of the legal process and theoretically lowers the cost of litigation for plaintiffs and defendants. In cases resulting from a common set of facts and similar questions of law, a class-action lawsuit frequently circumvents the need for repeated testimony from the same witnesses regarding identical questions, exhibits, and issues. Class actions also make viable an incentive that otherwise would not exist for claims where individual damages are negligible but damages for the class as a whole are significant. Millions of customers of a utility company who are overcharged by a dollar, for example, have little individual incentive to pursue a claim, although the total amount at issue is significant. This economic consideration is especially important for plaintiffs' attorneys, who often work for a percentage of the total amount recovered—a claim that would be impracticable to pursue on behalf of an individual often makes economic sense when taken up for a class.

In the event that potential damages may be greater than a defendant's ability to pay, class actions also allow a fair and reasoned distribution of assets. Rather than permitting plaintiffs who bring their claims first to receive compensation while those who come forward later get nothing, class-action lawsuits allow all to be recompensed for their losses in an equitable and orderly manner. Class actions also prevent the unseemly result of different outcomes for plaintiffs and inconsistent standards of conduct for defendants where a group of claims all stem from the same set of facts. Finally, class-action lawsuits are believed to be useful in situations where plaintiffs seek to change the behavior of a class of defendants through the threat of actions being brought seeking damages. This sort of persuasive benefit augments criminal sanctions insofar as it quickly attracts the attention of corporate leaders.

Critics of class actions assert that when improperly brought, this type of lawsuit can harm both legitimate plaintiffs and defendants who have not engaged in wrongdoing. Many class-action lawsuits are settled in a manner that results in large fees being paid to the attorneys who brought the suit, but only coupons or very small checks for members of the class. Such lawsuits also may impede interstate commerce, as corporations become more interested in avoiding and averting class actions than in focusing on developing and delivering products or services. Finally, questionable class-action lawsuits tend to sully the nation's judiciary and legal system; as costly litigation that enriches a few at the expense of others undermines the public's respect.

Class Action Fairness Act of 2005

In an effort to address some of these concerns, the U.S. Congress passed the Class Action Fairness Act of 2005 (CAFA). CAFA expanded federal jurisdiction over many of the class-action lawsuits that had been filed in state courts up until that point. The first major piece of legislation passed during the second term of President George W. Bush, CAFA had the strong support of members of Congress who favored tort reform. CAFA, which eased the process by which defendants could remove an action originally filed in state court, was seen as helping prevent some of the abuses of class-action lawsuits that had occurred previously to its passage. CAFA was touted by its supporters as a means to prevent forum shopping (i.e., the process by which plaintiffs seek the judicial system most likely to give them a favorable verdict). CAFA was also intended to reduce the number of "coupon settlements" (i.e., class actions that are settled with defendants paying plaintiffs' attorney fees and providing coupons to the class) by having all class-action settlements require approval from the judge to ensure that all class members benefit from the proposed resolution.

CAFA gives the federal courts jurisdiction over class-action lawsuits where the amount in controversy exceeds $5 million, and where any member of the class of plaintiffs resides in a different state from any defendant, except in those situations where at least two-thirds of all plaintiffs and defendants are residents of the same state. This change greatly reduced the ability of plaintiffs' attorneys to bring class-action lawsuits in forums that had traditionally been friendly to certain types of cases, such as Madison County, Illinois; or Atlantic County, New Jersey, as defense counsel can remove these cases to federal court. Although CAFA was harshly criticized at the time of its passage for impeding upon plaintiffs' rights, since its passage, more class-action lawsuits have been filed in or removed to federal courts, although much of this increase is because of plaintiffs' filing in federal courts rather than defendants' removal actions.

Consequences of Class-Action Lawsuits

Class-action lawsuits have the potential to protect the rights of consumers and can even prevent white-collar crime by making certain actions so costly for defendants that they decline to engage in such behavior. In response to the variety of high-profile corporate scandals that have occurred over the past 10 years, for example, prosecutors and plaintiffs' lawyers have sometimes worked together to obtain restitution for those harmed by malicious behavior. This has permitted collection of billions of dollars for a range of crimes, including consumer scams, environmental disasters, and financial fraud. Coupling criminal prosecutions with class-action lawsuits has several advantages for prosecutors and the public. First, the class-action system includes important protections for victims entitled to compensation, safeguards that the criminal system lacks. Second, a class-action lawsuit provides the means to coordinate multiple lawsuits, to hear victims' claims, and to divide an award between multiple injured parties. Third, permitting plaintiffs' attorneys to focus on compensation allows professionals skilled at this process to focus on recovery rather than having prosecutors struggle to cobble together a settlement. Fourth, the class-action process permits an equitable division of any award among a variety of victims. Finally, class-action lawsuits provide opportunities for more judicial oversight of settlements and provide for reviews of potential conflicts of interest.

When alleged white-collar crimes are committed by government agents, class-action lawsuits also provide an avenue for addressing wrongs that might otherwise go unpunished. During the 2010 U.S. census, for example, the U.S. Census Bureau hired over one million temporary workers to gather information. Census Bureau policy barred any applicant with an arrest record of any type from employment as part of this process. A group of individuals with arrest records for minor infractions filed a class-action lawsuit against the Census Bureau, alleging that the hiring policy unfairly discriminated against African Americans, Latinos, and American Indians, and sought to have the guidelines revised or set aside. As this example illustrates, class-action lawsuits provide an avenue for addressing problems facing groups that would otherwise be left without remedy. As complex situations involving the rights of large groups continue to evolve, class-action lawsuits will continue to alleviate injured parties' suffering.

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See Also: Adulteration, Economically Motivated; Boycott; Cigarette Advertising; Consent Agreements and Orders; Johns Manville Corp.

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Clayton Antitrust Act

The Clayton Antitrust Act, or An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies, and for Other Purposes, became law in 1914 in an effort to strengthen the existing Sherman Antitrust Act of 1890. It is a civil statute that focuses on price discrimination, condition of sales, mergers and acquisitions, and multiple directorships. After the *Standard Oil of New Jersey v. United States* (1911) decision resulted in the breakup of the company into smaller companies, it became apparent that the existing antitrust law needed to be updated. Alabama's Congressman Henry De Lamar Clayton, Jr., introduced the legislation in the House of Representatives, and a joint version containing modifications by the House and Senate passed into law on October 5 and 8, 1914, respectively. President Woodrow Wilson signed the bill into law on October 15, 1914, making it Public Law 63-212. The act sought to improve on the existing Sherman Antitrust Act of 1890, which could not meet all of the antitrust situations that might occur in the industry. The Clayton Act allowed for federal government intervention in company mergers before a monopoly was created.

Section 2 of the act discusses price discrimination and its prohibition in transactions with different purchasers of the same commodity, in the event that the discrimination could be in an attempt to lessen competition. Section 3 sets

Virginia's Congressman John W. Davis (left) worked with Alabama's Congressman Henry De Lamar Clayton (right) to pass the Clayton Antitrust Act of 1914, which allowed for federal government intervention in company mergers to prevent a monopoly.

conditions on the limits of sales and leases that could impact and lessen competition in an industry. A person whose business has been impacted by business practices that qualify as antitrust violations has the right to sue in district court. The law also indicates settlement guidelines entitling the suing party to three times the damages, court costs, and attorney's fees. Section 5 of the act discusses the settlements in cases brought by the United States and the statute of limitations. The act, however, does not restrict the existence of organized labor and unions related to industry. These are not impacted by antitrust laws. However, the law does restrict a person from being the director of two companies that deal with the same commodities. The law also limits a person from serving on the boards or as an employee of two financial institutions in a community that is smaller than 200,000 persons.

Under this act, mergers and acquisitions that can lessen competition in an industry are illegal. The government can step in and stop the merger before it happens, if there is a possibility of price increases to consumers. Companies that intend to merge are required to file with the Antitrust Division and the Federal Trade Commission. The act requires that information be filed with the Interstate Commerce Commission when bidding is done. An investigation is conducted and a decision is made regarding the merger. The Clayton Act was amended in 1936 by the Robinson-Patman Act, which makes anticompetitive practices by producers illegal. The amended Clayton Act required that items be offered to customers at the same price for which the sellers purchased it. In 1948, the Supreme Court ruled against Morton Salt in its decision *FTC v. Morton Salt* because the company made its Blue Label salt available to five national chain stores at a quantity discount that only they could receive, thus leaving out smaller stores. A similar decision concerning price discrimination occurred in 1990 when Texaco retailers sued because some retailers were getting gasoline at wholesale prices.

Further amendments were added in 1976 under the Hart-Scott-Rodino Antitrust Improvements Act. The act established that state attorneys general could file suit on behalf of citizens in their state, and it allowed for awards in an injury settlement of threefold the amount to the state. It also changed the personal settlement from threefold of damages sustained, to figuring the damage sustained by a statistical measurement approved by the court, to be awarded to the persons who sought the suit. Section 8 of the Clayton Act was also revised to state that no individual could acquire the capital stock of another company, where the original text stated that no corporation could have controlling interest in two companies in direct competition. This would prevent the formation of a monopoly. Today, the enforcement of the act is delegated to the Anti-Trust Division of the Department of Justice, Interstate Commerce Commission, Federal Reserve Board, and Federal Trade Commission.

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See Also: Antitrust, Federal Trade Commission; Antitrust, U.S. Department of Justice; Federal Trade Commission; Sherman Antitrust Act.

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Clean Air Act

Ratified in 1970 but extending a previous statute from 1955, the Clean Air Act (CAA) is a federal law in the United States. Functioning within the jurisdictional authority of the Environmental Protection Agency (EPA), the CAA aims to maintain a certain level of air quality by regulating the amount of hazardous air emissions that may be produced by stationary and mobile sources. Under the mandate of the CAA, the EPA has developed several regulatory measures, most notably the National Ambient Air Quality Standards (NAAQS), which established a set of primary and secondary standards intended to safeguard public health and welfare and to protect the environment from hazardous air emissions. Although the EPA established NAAQS, state governments have the responsibility to enforce the standards set. The six air pollutants that are particularly targeted under this program are carbon monoxide, lead, nitrogen dioxide, ozone, particle pollution, and sulfur dioxide.

Since its original enactment, the CAA has been significantly amended twice, in 1977 and 1990. These amendments ultimately expanded the technical scope of the CAA and afforded additional powers to the EPA to ensure industrial compliance with the amended version of the CAA. Specifically, the amendments created new regulatory initiatives that addressed pressing concerns of acid rain and the degradation of the ozone layer, and established new avenues to enforce existing standards of air quality. With these amendments, sources that fail to meet the requirements of, or otherwise violate, the CAA are vulnerable to financial, administrative, and other penalties. In recent years, several large corporations have been alleged or found to infringe on the CAA. In 2012, for instance, Essroc Cement Company, a large cement producer, paid $1.7 million in fines for breaching certain terms of the CAA. The EPA actively maintains a watch list of corporations that are considered high-priority violators of the CAA.

How Effective?

Scholars and policymakers have undertaken numerous studies to analyze the effectiveness of the CAA. Much of the extant literature on the CAA has found that its benefits exceed its costs. For example, in a recent report, Christopher Van Atten and Lily Hoffman-Andrews identify three broad economic benefits stemming from the CAA. First, citing a study produced by the Office of Management and Budget, they assert that the CAA yields economic benefits between four to eight times the costs of enforcement and compliance (other sources suggest that benefits outweigh the costs at a ratio of up to 100 to 1). Second, they contend that there is a corresponding relationship between the implementation of the CAA and economic growth. Whereas the CAA engendered 41 percent less common air pollutants from being released from 1988 to 2008, the same period saw GDP growth of 64 percent. This leads them to conclude that there is a positive correlation between economic growth and protecting the public health and the environment. Third, they find that the implementation of the CAA increased the national employment rate by adding 1.3 million jobs to the American economy between 1977 and 1991.

Overall, as J. Scott Holladay notes, a cost/benefit analysis vividly illuminates the efficiency of the CAA because there is evidence that the costs are largely absorbed by violators while the benefits are reaped by society as a whole. By regulating air quality, the CAA has played a crucial role in defending public health and welfare and protecting the environment. For the CAA to continue to meet its central mandate of preserving a certain level of air quality in the future, it will be integral for the EPA to attend to emerging challenges that potentially undermine air quality, and for state governments to fulfill their enforcement responsibilities.

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See Also: Asbestos; Clean Water Act; Endangered Species Act; Environmental Protection Agency, U.S.; Global Warming; Hazardous Waste; Nader, Ralph; National Environmental Policy Act; Pollution, Air.

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Clean Water Act

The Clean Water Act of 1972 (CWA), also known as the Federal Water Pollution Control Act, is a body of legislation designed to ensure that U.S. waterways are clean, monitored, and protected from contamination. The intent of the CWA is to "restore and maintain" the integrity of U.S. waterways. The CWA represents the first federal initiative to regulate water quality and establish national water-quality standards. Currently, the CWA maintains jurisdiction over 60,000 public bodies of water.

Prompted by Environmental Activism

The passage of the CWA occurred in an era of environmental activism in the United States. Much of this activism was spurred by highly publicized environmental catastrophes such as Love Canal and Times Beach. One of the most relevant of these disasters was the 1969 fire on the Cuyahoga River in Cleveland, Ohio. Years of industrial dumping in the river resulted in the spontaneous outbreak of fire on the water. Estimates suggest that this fire caused tens of thousands of dollars in damages. The fire sensitized the public to the consequences of water pollution and galvanized citizens to organize and demand protected waters. It simultaneously revealed that if left unregulated, the private sector would have little to no interest in modifying production to preserve public health. The CWA was largely the product of the grassroots environmental movement of the 1970s.

To achieve its stated intent, the CWA outlines 12 objectives. These objectives include limiting the quantity of pollutants discharged into waterways and investing in research initiatives and technologies that monitor and control water pollution. At the initial passage of the CWA, it was anticipated that these efforts would culminate in the abolition of pollution discharge into navigable waterways. In an effort to ensure this, the CWA states that by 1983, waterways would be restored to a standard that protects fish and wildlife. The CWA also states that the discharge of pollutants into navigable waterways would end no later than 1985. Neither of these goals was attained. One of the most important provisions in the CWA is the discharge permit program. The discharge permit program is the primary mechanism by which the CWA's water-quality standards are transformed into enforceable limits. Permits are issued under the National Pollution Discharge Elimination System (NPDES) and are valid for no more than five years. According to this provision, any person who is responsible for discharging pollutants into waterways at point sources must apply for and receive a permit. Permits are issued by the EPA, although as of 2010, 46 states have been granted authority to issue permits. According to the EPA, in 2009, over 45,000 facilities had such permits. Unfortunately, 2009 EPA figures also suggest that of major (larger) permit-holding facilities, approximately 55 percent were in noncompliance with CWA standards.

The CWA grants authority to the EPA, state agencies, and civilians to enforce the conditions of permits. Facilities found in violation of permits are subject to compliance orders issued by the EPA and/or are subject to civil suit by the EPA. Negligent or knowing violations can result in fines ranging from $25,000 to $50,000 per day. More serious infractions subject facilities to fines as high as $250,000. The EPA may also impose criminal sanctions on permit violators, instead of or in addition to civil penalties. Individuals violating permits are subject to as much as 15 years of imprisonment. The EPA is also granted authority to intervene if it finds that state entities have been negligent in enforcing permits. Civilians are also authorized by the CWA to file suit against violators and/or government entities that have demonstrated a failure to regulate CWA standards. Since 1972, the CWA has undergone a number of amendments expanding or limiting the authority of the CWA. For example, the 1987 revisions to the CWA expanded the CWA from addressing strictly point sources of water pollution (e.g., pipes) to including nonpoint sources of water pollution (e.g., storm runoff and snowmelt). Conversely, HR 2018 (passed by Congress in 2011) reduces the EPA's ability to cross-check state entities in water quality regulation. The passage of HR 2018 threatens to increase the presence of contaminants in water (e.g., lead and mercury) and underscores the need for criminology to better understand regulation and enforcement of the CWA.

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See Also: Clean Air Act; Coal Mining; Endangered Species Act; Environmental Protection Agency, U.S.; *Exxon Valdez* Oil Spill; Global Warming; Grassy Narrows First Nations Reserve; Gulf of Mexico Oil Spill; Hazardous Waste; Nader, Ralph; National Environmental Policy Act; Pollution, Water; Teledyne Industries Inc.

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Clinard, Marshall

Marshall Barron Clinard was a sociologist and criminologist, widely recognized as a pioneer in the study of corporate crime. Clinard was born in Boston, Massachusetts, on November 12, 1911. He died of a heart attack at the age of 98 on May 30, 2010, in Santa Fe, New Mexico. He received his B.A. (1932) and M.A. (1934) from Stanford, and a Ph.D. in sociology from the University of Chicago (1941). He married Ruth Blackburn in 1937, and they had three children. Clinard taught at the University of Iowa and Vanderbilt before joining the faculty at the University of Wisconsin, where he taught for 34 years. He was a popular and award-winning teacher. His influence on the discipline was enormous. Many of his doctoral students and their students now teach in sociology and criminology departments throughout the United States and Canada.

He expanded the traditional definition of crime to include corporate malfeasance and crime perpetrated by wealthy and powerful people. He was instrumental in establishing the study of corporate crime as an integral and legitimate area of sociological and criminological research. Beginning in the 1950s, with his research on corporate corruption, Clinard produced the first serious, systematic research revealing the wide range of unethical and illegal actions of large corporations and their executives. He was not a muckraker, but a serious and moral social scientist. He studied crimes committed by the largest corporations in the United States, finding corporate crime rampant and unabated.

Two Forms of White-Collar Crime

Continuing the work of Edwin Sutherland, Clinard, along with critical sociologist Richard Quinney, separated white-collar crime into two distinct forms. Corporate crime involved large-scale actions that benefited the corporations and those in control of corporate actions. On a far smaller scale, occupational crime was committed by individuals for their personal benefit (e.g., embezzlement). Clinard's research uncovered a staggering amount of corporate crime. He estimated that the cost of corporate crimes in terms of money, health, and lives was exponentially greater than that of crimes perpetrated by individuals or street gangs.

Clinard believed that deviant and criminal behavior was learned, like any other form of behavior, and that it persisted because of a lack of internal and external social controls. Corporate executives and managers (often greedy and narcissistic) neither held themselves accountable to the public nor were held accountable by social control agencies. Without regulators and law enforcement agents enacting regulations and laws, corporate managers felt free to take any action they desired. In his early work, he listed the automobile, petroleum, pharmaceutical, and defense industries as major offenders. Today, he would add financial, insurance, and governmental institutions to the list. The crimes and behaviors he described include violations of health and safety regulation, price fixing, fraud, hazardous waste disposal, corporate violence, bribery, and the systematic destruction of third world countries. Clinard also revealed the contradictions between the level and wide distribution of corporate crime and the squeaky clean, socially conscious image of corporations promoted through print and TV advertising and other forms of propaganda. Clinard noted that self-regulation and the existence of codes of ethics have only minimal success. Rather, he suggested stronger enforcement of existing laws and regulations; the passage of new, tougher laws with enforcement guidelines; and the deconstruction of propaganda that promotes a favorable image of corporations engaged in criminal activities.

Clinard's professional status is exemplified by his accomplishments. From 1961 to 1962, he served as president of the Society for the Study of Social Problems. In addition, he was awarded the Donald Cressey Award, the Edwin H. Sutherland Award for Distinguished Contributions to Criminology, and the Gilbert Geis Lifetime Achievement Award from the American Society of Criminology. He published 11 books, over 40 journal articles, and numerous book chapters and reviews. Included in this list is perhaps the most influential text in the area of deviant behavior. His text, *The Sociology of Deviant Behavior*, now coauthored with Robert Meier, is in its 14th edition. Tens of thousands of students have learned about deviant behavior and corporate crime from Marshall Clinard.

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See Also: BP PLC; Consumer Deaths; Defense Industry Fraud; Government Procurement Fraud; Hazardous Waste; Pharmaceutical Industry; Regulatory Enforcement; Sutherland, Edwin H.

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Clinton, William J.

William Jefferson (Bill) Clinton was born William Jefferson Blythe on August 19, 1946, in Hope, Arkansas. His mother, a widow, would later marry Roger Clinton. Bill took his stepfather's last name while in high school. During his high school career, Clinton was a delegate to Boys Nation (a civic education program sponsored by the American Legion), through which he had the opportunity to meet President John F. Kennedy; later, Clinton would say that this meeting was what inspired him to take on a career in public service. Clinton received his undergraduate degree from Georgetown University and was a Rhodes scholar at Oxford University before completing his law degree from Yale in 1973. After finishing Yale, he returned to Arkansas initially to teach at the University of Arkansas, Fayetteville Law School, later beginning a career in politics. In 1975, he married Hillary Rodham, a fellow Yale Law graduate. Clinton was elected attorney general of Arkansas in 1976 and won the governorship two years later. Though he lost a bid for reelection in 1980, he would regain the governorship in 1982, and he held it until his successful presidential bid in 1992. As a result of the 1992 elections, the White House, the Senate, and the House of Representatives were controlled by the Democrats, the first time all three bodies had been controlled by the same party in 12 years. This edge would be brief, as Republicans captured a House majority in 1994.

Controversy, Scandal, and Corruption

Despite a postelection promise to "lead the most ethical administration in history," the Clinton administration was rife with controversy and scandal. A few weeks into the administration's term, the White House fired seven longtime employees in the White House travel office and replaced them with Clinton family friends. This prompted the

Federal Bureau of Investigation to look into the firing, which was decried as conducted under pressure from the administration.

The next scandals to envelop the Clinton administration concerned Clinton appointees Zoe Baird and Kimba Wood. Clinton nominated Zoe Baird as the first female attorney general of the United States. Baird ultimately withdrew her name from consideration for the position when it was discovered that she had hired illegal immigrants as nannies for her children, a violation of federal law. The second nominee from Clinton, Kimba Wood, was similarly knocked from consideration. Clinton then nominated Janet Reno, a much safer bet, as she had never married and had no children, and thus had no need for illegal nannies. As attorney general of the United States, Janet Reno was tasked with investigating campaign illegalities in both the presidential and vice presidential campaigns, as well as investigating Clinton's involvement in the Whitewater scandal and the sex scandals uncovered in the Whitewater investigation. Reno also pursued companies violating antitrust laws—one of the most notable cases was her suit against Microsoft—and exerted pressure on companies and federal lawmakers to end insider trading. Under her watch, the largest criminal fine in the history of the U.S. Department of Justice (at the time) was levied against Hoffmann-La Roche Pharmaceutical Company for breaking antitrust laws and engaging in price fixing. She was also well known for appointing ethics advisors to serve in the offices of all U.S. attorneys.

Following "Nannygate" and the appointment of Reno, the Clinton administration had to weather the Whitewater scandal. This scandal got its name from the land deal that the Clintons invested in during the late 1970s. Their partners in the deal, James and Susan McDougal, bought a savings and loan facility in the early 1980s that was ultimately shut down by the federal government. James McDougal hired the Rose Law firm—where Hillary Clinton was a partner—to try and keep the business afloat. During a federal investigation into the failure of the savings and loan, the Clintons were named as potential beneficiaries of its alleged illegal activities. In an attempt to clear the air around Whitewater, Clinton tasked Janet Reno with beginning an investigation into the Whitewater matter. Reno appointed Robert B. Fiske to lead the investigation, but within eight months, he was replaced with Kenneth Starr. Under Starr's lead, the investigation into Whitewater was widened to try and uncover anything that the Clintons may have done illegally. Starr did not find any conclusive evidence that the Clintons had acted unethically or illegally in their business practices regarding the Whitewater land deal and its accompanying matters; however, Starr unearthed information in the form of sex scandals that would ultimately lead to Clinton's impeachment. First, Paula Jones accused Clinton of sexual harassment. Though it was later revealed that she was financed by a group of conservatives hoping to take down the president, Starr continued to pursue the investigation. The continued investigation led to the discovery of Clinton's affair with former White House intern Monica Lewinsky.

While under oath in the Paula Jones harassment case, Clinton testified that he did not have sexual relations with Lewinsky. Though he later acknowledged that he had "intimate relations" with her, he maintained that his earlier testimony was technically accurate. This flub would enable the House of Representatives to impeach him on two articles—perjury and obstruction of justice. The Senate, however, rejected both articles, and thus Clinton was able to remain in office. Clinton's time in office following the impeachment trial was not without scandal. In his last hours before leaving office, Clinton officially pardoned 140 individuals. Opponents accused him of selling pardons because of his personal ties to at least three of the pardoned individuals—including Susan McDougal for her part in the Whitewater scandal. Another controversial pardon was that of Marc Rich. Rich was indicted for income tax fraud and breaking a U.S. embargo (by selling oil to Iran during the hostage crisis) but had fled the country before being brought to court. Clinton's pardon of Rich was controversial because Rich's wife has lobbied hard for the pardon; her efforts included a \$70,000 donation to Hillary's Senate campaign and a \$450,000 donation to Clinton's presidential library. Though the U.S. Senate Judiciary Committee held hearings on the legality of the pardon, results were inconclusive.

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See Also: Campaign Finance; Edwards, John; Housing and Urban Development, U.S. Department of; Madison Guaranty Savings and Loan Association; Microsoft Corp.; Perjury; Real Estate Investments; Savings and Loan Fraud; Whitewater Scandal.

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Coal Mining

Coal mining has played a key role in industrial development. By 1900, the success of the American economy, the world's leading coal producer, had become largely dependent on coal. The treatment of coal miners shaped American labor history, labor law, and corporate crime. Mine owners were among the most powerful "captains of industry" to emerge during the Industrial Revolution, and coal miners became a core sector of the working class. The industry was particularly important in several states, such as West Virginia, where it remains concentrated today. Across the largely rural areas where mines were located, dozens of company towns emerged, and mine operators provided workers and their families company housing as well as other benefits (such as company-sponsored stores). Miners received minimal pay and faced harsh working conditions, and mine owners controlled virtually every aspect of their lives. Mine operators were adept in gaining control of local and state politics, leaving the industry largely unregulated, and abuses and accidents were commonplace.

Fairmont Coal Company

The worst mine disaster in U.S. history reflects the hazardous conditions facing coal miners, in which 300 miners (including many young boys) were killed in 1907 in an explosion that occurred at two mines operated by Fairmont Coal Company in West Virginia. An investigation failed to pinpoint the exact cause of the explosion, but officials concluded that it was likely triggered by a spark that ignited the methane gas or coal dust that had collected in the mine shaft. For more than a century, hazardous working conditions have led to over 100,000 deaths. Mining accidents are caused by several factors: explosions are the most immediate cause (and typically occur when gases reach excessive levels in underground mines); workers may also suffocate when toxic gases reach elevated levels; and collapsing roofs cause many deaths. Accidents are linked to the risks inherent in the extraction of coal, but they are often tied to negligence and misconduct of mine owners, and lax regulation exacerbates these problems. Miners have also faced occupational illnesses that can cause disability and death, and coal workers' pneumoconiosis (CWP) is the most serious and common of these. This fatal respiratory disease, recognized by doctors as early as the 1820s, is caused by long-term exposure to coal dust. For decades, mine operators resisted acknowledging this or providing compensation to disabled workers, allowing CWP to result in thousands of fatalities, far exceeding the deaths caused by coal-mining accidents.

Unions and Federal Legislation

In 1890, the United Mine Workers of America (UMWA) was established, largely in response to unsafe working conditions. From 1890 to 1933, the UMWA led many key strikes, demanding improved safety and higher wages. These strikes often paralyzed the national economy and often turned deadly as employers depended on private militia, local law enforcement, and the National Guard to confront strikers. This use of force claimed the lives of hundreds of coal miners who were caught in the "coal wars" that raged from West Virginia to Colorado. The UMWA eventually secured several historic political victories, such as the Wagner Act (1935), which redefined labor relations, outlawed many of the corporate tactics to curtail union organizing, and helped the UMWA to grow and improve the safety conditions of mine workers.

In 1891, the first federal statute governing mine safety imposed ventilation requirements for underground coal mines and prohibited child labor. In 1910, the Bureau of Mines emerged to further

Miners at the Virginia-Pocahontas Coal Company Mine #4 near Richlands, Virginia, line up for the elevator shaft, April 1974. One miner (far left) carries Red Man chewing tobacco, which was popular due to the smoking ban in the mines. The Federal Coal Mine Health and Safety Act of 1969 established monetary penalties for health and safety standards violations as well as criminal penalties for "knowing and willful" violations. After 1977, the Mine Safety and Health Administration was put in charge of enforcement.

promote safe working conditions, but the bureau was barred from inspecting mines. Responding to a series of mine disasters, the bureau gained nonbinding inspection powers with the passage of the Mine Inspection Act in 1941. Though limited in scope, the law had an immediate impact, as inspections increased fourfold (between 1946 and 1952) and fatalities declined. In 1952, the Federal Coal Mine and Safety Act expanded enforcement powers of the bureau, and certain mines were subject to annual inspections. Inspectors could issue withdrawal orders that required workers to be evacuated when they were in imminent danger. Operators who failed to comply with these orders or refused inspectors access to mines could face civil penalties. The law's impact was limited to large mines (exempting mines employing 14 miners or less) until Congress extended the law to cover all underground coal mines in 1966.

The Federal Coal Mine Health and Safety Act (1969) represented the most comprehensive legislation, broadening federal enforcement powers and setting new safety and health standards. For the first time, the law set an exposure limit for coal dust, with the promise of eliminating CWP and other respiratory problems. In addition, a system was established for compensating those totally and permanently disabled by CWP. The law required two inspections at every surface coal mine and four inspections at every underground mine each year. Monetary penalties were mandatory for violations of health and safety standards, and criminal penalties were established for "knowing and willful" violations. In 1977, the law was amended, shifting enforcement of the act from the Bureau of Mines to the newly created Mine Safety and Health Administration (MSHA) within the Labor Department.

Continuing Negligence

Federal legislation has resulted in a significant decline in injuries, and illnesses and fatalities have dropped sharply in the past 40 years. However, several recent mining disasters point to corporate negligence and misconduct. One of the deadliest disasters (in 2010) claimed the lives of 29 miners at the Upper Big Branch, West Virginia, mine. Sparks from outdated equipment triggered the massive explosion of methane gas and coal dust. A state-funded independent investigation found both Massey Energy and the MSHA to blame for the disaster. Massey was charged with operating this mine in a "profoundly reckless manner," failing to properly maintain the ventilation system and observe other safety measures. MSHA was faulted for allowing the company to operate without adequately addressing a long record of problems, including the 515 safety violations identified in an inspection conducted in 2009.

In 2011, the MSHA levied $10.8 million in civil penalties for flagrant violations of safety laws. Concurrently, Massey's successor reached a record settlement of $209 million with the U.S. attorney (for corporate criminal conduct). In 2012, the former chief of security at the mine was sentenced to three years in prison for destroying evidence during the accident's investigation. A former mine superintendent, he pleaded guilty in 2012 to conspiracy charges in which he admitted the deliberate concealment of health and safety violations and falsification of records to avoid the shutdown of the mine. He faced up to five years in prison and a $250,000 fine.

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See Also: Mine Safety and Health Act; Unsafe Working Conditions; Workplace Deaths.

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Cohen, Albert

Albert Cohen, born on June 15, 1918, in Boston, Massachusetts, is an American criminologist best known for his 1955 book *Delinquent Boys: The Culture of the Gang*, in which he outlined his theory of delinquent subcultures. In 1993, the American Society of Criminology presented Cohen with one of its highest honors, the Edwin H. Sutherland Award, in recognition of his outstanding contribution to criminological theory. He had intended to major in political science at Harvard University, but after taking introductory sociology from Pitirim Sorokin, he changed his major to sociology. Cohen would also take courses from Nicholas Timasheff, Robert K. Merton, and Talcott Parsons. Working out the differences between the competing theories offered by these professors helped him to develop his theory. Despite high grades and references from Timasheff, Parsons, and Merton, Cohen found entry into graduate school difficult. He applied to more than a dozen M.A. programs in sociology. Without financial support, he would not be able to continue his education.

Only Indiana University offered him financial assistance, in the form of a teaching assistantship. Cohen's suspicion that he was not given assistance because he was Jewish was confirmed by a rejection letter from one of the schools, informing him that it was school policy to not hire Jews. His acceptance from Indiana University was received via a telegram from Edwin H. Sutherland, whose theory of differential association would make a major contribution to Cohen's theoretical development. While at Indiana, he took his first course in criminology. He would go on to do a Ph.D. in sociology at Harvard. Cohen's official supervisor was Talcott Parsons, but because Parsons had so many students, Robert Freed Bales became Cohen's de facto supervisor.

Although each of his Harvard professors, especially Parsons and Merton, had some influence on his thinking, Cohen sought to explore the potential for combining aspects of Merton's theory of anomie with aspects of Sutherland's differential association theory. According to Cohen, each theory offered only a part of the explanation for deviant behavior. Cohen accepted Sutherland's analysis that lower-class society is organized differently from middle-class society. Within lower-class society, some groups are organized to conform to dominant values, whereas others are not. Each group attempts to ensure that its members adhere to the values of the group or subculture. Working-class youth form gangs, subcultures that define standards and goals for themselves. What he found lacking in Sutherland's theory was an explanation for why these groups existed in the first place. He turned to Merton for this explanation.

Influence of Robert K. Merton

Cohen rejected aspects of Merton's theory that he believed too individualistic but accepted Merton's theory regarding the creation of societal goals and defining the accepted means for attaining those goals. Cohen also accepted that society does not necessarily distribute the mechanisms for goal attainment evenly throughout society, and that this leads to some frustration among lower-class juveniles. Cohen termed this "status frustration." As a result, lower-class youth develop alternative goals and alternative means to attain goals. Cohen termed this process "reaction formation." Within this context, the deviant behavior of lower-class youths becomes quite different from what Merton had proposed. Differentially socialized members of working-class youth gangs do not engage in purposeful and utilitarian deviance, as do adults and some professional juvenile delinquents. Their deviance is nonutilitarian, impulsive, negativistic, and hedonistic. It is typically a rejection of dominant social values and expectations, and an indication of acceptance of the values of the gang.

Cohen's theory has won praise for stimulating a high volume of research, both accepting and rejecting his theory. His concepts of status frustration and reaction formation, and the processes by which working-class youth organize their activities, has been subjected to significant scholarly scrutiny. Cohen has been criticized for not validating his data and assuming them to be accurate as well as assuming that working-class youth gangs are aware of middle-class values and practices, without providing evidence to support the assumption. He has also been criticized for developing a theory that could not explain other types of deviance, including corporate and white-collar crime.

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See Also: Ethics; Organized Crime; Sutherland, Edwin H.

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Coleman, James

James William Coleman developed an integrated theory of white-collar crime. Working in the tradition of Edwin Sutherland and Donald Cressey, he developed a theory stating that white-collar crime emerges when motivation and opportunity coexist. Motivation relates to socially constructed values and rationalizations for participating in crime. Opportunity concerns structural characteristics that influence the ability and desire to engage in crime. Coleman was born in Los Angeles on November 23, 1947. His father was a police officer who strongly opposed the Vietnam War. His mother was a homemaker. His grandfather was a member of the Communist Party. Early in life, Coleman was preoccupied with social injustice. After studying sociology and obtaining his bachelor's degree from California State University, Northridge, in 1969, Coleman went to graduate school at the University of California, Santa Barbara. There, he studied under Donald Cressey. After the death of Edwin Sutherland, Cressey worked as a co-author, updating Sutherland's textbook, *Principles of Criminology*, which introduced the theory of differential association. Influenced by Sutherland's ideas and Cressey's research on embezzlement, Coleman began formulating theories on white-collar crime.

Coleman's integrated theory starts with the idea that deviance approaches to white-collar crime are too broad. In addition, separating white-collar crime into areas of occupational and organizational crime creates confusion. Although it is clear that occupational criminals act in their self-interests and organizational crime takes place to further a corporation's goals, there are too many similarities between the two to justify a theoretical division. The most useful way to study white-collar crime is to define it as a law violation, regardless of occupational or organizational issues. Moreover, the concepts most important to understanding white-collar crime involve motivation and opportunity.

Anything of value motivates people to act. With older forms of social structure, open sharing characterized interaction. With the capitalist culture of competition, values shifted to self-interests and finances. If one does not have money, one is considered a failure. In turn, white-collar criminals want money, bend the rules to get it, and rationalize getting it, regardless of the means. This links motivational aspects to techniques of neutralization. Neutralization theory proposes that criminals create motives for their actions after they are caught. Conversely, Coleman argues that white-collar criminals recognize that they are going to break the law ahead of time, so they construct psychological frameworks to legitimize their behavior. White-collar crime rationalizations include denying anyone will be hurt, complaints about unjust laws, necessity based on economic survival, and claims related to deserving money. They also involve arguments that criminal behavior is acceptable because it reflects peer behavior and business norms. Even if wider culture condemns white-collar criminal behavior, business subcultures can suspend the realities of mainstream beliefs. This allows the individual to accept white-collar crime as legitimate.

Motives are secondary to opportunity. If someone is not in a position to carry out white-collar crime, it will not occur. For example, an accountant will have a better chance of embezzling from the company than will a janitor. Opportunity is firmly seated in objective social structures. Coleman argues that white-collar crime is more likely when someone knows that he or she will not be punished severely by regulators. If victimization involves stealing small amounts of money from a large number of people, white-collar criminals know that their actions are less noticeable. If an individual works for an organization with a complex hierarchy, detection is also less likely. White-collar crime is more likely in private, profit-seeking organizations because nonprofit agencies are less likely to reward employees for such monetary offenses, especially if they create financial gain for the organization.

White-collar crime occurs more often when organizations have lax official policies on illicit activities. White-collar crime is more likely to take place when external economic pressures place organizations under financial strain. Finally, white-collar crime happens more when organizations have declining profits, whether because of new regulation or increased competition. Coleman believes that social justice, whether it concerns white-collar crime or some other social problem, cannot be achieved through institutional rules and regulations alone. Above all else, it requires a change in individual consciousness.

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See Also: Cressey, Donald; Differential Association Theory; Sutherland, Edwin H.; Techniques of Neutralization.

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Collateralized Debt Obligations

The housing collapse of the mid-2000s is blamed, in part, on the overuse of subprime lending practices. During the housing bubble that preceded the collapse, these subprime mortgages and other mortgage products were often combined into financial instruments called collateralized debt obligations (CDOs). These CDOs were then sold to investors, just like other financial products (i.e., stocks and bonds). Although the creation and use of CDOs are perfectly legal, the ambiguity surrounding the mortgages that constituted many CDOs led to their misuse. Many people creating and selling these CDOs, as well as those buying the products, were unaware of what they really were.

A CDO is an asset-backed security. An asset is any resource that has economic value (e.g., cash on hand, inventory, loans issued, or corporate bonds) that can be used to provide economic benefits immediately or in the future. A security is simply an investment instrument that is issued by a corporation. A CDO is an investment instrument issued by a corporation that is based upon some grouping of assets held by the corporation. The corporation issues the investment instrument as debt, meaning that investors are paid a fixed percentage return on their investment.

A company builds a CDO by identifying a group of assets it wishes to buy. It then issues debt in order to obtain the funds with which it will purchase the identified assets. The purchased assets are called collateral assets and are what make up the portfolio underlying the CDO. Typical CDOs contain a mix of bonds, mortgages, bank debt, and other financial securities. The types of CDOs used during the housing crisis are formally known by the term collateralized loan obligations (CLOs) because they were made up entirely of bank-issued loans (mortgages).

A CDO is broken down into subgroups of assets, called tranches. These tranches are labeled by rank: senior, mezzanine, and subordinate. The less risk in the tranche, the lower the expected return; senior tranches carry the least amount of risk and therefore the lowest potential return. However, payments are made in order of rank, meaning that although senior tranches have the lowest potential return, they also have the highest guarantee of payment. Should the assets underlying the CDO go bad or fail to return at sufficient levels, the company issuing the CDO may fail to pay its obligations. In this case, those owning the senior tranche will be paid first, while those owning the subordinate tranche will be paid last, if at all.

Essential to the legitimacy of the CDO is the use of credit ratings to assess the riskiness of the investment opportunity. The goal of CDO issuers is to obtain at least an "A" rating for their senior tranches and at least a "B" rating for their mezzanine tranches. The subordinate tranches are typically not rated because they are usually composed of a grouping of high-risk assets. While it may seem intuitive to assume that there will be demand only for those tranches that are rated by a credit rating agency, there are many investors interested in purchasing the more risk-laden tranches. This is because these tranches offer higher potential returns on investment. An additional upside of these risky tranches is that when investors are paid, they are paid at a much higher rate than owners of the senior tranche. The drawbacks are that these investments have the highest risk of default and are the last tranche to have returns paid out.

Why Collateralized Debt Is Used

Typically, nonfinancial institutions will issue CDOs in an attempt to take advantage of an arbitrage opportunity. The arbitrage, in this case, represents the difference between what the company earns on the assets backing the CDO and what it pays out to the owners of the tranches. By borrowing the funds needed to buy the assets, the company is getting a free lunch—it gets to keep the income that remains after debt holders are paid off, but it has not used any of its funds to obtain the assets. So long as the assets continue to return at a level that exceeds the issuers' associated debt obligations, the issuer is making money without actually spending any money. This frees up cash for use on other projects, and it helps increase the corporation's net worth.

Financial institutions use CDOs for a different purpose, which has been associated with the financial crisis associated with the subprime lending problems of the mid-2000s. It has been argued that the use of CDOs by financial institutions gave banks an ever-increasing incentive to continue to issue profitable, yet incredibly risky, subprime loans. But why would any lending institution willingly take on risky long-term loans just to receive significant periodic income? The purpose of CDOs for financial institutions is to remove the risk associated with the loans it has issued while retaining ownership rights to the loans. By packaging loans into a CDO (or CLO), a bank can remove the risk associated with loans it has issued because it is selling that risk to a willing investor.

Reducing the level of risk from the bank's balance sheet allows the bank to increase its capacity to lend money. When banks can make more loans, they can generate more fees from periodic loan repayments. Additionally, banks are required to keep a certain ratio of cash to loans disbursed as a precaution against unusual levels of default. Should the bank experience significantly high levels of default, the cash it is required to keep on hand will keep the institution solvent. By removing the risk associated with these loans from its books, a bank is able to reduce the amount of cash it needs to hold on hand. It can then use this cash to make other loans or investments.

For investors, CDOs are a good way to gain broad exposure to various levels of risk through a variety of assets. A key to proper investing is to own a portfolio that minimizes the potential damage that is inherent in idiosyncratic risk; owning a diverse and broad portfolio minimizes, or eliminates, idiosyncratic risk. Idiosyncratic risk is associated with a particular security. Every security has idiosyncratic risk, and it is typically uncorrelated to what is occurring within the market, the industry, or any other company. By owning a large number of securities, one can cancel out the idiosyncratic risk associated with any particular firm. CDOs offered investors an easy way to gain access to a large number of asset-backed securities at the same time.

Misuse and Abuse

Although CDOs offered investors and issuers many great benefits, they also hid many great dangers. It was difficult to impossible to know exactly what was in any given CDO. CDO managers were not required to disclose the specific assets underlying the CDO, so an investor never really knew which securities he or she was taking a piece of. It is likely that many investors did not care what their respective CDOs contained, so long as they had achieved a desirable rating and were producing the stated returns.

The housing bubble created an opportunity for the issuers of CDOs to take advantage of this ambiguity in the composition of CDOs. Loans with a higher-than-normal potential of default were lumped in with loans that had lower-than-average potential for default. This loan package would, on the basis of the lower default loans, obtain an "A" or better rating, and the issuer could easily move the "bad" loans off its books, thereby freeing up more cash for other investment activities.

Another way in which CDOs were abused came with the development of CDO^2 and CDO^3 products. A CDO^2 is built when the purchaser of a bundle of CDOs splits up the various assets making up its particular portfolio of CDOs and recombines them into new CDOs. When this occurs, the original portfolio of CDOs purchased is replaced by a group of CDOs that is made up of the various parts of the original products. These CDO^2s are then resold in the market; oftentimes the individuals creating the CDO^2 products were unsure of exactly which products were placed where. As with the original CDO, the CDO^2 had tranches that were rated by a ratings agency. However, because of the ambiguity associated with the specific contents of the tranche, a large amount of over-rating occurred, and securities that would never have been given a "B" rating now composed the majority of tranches that received "A" ratings or better.

Collateralized debt obligations are a good way for investors to build diversity into their portfolios and to select broad groupings of assets at desired risk levels. Yet, during the housing crisis of the mid-2000s, these securities were used by banks to move risky loans off their balance sheets so they could, in turn, make more risky loans. Once these risk-laden CDOs made it into the market, the creation of CDO^2 and CDO^3 products left the door open for risk-averse investors to be taken advantage of. Investors seeking relatively riskless investments bought stakes in investments that, in reality, should have held a junk rating.

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See Also: Loan Origination Schemes; Mortgage-Backed Securities; Paulson & Co. Inc.; Securitization Fraud; Subprime Loans.

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Commodities Fraud

A commodity is anything that can be marketed. Usually, the term applies to bulk items, from potatoes to pork bellies to quantities of copper or other goods produced to satisfy human needs and wants. Whereas crafts are individual items that are usually marketed individually, if a commodity is the same everywhere on the market—so much so that it cannot be readily distinguished between similar quantities of the same commodity in respect to the origin of either—then it is fungible, meaning that it does not matter what company produced it. That is, a bushel of wheat is the same kind of wheat sold everywhere in the market. In contrast, a product that is branded will be distinguishable, and it is treated as a good rather than a commodity.

Types of Commodities and Contracts

Commodity markets trade in bulk quantities of items such as agricultural products, livestock, lumber, metals, and other supplies that are the basic resources of an economy. Specific agricultural products include grains and oilseeds (corn, wheat, soybean, rice, and oats), dairy (milk, butter, and cheese), livestock (lean hogs and live cattle), and softs (cocoa, coffee, cotton, and sugar). Mineral commodities include gold, silver, copper, platinum, and palladium. Oil, heating oil, gasoline, and natural gas also are traded. These and many more items are traded in spot markets or futures markets.

Commodities contracts are traded as spot price contracts, forward contracts, futures, and options on futures. In addition, trading is done through derivatives for interest rates, swaps, ocean freight contracts, and environmental instruments.

Spot markets are markets in which goods are traded, usually for immediate delivery. A spot contract between a cotton farmer and a spinning mill located next to his farm will be an agreement in which the farmer agrees to deliver the cotton specified in the contract immediately. The cotton should already have been ginned and baled, although there may be circumstances in which it is to be delivered immediately after an imminent harvest.

Most spot market contract sales take place between strangers in broader markets. To get the supplies of hamburger it needs, a national hamburger chain may enter into spot market contracts for immediate delivery if sales have been higher than anticipated. This provides the meat needed immediately. Normally, its supplies will be acquired through a steady expiring of futures contracts that deliver at a specific date.

Forward contracts in commodities are contracts between two parties to buy or sell a commodity at a future time at a price agreed upon today. For example, a cotton farmer may make a contract with a spinning mill at the time of the planting of the crop. The forward contract also includes in its terms delivery of the cotton crop at harvest time for a fixed price. The spinning mill will pay to receive the crop at harvest time. The spinning mill assumes the long position. The cotton farmer assumes the short position because he is currently short a cotton crop at the moment. The price they agree to is the "delivery price," which is also the "forward price." The contract guarantees to the farmer a set return for the crop. The spot contract guarantees for the spinning mill a supply of cotton that will not be exposed to price rises. Since profit margins may be in pennies or even fractions of a cent per pound, the agreement smoothes out price fluctuations and creates a stable price product for the mill.

Normally, futures are contracts made between strangers in a vast market network. The futures market contract supplies commodities for future use at a specific future delivery date, but it provide immediate revenue to the maker of the contract and guaranteed delivery of a commodity at a future date when it is needed, at a known price. The variations in prices may mean that the future user of the product pays less than the spot market price at the time of future delivery, or if prices have fallen, the price paid in the futures contract will be more than the price at delivery. Mills and other kinds of manufacturers that use bulk quantities of commodities, such as wheat or corn are able to average out their commodity costs by hedging.

Futures markets are exchanges where contracts for future delivery are traded. Futures contracts can be bought directly or via options. They allow hedging of costs. The future is always uncertain. Prices will be higher, lower, or the same because they move sideways. To ensure a steady supply of the commodity(s) needed, companies may use options to smooth out the costs of their supplies as a way of delivering a product at a uniform quality and price. It may be financially wiser for a mill to buy call options, or puts, than futures contracts.

Options (puts and calls) provide a type of protection against price fluctuations. A call option allows an investor to "call" a contract at a lower price if the price has risen a little or dramatically. The call option will allow its owner to collect the difference between the sale of the futures contact at a higher price and the price of the call. If the price drops, then the call will be allowed to expire, but at less cost than purchasing futures contracts. A put option allows the investor (or speculator) to "put" the cost of a futures contract at a high price onto the one who sold it. The investor will be able to deliver the futures contract by purchasing it at a low price in the current market.

Commodity markets began as spot markets, but forwarding and futures contracts developed to meet problems caused by fluctuations in supplies and in the prices for supplies. Using forwarding and futures contracts can reduce the risk of inadequate supply and disruptive high prices at the time the commodity is most needed.

Examples of Commodities Fraud

Commodity fraud is as old as the first marketplace. In ancient times, herds of stolen or diseased animals were sold. Other frauds included selling and failing to deliver. Other ways of cheating, such as using false weights, were warned against in both the Bible and ancient Mesopotamian literature. These types of fraud deal with failure to deliver the commodity, delivery of adulterated or damaged commodities, or using false weights. Modern times have produced more sophisticated methods of fraud.

Adulterated wine, a form of commodity fraud, has been sold since ancient times. Many additives, from elderberry juice to other coloring agents that imitate real wine colors, have been used. In Roman times, Pliny the Elder reported that adulterated wine was so common that it was difficult to tell which wine was the real wine and which was a fraudulent substitute. The rise in modern bottling methods has led to wine frauds such as counterfeit labeling.

Olive oil was and remains a basic commodity in the Mediterranean. It is also a growing consumer product in America. However, despite regulations that require the country of origin and the specific labeling of commodities, cheaper olive oil from Turkey is shipped to Italy, where it is packaged and shipped as Italian oil to the United States.

Commodity frauds can take place in the financing of regular business transactions on the basis of forged but legitimate documents. On July 25, 1991, a Bulgarian sugar buyer paid $3.8 million for a shipload of sugar with a letter of credit. The sugar cargo was reported to have been loaded on the MV *Giovanna,* sailing for Varna, Bulgaria, from the Brazilian port of Santos. However, neither the ship nor the sugar existed. The criminals have yet to be found. In another case, a Paris bank paid $2.89 million in August 1992 for a cargo of refined sugar loaded onto the MV *Vladimir Ilyich* in Panama, bound for Kalingrad, Russia. The letter of credit was a forgery. Neither the criminals nor the sugar has been found.

Sometimes, commodity trading is used as a cover for advertising a fake job. The advertisement promises payments for easy work in a commodity trading company. The advertisement is really seeking a crook or someone innocent who will participate in a money mule scam. The money mule, if recruited, will actually become involved in transferring stolen money or merchandise.

Commodity trading fraud can take place through collusion in the marketplace. This is the charge against a number of giant international banks, financial institutions, and oil company giants who trade oil futures in the Intercontinental Exchange (ICE), which was founded in Europe in 2000. It was alleged that they engaged in "dark pool" trading, free from American law. Congressional investigators in 2003 found that "round-trip" trading was taking place. Company A trades a given quantity of oil with Company B, which also trades the same amount with Company A. The trades are all paper trades for nonexistent oil at exactly the same price. However, the price is a signal to other traders to bid up the price of oil.

Currency is a commodity, just as agricultural products. Foreign currency trading (forex) is a legitimate business but is open to fraudulent practices. To protect the public from currency trading fraud, Congress created the U.S. Commodity Futures Trading Commission (CFTC) in the Commodity Futures Modernization Act of 2000. The law gives the CFTC the authority to regulate commodity futures and options markets in the United States. It issues warnings and investigates frauds involving foreign currency trading.

Insider information is also used to manipulate the commodities market. The 1983 film *Trading Places,* starring Eddie Murphy and Dan Aykroyd, is a story of insider commodities market trading. The Duke brothers of the firm of Duke & Duke (Ralph Bellamy and Don Ameche) seek to use insider information to make a fortune in orange juice futures but are destroyed financially.

Guarding Against Fraud

It is a federal crime to fraudulently misrepresent oneself as a commodity trading advisor, a pool operator, or an associate of a commodity trader or commodity pool operator. It is also a crime to employ any device, scheme, or artifice in order to defraud a client of a commodity trader or managed commodity trading company. Despite the stiff legal penalties, greed overwhelms the moral integrity of some, who then engage in fraud in commodities markets.

Commodity trading is more sophisticated than many other investment activities. It therefore provides opportunities for fraud perpetrated by slick-talking salespeople who promise what is too good to be true. To guard against fraud in small-pool commodity investment scams, a type of "boiler room" scam, it is important for investors to verify that small commodity pools are managed by an individual who is registered with the CFTC. Most brokers are licensed, but there are unlicensed people who are really scamming the system. Even if brokers are licensed, wise investors check the broker's regulatory history before investing with any agent.

On March 7, 2012, the CFTC filed a complaint against Christopher Varlesi. He operated a fraudulent commodity pool, Gold Coast Futures and Forex (Gold Coast), from his Chicago office that traded commodity futures and foreign currency contracts. In order to attract investors, he made numerous misrepresentations about his trading skills and experience, while not being a registered a commodity pool operator. He also misappropriating investors' funds as his market speculations failed. Large commodity pools, managed by large investment firms, are legitimate firms that offer managed futures contracts for trading. Prudent investors investigate them to check their track record and other pertinent information in their prospectus.

Even with good information and personal relationships, fraud can still happen, as in the Wasendorf case. In July 2012, Russell Wasendorf, Sr., the chief executive officer of Peregrine Financial Group, a futures brokerage firm, confessed to stealing $100 million from his customers. He also lied to federal investigators. He was arrested after a failed suicide attempt outside his headquarters in Cedar Falls, Iowa. Investigations showed that he had embezzled millions by forging false account statements from U.S. Bank. He was sentenced to 50 years in prison on January 31, 2013, and was ordered to pay $215.5 million in restitution.

Civil actions filed by the Commodities Futures Trading Commission shut down Peregrine. Normally, a firm like Peregrine will gain a small margin from matching commodities contracts for buyers and sellers. Unfortunately some of the clients have been defrauded by Wasendorf. He had been able to evade regulators from the National Futures Association with a false post office box. The rise of Internet banking gave him the opportunity to create false online statements.

To evade regulators, Wasendorf used a false post office box to intercept requests from the National Futures Association. When Internet banking became common, he created sham online statements that were accepted by regulators until the collapse of MF Global, a giant commodities and futures firm, where a billion dollars of client money disappeared.

A large commodity company case was opened against Richard Regan, who was at the time the principal in Commodity Trading Advisor (CTA) Pro Trading Course, LLC. He was also a floor broker. He was charged with illicitly soliciting investors to take the commodity futures trading course that he offered. The CFTC charged that the defendants' claim to students that they would learn the commodity trading business if they took the course was false. Students were solicited through Craigslist and other Web sites. The defendants did not disclose that none of the teachers at CTA had ever gone beyond the first level of the course. Nor were any of the people at CTA earning profits to match the "payout charts" used to market the course.

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See Also: Adulteration, Economically Motivated; Commodities Futures Trading Commission, U.S.; Currency Fraud; Hedge Fund Fraud; Investment Trust Fraud; Market Manipulation; Price Fixing; Stock and Securities Fraud.

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Commodities Futures Trading Commission, U.S.

The Commodities Futures Trading Commission (CFTC) is an independent agency created in 1974 by the Commodity Futures Trading Commission Act, which amends the Commodity Exchange Act of 1936. Under this act, the new commission becomes the regulatory agency over all commodity futures trading. Prior to the passage of the CFTC, futures in the United States came under the governance of the Commodity Exchange Authority, established in 1922.

The role of the CFTC is to protect consumers and those who trade in the futures markets from fraud and to ensure that markets remain sound and competitive. Under the terms of the law, the CFTC consists of a five-member board of commissioners, who serve five-year terms. Commissioners' terms are staggered, and no more than three members can be from the same political party. Members of the commission should have backgrounds in finance, market trading, or working with commodities. The chair is selected by the president and, like all commissioners, must be approved by the Senate. Commission officers are responsible for Freedom of Information (FOIA) requests, distribution of commission reports and other documents, and serving as a liaison with other agencies. The commission has four divisions: Clearing and Risk, Enforcement, Market Oversight, and Swap Dealer and Intermediary Oversight. The commission's organization also includes eight offices that advise and support commission programs and the board.

The commission has sole jurisdiction over accounts, agreements, and transactions related to commodities in the futures market. The jurisdiction is not all-inclusive, so the agency must work with the Federal Trade Commission and the Securities and Exchange Commission when the commodity falls under joint supervision. All persons who trade commodities must register with the commission, and it is the responsibility of the commission to maintain the records and investigate the backgrounds of all applicants. All applicants are responsible for keeping personal records related to their positions and accounts they manage, and for submitting reports to the commission. At any time, the commission can call for a hearing to investigate a trader and decide to revoke his or her license in the interest of protecting the public. The commission is responsible for establishing rules, regulations, and standards that govern commodities futures trading in the United States and for working out agreements with foreign countries in international markets.

The Commodity Futures Modernization Act of 2000 reauthorized the agency for five years and amended some of the agency's duties. The act resulted from the President's Working Group on Financial Markets' Report on Over-the-Counter Derivatives Markets, which recommended three areas that impacted the CFTC. If accepted, the recommendations would allow the CFTC to continue the practice of exempting nonagricultural commodities from the regulations called for in the Commodities Exchange Act, include oversight of companies involved in OTC derivatives, and encourage broad deregulation of the existing trading process. The final regulatory structure was tailored to the various markets, based upon the products and those who participated in the market trade. The final version of the act did not indicate that a swap agreement was a futures contract or a commodity option.

The CFTC governing legislation was updated in 2008 in the wake of the stock market instability caused by over-the-counter derivative markets and the failure of Enron. Further regulation under the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) gave the commission additional duties, and call for an overhaul of regulations related to securities and derivatives. The purpose of these new rules is to provide market transparency, reduce risk, and protect the American public. Under the new legislation, the commission has expanded enforcement authority that extends to regulating derivatives dealers, over-the-counter derivatives, and transparent trading of standardized swaps. The role of the CFTC in the economy has expanded beyond overseeing agricultural commodities. As an independent agency, it plays a key role in regulating financial institutions in the United States, so that investments made by Americans are made legally by financial traders who are answerable to the commission. In its regulatory role, the commission conducts oversight investigations into complaints, suspends licenses, and works with the Securities and Exchange Commission in a new partnership to protect American investments at home and abroad. The agency has transitioned from a time when commodities were traded on a small scale in various locations around the country to a time when transactions are made in seconds via the Internet and across the globe. The likelihood of fraud and criminal behavior that can impact the entire world justifies the regulation oversight of this agency.

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See Also: Commodities Fraud; Market Manipulation; Marketing Fraud; Securities and Exchange Commission, U.S.; Securitization Fraud.

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Comprehensive Thrift Act

The Comprehensive Thrift Act, or the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990, is Title XXV of the Crimes Control Act of 1990. The purpose of the act is to strengthen the penalties for committing fraud in the financial sector. On November 29, 1990, President George H. W. Bush signed the Crimes Control Act, or Public Law 101-647, including the Comprehensive Thrift Act, a response to financial institution failures in the 1980s. Until the passage of this legislation, the government lacked the ability to locate and prosecute people who conducted criminal actions in banks, thrifts, and savings and loans. The law calls for the parties involved to return monies to taxpayers used to cover insured deposits. The act is related to antifraud legislation in the Financial Institutions Reform, Recovery and Enforcement Act of 1989. In response to the savings and loan crisis, Congress chose to expand regulation of the industry under the Federal Deposit Insurance Corporation (FDIC). Persons affiliated with financial institutions that fail or are in danger of failing have an increased responsibility for their role in the failure of the institution. Those who meet this category and are directly involved include directors, employees, and controlling shareholders. Those indirectly involved include attorneys, other shareholders, and accountants. Bank regulators can investigate anyone who participates in the operation of the institution.

The law restricts who can be affiliated with financial institutions. Prior criminal convictions can impact whether or not a person can fill certain roles in an institution. The FDIC and the financial institution must review all criminal histories of those affiliated with a financial institution, and criminal convictions under any one of 13 statutes can cause the FDIC to call for a 10-year wait period. One exception is if the conviction is reduced after a motion from the FDIC. A conviction also prevents the person from having direct or indirect controlling interest in the institution. Congress also amended the prison terms associated with bank crimes. In 1989, Congress amended the maximum prison term from five to 20 years, and under the Comprehensive Thrift Act, the time increased to 30 years. The law also increased the statute of limitations to 10 years for racketeer-influenced and corrupt organizations, and Department of Justice investigations into violations of bank statutes. Interference with investigations, hiding information, or committing similar acts could lead to a fine and jail time up to five years. Persons described as financial crime kingpins may receive 10 years to life and a $10 to $20 million fine, if found guilty of meeting the definition of a kingpin and accumulating $5 million over a two-year period.

Persons who are involved with the failure of a financial institution are held financially responsible under this new law. Congress revised the Bankruptcy Code so that those affiliated with failed institutions could not declare personal bankruptcy to clear the debt. In addition, regulatory agencies can freeze personal assets of those involved until the case is settled and all penalties are paid. The law also made major changes to the golden parachute practice, based upon prior FDIC experience with the savings and loan failures. Before, the FDIC had no way to restrict bank executives from taking sums of money under the pretext of an indemnification plan. Under the new law, the FDIC can prohibit payments from institutions in danger of failure until they receive approval. This does not impact retirement plans and related packages and is intended to make such packages more reasonable. Under this legislation, the FDIC has to investigate the recipient of the package to see if he or she has either a criminal record or if his or her practices led to the institution's problems. This revised process saves the taxpayers huge sums of money. The purpose of this landmark legislation is to further regulate the banking industry and prosecute white-collar crimes. Executives in the banking and savings and loan industry operated under lax regulations, leading to practices that caused the failures of numerous savings and loans. This law tightened up the loopholes and made people accountable.

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See Also: Bank Fraud; Federal Deposit Insurance Corp.; Savings and Loan Fraud.

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Computer Fraud and Abuse Act

Computer-related crime grew exponentially throughout the 1990s. Going into the 21st century, computer-related crimes became more prevalent and diverse. The primary federal statute used in combating the various types of computer crime is the Computer Fraud and Abuse Act (CFAA) 18 U.S.C. § 1030(a)(1)-(a)(7). The CFAA is a law passed by the U.S. Congress in 1986, intended to reduce cracking of computer systems and to address federal computer-related offenses. The act governs cases with a compelling federal interest, where computers of the federal government or certain financial institutions are involved, where the crime is interstate in nature, or where computers are used in interstate and foreign commerce.

It was amended in 1989, 1994, 1996, 2001 by the USA PATRIOT Act (2002), and by the Identity Theft Enforcement and Restitution Act (2008). The CFAA criminalizes actions conducted against computer systems in cases where there is a compelling federal interest, including government computers, computers of financial institutions or used for interstate or foreign commerce, and computer crimes that are interstate, such as those conducted through the Internet. The CFAA is not a comprehensive set of laws but rather provided or modernized laws for areas not already addressed by federal criminal law.

Penalties

Though primarily concerned with defining computer-related criminal activities and assigning criminal penalties thereto, the CFAA also provides a private right of action in subsection 1030(g), allowing civil lawsuits to be pursued against those who access private computers without authorization. Broadly, what is criminalized is the intentional and unauthorized access of a computer, though the broadest interpretation of the law had been rejected by the Supreme Court. Specific crimes identified by the CFAA are enumerated in subsection 1030(a): accessing a computer for the purposes of espionage; accessing or exposing protected information dealing with credit, financial, and government institutions; unauthorized access to a government computer; using unauthorized access to a computer for the purposes of fraud; damaging a computer of a type protected by the CFAA, which includes but is not limited to the use of viruses and denial of service attacks; trafficking in passwords providing access to protected computers or in a way that affects interstate or foreign commerce; or threatening to damage a protected computer.

Subsection 1030(b) criminalizes any attempt or conspiracy to commit the offenses delineated in 1030(a), while 1030(c) defines the penalties for such crimes. Subsections 1030(e) and 1030(f) are standard sections providing definitions of terms used and allowing exceptions to the law for criminal investigations. The 1984 Comprehensive Crime Control Act established credit card fraud and computer crimes as falling under the jurisdiction of the U.S. Secret Service, and 1030(d) affirms this. The Secret Service's powers in this area were extended by the October 26, 2001, passage of the USA PATRIOT Act, which tasked the agency with creating a network of Electronic Crimes Task Forces concerned mainly with computer crimes that target infrastructure, have significant economic impact, involve identity theft, or rely on the use of a new technology. An early success of the ECTFs was Operation Firewall, a year-long operation culminating in the arrest of 28 suspects responsible for the theft of 1.7 million credit card numbers and account information.

Given that the CFAA is a federal statute, federal sentencing guidelines govern these sentences. In 1996, Robert Morris, a Cornell University graduate student, was the first person prosecuted under the CFAA. Robert created a worm (a computer virus) that infected over 6,000 computers across the United States. He was sentenced to three years on probation, fined over $10,000, and ordered to perform 400 hours of community service. The public was not pleased by the light sentence. In 1997, Congress directed the U.S. Sentencing Commission to provide for a minimum of six months of imprisonment for defendants convicted under sections 1030(a)(4) and (a)(5).

Although there have been a limited number of criminal actions based on the statute, the CFAA also has a civil component—§1030(g) of the statute provides a private right of action. These cases have presented courts with many opportunities to consider the evolving world of computer and Internet use, especially in the workplace. The understanding of "unauthorized access" has created the most controversy. A U.S. appeals court rejected the government's broad reading of the

CFAA in April 2012. The CFAA has been used to prosecute workers who steal from company computers, but the 9th U.S. Circuit Court of Appeals in San Francisco stated that such use could expose millions of Americans to prosecution for harmless activities at work. The 9–2 decision diverges from broader readings of the federal Computer Fraud and Abuse Act by three other federal appeals courts. This raises the chance that the U.S. Supreme Court might attempt to resolve the issue in the near future.

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See Also: Computer Hacking; Internet Fraud; Nigerian 419 Scams.

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Computer Hacking

Computer hacking entails gaining unauthorized access to computers or computer systems. Internet Web sites and books can describe how to hack, though most significant computer hacking occurs by those who are highly skilled and motivated to achieve their goal. A controversy exists with computer hacking in exploring its necessity to secure computer networks (ethical) and infiltrating computer systems illegally with malicious intent (criminal). The limited resources to investigate and prosecute hackers, if they can be identified, place hacking in the category of white-collar crimes, like most computer crimes. This process can have detrimental effects on corporations and critical infrastructures because computers and systems can come under the control of the hacker.

It is possible that the first hackers were young male phone operators who were would conduct pranks with the switchboards to create chaos for phone users. Engaging in unethical, disruptive, or criminal behaviors that impact numerous people tends to be a marker of a hacker. Today, computer hacking centers on the use of computers and the Internet to gain illegal access to an individual computer or business computer system. Permission to infiltrate a computer system is typically not given, and the intent of what a hacker does once he or she has access to the computer or computer network is concerning.

Federal and state laws exist to make computer hacking an illegal act. The Computer Fraud and Abuse Act (CFAA) of 1986 treated computer-related crimes as a federal issue. All computers connected to the Internet are protected, as well as computer activities. The National Information Infrastructure Act of 1996 extended the protections of the CFAA to make viewing information on a computer without permission a crime, instead of the CFAA requirement of a financial gain from the illegal act. The Cyber Security Enhancement Act (2002) increased the penalties under the CFAA. The Digital Millennium Copyright Act of 1998 makes it illegal to circumvent technical mechanisms that protect copyrighted material like music CDs. States have passed various laws that enhance the federal acts or mimic the federal mandates.

Types of Hackers

Depending on the field of study and focus of content, there are numerous types of hackers. Although many people who would be labeled as hacker do not call themselves such or consider their practices illegal, their intent and skill level place them in a group. The intent of the hacker is debated because the act of hacking is an illegal practice, though mitigating factors do arise. Persons who hack into a computer or a computer system with a malicious intent are referred to as "crackers" or "black hats," depending on their discipline. Individuals who have few hacking skills or use hacking information on Web sites can be referred to as "script kiddies." Persons with a computer science degree or a formal relevant college degree are referred to differently, based on their intent. Hackers who engage in hacking for the "public good" are referred to as *hactivists, white hates,* or *ethical hackers*. Professionals whose job is to engage in computer hacking are placed into another group.

One of the first computer hackers arrested and prosecuted for engaging in illegal acts to hack computers was Kevin Mitnick. He was arrested in 1995 for various computer-related crimes such as illegally accessing computer networks of major corporations, wire fraud, and computer fraud. He spent time in prison, and upon his release, he had court-ordered limited Internet access. Once he completed his supervised release, Mitnick started a consulting firm for security professionals and wrote three books on his experiences.

Each year, more and more individuals engage in computer hacking and are prosecuted for their actions. Teenagers, organized crime groups, state officials across the globe, and professionals are entering the practice of computer hacking, some with more success than others. As courts gain more experience and knowledge of computer hacking, the fear in prosecuting offenders has lessened, bringing more charges forward, though knowing the identity and location of the offender is still problematic because of global access to the Internet and the anonymity provided online.

The opportunities provided by computer hacking are now recognized by organized crime and terrorist groups. Cyber terrorism is a real threat for many countries, with the possibility of disabling an entire country through the use of the Internet. With computer hacking information provided online and in numerous how-to books, there is concern about growing numbers of hackers. Although hacking requires much knowledge and skill to undermine federal agencies, this has been done more than once to various countries' top federal agencies.

Hacking Techniques

There are numerous techniques used in computer hacking. Mitnick wrote about his experiences with social engineering, which is the process of gaining trust in people who have relevant information to help access a computer or computer system. There are numerous forms of harmful software programs or malware that are used in computer hacking. Virus-writing programs set out to replicate and attach themselves to other programs to enter another system. The Melissa virus caused used e-mail addresses from its user to send an e-mail with an attached virus. The virus would replicate itself in the e-mail addresses to bombard a computer or system. A worm is similar, but it can replicate alone and can send itself to other systems. The Lovebug worm of 2000 was delivered to computer users by their friends. In 2010, Stuxnet was discovered as a cyber weapon, designed to infiltrate and significantly impact

As a guest instructor at the Wilmington, Delaware, 2010 U.S. Cyber Challenge Camp, which trains college students to become world-class cyber-security experts, Virginia Tech University graduate student John Paul Dunning built this "Nerf rifle" hacking device. It uses two potato chip cans as directional antennas, one to sniff wireless traffic and the other to sniff Bluetooth traffic. It also contains a GPS antenna and small notebook computer to drive all of the equipment and collect data. Its range is slightly over half a mile.

Iran's nuclear program. A Trojan horse appears to be a legitimate program, though there is a hidden destructive component in the software. Denial of service attacks can flood a network with traffic to prevent computer users from accessing the service or site. Web site defacement can be used to gain access to a Web site to corrupt its content. Within each of these techniques, the skill level and sophistication of the malicious act can vary significantly, from copying or pasting from a Web site to an entire Web site shutdown, or critical infrastructures manipulated to harm people.

The technique used depends on the desired outcome for the computer or computer system. Some consequences of these acts are an inconvenience for the user but are not detrimental for the computer. Others can be a public concern for safety and well-being when critical infrastructure computer systems are hacked into.

In 2009, spies from other countries were able to gain access to a U.S. electric grid, though no damage was done by their exploration. It is predicted that a hacker or hacking group could gain access to power grids, sewer treatment plants, or other critical infrastructure. This is a struggle for the government because most infrastructures are privately owned, so a public–private relationship must be fostered.

Because computer crimes are considered white-collar crimes, focus and resources tend to be held in other criminal endeavors. There is debate among experts of the seriousness of computer hacking, as well as its ethical position. Computer hacking can be viewed as necessary to help strengthen computer security for computers and computer systems, though the actions are illegal. The intent of the act becomes paramount to the discussion. The consequences of computer hacking can be detrimental for individuals and society as a whole, which is a characteristic of many white-collar crimes. As various cybercrimes continue to rise each year, computer hacking will continue to be a viable skill and asset for online offenders.

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See Also: Computer Fraud and Abuse Act; Internet Fraud; War on Terror.

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Conflict Theory

Conflict theory is a perspective in the behavioral sciences that explains that the social world is in a continuous state of change because of its broad spectrum of inequality among many parts. This paradigm explores how society stratifies its members by variables such as gender, race, ethnicity, and class. Furthermore, conflict theorists aim to make generalizations and draw conclusions regarding the correlations between such variables and varied manifestations of unequal distributions of resources, power, and prestige. The conflict theoretical paradigm examines social life from the perspective that its vast parts exist in a continuous struggle for that which has been regarded as valuable and scarce. Contrary to structural functionalism, disharmony and inequality drive the social world. Collective behavioral change and social movement typically result from such dissent.

Conflict theory emerge partially in response to capitalism's effect on the lower social and economic classes. The proposed theory assumes the proletariat position that represents a numerical majority. During periods of economic downturn, the growing number of people excluded from the workforce typically reflects broad structural problems beyond the individual's control. Capitalism can be defined as a belief in the ideal of yielding maximum production, from minimal producers, for the lowest costs, as efficiently as possible. Although capitalist economic systems have a variety of forms because of differences in regulatory mechanisms, such systems produce structural economic advantages for the elite, who have a favorable social location. However, economic hardship becomes increasingly likely for the excluded masses. The pluralist concept idealistically serves society as the ultimate requisite for democracy. However, the reality of pluralism fails to produce societal equality because of its tendency to result in an elitist conclusion. Pluralism masks intergroup power dynamics. Through socialization, the powerful become desensitized to their role as beneficiaries from others' oppression.

Mechanisms for Social Control

Conflict theory remains continuously relevant as society and its accompanying institutions exist on a trajectory of relatively rapid change. Such a theoretical paradigm recognizes that social control relies on both external and internal mechanisms. External mechanisms include legislation that conflict theorists view as favoring societies' most privileged because their perception deems laws as collectively designed to prioritize protecting private property and capital. Conflict theorists view public policy as influenced more by lobbyists, special interest groups, and political action committees (PACs) than by common voting constituents. In the case of a criminal trial, the wealthy have the advantage of using their resources to hire highly experienced attorneys with proven track records of success, purchase settlements outside court through negotiations, and use bargaining power in an attempt to lessen charges. Persons of lower socioeconomic classes have an increased likelihood of lacking resources to post bonds or to finance a legal defense, and furthermore suffer lost wages because they are detained for weeks or months prior to their trial date.

Voluntary control functions as an internal mechanism for behavioral modification and criminal deterrence. The mass media and their host institutions, such as politics, the economy, and education, play a role in regulating ideas and information for the purpose of mass consumption. These institutions collectively influence individual preferences, actions, and values. A conflict theoretical perspective views such voluntary controls and their various agents as means to distract the masses from macro-level forces that contrast with their broader self-interest for social progress and upward socioeconomic mobility.

For white-collar and corporate criminals, conflict theory stresses that such offenders receive a degree of invisible structural protection against negative sanctions. For example, informants or other forms of status quo opposition become subject to a swift and harsh backlash. Those who attempt to disclose the complex legal system as lacking objectivity, justice, and fairness risk being labeled as "radical." Second, corporate criminality typically comes from powerful vantage points. Protecting their honor becomes a greater priority than the victims of such criminals. Furthermore, the wealthy have the economic means to avoid character defamation. According to the U.S. Bureau of Justice Statistics, approximately half of white-collar criminals avoided prison sentences. Conflict theorists view white-collar crime as illegitimate activities that typically exist beyond the access of lower socioeconomic classes. Compared to the common person, physicians, for example, have greater access to documents that could lead to Medicare fraud. Likewise, the average person lacks the capability to manipulate the price of stocks, to practice large-scale tax evasion, or to embezzle revenues while purging the records through false bookkeeping. Ultimately, conflict theorists view the white-collar criminal as likely to have broad and subtle victims, disproportionately hurting the poor and the lower-middle class.

A critical response to conflict theory stresses that some positive results have been obtained for the common person, such as consumer protection policies, "right-to-know" legislation, worker safety laws, and market regulation, which in some cases contrast with the elite's self-interest for the "common good." Because of its overemphasis on the structural causes behind crime and deviance, conflict theory is unable to explain criminal behavior as stemming from intrinsic causes such as ill will, delusion, or psychological disorders. Because conflict theory typically focuses on consequences behind inequality and the quest for collective change because of rising discontent, the theory overlooks the idea that moderate social compromise and peaceful negotiation do exist in some social sectors, despite macro-level social, political, and economic disparities.

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See Also: Capitalism; Critical Theory; Differential Association Theory; State Crime Theory.

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Consent Agreements and Orders

White-collar crimes are frequently resolved by the use of consent agreements and orders. Variously referred to as *consent agreements, consent orders,* or *consent decrees,* they are legally binding agreements that are voluntarily entered into by the parties in a legal dispute. Given that white-collar crimes are often perpetrated by business entities, rather than single individuals, civil lawsuits are often the vehicles used to attack the perpetrators. Civil suits are generally more useful in punishing the behavior of organizations than are criminal complaints for a number of reasons; for example, there is no upward limit on the amount of monetary damages that can be assessed in a civil case, whereas criminal fines are traditionally low. Moreover, the burden of proof is lower in civil cases.

Consent orders and agreements provide a convenient means to settle civil litigation, backed by court oversight and enforcement. Consent orders and agreements are governed by state and federal laws, which differ by jurisdiction. Consent orders allow the disputing parties to settle complaints expeditiously, without having to take the matter to trial and wait for the court's final judgment. With a consent order, the parties settle the case with the approval of the court that would have jurisdiction over the matter if it went to trial. The court must agree to the consent order for it to be valid. The court cannot force the parties to forgo their right to pursue full adjudication through trial; however, once the court has approved the consent order, it is legally binding on the parties.

The court then has the power to oversee the enforcement of the order and impose sanctions on any party who does not comply with the terms of the order. Consent orders can be entered into for the purpose of resolving all of the issues in the case, thereby ending litigation. Consent orders may also be entered into for the purpose of resolving only selected issues in the case, while the case continues to progress toward a trial, without determining the ultimate outcome of the case. This latter type of agreement is known by the terms *interlocutory consent agreement* or *interlocutory consent agreement order*.

Saving Time and Money

The consent order is popular with both the government and alleged white-collar criminals as a means to resolve legal issues because it saves time and money for both sides. If an organization or individual has failed to comply with regulations, the government could file an aggressive lawsuit, but then offer to drop it if the allegedly offending party immediately begins complying with the regulations and accepts other terms of a consent agreement. The government accomplishes its goal of speedy regulatory compliance without the costs of lengthy litigation. In turn, the alleged offender also avoids litigation costs while at the same time averting hefty damages that may have been assessed by the government had the lawsuit progressed to trial.

The U.S. government took this tactic to force against Ellerbe Becket Inc., an architectural firm, to comply with the Americans with Disabilities Act (ADA) and stop designing sports stadiums that were inaccessible to wheelchairs. After the government filed suit in federal court against Ellerbe Becket in 1995, alleging multiple violations of the ADA, the firm quickly entered into a consent agreement and changed its practices.

In another example, a consent order was used to resolve a charge that certain banking institutions were charging different broker rates for home buyers, depending on their race. The U.S. government filed a complaint against AIG Federal Savings Bank and Wilmington Finance, alleging that they violated the Fair Housing Act and the Equal Credit Opportunity Act by charging African American borrowers higher broker fees than white borrowers. The parties filed a consent order in 2010 with the U.S. District Court of Delaware wherein, without admitting guilt, the banks agreed to change their policies and procedures, establish a settlement fund, and be monitored by the court for three years. Although in theory this case could have been charged and prosecuted as a civil rights violation, the best way for the government to quickly put a stop to the unwanted conduct was to enter into a mutually acceptable, court-enforceable consent order. Consent agreements and orders are also popular tools for licensing commissions and boards. If a licensee, such as an attorney or doctor, engages in wrongdoing that could be subject to disciplinary proceedings, the licensing commission may choose to issue a consent order in which the licensee agrees to sanctions, such as censure or suspension of his or her license. This allows the parties to avoid a full administrative hearing. As in other arenas, using consent orders provides for quick and inexpensive disposition of the case, with the added advantage of ongoing oversight by the commission.

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See Also: Celler-Kefauver Act; Corporate Criminal Liability; Sentencing Guidelines.

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Conspiracy

A conspiracy is an agreement between two or more individuals to commit a crime. Depending on the jurisdiction, the crime may be a felony or a misdemeanor. While some jurisdictions only require the agreement, most jurisdictions require that there must also be an overt act committed by one of the individuals that is in furtherance of the agreement. As a result, two crimes are committed. The first is the conspiracy (to commit a crime), and the second is the underlying offense that the individuals agreed to commit. Examples of underlying offenses include murder, robbery, embezzlement, drug smuggling, and the distribution of stolen property. A conviction for conspiracy does not require a conviction for the underlying offense (*Clune v. United States*, 159 U.S. 590, 1895). Each conspirator is liable for the foreseeable acts of his or her co-conspirators, even if the acts and parties are unknown (Pinkerton's Rule: *Pinkerton v. United States*, 328 U.S. 640, 1946). The Model Penal Code (Section 5.03 Criminal Conspiracy), drafted by the American Law Institute, does not accept the Pinkerton Rule. In addition, statements of one co-conspirator are admissible against his or her co-conspirators. A conspiracy may also "exist even if co-conspirators do not agree to commit or facilitate each and every part of the substantive offense" (*Salinas v. United States*, 522 U.S. 52, 63, 1997).

Types of Conspiracies

There are two basic types of conspiracies: chain and wheel. A "chain" or "link" conspiracy is a linear relationship that involves several individuals who act in concert to achieve a common goal. A common example is the production, refinement, smuggling, and sale of narcotics in the United States. The common goal is the sale of illegal drugs, and each individual is part of the drug conspiracy. This is similar to conspiracies during Prohibition regarding alcohol production and sales. The question arises as to whether there is a single or multiple conspirators in a linear arrangement. In *Blumenthal v. U.S.*, 332 U.S. 539 (1947), a post-Prohibition liquor case, Blumenthal challenged his conviction of a conspiracy to violate the Emergency Price Control Act. In this case, Blumenthal and other salespeople sold liquor above the controlled price for all of the parties (salesperson, known owner, and unknown owner and divided the additional money among the group. The Court found that there was a single conspiracy supported by 10 overt acts.

A "wheel" conspiracy, also known as a "hub-and-spoke" conspiracy, receives its name from the visible structure of the conspiracy and its participants. In this case, there is a central figure, much like the hub (center) of a wheel, who reaches out to various individuals, who work with this person to commit a crime. In a drug case, a dealer works with various runners or street dealers to sell the drug product; these individuals share a common objective, as stated in *United States v. Brown*, 587 F.3d 1082, 1089 (11th Cir. 2009):

> To sustain a conviction for conspiracy to distribute narcotics (21 U.S.C. Section 846) the government must prove (1) that an agreement existed between two or more people to distribute the drugs; (2) that the defendant . . . knew of the conspiratorial goal; and (3) that he knowingly joined or participated in the illegal venture.

Wharton's Rule

Although a conspiracy requires an agreement between two or more individuals, conspiracy cannot be charged where the minimum number of individuals necessary to commit a crime is two. This is known as Wharton's Rule and is also known as the Concert of Action Rule. It is explained in *A Treatise on the Criminal Law* (1846), written by Francis Wharton. Examples of such substantive crimes that require at least two individuals to commit the underlying offense are prostitution and gambling. However, a pimp and his or her prostitutes can engage in a conspiracy to commit prostitution before the purchaser, or "John," becomes involved in the crime. In *Iannelli v. United States*, 420 U.S. 770 (1975), the Court recognized that there are also crimes where a minimum of five individuals is required for federal jurisdiction over the underlying offense, but this would not mean that five individuals are necessary to complete the underlying offense (Title 18 U.S.C Section 1955). As noted in *Iannelli,* the rule traces its origin to the decision of the Pennsylvania Supreme Court in *Shannon v. Commonwealth,* 14 Pa. 226 (1850), a case in which the court ordered dismissal of an indictment alleging conspiracy to commit adultery that was brought after the state had failed to obtain a conviction for the substantive offense.

Statutes

There are conspiracy statutes in both federal and state criminal codes. The primary conspiracy law within the federal code is Title 18 of the U.S. Code—Crimes and Criminal Procedure, Section 371—conspiracy to commit offense or to defraud the United States. The statute states the following:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

There is a separate conspiracy law that applies to drug conspiracies. Title 21 of the U.S. Code related to food and drugs, Section 846—Attempt and Conspiracy, states the following:

> Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

There are many other statutes that include a conspiracy section within the definition of the substantive offenses. Sections 1831 and 1832 concern the protection of trade secrets, and both of these sections contain provisions for conspiracy to violate the law.

Defenses

The defense against a charge of conspiracy is withdrawal. However, the defendant must effect the withdrawal before an overt act is committed in furtherance of the conspiracy. The major problem for the defense is that the crime of conspiracy, unlike the underlying substantive crime, is committed with the completion of the overt act. Crimes like burglary and kidnapping require completion of the substantive crime; all the elements must be met, or only attempt can be charged after substantial steps have been taken to commit the offense. This is why a conspiracy is so easy to charge and convict, and is difficult to defend against.

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See Also: Employee Crimes; Federal Trade Commission; Industrial Espionage; Mail Fraud.

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Consumer Deaths

In white-collar and corporate crime, a variety of victims can be distinguished: the state, competitors, citizens, employees, animals, the natural environment, and consumers. This last category has received little attention in criminology until now. The lack of knowledge about consumer victims contrasts with the fast-growing international consumer market. The general reasons why victims of these white-collar and corporate crimes struggle to have a place in the criminological discourse also concerns consumer victims: The injurious activities are not criminalized, consumers are not aware of the external cause of victimization, consumers lack the expertise to understand who is guilty, companies are too powerful to be accused of a crime, and governments are careful in making harmful companies a political topic. A specific reason why consumers have difficulty being recognized as victims is the connotation of choice or free will related to consuming. Consumer victims are often considered to have free choice in consuming or not, and in what they consume. This brings up the old criminological concept of victim precipitation, which means that victims contribute to their victimization. This complicates the ability of consumer victims or their relatives to receive retribution or compensation.

Characteristics of Consumer Deaths

A first characteristic is the unknown number of consumer deaths. People can die after a long period of illness without really knowing the cause, or they may be aware of the cause without announcing it publicly. The global effect of marketing an injurious product worldwide makes estimating the percentage of consumer victims more of a "guesstimate." The international distance between consumer victims hampers communication about the injurious effect and the eventual collection of victims to take action. New multi-media, however, have facilitated the distribution of information about injurious products.

Injurious products don't need to have immediate effects after consumption. In some cases, it takes years before the effects are visible. The pharmaceutical product diethylstilbestrol, or DES, was a synthetic hormone distributed between 1950 and 1980 to women worldwide during pregnancy to avoid miscarriage or early birth. The medicine had serious physical effects, not only for the mother but also for the children in their teenage years and for the grandchildren. It increased the risk of infertility for these mothers and their daughters, caused genital deformations, and increased the risk of cancer for mothers and their children. In many DES cases where children were the victims, the first symptoms of cancers became visible 15 years after their mothers took this pill. Another example of slow victimization of consumers is the fast-food victim. One of the main diseases and causes of death in Western countries is obesity. Obesity has a higher risk than heart disease, cancer, asthma, and many other illnesses. It is one of the main preventable causes of death in Europe and the United States at the moment. In the United States, people suffering from obesity have accused fast-food producers of creating the false impression that their food was nutritionally beneficial.

Consumer victims bear a gender differentiation. The marketing of consumer products to women makes this gender category more often the victim of consumer products than men. Far more women are victims of pharmaceutical products. This can be explained by the medicalization of the female body. A pill or a medical treatment has been produced for every biological change of the body during a woman's life. Diet pills, medicines for pregnancy, pills to prevent pregnancy, painkillers during childbirth, pills to go through the menopause, cosmetic surgery—all of these treatments purportedly help women to have a pleasant life. For every category of pill or treatment, however, there is an example of consumer victimization, with dramatic effects.

Consumer victimization has a connotation regarding free choice that makes it difficult for victims to be acknowledged as a victim, and to prove that they have a right to retribution. Two extremes may be distinguished on the continuum of consumer victims: the consumer victims who couldn't know the risks of the product and whose victimization was beyond their control, and the consumer victim who must have known about the injurious effects of the product because it is general knowledge. This is the case for all accidents that happen because of a hidden fault. One example in the automobile industry is the case of the Ford Pinto, a car produced by Ford Motor Company between 1970 and 1980. A total of 27 deaths were attributed to the poor construction of the Ford Pinto. A more recent example is the high failure rate of Firestone tires installed on different makes of cars, including Ford vehicles. Tire failures are estimated to have caused 250 deaths and more than 300 serious injuries. People who buy a new car trust that all safety measures have been taken by the producer, and only the engineers have the scientific knowledge to guarantee the safety of the car driver. These consumer victims cannot be blamed for their victimization.

At the other end of the continuum are consumer victims who are informed about the injurious effects of a product. These victims are partly accountable for the injurious effects, while the producing company remains guilty because it deceives the consumer with misleading advertisements or false information. Smokers have accused cigarette producers for being dishonest about the ingredients of their products, while obesity patients have blamed fast-food restaurants for their aggressive advertisement mainly toward children. In both cases, consumers know that regular consumption of these products is harmful. Every lawsuit against cigarette producers or fast-food restaurants involves a legal controversy about who is the most responsible for the injury.

In October 2012, the U.S. Food and Drug Administration (FDA) reported that Monster Beverage Corp.'s energy drinks had been cited in the deaths of five people in the past year, according to incident reports submitted by doctors and companies. A couple in Maryland filed suit against the company in October 2012, claiming that the drinks led to caffeine toxicity that killed their 14-year-old daughter. Energy drinks like Monster aren't bound by FDA guidelines for caffeine in sodas because they are often sold as dietary supplements.

Although blaming the consumer victim is sometimes partly acceptable, in most cases, it is used as a neutralization technique: Companies try to get rid of the responsibility for harm by blaming the consumer victim. An example is the case of amphetamine-based diet drugs that caused dramatic heart and lung failures. Pharmaceutical companies and doctors defended themselves by referring to the free choice of people to take the easy way for losing weight. In this case, the consumers merely trusted the companies that these medicines were safe.

While some company activities have unhealthy effects only in wealthy countries, they may have a fatal effect in less economically developed countries. Breastfeeding has a monopoly position in infant food production because it is free and contains all the nutrients that a baby needs. From 1970 on, the infant formula producer Nestlé has been accused by campaigners for unethical promotion of its products in less economically developed countries. Campaigners who set up a boycott against the use of Nestlé products claimed that the producers contributed to the death of millions of babies born in poverty. About 1.5 million children die every year because of malnutrition. One of the reasons is that women decide, influenced by promotion, to feed their baby after childbirth with breast milk substitutes. The problem with infant formula is that they have to buy the powder, they need clean water to prepare the formula, and they lack the ideal conditions for conservation. The United Nations Children's Fund estimates that babies fed by infant formula have six to 25 times the probability of dying of diarrhea than breastfed babies.

An improper category of consumer victims is people who risk death because of the consumption patterns of others. An example is the habit of Western people of eating meat. Scientists warn that if people continue to consume the same amount of meat as today, in 2050, the world will suffer a shortage of water. The first victims will be people who live in less economically developed countries, where drinking water is scarce. Another category of consumer victims is people who are not able to consume life saving products because of the price of the product. An example is the increase of the price of human immunodeficiency virus infection/acquired immunodeficiency syndrome (HIV/AIDS) inhibitors because of the strengthening of international patent protection by the World Trade Organization. Less economically developed countries are used to obtaining generics, which could be marketed for lower price. After the strengthening of the law, these countries had to respect the patent protection legislation. The measure led to social protest and court cases against the producers of AIDS inhibitors.

Consumer Deaths and Retribution

The most important difference between white-collar and corporate crime, versus traditional crime, is the economic and social importance of companies for a country. The economic and social significance of companies put governments in a dubious position: They have to protect the market to ensure employment. On the other hand, they have a duty to protect people against injurious products. In the history of white-collar and corporate crime research, the critique of governments for their restricted intervention to stop companies from producing injurious products and to sanction responsible companies is constant. Companies that violate the criminal code are only occasionally sentenced, and many company activities are known to be risky but are accepted. Most cases are brought before civil courts, even cases where the violation of the criminal code is obvious. Common law has an alternative in civil court by means of punitive damages for this kind of decriminalization. Punitive damages are imposed on the defendant who has been found guilty. Because the amount exceeds the compensation rate, it has a punitive character. Punitive damages are intended to reform or deter the defendant and it can redress the injury of the plaintiff. In continental law, it is unacceptable to use the civil court to punish a defendant. A civil court case aims to compensate the victim if the plaintiff succeeds in proving the damage as well as the causal relation between damage and the product.

For consumer victims, even a civil court case is often an agony. The reasons are manifold: Victims do not succeed in proving the causal connection because they lack the scientific background, they cannot afford to bear the costs of a long court case, or they cannot stand the emotional weight of a long procedure. For these reasons, consumer victims often accept to settle the case out of court.

This makes the procedure easier for both parties. Because it happens in private, settlement out of court also contains a risk for the less powerful party to not receive just compensation.

One solution to strengthen the position of the consumer victim or his or her relatives is the class-action lawsuit, a legal instrument that allows victims to claim collectively. One of the plaintiffs, a solicitor or another representative, collects the claims of all consumer victims and represents this collectivity in civil court or out of court by a settlement. The class-action lawsuit is often used in the United States. In European civil law, this arrangement was unknown until recently, but changes have been made that allow consumer groups to bring claims on behalf of large groups of consumers. The advantage of the class-action lawsuit is that consumer victims can share the burden of proof and the costs of the procedure. It can make thousands of small claims into one substantial claim that may have a preventive effect for the future and for other companies. An unintended side effect is the restraint of companies, doctors, and other professional groups to offer their services out of fear of becoming the object of a class-action lawsuit.

Consumer Activism

Another means to strengthen the position of the consumer victim is the support of a consumer organization. This can be a rather informal collection of consumer victims or a more formalized organization that represents consumer victims. Until recently, it was hard for consumer victims to meet and set up a movement because the consumer victims were spread around the world. Since the advent of social media, there has been a boom in consumer activism. Consumer organizations can inform people who are not aware of the risk of some products or who are not aware of the connection between their health problems and the product. Consumer organizations can also help support consumer victims in a court case, in the background, by providing expertise or moral support, or on the front line by leading a class-action lawsuit. Consumer organizations can also put pressure on companies. Consumers have the power to play a counterforce against companies because as consumers, they can directly affect the profit of the company. In order to put enough pressure on the company, collective action is needed, as with the Nestlé boycott resulting from aggressive advertisement for infant formula in less economical developed countries.

Every social movement needs a crusader, one person who sets up and moves on the consumer movement. The most famous consumer activist is Ralph Nader, an American consumer advocate who started his activism in the 1950s by blaming the American automobile manufacturers for violations of safety rules. He published his complaints in 1965 in his book *Unsafe at Any Speed*. He continued his consumer activism and became a crusader of the environmental movement and against nuclear energy. His activism is based on informing people and the government by writing well-documented reports. He also tried to break into the political power block by running several times as the presidential candidate.

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See Also: Breast Implants; Caveat Emptor; Class-Action Lawsuits; Dalkon Shield Case; Infant Formula; Nader, Ralph; Pharmaceutical Industry.

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Consumer Product Safety Commission, U.S.

The Consumer Product Safety Commission (CPSC) is the independent federal regulatory agency created in 1973 to regulate the safety of products made and sold in the United States. The agency serves to protect consumers against injury caused by consumer products, including many structural items. Authorization to establish the commission came from Public Law 92-573, or the Consumer Product Safety Act of 1972, signed into law by President Richard Nixon.

The initial force that led to the creation of this agency was the "Final Report of the National Commission on Public Safety," published in 1971. The product of a two-year study, the report showed that many accidents and deaths from consumer products could be prevented with better standards, regulation, education, and oversight by a government agency. The law established a five-person commission, on which members serve seven-year terms. Members must not be affiliated with a consumer industry by employment or investment. From a political party standpoint, no more than three members can be from the same political party, thus preventing politicization of the commission. A newly elected president cannot remove the members and chair of the commission, like other executive branch offices, at the beginning of his or her term in office.

The commission also has a Product Safety Advisory Council, which consists of 15 members from local, state, and federal levels of government. Members of this group have product safety knowledge and affiliations. Members are divided equally between industry, small business, and industry organizations, and they convene at least four times a year to propose rules for consideration. The purpose of the council is to advise the commission, whose membership cannot be from industry. In its regulatory role, the commission assumes the responsibility for existing laws related to consumer products and their enforcement. These include items covered by other laws like hazardous substances, flammable fabrics, refrigerator safety, and poison prevention. The law gave the commission strong powers to oversee industries as they try to regulate them. When a product is placed on the market and is determined hazardous, the commission can enforce compliance through a variety of sanctions and court injunctions. The agency works with industry to enforce testing for safety of products produced for all ages. Importers are also held to these standards when bringing items into the country for sale to the American public. The responsibility for consumer safety lies with the manufacturer, not the consumer, whose use of a product might not be entirely appropriate. The commission works to educate users to make better-informed decisions.

Tracking Trends in Consumer Accidents

The CPSC examines trends in consumer accidents and uses the information to write regulations to make changes to the design of products. Safety standards are not written solely by the commission because by law, it must consult industry. This is a difficult process because industry writes the standards and the commission must be alert for abuse. The commission polices industry and tracks accident reports. The agency will issue recalls for particular items. Recent examples include baby slings that could cause small infants to suffocate, drop-side baby beds that could trap children, and defective car seats. In some cases, the problem is around for many years, and a spike in the number of accidents leads to the recall and change in standards. Today, cribs sold in the United States cannot have drop sides and must meet strict safety guidelines. The commission recognizes that industry needs to do more to protect consumers and take responsibility for the products put on the market. Industry cannot assume that consumers will use a product the way that it was intended.

In 1972, Congress created the Consumer Product Safety Commission to oversee enforcement of product safety laws and regulations in the United

States. Additionally, the commission is charged with educating the public about the proper use of consumer products and notifying them about items on the market that need to be recalled. This nonpartisan commission is in a position to greatly influence industry and consumer safety in a time when many products are imported from other countries.

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See Also: Consumer Deaths; Consumer Product Safety Commission Act; Food and Drug Administration, U.S.

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Consumer Product Safety Commission Act

The Consumer Product Safety Commission Act created the Consumer Product Safety Commission (CPSC) to oversee regulation of consumer products in the United States. The act was sponsored as Senate Bill 3419 in the 92nd Congress after the release of a report on a two-year study by the National Commission on Product Safety chaired by Arnold B. Elkind, detailing the numbers of injuries caused by consumer products. President Richard Nixon signed the law on October 27, 1972, creating an executive branch independent agency to regulate product safety. The act impacts manufacturers, distributors, retailers, and citizens via the actions of the commission and its advisory council. A five-member commission is appointed by the president for individual seven-year terms and is responsible for regulating consumer products. Under the guidelines in the law, the members cannot have any professional or financial ties to industry, and no more than three members on the commission can be from the same political party. Commissioners receive guidance from the 15-member Advisory Council created under the law. The makeup of the council includes five members each from industry representing local, state, and federal governments.

Oversight Over Safety Laws

CPSC legislation combines oversight of a variety of safety laws under the guidance of the commission. Legislation related to hazardous substances, flammable fabrics, poison prevention, and refrigerator safety all transferred to the commission to make sure that the laws are enforced and updated regularly. The commission receives recommendations from the council on proposed changes suggested by industries. Additionally, the commission conducts studies and makes reports and recommendations based upon those findings.

Today, the commission routinely tests groups of children's toys for lead and other dangerous chemicals. The act impacts manufacturers of products in the United States and those whose products are imported. Companies may be required by the commission to turn over records related to products and reports related to tests on their products. Companies are required to label their products, submit plans for new products, and notify the commission of defective products that need to be recalled. Manufacturers are expected to keep current with regulations and safety standards, and they have the right to ask for review of commission actions and decisions. Manufacturers are obligated to comply with all standards and regulations and report defective products, and they are subject to random inspections. Distributors and retailers in the United States are held to the same guidelines as manufacturers. Defective or recalled products cannot be distributed under penalty of fines, and sellers are required to notify the commission if they receive a defective product.

Imports and exports are also covered by the law. Exports from the United States are not covered by the legislation, unless the goods are going to a military installation, diplomatic mission, or similar situations. All imports to the United States are covered by the act, although this can present some problems for those who import goods. The main benefit of this law is for the American consumer.

Testing, Regulations, and Standards

As the purpose of the act is to protect consumers and to bring about a decline in the injuries and deaths related to consumer products, testing of products, establishing regulations, and standards from industry professionals all work to safeguard the consumer. Recent recalls of defective car seats, drop-side baby cribs, pacifiers, and baby slings seek to improve safety for children whose parents may not use the items properly or who may be exposed to products that have a manufacturing weakness. Acting upon the recommendations of the Commission on Product Safety, Congress created an executive branch regulatory agency with the charge to regulate the consumer products industry. This act was a way to reinforce state and local agencies and to institute a system to inspect products, protecting consumers. Internal efforts from industry proved insufficient, so this legislation established a system that works today. Information about defective products is disseminated efficiently, and manufacturers and retailers alike are required to respond to recalls under penalty of law. This act was updated in 2008 by the Consumer Product Safety Improvement Act of 2008.

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See Also: Consumer Deaths; Consumer Product Safety Commission; Fisher-Price Inc.; Food and Drug Administration, U.S.; Nixon, Richard M.

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Contractor Fraud

Contractor fraud is a form of white-collar crime that is punishable criminally, civilly, and administratively; it occurs through conspiracies among individuals and entities (i.e., legal fictions) that transcend states and nations. It is a global issue. Contractor fraud is not a novel or recent issue, but it has been increasing because of the globalization of economic activity and the increased role of government financing in many jurisdictions. The rights to obtain and obligations to transfer resources, especially financial, are often exchanged without adequate transparency as to the integrity of the parties to these transactions. Contractor fraud involves deceit, theft, and corruption (e.g., theft by deception, bribery, and kickback schemes). It is perpetrated through corruption of the decision-making process of the individual (i.e., the fraudster) as the fraudster intentionally, covertly, and wrongfully diverts economic or financial resources away from the project under which the fraudster is engaged to support.

The means and methods of contractor fraud are variable. For example, the fraudster may be an individual intentionally failing to provide adequate oversight (i.e., deliberately looking the other way as resources are looted), or an individual intentionally creating a materially misleading invoice for payment (i.e., fraudulent invoicing). Similarly, the motivations for perpetrating contractor fraud are diverse: for example, obtaining material resources that the fraudster would otherwise be unable to obtain without incurring unwanted costs, including having project labor and materials wrongfully dedicated to personal projects (i.e., using project resources to perform capital improvements on the fraudster's residence), or wrongfully inflating a contractor's project revenues in support of the fraudster's professional reputation (i.e., reporting fictitious contractor revenues in a career advancement scheme).

Traditional explanations for contractor fraud include Émile Durkheim's concept of anomie, Edwin Sutherland's concept of differential association, and Donald Cressey's concept of the fraud triangle. These concepts are interrelated, identifying elements within the social psychology of fraudsters generally, though it is difficult to predict whether any particular individual will commit contractor fraud. The explanatory power of these traditional models is limited; they are useful more as an after-the-fact description or diagnosis of what went wrong in a discovered case of fraud than as a before-the-fact model that produces reliable predictions about specific individuals based on measurement of perceived attributes of these individuals.

Contractor fraud occurs within and across the private, public, and independent sectors (i.e., commercial, governmental, and nonprofit venues). Transactions commonly subsumed under contractor fraud include those characterized by bribery, kickbacks, illegal gratuities, and special consideration extended to decision makers (e.g., special favors). It is an economic crime of abuse of position, thwarting free and open competition, such that decisions are made that are unfairly influenced by improper advantage (e.g., pay-to-play schemes). These illicit and illegitimate decisions increase costs to project and market participants, and they unjustly enrich the fraudster.

Contractor fraud is generally authorized and executed under the aegis of a corporation, which superficially provides limited liability for business decision making (i.e., the individual decision maker is legally protected against personal liability from unfortunate results flowing from the exercise of business judgment). Though this corporate shield is often ineffective against criminal contractor fraud, it can transform the culture of procurement from risk averse or risk neutral to risk taking: In a risk-taking culture, individuals may be more likely to make decisions that are illegal or fraudulent.

The contractor as independent principal (and legal fiction) is subject to individualized pressures, including demands for efficiency and profitability, and the personal incentives of its agents; the integrity of decision making of the contractor is dependent on the integrity of its agents, many of whom have interests that diverge from the legitimate interests of the contractor.

There are internal and external gatekeepers whose function is to provide an independent and objective check on the risk of contractor fraud. These include employees within the contractor, employees of the buyer of the contractor's product or services, and intermediaries such as architects, engineers, and external project auditors who provide review, approval, and oversight activities. However, their effectiveness is limited, especially where resources applied to mitigating contractor fraud risk are inadequate or collusion exists.

As the contractor is the subject matter expert for the project, whether as designer, builder, or consultant, deference to its decision making may be routine and customary. This results in an opportunity and vulnerability structure for unscrupulous contractor employees to exploit. Within the engineering, procurement, and building functions are a multitude of subcontracts and vendor purchase agreements through which much is at stake: Individual livelihoods depend on participating in the project, whether legitimately and/or illicitly.

The prime contractor or construction manager (i.e., the entity through which the project is directed and controlled) is the relationship manager over the network of subcontractors, sub-subcontractors, vendors, and consultants on which the project depends for successful and timely completion. This network offers resources in the forms of soft costs (e.g., obligations to architects, engineers, and other consultants) and hard costs (e.g., the trades such as masonry, the use of concrete, and carpentry). Contractor fraud is about skimming or otherwise wrongfully diverting the value of the cost of these resources.

Contractor fraud is noteworthy because of the risks created under large projects. The high monetary values of these contracts provide opportunity and incentive for individuals, honest and/or dishonest. Additionally, the complex nature of the processes of project development (i.e., engineering, procuring, constructing, installing, and commissioning) makes oversight expensive, time-consuming, and contingent upon the honesty and integrity of other experts and consultants, properties that tend to result in minimization of resources dedicated to oversight.

Means and Methods

Contractor fraud is deviant conduct violating the norms explicitly and implicitly governing transactions. It is accomplished in a variety of ways. However, a characteristic shared among successful contractor fraud schemes is the failure on the part of the victim to conceive of the materially misleading nature of evidence and data presented and disclosed to it. Additionally, fraud is not in fact committed by corporate entities (though it

New York City Council Member Letitia James speaks at the CityTime press conference at City Hall, December 17, 2010. On March 14, 2012, it was announced that contractor Science Applications International Corp. (SAIC) was to pay the U.S. government more than $500 million to settle charges that SAIC conspired in fraud, resulting in cost overruns to implement the city's computerized timekeeping system, CityTime. James predicted that it would be "the largest fraud on record in the city's history." She turned out to be right.

may be imputed to the entity by operation of law). Individuals commit fraud, whether the buyer and/or seller. Moreover, these agents may be in high managerial positions or much lower in the organizational hierarchy.

The initiation of the fraudulent scheme may occur early in the project development or program management process. In illustrating the variable forms in which contractor fraud occurs, it is not necessary to distinguish between fraud initiated by the contractor's agent and fraud initiated by the buyer's agent because the risk of corruption in the relationship and transaction may develop from either or both points. For example, the bidding process may be corruptly and fraudulently exploited in many ways, including improper development of the request for information and/or request for proposals from potential contractors (e.g., the process may be steered by design to a particular contractor by customizing the description of required work such that competition is unfairly excluded), improper solicitation of bids (e.g., steering invitations only to corruptible contractors), and improper processing of bids (e.g., selective leakage of information to a favored contractor).

Another common means of perpetrating contractor fraud is through exploitation of the contract. There are two basic types of contracts (cost-plus and guaranteed or fixed price contracts); these may be fraudulently executed through improper inflation of costs and/or improper inflation of scope of work. Costs may be fictitious (e.g., charging for ghost employees); scope of work in the base contract may be deliberately misleading and understated so as to take advantage of requiring extra work (i.e., change orders or "scope creep"), the costs for which exceed the initial expected benefit of the bargain by the project owner. Additionally, costs may be fraudulently allocated among different contracts (e.g., improperly charging work to a cost-plus contract that should be charged to a fixed-price contract); costs may be paid that do not even benefit the project (e.g., capital improvements paid for under the project that benefit an individual outside of the contract, such as redeveloping a personal residence for a fraudster or buyer's agent).

The fraudster in contractor fraud exploits and defeats project oversight, creating acceptance by key project decision makers of misleading statements and/or inducing their acceptance of incomplete and misleading statements (i.e., the fraudulent act may be a commission or omission of statement). Though the principals to a project (the owner and prime contractor or construction manager) employ a supporting network of consultants, experts, and specialists (e.g., engineers, architects, trade subcontractors) that prepare and maintain forms, records, and reports for the purpose of managing the project and explaining project expenditures, the effectiveness of the overall oversight system is subject to compromise. This is especially true for project owners such as the U.S. military, which often contracts on a cost-plus basis and is not subject to the same budgetary constraints and deterrence models as commercial project owners, under which cost overruns, even legitimate, may imperil individuals' careers and the project owner's financial viability.

Though the object of legitimate contractor work is generally the development or redevelopment of capital assets, the means and methods of contractor fraud usually demands exploitation of the financial system. Specifically, assets readily convertible to cash (i.e., liquidity) are diverted from the project to the fraudster. Overbilling, fictitious billing, graft, and promises of special consideration are schemes characterized in part by traditional theft by deception and in part by money laundering. Initiating the authorization, recording, processing, and reporting of fraudulent financial transactions is the linchpin of contractor fraud. As in other venues of fraud, the business purpose of the fraudulent transaction is intentionally inadequately presented and disclosed to and/or by decision makers.

The compartmentalization of modern business unintentionally facilitates contractor fraud. Entity hierarchies (e.g., internal control systems) are characterized by an increase in reliance on data and a decrease in reliance on other evidence as the review and approval of the transaction at issue wends its way through the entity's internal controls. For example, in the field, individuals have personal and/or indirect knowledge of whether goods and services are provided consistently with the contract, but as the abstract of the transactions (e.g., the shorthand depicted in double-entry bookkeeping or brief explanatory statements in journals and ledgers) goes upstream, much is left behind, whether as suspicions in the minds of operations employees and agents, or something more dispositive on the issue of fraud (e.g., observation of graft). The layers of intermediary controls (i.e., gatekeepers) may comply with regulations such as Sarbanes-Oxley, if applicable, but may not comply with the demand of obtaining effective evidence of corrupt intent influencing and motivating the transactions (e.g., to benefit a decision maker through undisclosed kickbacks). Data in the space of contractor fraud is generally derivative of evidence; these data are often unwittingly processed within entities and made an essential part of the misleading narrative. Moreover, persons with best or at least significant leverage over the project (e.g., providers of debt and/or equity capital) are distanced both physically and logically from the project (i.e., they are removed from the field, the preparation of books, and the maintenance of records).

Conclusions

Whether contractor fraud as a deviant phenomenon is becoming rarer is difficult to assess. As with most frauds, which are by nature schemes of deceit and concealment, contractor fraud is not readily observable, and whether positive or empirical research by academics, law enforcement agencies, civil society organizations, and related entities can obtain a useful approximation of the true population of the frequency and severity of contractor fraud is dubious. The stated population of fraud generally, and contractor fraud specifically, is a rough estimate. Alternatively, examples abound of instances of contractor fraud throughout the global economy, though these examples may not properly support statistical inferences about the population of fraudsters generally, and contractor fraud specifically. The data are valuable; however, the science of estimating the problem of contractor fraud may rest more on analysis of opportunity structures than inferences from empirical data.

Moreover, selective enforcement of potential contractor fraud is inevitable because law enforcement agencies and regulators have limited resources. Whether these are too scarce to effectively police the landscape of contractor fraud is not clear. Enforcement by private parties faces resource constraints because litigation is not a reliable profit center, being characterized by significant risk and uncertainty. Overall, contractor fraud as a type of illicit financial service is growing globally, along with the general industry growth of financial services, because contractor fraud improperly siphons and diverts resources legitimately committed to large-scale project development and redevelopment. However, bribery and kickback schemes under contractor fraud may go beyond wrongful diversion of financial resources, including procurement and giving of sexual favors, or other nonfinancial special considerations to corrupt decision making.

Difficulties of proof provide a disincentive to pursue allegations of contractor fraud. Because contractor fraud is not an accidental wrongdoing, victims and law enforcement agencies are required to demonstrate bad intent on the part of the defendant, which may not be a significant hurdle in cases of obvious self-enrichment (e.g., charging capital improvements done on the defendant's personal residence to a project involving the redevelopment of a retail mall on behalf of the defendant's employer, the project owner) but may be less clear in cases of inflated project billings under projects characterized by elaborate reviews and approvals, thereby diffusing responsibility (e.g., using kickback schemes to overcharge the U.S. Air Force in the development of a high-tech jet). Process may disguise, cover, and launder the substantive wrongdoing, such that the cause of the higher-than-anticipated cost appears to be financial mismanagement, good faith but erroneous cost assumptions, honest mistakes in judgment, anything other than contractor fraud. Fraud may exist in fact but be left alone and deemed error by the victim.

Legitimate concerns, such as privacy protections that limit open-source information, and illegitimate objects such as inaccessible side agreements that contain illicit promises of special consideration not publicly available to those charged with project oversight, enable contractor fraud. Contractor fraud occurs opaquely underneath the public record. As with other investigative methods that result in a public record, there is an unavoidable cost-benefit analysis and balancing of competing interests performed.

Accounting and administrative controls have been routinely applied in the effort to deter, prevent, detect, and punish instances of contractor fraud. Supplementing the legal remedies of external agents (e.g., public prosecutors and regulators), these control activities by internal agents are powerful. For example, surveillance techniques enabled by computer-based technology can potentially capture every keystroke and observe every conversation; constrained only by the enforceable limits of the law, these techniques have contributed to a social environment in which privacy is scarce.

Nonetheless, contractor fraud is neither on the verge of extinction nor a matter of petty concern. The reach of technology is countered by the ingenuity of the fraudster, pushing contractor fraud up the governance hierarchy (e.g., from clerks to senior management), where overrides to controls, weaknesses in controls, laxity in public prosecution, and conspiracies are more readily exploited. There is no bidding process that cannot be rigged and no invoicing process that cannot be fudged. Like other frauds, contractor fraud is primarily a management issue. In the real world, all of the guards (e.g., gatekeepers) are corruptible: Eternal diligence is effective only when the guard labor is adequately informed and possesses integrity.

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See Also: Conspiracy; Corruption; Cressey, Donald; Defense Industry Fraud; False Claims Act; Foreign Corrupt Practices Act; Sutherland, Edwin H.

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Coolidge, Calvin

Calvin Coolidge (1872–1933) served as the 30th president of the United States, from 1923 to 1928. President Coolidge was a lawyer by training. His political career began in Massachusetts, where he served as lieutenant governor and then governor before earning a place on the Republican presidential ticket in 1920 as the vice presidential candidate, alongside Warren G. Harding. Coolidge's personal life and political career were relatively devoid of conflict or controversy, despite the fact that his presidency witnessed violent labor strikes, initiation of the Hoover Dam project, Prohibition Era unrest, and the creation of sweeping European peace treaties.

Coolidge, a Republican in favor of small government, was also in many ways a social progressive; he often remarked publicly on the need for equal treatment of all races and genders under the law, though he never acted decisively toward either end. Coolidge's handling of the Boston Police Strike while governor of Massachusetts and the fallout from the corruption scandals of the Harding administration earned him respect from ordinary citizens and his political peers. During his presidency, the U.S. Justice Department investigated and prosecuted an unprecedented number of antitrust cases, further cementing his reputation as an efficient, law-and-order politician of strong moral character.

Born John Calvin Coolidge, Jr., in 1872 and raised by his father near Plymouth Notch, Vermont, Coolidge quickly developed interests in various political issues, eventually earning a degree from Amherst College in Massachusetts. Coolidge remained in Massachusetts after college, becoming a lawyer and part-time politician. He gradually rose to prominence within the Republican Party of Massachusetts, serving as lieutenant governor from 1916 to 1918 and as governor from 1918 to 1920. Coolidge's handling of the Boston Police Strike of 1919 made him a viable candidate for the nation's highest office. American labor union membership and organizing increased following World War I, as workers in a variety of occupations sought better wages and working conditions. At the time, labor union activism was also closely, though unfairly, associated with communism. As a result, significant conflicts between workers, labor organizers, and corporate and political leaders were frequent.

From Police Strike to the Presidency

In 1919, the Boston police commissioner suspended several dozen police officers for attempting to organize a police labor union. In response, nearly the entire Boston police force staged a general strike to protest the suspensions and force recognition of a police union in Boston. Looting, rioting, and property destruction—although not widespread—ensued. Once it became clear that the striking police officers were not going to return to duty without having their demands met, Governor Coolidge chose to quell the strike by calling out the state militia. The presence of the state militia ended Boston's civil unrest. Most of the striking police officers were fired and replaced; members of the new police force received many of the wage and working condition improvements that the previous officers had sought. Coolidge's remarks on the police strike, published in newspapers around the country, earned him the respect and admiration of many people fearful of unionized labor inspired by communist revolution:

"[there] is no right to strike against the public safety by anybody, anywhere, any time."

Coolidge joined the 1920 presidential ticket as the vice presidential candidate to Warren G. Harding, another republican from Ohio. Harding and Coolidge defeated Democrats James M. Cox and Franklin D. Roosevelt in the 1920 election. Coolidge's vice presidency was uneventful. In August 1923, while vacationing with family back in Vermont, Coolidge received notice that President Harding had died while on a multi-state speaking tour of the United States. Calvin Coolidge's father, John, quickly swore Coolidge in as the 30th president of the United States on August 2, 1923. One of the first tasks confronting Coolidge after assuming the presidency was establishing a sense of law and order in the White House, something absent during Harding's presidency.

Warren Harding had surrounded himself with individuals of questionable moral character. It was rumored that Harding was a philanderer, and his gambling parties at the White House were well attended by his closest cabinet members and political associates. Despite the 1919 Prohibition Act's ban on alcohol, Harding and his associates often consumed whatever type of liquor they desired. By the time Coolidge became president, numerous instances of graft, bribery, theft, and other illicit activities by Harding's cabinet members had come to light, and Coolidge was forced to deal with the fallout. The illegal land leases that allowed the Teapot Dome and Elk Hills oil reservoirs to be tapped garnered the most attention. Additional scandals related to the improper sale of surplus military supplies, and the property of German nationals seized during World War I also resulted in investigations and resignations. Despite Coolidge's ties to the Harding administration, he was never implicated in any of the wrongdoing.

Coolidge was reelected in 1924, serving one full term as president before choosing not to run for re-election in 1928. During his tenure, the Justice Department initiated more antitrust investigations and prosecutions than at any other time. These investigations, geared toward curbing corporate actions that unfairly altered the competitive marketplace, did little to harm large corporations. For example, the National Cash Register Company was fined only $50 for price fixing. Likewise, major antitrust cases against the Standard Oil Company and others often did not result in verdicts favorable to the federal government. Likewise, the Federal Trade Commission, tasked with enforcing antitrust laws, was relatively ineffective during Coolidge's presidency.

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See Also: Antitrust, U.S. Department of Justice; Federal Trade Commission; Sherman Antitrust Act; Standard Oil Co.; Teapot Dome Scandal.

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Copyright Infringement

Copyright infringement is the unauthorized use of a work that has been registered with a federal agency. It was once considered solely a civil court issue. In more recent years, with the advent of computers and the Internet, copyright infringement is a criminal and civil issue. In the United States, once creative works are approved for copyright registration, the authors are given many rights to protect their work. As the world has become more globalized, copyright owners struggle to protect their works around the world because federal protections do not extend to all countries. The Internet has significantly increased the ability and opportunity to commit this infringement, with little confidence that the enforcement will be able to keep up with the practice.

Per the U.S. Copyright and Trademark Office, a copyright is a work that is considered creative, original, and in some tangible form so that the office can review and approve the registration. Poems, books, music, Web sites, and artistic pieces may be copyrighted. The U.S. Constitution, Article 1, Section 8, Clause 8, discusses the significance of copyrights as helping a society to progress by protecting creative endeavors for their author. People may be more enticed to create works if there are federal protections for their hard work and skill.

Copyrights are unique in that they are considered under a strict liability statute, which means that a person can be held accountable for using a registered copyright without permission even if its use was unintentional. If a person copies a picture from a Web site and places it on his or her site, without permission from the owner, the person can be held accountable for damages in court. Not knowing about the law is not a viable defense in a copyright infringement case. Typically, a copyrighted item has information about how to contact the author for permission to use the work, although there are some circumstances in which authorization is not needed.

Benefits and Limitations of a Copyright

A person who creates a tangible work is not required to register the item with the U.S. Copyright and Trademark Office. There is a review process and an application fee in order to seek approval for a registered work. Because of this, some people conduct a "poor man's copyright" to seek some level of protection if the need arises. A person may mail the item to himself or herself and not open the envelope since it would have a date stamp by a federal agency to provide a date for the work. The Copyright Office does not recognize or endorse this practice in place of the registration process. Once a work is approved by the Copyright Office, the author has many exclusive rights. He or she can reproduce the work as much as desired, as well as sell, rent, or lease the piece. Preparing a derivative work is also a given right, so that the author can create translations, dramatizations, products, and other related items representing the original work. Performing and publicly displaying the work is at the discretion of the author, another benefit of registration.

One of the most significant benefits of a registered copyright is that the author has exclusive rights to his or herwork for the time up to his or her death, plus 70 years after. Michael Jackson, the King of Pop, died on June 25, 2009, and his children and family will reap the exclusive rights to all of his copyrighted works for 70 years. After that time, the works will enter into the public domain.

With the exclusive rights that copyright owners have, they also have some limitations, where it is up to the court system to interpret and decipher the balance between exclusive rights and public concerns. Under the First Sale Doctrine, a copyright owner receives benefits from the "first sale," so that if the consumer wants to sell the item later, he or she can do so without paying the author again. If a student buys a textbook, and after the class is over he sells the book online, the author of the book does not reap any profits from that sale, as the author did from the first sale. Fair use is another limitation for copyright owners, in that work can be reproduced without permission if is meets specific criteria. For example, colleges and universities are able to use copyrighted material in their classrooms because it is for educational purposes, not for profit. Public domain creates another limitation to the exclusive rights of copyright owners, in that some material can be deemed "public" so that the author loses or never gains registration for the work, and any person can use the work. Almost all government-produced work is considered to be in the public domain. These limitations do not negate the significant rights and potential success that a registered mark can have for the author.

Copyright Infringement

A registered copyright requires people to seek permission for use of, or purchasing of, a work. When this is not done, a copyright infringement ensues. The author can contact an attorney to initiate a civil law suit. If the infringement results in loss of a certain amount of potential profit from the work, criminal charges may be filed against the infringer, whether intentional or not.

The copyright owner is required to show the court the copyright registration as well as the violation and the liability. The role of the infringer impacts the possible damages ordered if the court finds a violation. The infringer can be the person who actually infringed or a person who contributed but did not initiate the infringement. The role of the infringer, profits received and lost from the infringement, and other factors are considered in civil court.

Copyright infringers can be ordered to pay monetary or actual damages, or statutory damages per work, based on whether they were willful or "innocent" infringers. These damages can range from $200 to $150,000 per work. Attorney fees can be ordered to be paid, and a judge can order an injunction or restraining order to cease use of the work by the infringer.

In response to the growing use of the Internet by the public to access copyrighted material illegally, the No Electronic Theft Act established criminal copyright liability for copyright infringers in 1997. This act does not require the infringer to have made any profit from the infringement to be criminally charged. Copyrighted material must have a total retail value of more than $2,500 for criminal prosecution. This act allows organizations like the Recording Industry Association of America to file criminal charges against people who illegally download and share copyrighted music.

In 1998, the Digital Millennium Copyright Act (DMCA) was passed to support the World Intellectual Property Organization global copyright initiative by protecting copyright holders in the United States across the world. With the span of the Internet, infringers can live in other countries where copyright laws do not exist or are severely limited compared to those of the United States. The DMCA also addressed technological measures to circumvent specific software practices in place to make infringement more difficult.

Impact

Internet users have pushed copyright infringement from a civil issue into a criminal endeavor. Downloading music, movies, pictures, and other items online, without permission, is a copyright infringement that may far exceed the $2,500 criminal charge requirement. Peer-to-peer sites, which have "peers" or computers connected to each other by the Internet, have been the main route used to share illegally downloaded music and video products. In 1999, Napster was one of the first music-sharing sites to experience legal restraints to stop its peer-to-peer sharing of illegally copied music.

More recently, the Federal Bureau of Investigation, with assistance from several law enforcement agencies in the United States, New Zealand, Hong Kong, London, Germany, and Canada, charged seven people and two corporations with maintaining an international organized criminal enterprise responsible for worldwide online piracy of copyrighted works. Megaupload.com and Vestor Limited were indicted and charged with racketeering, conspiring to commit copyright infringement, money laundering, and two other counts of criminal copyright infringement. They supposedly generated more than $175 million in criminal proceeds and caused more than half a billion dollars in harm to copyright owners by unlawfully reproducing and distributing copies of movies, music, television shows, electronic books, and software for over five years. The individuals could face five to 20 years for each charge.

Intellectual property acts, such as copyright infringement, were viewed less seriously in the past because they were civil crimes and little harm was sustained. With the advent of the Internet, copyright infringement has moved into the criminal courts and into criminal organized crimes groups. The United States and other countries are trying to unite to combat infringements, though many obstacles remain, such as cultural differences, variations in copyright laws, and resources for enforcement. Copyright infringements will continue to rise because they are easily perpetuated with online activities across the world.

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See Also: Capitalism; Counterfeiting; Industrial Espionage; Internet Fraud; Irving, Clifford; Patent Infringement; Trademark Infringement; Unfair Trade Practices.

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Corporate Capture

Corporate capture is a phenomenon in which private (corporate) interests pervert the tools of government and employ them to serve their particular ends. It is typically discussed with regard to regulation and hence is also referred to as regulatory capture. Rarely is it used to refer to generic capture.

In debates over governmental regulation, liberals tend to favor regulations as expressions of the public will and serving the common good, to be used to protect minors, patients, and many kinds of consumers from abuse by unscrupulous actors in the private sector. Laissez-faire conservatives and libertarians tend to oppose regulations because they view them as an abuse of the government's power and as harmful to the economic well being of the nation. This form of the debate overlooks the phenomenon of regulatory capture, which reveals that regulations work neither to promote the public good nor to undermine private actors. These observations have led some scholars to argue that regulations are useless or worse, and others to seek more effective forms of regulation.

The term *regulatory capture* is often associated with the work of economist George Stigler and his article "The Economic Theory of Regulation," where he writes that, "as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit." This work builds upon Stigler's previous essay with Claire Friedland, "What Can Regulators Regulate? The Case of Electricity," which takes up the question of the efficacy of regulation more generally and concludes that regulatory efforts rarely cause any deviation from market outcomes. Stigler's research on regulation influenced the work of a number of later scholars investigating the phenomenon of capture and applying the methods of public choice theory to regulatory issues.

In addition, the liberal–conservative debate represents a case of deficient generalization, in which various observers note incidents where the realities of regulation deviate from their core assumptions, but neither side has proven ready to draw conclusions from these incidents, most of which point in the same direction. Thus, many liberals are aware of regulations that end up serving private interests rather than the public, but they still strongly favor regulations. For instance, they considered the enactment of the Dodd-Frank financial reform bill in 2010 to be one of the major achievements of the Obama administration, despite the fact that the law was in a sense doubly captured: prior to passage, the initial bill was greatly diluted by lobbyists working for the industries it was supposed to regulate. Also, the law as enacted by Congress is particularly open-ended, leaving it to various agencies to shape the needed specifications, under conditions particularly favorable to lobbyists. Conservatives are also aware of incidents in which regulations serve those in the private sector, usually their allies, but nevertheless continue to stand strongly opposed to regulation in general.

Methods of Capture

Capture is achieved in several ways: when special interests compose regulations, by diluting regulations, by weakening enforcement, by gaming the regulators, by setting prices and rates, and through close relationships between regulators and industry.

Lobbyists representing the pharmaceutical industry literally composed the text of the 2003 bill that governs drug benefits for Medicare recipients. This benefit was initially estimated to cost taxpayers $400 billion over 10 years; more recent estimates range as high as $1.2 trillion. Also, as composed by the lobbyists, the law prohibits the federal government from negotiating the prices of these drugs.

In the wake of the 2001 Enron scandal, Congress passed the Sarbanes-Oxley Act in 2002. Hailed in the *Economist* as "the most sweeping reform of corporate governance in America since the Great Depression," the law left it to the Securities and Exchange Commission (SEC) to work out the details of the new regulations. However, the SEC was subjected to extensive lobbying by the accounting industry, such that the regulations that took effect included a definition of auditing that created a loophole for auditors to continue practices initially targeted for prohibition because they entailed a conflict of interest.

Sarbanes-Oxley was further weakened in 2006. Whereas it initially required auditors to investigate any accounting issues that have a "more than remote" chance of damaging a company's finances, the rules were revised to only require auditors to investigate issues that have a "reasonable possibility" of doing so. Moreover, in 2009, small businesses were permanently exempted from two of the act's key provisions—the first requiring executives to confirm the integrity of their firm's internal accounting procedures, and another requiring an outside audit of these procedures. This gradual dilution of regulations is reflected in the size of the regulatory text of the law; it was reduced from 180 pages to a mere 65.

According to a 2006 report, cutbacks in staff and budgets reduced the number of food safety inspections conducted by the U.S. Food and Drug Administration from about 35,000 a year in the 1970s to about 3,400 a year. In addition, over this time, the number of inspectors at the Agriculture Department declined from 9,000 to 7,500.

In 2012, the Federal Trade Commission (FTC) imposed a $22.5 million fine on Google for using tracking cookies on consumers' Web browsers to collect data on their Internet use. This represented an infringement on consumers' privacy rights by the Web company, a charge that has been leveled at them before. However, it is doubtful that the FTC will succeed in doing much economic damage to the Web powerhouse. The tiny fine is less than what Google earns in a few hours.

Special interests affect the regulatory regime in their favor by switching regulations into a new jurisdiction (e.g., from state to federal) or by pitting the regulators against one another. Thus, when mortgage lender Countrywide Financial felt "pressured" by the federal agencies charged with overseeing it, executives, as they put it, "simply switched regulators." As a national commercial bank, Countrywide had been under the jurisdiction of the Office of the Comptroller of the Currency. As early as 2005, Countrywide executives engaged in talks with the Office of Thrift Supervision (OTS), known to be a much more "flexible" regulator. Less than two years later, Countrywide redefined itself as a "thrift" instead of a "national commercial bank," and thus became regulated by the OTS. Over the next two years, OTS proved to be a very lax regulator of Countrywide's mortgage lending, as it also proved to be for IndyMac, Washington Mutual, and other major lenders. These institutions played a significant role in the financial crisis that followed.

Regulators are often charged with limiting the profits earned by one industry or another, such as by limiting the rate increases of utilities. However, in several major cases, captured regulations had the opposite effect: They bolstered the profits of a specific industry by setting higher prices and rates than the market would provide. An example of this can be found in the establishment of price ceilings on gasoline in some eastern Canadian cities. The imposition of price ceilings, which on the surface seemed to hedge against rising prices, actually artificially inflated gas prices in these areas and greatly slowed the pace at which these markets would respond to a general decline in the price of oil. These regulations helped better entrench the position of otherwise inefficient firms already selling in these gas markets, and they worked to discourage the entrance of newer, more efficient firms with higher overhead costs. Thus, the price ceilings served the narrow interests of entrenched firms while preserving inefficiencies in the market and artificially inflating prices.

After the explosion at the Upper Big Branch mine in West Virginia in 2010 killed 29 people, it was reported that the federal agency responsible for mine oversight, the Mine Safety and Health Administration, was reluctant to close even those mines that repeatedly violated safety rules. Furthermore, the agency rarely imposed large fines and often failed to collect the fines it did impose.

After the explosion at BP's Deepwater Horizon well in 2010 and the resulting oil spill in the Gulf of Mexico, there was widespread consensus that the federal agency responsible for regulating the well, the Minerals Management Service (MMS), had failed in large part because it had been captured. In the *Wall Street Journal*, Gerald P. O'Driscoll, Jr., wrote the following:

> By all accounts, MMS operated as a rubber stamp for BP. It is a striking example of regulatory capture: Agencies tasked with protecting the public interest come to identify with the regulated industry and protect its interests against that of the public. The result: Government fails to protect the public.

The Interior Department's inspector general found that MMS officials responsible for overseeing drilling in the Gulf of Mexico were allowing oil and gas officials to fill out their inspection forms, and some even considered themselves part of the industry they were tasked to regulate.

Responses to Corporate Capture

Despite a number of different avenues for private interests to capture regulations, capture is rarely complete, and thus even regulations subject to capture can generate some pubic benefit. The Sarbanes-Oxley act was in part a response to the actions of Enron Corporation and its accounting firm Arthur Andersen, which was found to have used irregular accounting practices to conceal a significant amount of Enron's debts and losses. As these practices came to light, Enron's stock plummeted from over $90 to less than $0.50 per share, forcing the company to declare bankruptcy, causing substantial losses to many thousands of investors and leaving thousands of Enron employees without their retirement savings accounts and other benefits. Similar scandals involved other major American corporations, such as Tyco and WorldCom.

Sarbanes-Oxley was significantly diluted during its creation and in the initial years of its implementation. Nevertheless, the law has achieved some of its goals. In his review of the act, John C. Coates of Harvard Law School concluded that Sarbanes-Oxley created significant incentives for firms to devote greater resources toward internal controls of their accounts. Furthermore, the act provides a number of long-term benefits, including greater transparency and accuracy concerning firms' financial data, which reduces risk of losses for investors. Finally, the act requires that high-level executives sign off on their firms' financial statements, creating not just a paper trail but also a culture of increased accountability at the highest levels of corporate office. Thus, in spite of being significantly diluted, Sarbanes-Oxley can be seen as a somewhat successful attempt at regulation.

Recently, scholars have suggested a new approach to regulation, led by Cass Sunstein and Richard Thaler, who argue in favor of a benign paternalism that induces desired patterns of action through small incentives, opt-out programs rather than opt-in programs, and simple persuasion. Rather than coercing desired outcomes through heavy penalties or regulation, Sunstein and Thaler, whose ideas were embraced by President Barack Obama and British Prime Minister David Cameron contend that the government should operate as a "choice architect" that "nudges" people in the right direction. However, this new mechanism assumes a benign government, out to serve the public, and does not provide antidotes to capture.

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See Also: Corporate Criminal Liability; Public Corruption; Reform and Regulation; Regulatory Enforcement; Revolving Door; United States.

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Corporate Criminal Liability

A consistent definition of what constitutes corporate criminality has proven elusive over the last 150 years. By today's standards, the labor conditions and treatment of workers (and by extension, consumers) during the Industrial Revolution in both the United States and the United Kingdom would no doubt be deemed unconscionable, not to mention illegal. Yet, as corporations are ostensibly held to higher ethical and environmental standards today, questions persist about how a commercial enterprise is judged under the law and how it is ultimately held culpable for acts of malfeasance and illegality. Settling on definitive answers is especially problematic given that corporations are, like people, sovereign entities under the law, yet are in many respects able to shed this individual accountability once subject to public and media scrutiny in cases of criminal wrongdoing.

What are deemed permissible transgressions of a number of statutes relating to workplace safety and manufacturing standards has historically depended on a number of factors. These factors include the nature of the work performed and the associated remuneration, the location of the work performed, the gender and ethnicity of those performing the work, and the larger socioeconomic conditions of the period in question. In short, corporate misbehavior tends to be defined by complex factors that are socially, rather than legally, determined, and are arbitrary in nature. What is considered an inevitable and competitive manufacturing practice in a saturated commodities market by one generation is considered grossly negligent, reckless, and greedy by another. What workers consider an honest wage, as well as fair and equitable treatment in a nonunionized workplace headquartered in an economically depressed area of America, is decried as worker exploitation by their unionized counterparts in more prosperous and therefore selective regions of the country. Such inconsistencies make qualifying and quantifying the form of corporate deviance that meets the threshold of criminal culpability all the more problematic.

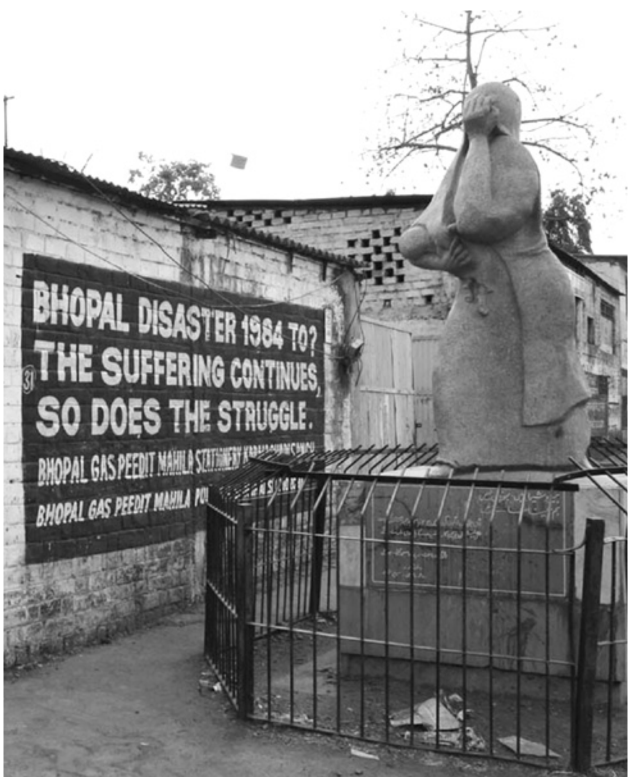
Companies as Individuals

In the 2003 independent documentary *The Corporation*, directors Mark Achbar and Jennifer Abbott overlay the behavioral criteria used for assessing and diagnosing psychopathy, as detailed in the *Diagnostic and Statistical Manual of Mental Disorders*, onto the business model of the generic American corporation: a lack of empathy, self-grandiosity, interpersonally and economically exploitative behavior, and a host other antisocial traits common among criminal psychopaths. The film, at the time of its release, foreshadowed a prevailing anticorporate sentiment that has come to define much of the last decade and its economic turbulence.

Mark Achbar and Jennifer Abbott's assessment of the typical—and typically American—corporation as a psychopath is not some abstract metaphor or anthropomorphization of companies as living and breathing beings. Their profile defaults to 19th-century American case law that assesses the rights and responsibilities of a corporation as equal to those, as defined in the Fourteenth Amendment, of a real person. This concept of corporate personhood, beginning with Supreme Court decisions as early as 1819 in civil cases such as *Dartmouth College v. Woodward* and, later, *Santa Clara County v. Southern Pacific Railroad* were initially rationalized on the basis that in cases of contract violation, corporations should have the same rights and legal recourse as private individuals, because the employees working for corporations do not forfeit their rights as citizens just because they are working in consolidation. However, when moving in the opposite direction with respect to accountability and liability, the corporation is able to default back to an amorphous collective in which no single individual can bear responsibility on behalf of the group. In other words, the corporation has, by the very nature of this paradoxical design, achieved all of the rights of a private and sovereign person, yet in most cases bears few if any of the associated responsibilities.

Part of the problem rests in the fact that a corporation, while defined as a person in the technical sense, cannot be arrested, arraigned, cross-examined, or jailed in the same manner as a flesh-and-blood defendant. As a result, most cases of corporate misbehavior with respect to unsafe products and workplace practices tend to be mediated through civil remedies, including stand-alone and class-action lawsuits. Exceptions include cases where identifiable individuals within a corporation are found engaging in flagrantly illegal practices—such as wire fraud, contract fraud, and insider trading—under the auspices of carrying on business; they are typically charged with crimes that fall within the white-collar category. In these cases, the Enron and WorldCom scandals two of the most recent and better-known examples, the ability to isolate the fraudulent actions of a few allows the parent corporation—while usually insolvent and publicly disgraced—to avoid official prosecution, at least in a criminal context.

In cases that cross the threshold of white-collar crime and enter the realm of violent or predatory crime, or what is sometimes called corporate violence, identifying the usual suspects is much more convoluted. First, the circumstances are often not as clear-cut, and the legal stakes are much higher. In a number of Commonwealth nations, recent legislative changes have allowed for new laws that streamline this process, making company principals criminally as well as civilly responsible for unsafe work conditions and/or manufacturing negligence. In Canada, for instance, the tabling of Bill C45 in 2003 eventually led to changes in the statutory definition of criminal negligence, and the law now allows for the prosecution and imprisonment of corporate executives for acts of corporate violence—preventable work-related injuries and deaths—that they ought to have known were likely. The bill, when first tabled, was commonly known as the Westray Bill, in reference to the Westray Mine disaster in Plymouth, Nova Scotia, on May 9, 1992. On that date, the mine, owned by Curragh Resources Inc., saw 26 coal miners killed underground following a methane gas explosion, a tragedy later deemed preventable when Curragh's spotty safety record and history of mismanagement was brought to light.



A memorial in Bhopal, India, for the thousands killed and disabled by the toxic gas released from Union Carbide Corp.'s chemical plant in December 1984. In June 2012, a U.S. court ruled that the company was not liable for environmental remediation.

In the United States, federal workplace safety legislation has been on the books since 1970. In 1999, the U.S. attorney general published guidelines for the criminal prosecution of corporations, including assessing the corporation's history of malfeasance and identifying a culture of wrongdoing and corner-cutting that might rule out noncriminal alternatives, which are in many cases deemed more realistic from a prosecutorial standpoint. The rare circumstances where criminal prosecutions are initiated tend to reflect egregious breaches of the public trust and safety. Such prosecutions are therefore carried out selectively and judiciously, often to serve as a general deterrent and to bring to heel any number of other corporations that, while not officially named on the docket, may be under scrutiny for conducting business unethically.

Ford Motor Company

With these criteria in mind, the seminal case with respect to the criminal prosecution of American corporations was likely the case against Ford Motor Company for criminally negligent homicide in Indiana in 1978. That year, Elkhart County prosecutor Michael Cosentino convened a grand jury following the horrific deaths by fire of three young local girls, who were rear ended while driving to a volleyball practice. The girls' deaths brought to 27 the total number of drivers and passengers killed in bizarre fires and explosions while traveling in Ford's Pinto model, which at that time had been in production for over seven years. The Ford Pinto Memo, an internal corporate document that had been leaked a year earlier, confirmed that company principals were likely aware as early as 1973 that a manufacturing defect in the fuel tank neck made the Pinto susceptible to explosions following rear-end collisions. Ford's upper echelon decided that it would be more cost-effective to pay out civil damages for deaths, injuries, and property damage resulting from the explosions and fires than to issue an international recall, knowingly imperiling all current and future Pinto owners as well as the motoring public at large.

After it was indicted for the deaths of the Elkhart County girls, the company vigorously defended itself and its executives. Ford's marquee legal team successfully diffused the company's responsibility in the girls' deaths by citing mitigating factors such as the statistically dangerous stretch of road where the collision occurred and the speed of the other driver, who was deemed at fault for the accident and was in possession of alcohol and drugs at the time of the collision. The judge presiding over the trial elected to dismiss the case before it ever went to a jury, but the prosecutor's public message with respect to the duty of care expected of corporations under the law was clear. As a result, Ford issued a recall later that year and discontinued production of the Pinto by 1980.

Although the Ford Motor Company had managed to skirt direct criminal liability in Indiana, its prosecution nonetheless set a precedent with respect to the punitive implications of corporate negligence nationwide. Three years later, on the morning of February 10, 1983, Polish immigrant Stefan Golab reported for work at the Film Recovery Systems Illinois plant and began his usual routine of using a cyanide solution to extract latent silver from used celluloid film rolls. On this particular morning, however, Golab was quickly overwhelmed by toxic fumes released by this rendering process, and he collapsed. He was later rushed to a hospital by ambulance, where he was pronounced dead on arrival. A subsequent toxicology test confirmed that Golab had died from acute cyanide poisoning and that the poison had been ingested through his mouth and nose in a gaseous form. Employees at Film Recovery Systems had been complaining of nausea and dizziness as a result of exposure to high levels of cyanide fumes for weeks prior to Golab's death. The response from company management to these complaints had always been the same: "If you don't like it, quit."

Film Recovery Systems

This cavalier and callous attitude, along with the willful disregard for the welfare of employees, led to the unprecedented convictions of three company executives for murder in June 1985—their negligence and malevolence elevating what under different circumstances might have been an unfortunate workplace accident to a homicide. Sentencing each of the executives to 25 years in prison, Judge Ronald Banks additionally ruled that Film Recovery Systems and its sister corporation, Metallic Marketing Systems, were both guilty, as corporations, of involuntary manslaughter in Golab's death. After languishing in the system for nearly a decade following a successful appeal, and with the company now defunct, the men—who had remained free on bail since 1985—entered guilty pleas to a charge of involuntary manslaughter in September 1993. Two of them later received comparatively minor prison terms of no more than three years, and one was sentenced to probation and community service.

The Ford and Films Recovery Systems cases paved the way for the enhanced criminal liability of corporations in America as well as establishing guidelines with respect to the adequacy standards of prosecutions. Over the last decade, with an increasing shift toward models of global capital and the headquartering of manufacturing operations in developing nations, this may soon change.

It is probable that jurisdiction and extradition issues, as well as the inconsistency of both criminal laws and workplace safety and environmental regulations between nations, will serve as something of a setback for a definitive model of corporate accountability on an international scale. The Bhopal disaster, for instance, not only killed a number of employees at Union Carbide's India-based chemical plant in December 1984, but also affected in excess of 10,000 local residents, while environmentally and economically devastating the entire region. Just days after the toxic explosion, Union Carbide's chief executive officer Warren Anderson was arrested by Indian authorities, but he fled back to America immediately after making bail. In 1987, the Indian government summoned Anderson, as well as eight other company principals, on a charge of manslaughter, demanding that they return for a hearing, but to no avail. After they were formally charged criminally in 1991, Anderson and the other Union Carbide executives are still considered fugitives from justice in India, with the prospects of their extradition dim, especially given that the U.S. Supreme Court has consistently refused to entertain appeals of lower court rulings that would allow civil remedies, let alone criminal sanctions, to be enforced on American soil. Whether these sorts of transnational loopholes are to become the rule or the exception with respect to the future of corporate criminal liability remains to be seen.

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See Also: Corporate Capture; Corporate Dumping; Corporate Raiding; Criminal Facilitation; Film Recovery Systems, Inc.; Ford Motor Co.

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Corporate Dumping

Corporate dumping of hazardous waste was defined by the Resource Conservation and Recovery Act (RCRA) of 1976 as the illegal disposal of hazardous or toxic waste. The RCRA defines as hazardous waste a specific list of wastes as well as any waste that is toxic, corrosive, reactive, or flammable.

While the public generally thinks of hazardous waste as an industrial byproduct, numerous businesses are responsible for handling and disposing of hazardous waste produced by their activities, including hospitals, dry cleaners and cleaning services, photo and film processing centers, and any business that maintains, repairs, or fuels vehicles. The Environmental Protection Agency (EPA) is responsible for regulating the management of hazardous waste and has developed strict requirements for treatment, storage, and disposal. The EPA requirements are the bare minimum standard to which companies are held. Most states have also developed regulatory programs of their own. The illegal dumping of hazardous waste is a crime that can have serious consequences to the environment and human life.

Hazardous Waste Disposal

Hazardous waste in the United States is handled from generation to disposal. Generators of hazardous waste give their waste to transporters, who transport the waste to a treatment, storage, or disposal facility. Hazardous waste crimes vary widely, but there are similar methods of operation. One widespread practice involves criminal activity by a generator, transporter, or broker, or a treatment, storage, and disposal facility. For example, a generator of waste may act alone or conspire with others to illegally dispose of hazardous waste, either by on-site disposal or by removal and disposal at unauthorized points. Often, an unlicensed transporter will contact unwitting (or uneducated) generators and convince them that a low-cost disposal strategy is possible. The transporter may conspire with a known treatment, storage, and disposal facility or dispose of the wastes after falsifying the legally required waste manifest. A less common practice, but one seen in several states, is to rent a truck, fill it with hazardous waste, and then abandon it.

Perhaps the most common form of illegal disposal of hazardous waste is "midnight dumping." In a typical midnight dumping scenario, wastes are disposed of in the nearest isolated area. Agents of generating companies can directly commit these offenses or criminally conspire with waste transporters. Three other common types of hazardous waste crimes include "cocktailing," paying illegal "tipping fees," and the forging of manifests. Cocktailing occurs when someone mixes hazardous waste with nonhazardous waste in small quantities so that it will pass for a nonhazardous waste.

Once the hazardous waste is mixed in a 55-gallon drum, county and state landfills should not accept the waste. Unfortunately, many landfills have been caught accepting the waste because the transporter has paid a landfill employee a tipping fee to look the other way. Every shipment of hazardous waste must be accompanied by a manifest. Forging manifests is also common and is mainly done either by the generator or by the transporter. Transporters may illegally dispose of some of the waste, then change the amount of hazardous waste that is shown as properly disposed of on the manifest.

Estimates of the Size of the Problem

Estimating the extent of hazardous waste crime is conceptually and practically very difficult. National estimates of hazardous waste generation are very uncertain. A second obstacle is the various and conflicting definitions of hazardous waste that exist among the federal, state, and local environmental agencies. For example, waste oil may be deemed a hazardous waste by a local agency, but it is not at the federal level. Not only are there varying definitions, but there are also new chemicals produced each year that may or may not be considered hazardous, according to different standards. A third obstacle to obtaining accurate estimates of hazardous waste generation is the difficulty in identifying hazardous waste generators, transporters, and treatment, storage, and disposal facilities.

There are more than 400,000 known organizations handling hazardous waste in America. This does not include many of the small organizations that have not been identified, including the thousands of hazardous waste–producing auto repair shops and dry cleaners operating in the United States. The problem of illegal hazardous waste handling and disposal is possibly worse among these smaller, nonregistered organizations. It is also hard to estimate the actual amount of illegally disposed hazardous waste because there are numerous places to dump it without discovery. Even if the illegally disposed hazardous waste is found, it is nearly impossible to identify when it was dumped and by whom.

America's vast industrialization has resulted in enormous quantities of waste. Hazardous waste crimes have the potential to cause serious harm to both the public and the environment. Since the discovery of the Love Canal hazardous waste dump site in the 1970s, the problem and study of hazardous waste has received a great deal of attention from the public and the media. This attention has mostly focused on the possible health effects that the illegally disposed waste has had on the environment and human life. Today, an estimated one hundred billion tons of hazardous waste are produced in the United States annually, with the majority of it disposed of in an environmentally unsound manner.

Most corporate dumping of waste is handled through administrative or civil penalties, yet criminal penalties have increased over the past decade. There are specific accepted forms of dealing with hazardous waste and not every method is appropriate for every form of waste. The ideal situation is one in which the waste is recycled into a new product. With electronics waste, such as discarded cell phones, computers or computer parts, and obsolete consumer electronics, the heavy metals and batteries can be recovered and reclaimed. Flammable wastes are sometimes incinerated or even used as fuel.

Other wastes may be treated to neutralize their hazardousness. Sewage treatment plants, for instance, use a multistage process that not only filters sewage but also uses chemical precipitation or bacterial processes to remove phosphorous, as well as disinfecting the microorganism content. When it is not possible to dispose of waste in any of the aforementioned manners, or it is too expensive to do so, there are various forms of landfills and permanent disposal facilities.

Honeywell Inc.

One significant case was against Honeywell Inc. Delvin Henry, an employee at Honeywell Inc's Baton Rouge plant, opened a one-ton cylinder that had been erroneously labeled as containing relatively benign refrigerant. Once it was opened, a highly toxic and corrosive hazardous material was violently released from the cylinder. Henry was sprayed with the liquid and engulfed in a cloud, causing severe internal and external injuries. Henry died the following day from his injuries. Honeywell pleaded guilty to a bill of information charging one count of negligently causing the release of hazardous air pollutants and negligently placing another person in imminent danger of death. Honeywell was sentenced to two years' probation, a criminal fine of $8 million, restitution of $2 million to the victim's three children, and community restitution totaling $2 million to the Louisiana Department of Environmental Quality, Louisiana State Police Hazardous Materials Unit, and Louisiana State Police Emergency Operations Center. Chemical and Metals Industries Inc. paid a $1 million criminal fine and $2 million payable in restitution to the victim's estate, including his three children. This was the largest criminal fine and restitution award in the Middle District of Louisiana. In a separate 2011 criminal prosecution, Honeywell International Inc. paid an $11.8 million criminal fine for knowingly storing nearly 10,000 drums of mixed hazardous/corrosive and radioactive wastes without a permit for almost a decade at its yellow cake uranium processing facility in Metropolis, Illinois.

Although the immediate, short-term effects of hazardous waste crime are often hard to detect, the long-term damage can be severe. Illegally disposed hazardous wastes can cause serious harm to the environment and human health through contamination of water, air pollution, fires, explosions, poisoning via food chain contamination, and direct human contact. Hazardous waste pollution has deadly consequences. The dumping of hazardous wastes in lakes, rivers, and streams has a significant effect on the aquatic life residing there.

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See Also: Asbestos; Employee Safety; Environmental Protection Agency, U.S.; Grassy Narrows First Nations Reserve; Hazardous Waste; Love Canal Disaster; Pesticides; Pollution, Water; Times Beach Contamination; Toxic Substances Control Act; Waste Management Inc.

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Corporate Raiding

Carl Ichan once said: "You learn in this business: It you want a friend, get a dog." Mr. Ichan's business was corporate raiding. Prevalent in the 1980s and, to a far lesser degree in the early-1990s, *corporate raiding* is a phrase used to describe a strategically implemented set of investment strategies initiated against a publicly traded company. Corporate raiding often involved a hostile takeover as well as a leveraged buyout. A leveraged buyout is an acquisition in which the purchase is financed via a combination of equity and debt. Additionally, the cash flows or assets of the target company are used to secure and repay the debt. As the debt usually has a lower cost of capital than the equity, the returns on the equity increase with increasing debt. Hence, the debt effectively serves as a lever to increase returns.

Today, private equity firms often utilize this technique to acquire companies. Corporate raiders, those individuals spearheading the raids, aspired to gain acontrolling share of the targeted publicly-traded company. Corporate raiders have been fictionalized on television and in film as capitalist predators; however, corporate raiders are more than just mythic creations.

Generally, corporate raiders use voting rights and other measures to increase the share value of a target company. For many, the term *corporate raider* is used to describe a capitalist extreme—a titan of industry unmoved by human costs who profits from the acquisition of companies, despite whatever fallout the acquisition may have on the company and/or the company's workforce. On some levels, a skilled corporate raider is much like a methodical predator in the capitalist jungle. Corporate raiding begins by assessing or identifying a target.

This process is influenced by many factors, including the raider's financial resources, the target company's board of directors, the involvement/interest of the target company's shareholders, the value of the target companies stock, and what, if anything, above the value of the stock may influence shareholders. Successful corporate raiders are also skilled at maintaining channels of finance. Specifically, a corporate raider must identify financial institutions or individuals to finance and/or underwrite their vision for the target. This greatly influences the tactics utilized to carry out the raid. After securing financial backing, the corporate raider must identify and execute strategies to acquire power within the target company. Corporate raiders often utilized holding companies as investment vehicles for later leveraged buyouts. Again, this is a nuanced process; however, there are some tactics that have been frequently utilized by the most successful raiders.

How a Company Is Targeted and Raided

Hostile takeovers were frequently used by corporate raiders and are often used to differentiate corporate raiding from private equity investments and/or activist shareholders. Hostile takeovers frequently occurred in the 1980s. Anytime a potential investor targets a corporation in a bid to gain control of that entity, this is referred to as a takeover attempt. A hostile takeover is a method by which an individual or group attempts to acquire a corporation in which the current board of the targeted corporation does not cooperate. When a deal is stuck between the current board and the bidder, the takeover is said to be friendly. If the current controlling powers of the targeted company are unwilling to relinquish control and the potential "raid: persists, the takeover attempt is considered hostile.

An individual or group attempting a hostile takeover can also appeal directly to the shareholders to replace members of the current board of directors with others that will approve the takeover. Additionally, voting rights may be used to enact various measures directed at increasing the share value. These measures might include replacing top executives, downsizing operations, or liquidating the company. Finally, the raider may quietly attempt to buy up a controlling share of a corporation's stock on the open market.

When the board of directors and/or management resists the acquisition by a corporate raider, the information available to the raider is limited. Specifically, the raider must rely on publically available information about the target company regarding its finances. As a result, hostile takeover attempts carry a higher degree of risk than pursuing a corporation by nonhostile means. Thus, investment banks were often less willing to finance hostile takeover attempts because of this risk. The realities of a hostile takeover situation sometimes resulted in securities fraud, including insider trading and other white-collar crimes.

During the 1970s and 1980s, investment banking firms sprung up to service corporate raiders and help raise "blind pools" of capital. Corporate raiders could use these "blind pools" of capital to make serious takeover attempts and provide high-yield debt financing of the buyouts. Many corporate raiders turned to the investment banking firm of Drexel Burnham Lambert to acquire the necessary blind pools of capital that were necessary to provide high-yield debt financing.

Michael Milken was affiliated with this firm in the 1980s and played a pivotal role in assisting some of the most notorious corporate raids. For example, Milken raised a blind pool in excess of $700 million for corporate raider Ronald Perelman, who would eventually takeover Revlon in 1985. Milken was indicted in 1989 on more than 90 counts of fraud and racketeering that included allegations of insider trading, tax evasion, and stock parking. Hostile takeovers peaked in popularity during the 1980s along with corporate raiders. As these "blind pools" of capital dissipated in the late 1980s, so did hostile takeovers and corporate raiding.

Specifically, in the late 1980s, many corporate raiders who utilized hostile takeovers suffered from bad investments as a result of bad investments. Ultimately, their investors took huge losses and the lines of credit used in corporate raiding vanished. Moreover, corporations began implementing defensive measures to prevent future hostile takeovers and the luster of the corporate raiding began to fade as the 1980s came to an end. These defensive measures included "poison pills" and "golden parachutes" as well as purposeful increases of debt levels on the target's balance sheet. All of these tactics were aimed at neutralizing the power of the raider.

Case Studies

The 1970s and 1980s saw a number of famous and/or infamous corporate raiders try to acquire companies through hostile takeovers. Carl Icahn developed a reputation as a successful and ruthless corporate raider after his hostile takeover of TWA in 1985. After succeeding in the hostile takeover, Icahn systematically sold TWA's assets to repay the debt he used to acquire the company and make a profit.

This behavior was known as asset stripping, and along with corporate restructuring and layoffs, was not uncommon among the raiders of the1980s. He also attempted a hostile takeover of U.S. Steel in 1989 but eventually failed. T. Boone Pickens, another corporate raider of the 1980s, attempted a hostile takeover of Gulf Oil in 1984. This takeover attempt was a reality check for many in the investment world as to the power of a skilled raider, even when the target was a large company.

Changing Marketplace

In the 1990s, the overall price of the American stock market increased, which reduced the overall number of situations where a company's share price was low in respect to the assets that it controlled. Thus, companies became less attractive options for takeovers. Corporate raiding evolved into work done at the hands of private equity firms. By the end of the 1990s, private equity firms pursued arguably different tactics than their corporate raiding predecessors.

Generally, private equity firms attempt to get the board of a target to "agree" to the takeover. However, if the firm is successful in acquiring a corporation, the same measures found in the corporate raids of the 1980s are frequently utilized.

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See Also: Board of Directors; Greenmail; Gulf Oil Corp.; Milken, Michael; Stock and Securities Fraud; Stock Churning; United States Steel Corp.

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Corruption

Corruption refers to the misuse of official powers, privileges, and resources for personal benefit, either for oneself or for others. The etymology conveys the notion of breaking something up into pieces, thereby disrupting the descriptive or prescriptive order between the constituent parts. By the middle of the 14th century, the term referred to the decay of bodies or of the soul. By the early 15th century, it came to refer to misuse of public offices, and later that century, of language.

It is misuse because those who commit the act do so knowingly and willingly. The powers, privileges, or resources are "official" because the holder possessed them via a role resulting from orderly circumstances and legitimating assent of those who have conferred these powers, privileges, or resources. For private companies, the last of these would include contributors of capital, for example, through retained earnings. For government entities, this group would include citizens.

Corruption occurs when an agent sets aside his or her role as a representative or agent of one or more others and acts on his or her account. In a traditional example, an employee of a private company offers a bribe to an employee of a government. In each case, the actions of these two individual people reflect on them and on their organizations. Each is an agent of his or her organization, and one can assume that they met in the ordinary course of business.

When the company employee offers a bribe, under agency theory, the law likely will impute this action to his or her company, especially if there is prospective benefit for the company from the payment. If the employee does this with the knowledge and assent of the company, then both the employee and the company have committed an ethical (and likely legal) violation. To the extent that the employee and his or her superior conspired to pay the bribe, one could impute violations to them vis-à-vis the company in any event. If the employee does this without the knowledge of the company, then the employee has committed an ethical and legal violation, both against society and against the company, in violation of his or her implied contractual duties of loyalty and good faith. Depending on the employment relationship, there might also be fiduciary duties of care and loyalty at issue.

If the employee of the government accepts the bribe, then he or she has violated both his or her implied contractual duties of loyalty and good faith to his or her employer and his or her civic legal duty to discharge the responsibilities of his or her office. Even if the employee's position is at a low level, it retains the mantle of public service, and acceptance of a payment on one's account, for the purpose of affecting the performance of one's public duty, violates that duty.

Even though this example includes employees of public and private organizations, it is principally because of the involvement of a governmental organization that the label of corruption applies. Corruption traditionally has referred to circumstances in which the actor, the obligations, and the transgressions occur in the context of public duties. When the facts relate to a private organization and the employee misleads someone to gain personal benefit, then he or she normally has committed fraud.

However, because of the mixed public-private nature of some organizations, the fact that such violations often involve both public and private institutions, and the structural similarity between such violations, the dividing line between "fraud" and "corruption" is not as clear, particularly in the 21st century. Although legal frameworks continue to note the distinctions between these types of violations, practitioners are attaching less significance to such differences.

There are various forms of corruption, aside from payment of bribes for favors, including embezzlement; money laundering; tax evasion; manipulation of markets for information, capital, and commodities; and trafficking in people, drugs, and arms.

Leading Regulatory Frameworks

The first major national regulatory framework to deal with corruption in the form of bribery of foreign public officials was the U.S. Foreign Corrupt Practices Act (FCPA). Congress passed this act in the wake of admissions by over 400 U.S. companies that they had made payments totaling hundreds of millions of dollars to foreign officials, parties, and candidates to secure business advantages. Two especially egregious cases at the time involved the Lockheed Corporation and Chiquita Brands. This act consists of two major sections.

The first section prohibits payments by certain classes of persons and entities to officials of foreign governments or intergovernmental organizations to exert influence on them in their official capacities to violate their lawful duties through acts of commission or omission, or to secure improper advantage to assist in obtaining, retaining, or directing business for, with, or to anyone. The act exempts facilitation (or "grease") payments to low-level government officials, whose scope for responsibility is narrow and whose duties are largely clerical or ministerial. Such payments relate to actions that the government employee already was under obligation to perform.

The initial antibribery provisions of the FCPA applied to all U.S. persons and some foreign issuers of securities. The International Anti-Bribery Act of 1998 amended the FCPA to conform it to antibribery conventions of the Organisation for Economic Co-operation and Development (OECD), principally by extending the antibribery provisions to foreign firms and persons who directly or indirectly participate in such acts inside the United States.

The second part of the FCPA requires companies that list securities in the United States to comply with accounting ("books and records") rules to make and keep records that "accurately and fairly" reflect the company's transactions, and "devise and maintain an adequate system of internal accounting controls." Failure to abide by these requirements constitutes a distinct violation under the act, apart from bribery.

At enactment of the FCPA, there were concerns in the United States that the legislation would handicap American companies vis-à-vis foreign competitors. However, many of the companies that have been targets of enforcement actions, particularly since 2000, have been units of non-U.S. companies.

Moreover, the practical effect of U.S. leadership on this issue has been to raise the bar of expectations for practices by companies in global commerce and to avoid wide disparities of advantage. By promoting transparency and lowering the cost of capital, the legislation has influenced measures in other jurisdictions, for example the United Kingdom Bribery Act 2010 and multilateral conventions such as the United Nations (UN) Convention Against Corruption.

The United Kingdom (UK) passed the Bribery Act in April 2010, and it became effective on July 1 of that year. It repealed all statutory and common law bribery laws and replaced them with crimes of bribery, being bribed, bribery of foreign public officials, and failure of a commercial organization to prevent bribery on its behalf.

The act is more stringent than the FCPA in forbidding payments to representatives of public or private organizations, and in prohibiting even facilitation payments. A key factor in determining whether a violation has occurred is whether the payment compromises the "good faith or impartiality" of the recipient in the discharge of his or her official duties. Where the violation occurs outside the country, "local practises or customs" cannot override its provisions unless these are part of the jurisdiction's "written law."

Just like the FCPA, this law aligns with guidance from the OECD Anti-Bribery Convention regarding payments to foreign public officials. However, unlike what happens with general bribery offenses under the United Kingdom act, only the briber is subject to conviction, not the recipient.

The act's novel offense of "failure of commercial organizations to prevent bribery on their behalf" imposes nearly universal personal jurisdiction on natural or legal persons according to a modest threshold of commercial nexus with the United Kingdom, regardless of the actual location of the crime. The standards are strict liability and vicarious liability. An organization can mount a defense by showing that it had implemented "adequate procedures designed to prevent persons associated with [the organization] from undertaking such conduct." This is similar to the mitigation standards under the U.S. federal sentencing guidelines for organizations. The maximum criminal penalties include 10 years in prison, an unlimited fine, forfeiture of property, and disqualification from service as a corporate director.

The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is an international agreement under the sponsorship of the OECD for combating bribery and collateral forms of corruption. The purpose of the convention is to harmonize laws in signatory countries regarding the criminalization of bribery of foreign public officials. After years of study and negotiation, the parties concluded and signed the agreement on December 17, 1997, and it entered into force on February 15, 1999.

Accession to the agreement is limited to members of the OECD and the OECD Working Group on Bribery in International Business Transactions. As most of the 39 countries that had acceded to the agreement by March 2012 were economically advanced or were on their way to such status, the organizers had conceived of the convention as helping reduce bribery in developing nations by addressing the supply side.

Authority for implementing provisions remains with respective signatory nations. The convention provides for two types of monitoring by the working group to ensure compliance: review of the terms of legislation for conformity with convention guidelines for criminalization of bribery of foreign public officials, and review of implementation of the legislation to ensure its practical effect conforms to convention guidelines.

On November 26, 2009, the parties to the convention agreed to a Recommendation for Further Combating Bribery of Foreign Public Officials. They released this document on December 9, 2009, to coincide with the 10th anniversary of the convention.

Hundreds of thousands of demonstrators surround the presidential office in Taiwan, calling on President Chen Shui-bian to step down on Taiwan's National Day, October 10, 2006. When first elected in 2000, Chen Shui-bian vowed to end decades of political corruption. Instead, he became embroiled in a series of corruption scandals involving his presidency and his family, including bribery and embezzlement. In September 2009, he was sentenced to life in prison in after a Taiwan court convicted him on graft charges.

The recommendation included the following provisions to enhance the ability of signatory nations to fight bribery of foreign public officials:

1. Adoption of leading practices to hold companies and their subsidiaries liable for bribing foreign public officials and to prevent them from serving as covert intermediaries.
2. Periodic review of policies and practices regarding facilitation payments.
3. Improvement of mutual legal assistance between nations regarding sharing of information and evidence in foreign bribery investigations and prosecutions and in seizure, confiscation, and recovery of transnational bribery proceeds.
4. Creation of an effective means for public officials to report suspected foreign bribery internally and externally to law enforcement, and for protecting whistleblowers from retaliation.
5. Cooperation with the private sector to adopt more stringent internal programs and controls to prevent and detect incidents of bribery.

The UN Convention Against Corruption is the first legally binding, multilateral treaty to fight corruption. On December 4, 2000, the UN General Assembly established an ad hoc committee to draft this agreement to fight transnational corruption. It did so over seven negotiating sessions from January 21, 2002, to October 1, 2003. The general assembly adopted it at the end of that month, and it entered into force on December 14, 2005. A Conference of the States Parties handles administration for the convention and assists signatories in implementing it.

The convention requires signatories to effect an array of anticorruption measures affecting their laws, institutions, and practices. The major sections deal with anticorruption measures through prevention, criminalization and law enforcement, international cooperation, and asset recovery. There are also procedural sections dealing with technical assistance and information exchange, and mechanisms for implementation as follow:

Prevention: The convention addresses public and private means, including leading practices such as anticorruption bodies, transparent election campaign financing, merit-based antipatronage policies, transparent and accountable public finance and procurement, and engagement with civil society organizations to reinforce efforts by government and business.

Criminalization and law enforcement: The convention requires signatories to criminalize an array of corrupt acts, including bribery, embezzlement, trading in influence, money laundering, and obstruction of justice. It also encompasses and construes practices in the private sector that traditionally would have constituted fraud or other criminal activity.

International cooperation: The convention spells out terms for coordinated action among signatories for an array of anticorruption measures, including prevention, investigation, and prosecution of offenders. In addition, it requires specific forms of mutual legal assistance in gathering and transferring evidence and extraditing offenders. It also requires signatories to support tracing, freezing, seizure, and confiscation of proceeds of corruption.

Asset recovery: The convention seeks to deter decision elites from plundering their countries through grand corruption by reducing the number of havens to which they can channel their wealth. This section reflects negotiations between aggrieved nations that have suffered losses of wealth through rent extractions and other forms of plundering, and the mostly economically advanced countries that have become such havens because of bank and incorporation secrecy practices. This section provides for evidentiary and procedural standards for recovery and restoration of embezzled public funds and other proceeds of grand corruption. It also requires signatories to extend the widest possible cooperation with one another in effecting such recovery and restoration.

Social Profit and Advocacy Initiatives

Transparency International has been a leading social profit organization in helping fight various forms of corruption in public and private institutions around the world by promoting transparency and accountability of organizations and their leaders. Its mission is "to stop corruption and promote transparency, accountability and integrity at all levels and across all sectors of society," and its vision is for "a world in which government, politics, business, civil society and the daily lives of people are free of corruption."

The organization guards its independence and proclaims itself as politically nonpartisan. It also expressly declines to allow donors to influence its policies and practices. From its Berlin headquarters, it operates through approximately 100 national and other chapters around the world.

From its founding in 1993, the organization has monitored and publicized incidents of public and private corruption, particularly as they have affected international development. Since 1995, its annual publication of the "Corruption Perceptions Index" has ranked jurisdictions by the perceptions of corruption from people doing business there. It has also published the "Global Corruption Report" and, since 1999, the "Bribe Payers Index," ranking the frequency with which multinational corporations in each jurisdiction offer bribes. The organization also provides free legal services for those with low incomes who are facing corrupt practices, and its representatives advise governments regarding reforms of policy.

Global Financial Integrity (GFI) is a project of the Center for International Policy, a social profit organization in Washington, D.C. It operates as a think tank and advocacy organization, with thought leaders from governmental, intergovernmental, corporate, scholarly, and other backgrounds preparing original research to support policy recommendations for national, bilateral, and multilateral contexts.

It started in September 2006, after its director, Raymond Baker, published *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System* the year before. The mission of GFI is to "promote national and multilateral policies, safeguards, and agreements aimed at curtailing the cross-border flow of illegal money." It does this to "enhance global development and security."

The work of GFI focuses on "illicit financial flows" across borders, and it has produced empirical research to document that the majority of these outflows from the developing world, particularly from Africa, result from corruption originating in the industrialized economies. Only a minority of outflows relate to corruption, simple tax evasion, and traditional criminal activity in developing nations. The organization estimates that such illicit flows total at least $1 trillion annually, with about one-half of this money ending up in accounts in advanced economies. For every $1 going into the developing world for development projects through World Bank and other programs, about $10 comes out through such illicit financial flows.

GFI has led coalitions of national and global organizations to rally support for statutory and multilateral proposals to enhance global financial transparency and accountability and deal with challenges of money laundering; transfer pricing; tax evasion; incorporation transparency; bribery; trafficking in people, drugs, and arms; and other practices that undermine development programs, extract wealth from developing nations, and cause states to fail. Since 2009, GFI annually has recognized global leaders in the fight against corruption by conferring Global Financial Integrity Awards on Robert Morgenthau, Eva Joly, and Carl Levin.

Transcultural Perspectives

Because concern about corruption often comes from industrialized nations, particularly regarding funding for public, private, bilateral, and/or multilateral projects, there have been concerns that assessments of the problem and prospective responses have reflected the economic, political, cultural, and/or ethical preferences of wealthy nations. When business, governmental, scholarly, and other leaders from economically advanced nations cite the extent and costs of corruption, some in developing nations resentfully interpret this to be economic, cultural, or normative imperialism.

Criticisms from the developing world often reflect perceived judgmentalism by those in economically advanced economies, along with weariness for having to explain qualitatively distinct circumstances in their societies that make bribery and other forms of corruption common. Some in developing nations argue that dismissiveness of such circumstances is unrealistic, opportunistic, and even cruel because the practical effect is to deny economic opportunities to some of the most vulnerable populations in the world.

One response to this is to note that corruption harms everyone, including the poor, and that it is only by aligning the willingness to invest with the cost of capital, including the risks and rewards for investors, that an economic (and ethical) equilibrium can result. Societies that are more effective at promoting transparent and fair markets will find it easier to attract capital than other societies, and this can be beneficial to a broad array of stakeholders.

Moreover, in many cases, governments of developing nations have committed to fighting corruption and promoting financial integrity through ratification of bilateral and multilateral treaties and participation in other initiatives. Such gestures belie claims that corruption is simply a fact of life and a way to conduct business. The prospective conflict, then, is not between the ethos or practices of industrialized and developing nations, but rather between the practices of developing nations and their publicly declared positions. There are no societies that prescribe bribery or other forms of corruption as official positions. Even in those societies where corruption is rampant, there is shame when it comes to light. In bridging these distinctions, the industrialized world has features in common with the developing world, particularly with regard to the need for continuing reform, improvement, and integrity.

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See Also: Bribery; Corporate Capture; Embezzlement; Foreign Corrupt Practices Act; Kickbacks; Money Laundering; Offshore Bank Accounts; Offshore Entities; Police Corruption; Public Corruption; Whistleblowers.

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Counterfeiting

Counterfeiting involves the manufacture and distribution of facsimiles or replicas of an original product. The process is undertaken by those intending to sell the replicas, which are fairly inexpensive to produce, to the public, which believes that the replicated product has superior value.

Throughout much of history, counterfeiting has concentrated upon the replication of coinage and currency, as these facsimiles can generate tremendous profit. Over the past half century, however, the counterfeiting of a variety of consumer goods has taken center stage, both because of governments' preventive measures to discourage replication of currencies and because of the increased profit margins in the counterfeiting of apparel, recorded music, movies, computer software, electronics, and other goods. Concerted international efforts have been launched to reduce the production and trafficking of such consumer goods, although the lucrative nature of the process has hindered such efforts. Renewed efforts by copyright and trademark holders has led to a certain reduction of the problem, but the predicament caused by counterfeiting continues to bedevil creative artists, manufacturers, and law enforcement agents.

Background

Counterfeiting has taken place since ancient times, with examples of replica coins that contain base metals along with silver or gold being documented in the Greek city of Lydia as early as 600 B.C.E. Once the Chinese introduced paper money in about 1200 C.E., officials took steps to defend mulberry trees, which were used to produce the paper for currency, so that counterfeiters would be thwarted in their efforts. The counterfeiting of currency has been prevalent in almost every society throughout history, with severe penalties reserved for wrongdoers who are caught and convicted. Many government leaders have perceived the act of unauthorized duplication of coinage or currency as akin to an act of treason.

The crime of counterfeiting coinage and currency is treated so seriously in part because the stability of governments often depends on public reliance on its currency. Because making coins and currency was seen as the prerogative of the state throughout history, the act of counterfeiting was seen as more than just a crime against the individual who accepted the specious money—it was an act against the state itself. Therefore, those possessing the skills to counterfeit currency were frequently executed. In times of war, nations even employed the tactic of flooding their enemy's economy with counterfeit currency, devaluing the money of their state and plunging them into economic chaos. During both the American Revolutionary War and the Civil War, counterfeiting was used by the British and the Union, respectively, in an attempt to sway public opinion into opposing the war effort.

Although counterfeiting money is still the most popular outlet for those involved in duplicating authentic goods, other items are also replicated. Counterfeiting documents has been common throughout history, with both legal documents, such as wills or deeds, and collectible items, such as autographs and other memorabilia, as popular targets. Common techniques of counterfeiting documents include using paper, ink, and printing techniques for the fake version that are similar or identical to the genuine article. For this reason, many legal documents include security measures to complicate their replication.

Many popular consumer goods are also replicated. The International Chamber of Commerce (ICC) estimates that counterfeit goods make up approximately 5 to 7 percent of world trade. Despite the continuing international efforts to curtail the counterfeiting of goods, the hands-off enforcement patterns of certain nations such as China, North Korea, and Taiwan have made it difficult to completely halt illicit replications.

Counterfeiting Money

Governments have vigorously opposed the counterfeiting of their currencies since the earliest replications of coinage were attempted. In addition to defrauding the citizens who accept fake money, counterfeiting causes a variety of social ills. Counterfeiting reduces the value of genuine money, causing unrest among all. As more money is circulated in the economy, inflation often results, leading to an increase in prices for all citizens. The appearance of counterfeit money also decreases the sense of security that merchants, consumers, and others feel in accepting money that may be phony—sometimes leading to demands of payment in precious metals or the currency of another nation. Finally, merchants and others who accept counterfeit money are not reimbursed when they turn specious coinage or currency over to law enforcement agents, forcing them to increase their prices.

Attempts have always been made to discourage the counterfeiting of coinage and currency. The designs of notes and bills have included fine detail, raised intaglio printing, and special paper, making it easier for consumers and merchants to spot forgeries. When coins were made of precious metals, milled edges prevented valuable material from being scraped off or taken from the edges of the rim. Leaves were common on many early American examples of currency, as their unique and intricate designs were difficult to duplicate. As a variety of advances in copying technology became prevalent during the 20th century, more complicated and complex anticounterfeiting measures were introduced. Engraving bureaus introduced a variety of measures, including design features that disable photocopiers, embedded strips and other devices, holograms, inks that change color depending on how a bill or note is held, the use of multicolored inks, and microprinting. Various software programs have included safeguards that preclude the manipulation of scanned images of bank notes and currency. Government agents have also created new tests that make the detection of counterfeiters quicker and more efficient.

Counterfeiting Consumer Goods

The Organisation for Economic Co-operation and Development (OECD) estimates that over $250 billion worth of counterfeited consumer goods are sold every year. Others estimates place this figure at two or three times larger, since the OECD does not include online transactions in its estimates. The variety of counterfeited consumer goods is broad, including cigarettes, wine, automobiles, prescription medications, apparel items, watches, jewelry, luggage, software, toys, electronic goods, and other products. As the largest consumer nation in the world, the United States is the destination for many of these goods. Even U.S. government agencies such as the Department of Defense and the National Aeronautics and Space Administration have discovered that their procurement officers have inadvertently purchased counterfeit goods.

Although often overlooked, crimes that infringe upon patents, copyrights, and other intellectual property are not victimless. The presence of counterfeit goods in the U.S. economy is estimated to cost between 750,000 and 1,000,000 jobs that are lost to overseas production facilities. Legitimate copyright and trademark holders lose billions of dollars worth of sales annually, and their ability to invest in research and development for future products is diminished. Additionally, some counterfeit consumer goods present a threat to the general public, as specifications required for certain pharmaceuticals are sometimes ignored or unsafe materials are used to manufacture certain consumer goods. Considerable tax revenues are also lost as those involved in the manufacture of counterfeit goods fail to pay the proper levies to government authorities. Recent reports from the Central Intelligence Agency and other sources suggest that in some situations, revenue from counterfeit goods may flow to terrorist organizations. For these reasons, a great deal of energy is expended in attempts to curtail such counterfeiting.

A variety of U.S. law enforcement agencies, including the Federal Bureau of Investigation, the Department of Homeland Security, Customs and Border Protection (CBP), and the Department of Justice, along with state, local, and municipal law enforcement agents, work to prevent the importation and sale of counterfeit goods. Working in conjunction, these groups have seized billions of dollars worth of counterfeit goods. Such seizures have demonstrated that the brands most frequently counterfeited include those that appeal to an upscale, image-conscious market, including Burberry, Cartier, Chanel, Nike, Polo, Ralph Lauren, and Tiffany. To defend against this influx of counterfeit goods, some have suggested that the United States should adopt practices common in Europe, such as making the sale or purchase of counterfeit goods punishable by significant fines and jail time. CBP has created a supplemental registration of trademarks through a program known as Intellectual Property Rights e-Registration, which facilitates trademark owners' attempts to obtain court orders that permit the seizure of counterfeit goods. Although there has been support for a piece of legislation known as the Stop Online Piracy Act (SOPA) and the Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property (PROTECT IP) Act, which would permit the shutdown of Web sites used for selling counterfeit goods, significant opposition has prevented its passage to date.

In June 2010, U.S. Immigration and Customs Enforcement reported the seizure of hundreds of articles of counterfeit sports merchandise, such as counterfeit hats, T-shirts, and jerseys during the 2010 Stanley Cup playoffs in Philadelphia, Pennsylvania. Working in conjunction, a variety of U.S. law enforcement agencies have seized billions of dollars worth of counterfeit goods.

A growing appreciation of the complexity of thwarting the manufacture, importation, and sale of counterfeit goods has led to increased collaborative efforts between U.S. authorities and other nations. International initiatives appear to be one of the more promising ways to thwart the continued infringement of intellectual property rights. To that end, in 2011 the United States joined Australia, Canada, Japan, Morocco, New Zealand, Singapore, and South Korea in signing the Anti-Counterfeiting Trade Agreement (ACTA), a multinational treaty that established international standards for intellectual property rights. The original signatories were joined one year later by the European Union, the 22 nations that compose the European Union, and Mexico. ACTA aims to create new initiatives to target the manufacture, transport, and sale of counterfeit goods and would create a new governing body existing outside extant international forums such as the United Nations or the World Trade Organization. The prospects for increased international cooperation pursuant to ACTA appear excellent.

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See Also: Advertising Fraud; Antiquities Fraud; Art Fraud; Bait and Switch; Commodities Fraud; Copyright Infringement; Food and Drug Administration, U.S.; Industrial Revolution; Marketing Fraud; Patent Infringement; Trademark Infringement.

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Countrywide Financial Corp.

Countrywide Financial Corporation (also known as Countrywide Mortgage or Countrywide Home Loans) was the largest underwriter of U.S. residential home loans in 2004, originating roughly one out of every five U.S. mortgages. When shareholders learned that its portfolio was loaded with risky mortgages in 2008, the company's stock collapsed. Bank of America bought Countrywide in 2008.

Background

Angelo Mozilo and David Loeb founded Countrywide Credit Industries in 1968. The New York firm sold mortgages to residential homebuyers and then packaged them for sale to investors. Mozilo moved to California to take advantage of the growing residential market, while Loeb stayed in New York to secure capital and package the mortgages for resale. Also, in 1968, Congress allowed the Federal National Mortgage Association (Fannie Mae) to buy prime mortgages and repackage or "securitize" them for sale. Countrywide could now underwrite and sell more prime mortgages, which met high standards for down payments and borrower incomes.

During the 1980s, Wall Street firms began securitizing mortgages and selling them to investors who wanted higher rates of interest. Some firms began packaging adjustable rate mortgages (ARMs), which are mortgages with a low initial interest rate that increases over time. They also packaged subprime mortgages, which are riskier because they are often purchased by people with low credit scores and past defaults. Countrywide avoided writing subprime mortgages during this period because of the risk. In the 1990s, mortgage brokers moved into high gear and Wall Street packagers such as Bear Stearns, First Boston, Merrill Lynch, and Lehman Brothers increased their mortgage operations. The influx of capital encouraged Countrywide and other mortgage originators to find more borrowers. In 1992, Countrywide was the largest U.S. originator of residential mortgages.

Intense competition and pressure from his national sales manager, David Sambol, led Mozilo to start writing subprime mortgages in 1995.

In 1999, Countrywide negotiated an exclusive agreement with Fannie Mae to purchase Countrywide loans at a discounted rate. Mozilo eventually began securitizing loans in-house to capture even more profit. Business accelerated when interest rates dropped from 8.5 percent in mid-2000 to 5.5 percent by mid-2004. ARMs went as low as 3 percent. The U.S. housing market took off, and trillions of dollars poured into the mortgage industry. Countrywide and other mortgage originators wanted to sell more mortgages, which led them to target less-qualified borrowers and to construct enticing, but dangerous, products. These products included exploding ARMs in which interest rates "exploded" upward after three or five years, Alt-A mortgages that required no borrower income information, and interest-only mortgages in which payments could more than double after a few years. Many companies followed this risky pattern, and $7 trillion in mortgage debt was created in the United States between 2000 and 2007.

The Bubble Collapses

In 2006, Mozilo realized that Countrywide owned too many risky mortgages and tried to move his positions, but the market for securitized mortgages had cooled and housing prices began to fall. At the same time, Mozilo told investors that Countrywide was not exposed to significant credit risk. On January 26, 2007, the stock price hit a high of $45.26, but loan defaults began to increase. Later in the year, Mozilo announced a third-quarter loss of $1.2 billion and terminated 12,000 employees. The stock hit $6.96 on January 31, 2008. In July 2008, Bank of America acquired Countrywide for $4 billion.

Countrywide crossed four ethical and at times legal lines in its quest for higher profits. In its efforts to capture more market share, Countrywide structured mortgages that customers could not pay. For some ARMs, monthly payments could increase by 30 to 50 percent unless the borrower refinanced. These loans and others put buyers at risk of foreclosure. In December 2007, 33.6 percent of Countrywide's subprime loans were delinquent. Countrywide also allegedly sold qualified minorities mortgages with higher interest rates while selling qualified white customers prime mortgages, thereby violating the Equal Credit Opportunity Act and the Fair Housing Act. The U.S. Department of Justice (DOJ) alleged that mortgage brokers acting for Countrywide broke these laws by placing over twice as many African American and Latino customers into higher interest subprime loans while guiding similarly qualified white borrowers to prime loans between 2004 and 2008. In addition, executives and board members acted for themselves and not in the interest of shareholders. In 2006 and 2007, while Countrywide was exposed to significant subprime risk, Mozilo and other executives represented the company as a prime lender, without significant exposure to risky mortgages. These representations supported the share price and the value of executive compensation packages. In reality, Countrywide had significant exposure to subprime loans. Moreover, between 1996 and 2008, a special Countrywide VIP unit wrote hundreds of mortgages for Fannie Mae senior managers and members of Congress involved in housing legislation. During the same period of time, Fannie Mae and Countrywide fought against government reform efforts to diminish Fannie Mae's positions in subprime mortgages from Countrywide.

In 2010, Bank of America's Countrywide Finance unit paid the Federal Trade Commission $108 million for allegedly setting loan fees too high. In October 2010, Mozilo and two other executives paid a record $22.5 million fine for misleading investors. Early in 2011, Countrywide reached a $20 million settlement with the DOJ for allegedly foreclosing on about 160 U.S. military members, without proper legal documents. On December 21, 2011, the DOJ settled with the Countrywide unit for allegedly discriminating against 210,000 people of color with a record $335 million fair-lending settlement. Countrywide did not admit to discriminating against anyone.

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See Also: Fair Housing Act; Mortgage-Backed Securities; Mozilo, Angelo; Subprime Loans.

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Creative Compliance

The idea of creative compliance raises questions about how the line between criminal and noncriminal behavior is drawn. It investigates how the "law abiding" abide by the law and shows crime and compliance to be problematic and easily manipulated concepts. Creative compliance is a means by which people can simultaneously escape both legal control and the stigma, and potentially adverse consequences, of out-and-out lawbreaking. It involves circumventing the impact of law, meanwhile retaining immunity from legal sanctions, by being able to claim that the activity in question is arguably "perfectly legal" or "not strictly illegal" and that no specific law has technically been broken, even though the legal policy behind it had been totally undermined. It is a practice that typically requires sufficient economic resources for high-level professional legal input and is therefore particularly pertinent at the white-collar or corporate end of society.

Big corporations, for example, in doing business on a day-to-day basis, face securities laws, accounting regulations, tax law, competition law, and banking regulations that are intended to control corporate behavior, protect markets, consumers, or employees, raise revenues or, to cite a recent example, limit systemic banking risk. These are laws with a public policy purpose. From a business perspective, however, they frequently represent an inconvenient constraint on the ability to optimize deals and profitability. In business culture, these potential legal constraints tend therefore to be seen less as policies to follow and more as obstacles or hurdles to overcome.

Lawyers are seen not so much as advisors on what is not to be done according to law, but as devisers of legal structures that will achieve the business goal, despite the law. Technical legal work is a vital element because the essence of creative compliance is to achieve arguable technical compliance with the letter of the law, while defeating the policy behind it, or its "spirit." The word *arguable* is important because the legal constructs produced may be seen by those constructing them as spurious, bullish interpretations, or "sailing close to the wind." But the fact that a legal argument has been offered in support, even if it is subsequently challenged and fails in court, can be enough to secure immunity from prosecution. It is a failed attempt at creative compliance, rather than a crime.

Labeling Theory

The idea of creative compliance, which began with research on United Kingdom (UK) tax evasion and avoidance in the 1980s, builds on older criminological work on white-collar crime and labeling, which had already raised questions about how the line is drawn between what is defined as criminal and what is not. White-collar crime analysis looked at how the law-breaking activities of corporations tend to be treated differently from "normal" crime in the administration of law. Labeling theory showed how law enforcement agents or regulators actively interpreted and categorized the activities of those they were policing, in a way that led them sometimes to invoke criminal law enforcement and the criminal label, sometimes not. The idea of creative compliance also looks at the role of law and the active construction of criminal and noncriminal labels, but its focus is different. The actors in question are not the regulators, but the regulated. The issue is not how law directly labels white-collar activities in a way that decriminalizes them, but how law is actively used and managed by the regulated to rule out a potential criminal label and claim legal compliance. Law is seen as malleable, as a material to work on, through highly creative legal work. The white-collar element remains key, since the ability to manage the criminal/compliant label through creative compliance is particularly available to those with the power and resources to purchase creative legal work.

The empirical work behind the concept investigated tax evasion (criminal) and tax avoidance (lawful), analyzing what differentiated them. It also looked at creative accounting and fraudulent accounting, and the difference between the two. It suggested that the consequences to society were the same in both out-and-out crime and creative compliance; that in both cases the purpose of the law was totally defeated, and intentionally so; and that the difference lay only in how the objective was achieved: It is not what you do, but the way that you do it. It is done by creatively using the law rather than technically breaking it.

Avoiding Taxes

Creative compliance takes many forms, but it typically involves repackaging the legal form of an activity while the economic substance (which is the target of the law) remains unchanged. The essence of the practice can be illustrated through a simple example from the area of UK Value Added Tax (VAT). When VAT was introduced some years ago on fuel, such as central heating oil, business was largely unaffected because VAT-registered businesses could simply reclaim the costs, but ordinary domestic consumers and other organizations, such as colleges, were unable to reclaim in this way and were hit by the extra costs. In the case of some colleges, a simple solution was found. A college dormitory would sell the boilers or furnaces in its cellar to a specially created company. As a business, the company could buy the fuel to heat them, reclaiming the VAT. The company would then sell the hot water generated by the furnaces to the college dorm. There was no VAT on hot water. VAT was therefore avoided. The substance remained exactly the same. The same furnaces were still in the same cellar, the hot water was still circulating round the same radiators, but the insertion of a separate company in the chain of ownership and consequent change in legal form meant that the tax was avoided. There was no legal noncompliance involved, just creative compliance.

Most corporate creative compliance is much more complicated, with whole chains of avoidance techniques brought into play. A specific banking regulation, for example, might be avoided by a change of legal form, only to find that it has adverse tax consequences that require another tweak in the legal construct, which in turn may necessitate routing through a different jurisdiction or the insertion of a trust, and so on, until a hugely complex legal structure is created. But the essence is always essentially the same. It is a way of changing the legal form in order to protect the economic substance from some adverse law or tax, or alternatively to manipulate it into a category that carries some advantageous legal status.

Practices such as tax avoidance and creative accounting, and circumvention of any regulation seen as an obstacle or inconvenience, are routine and pervasive in big business. The case of Enron has entered the annals of white-collar crime, and senior executives were jailed. Out-and-out crime was involved. But the reality is that many of the practices that misled the market on such a grand scale were in fact examples of creative compliance, manipulating the law, rather than technically breaching it. They were also practices that were in routine use, if not always on such a grand scale, in the corporate world more generally. The role of creative compliance was recognized in the congressional investigations into Enron, in subsequent discussions, for example, by Elliot Spitzer, of the problems posed not just by crime but also by "gaming the system," and in the new emphasis in the sentencing guidelines on business ethics.

Creative compliance reaffirms the concerns over equality and fairness before the law, which the idea of white-collar crime originally spotlighted. It also points to a fundamental issue for legal control and for the rule of law. Creative compliance demonstrates a corporate culture in which law and regulation are seen not as democratically authoritative commands to be obeyed, but as obstacles, hurdles, or inconveniences to overcome, and the role of corporate lawyers is seen as finding creative ways to achieve this. Recent scandals over corporate accounting and the financial crisis have stimulated the usual calls for more effective legal regulation. However, there is little chance of any changes in the law achieving effective control in the corporate world, unless the culture of creative compliance is addressed.

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See Also: Enron Corp.; Sentencing Guidelines; Spitzer, Eliot; Tax Evasion.

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Credit Card Fraud

Credit card fraud is a method of identity theft that comprising the unlawful acquisition of another's credit card information for the purpose of illegally charging procurements to the cardholder's account or removing monies from the account. Credit card fraud is considered a crime against property. The scope of white-collar crime is continuously transforming, which poses a distinct challenge to the law enforcement community. Improvements in, and expanding availability of, technology increase the broadening of approaches used in the commission of high-tech and credit card fraud crimes. Identity theft is usually associated with credit card fraud. Statistical trends reveal the immense pace of the growth of identity crimes. This growing trend in identity theft has strongly paralleled the introduction and expansion of e-commerce. The transaction referred to as *e-commerce* represents both consumer-based and business-to-business transactions.

Credit card fraud has many names or titles, including Kansas' Criminal Use of a Financial Card to Texas' Credit Card or Debit Card Abuse. As more and more individuals rely on credit or debit cards, the propensity for abuse and/or illegal activity related to these cards increases. Between 2005 and 2007, the National Crime Victimization Survey found that the number of households with at least one member who experienced one or more types of identity theft increased 23 percent. The Federal Trade Commission's 2006 identity theft survey found that 3.7 percent of the adult population, or 8.3 million adults, discovered that they were victims of identity theft during that year. The survey also found that identity thieves made off with an estimated $15.6 billion. Rodney Huff, Christian Desilets, and John Kane conducted a survey of households and found that nearly 24 percent of households were the victims of a white-collar crime. Of these, almost 40 percent were the victims of credit card fraud. Credit card fraud was the leading white-collar crime that was committed against households in their study. With identity theft brings the ability to secure a credit card in another person's name. Credit card fraud ploys usually fall into one of two classes of fraud: First is application fraud, and second is an account takeover.

Credit Card Fraud by Application

Application fraud is most often associated with identity theft. Identity theft has become a major concern of law enforcement as well as the community and consumers at large. The anonymity of the Internet and access to much personal information has fundamentally changed the nature of identity theft. The expanded use of the Social Security number is one of the primary reasons for the ease of identity theft, which leads to application fraud in credit requests. Application fraud refers to the illegal and unauthorized initiating of a credit card account in another individual's name. The three major credit reporting bureaus (Equifax, Trans Union, and Experian) control the information on all persons applying for credit in the United States. These companies allow anyone with a name and Social Security number access to a credit history. Credit reports are very valuable to the identity thief. Credit card companies do a better job at security because they make the process more extensive than just a name and Social Security number. This extra level or protection leads white-collar criminals to fall deeper into stealing information about individuals, so that they have enough information to perpetrate an identity theft.

White-collar criminals who engage in identity theft obtain as much information as possible about the individual whom they wish to defraud. This includes information that the general public may not believe is very sensitive. Some examples are children's names, place of birth, dates of birth, pets' names, hometowns, and favorite sports teams. This type of nonessential information may be useful in an account takeover, which is protected by lost password questions related to nonessential information such as that mentioned above. Gaining access to this information can be accomplished through very rudimentary means, such as dumpster diving or through online phishing scams. Dumpster diving refers to scavenging through garbage or trash to obtain discarded materials that identify the person who threw out the garbage. The items of most value have account numbers, addresses, dates of birth, social security numbers, financial records, medical records, or any personal records. With this type of personal information, an identity thief can create convincing counterfeit documents. These documents may assist the thief in setting up rented mailboxes with the phony personal information to have items purchased through the fraudulent credit card. Credit card application fraud schemes are serious because a victim may learn about the fraud too late, if ever.

Methods of Identity Theft

Identity thieves look for both incoming and outgoing mail, left in an unlocked mailbox at a residence. Outgoing mail with a personal check and billing information is the most desirable. Thieves may also steal incoming mail in an attempt to look for this same information. In addition, thieves may attempt to make contacts in mail facilities where the employee steals letters that may have credit cards in them. Thieves have also been known to complete a change-of-address form and divert all mail to a fraudulent address to which they have access.

Eavesdropping on anything, from using a computer in a public place to watching public transactions that involve personal identifiers, can be used by the identity thief. This may seem like a rudimentary way of stealing personal information; however, it still occurs.

Identity thieves can obtain information illegally from unsecured Internet connections. These locations are increasingly prevalent as wireless routers are used in many places. In addition, social media have presented identity thieves with a wealth of personal information. If an identity thief has enough personal information, he or she can use hint questions to obtain access to social media accounts such as Facebook. In addition, many unsuspecting users of social media to post personal information about themselves that the thief may be able to use to perpetrate an identity theft.

Black Market

Identity thieves have access to extensive black markets, where stolen personal information can be sold and resold to individuals throughout the world. Evidence suggests that Internet Relay Chat (IRC) channels and Web sites operate for hackers to sell considerable quantities of personal information obtained through database companies and by other means. These Web-based suppliers exist to sell credit card and bank accounts, PIN numbers, and supporting customer information obtained from victims around the world in lots of tens or hundreds of accounts. Stolen bank and credit accounts are referred to as "dumps" inside these markets, and the individuals who participate are referred to as "carders." Financial accounts in carding markets are sold at extremely low prices. Identity thieves could also buy accounts obtained from countries around the world, suggesting that identity theft and credit card fraud have no geographical boundaries.

Credit Card Fraud by Account Takeover

Account takeovers usually involve the criminal takeover of an existing credit card account, a procedure by which a criminal obtains sufficient personal information about an individual to change the account's billing address. With the increasing use of technology, hackers attempt to gain access to sensitive databases of information. The United States has seen a major increase in the collection and maintenance of digital files to save space. Consequently, these files provide hackers with a wealth of information. Once access is gained to a database, the hacker obtains the personal information that is needed to steal the identity of an individual. Once the criminal has sufficient personal information, he or she subsequently notifies the credit card company that the card is lost or that it was stolen in order to acquire a new credit card and make fraudulent purchases with it.

Another common method used to accomplish an account takeover is called skimming. Skimming plots occur when an employee of a business illegally accesses a customers' credit card information. The employee then either sells the personal card information directly to identity thieves or takes over the customer's identity. The employees use a skimming device that they swipe the consumer's card through, in addition to the regular credit card machine supplied by the legitimate business. Consequently, this plot is done without the customer's knowledge, and the credit card information may be used months after the actual skimming occurred. This type of stealth makes it difficult to determine when the skimming happened. Skimming also occurs at automated teller machines (ATMs).

The skimming devices are illegally installed on ATMs and are usually undetectable by the users. The makers of the skimming devices fabricate the device so that it appears to be part of the ATM. Thus, the customer does not know that their card was skimmed. These unambiguous devices are realistic-looking card readers, positioned over the factory-installed card reader. Customers insert their ATM credit or debit card into the counterfeit reader, and their account information is read by the device and stored on a small attached device or cell phone. In addition, the credit card information can be sent wirelessly to the criminals.

Skimming at ATMs typically involves the use of some sort of hidden camera, installed on or near the ATM. This camera records the ATM customers' submission of their personal identification number (PIN) into the ATM's keypad. Moreover, there have also been instances where, instead of a hidden camera, identity thieves attach a counterfeit keypad above the real keypad, which records every keystroke as customers punch in their PIN.

Skimming devices are installed for relatively short periods of time, oftentimes just a few hours. This relatively short time period reduces the chances that someone will notice the device and consequently reduces the chances that the thieves will be caught. They are then removed by the thieves, who download the stolen credit card account information and encode it onto blank cards. The cards are then sold on the black market or used by thieves to make withdrawals from the customer's account at other ATMs, or are used to purchase items. Many thieves purchase gasoline with the counterfeit cards because they can pay at the pump, and the chance of being caught with a fraudulent card is minimal.

Reporting Trends

According to research on white-collar crime (including credit card fraud) conducted by Huff, Desilets, and Kane, of the known households that reported being a victim of a credit card fraud, only 83.3 percent reported the illegal activity to their credit card companies, and 20.5 percent were reported to the police. This is an alarming statistic, considering the low percentage actually reported to an agency that had the ability to prosecute the offenders. This low reporting statistic, combined with the months that it may take to find out that a crime actually happened, leads to

President Barack Obama signs the Credit CARD Act, a cardholders bill of rights, in the White House Rose Garden in Washington, D.C.., May 22, 2009. He is flanked on his right by the co-sponsor of the bill, Rep. Carolyn Maloney, D-New York.

a low clearance rate by law enforcement. In addition, the investigative response by law enforcement involves both technological knowledge and traditional investigative techniques.

Law Enforcement Response

Federal law enforcement agencies and the criminal justice system have begun to respond to the increasing threat posed by identity theft and credit card fraud. Because this type of crime has been increasing at such an alarming rate, law enforcement has had to devote resources for the specific investigation of both identity theft and credit card fraud. New legislation has been passed, and preventative consumer awareness programs have been launched. Credit card fraud is not a crime that is immediately known to the victim and may take as long as a month or longer until the crime is discovered. In addition, an individual may be the victim of identity theft, but not of credit card fraud. Personal information that is obtained illegally may be stored and used anytime in the future. Consequently, these are real challenges that law enforcement faces.

Determining where the identity theft or credit card fraud took place, for jurisdictional purposes, is challenging. This is particularly true because the identity theft may have taken place in one jurisdiction and the credit card fraud in another jurisdiction. To complicate matters for law enforcement, oftentimes someone steals the identity and another person perpetrates the credit card fraud. Some jurisdictions have set up multi-agency task forces to combat these challenges.

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See Also: Forgery; Identity Fraud or Theft; Internet Fraud; Investigation Techniques.

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Crédit Lyonnais

Crédit Lyonnais Bank is a French bank with a central role in European and global financial markets. During the 1980s and 1990s, although controlled by the French government, Crédit Lyonnais underwent a period of great expansion and aggressive lending practices. In particular, Crédit Lyonnais became involved in financing a variety of Hollywood films and later financed Giancarlo Parretti's disastrous takeover of MGM/UA Communications Co. These dealings resulted in a $5 billion loss for Crédit Lyonnais and almost resulted in the firm's bankruptcy. Crédit Lyonnais also received the controversial transfer of the Executive Life Insurance Company's portfolio of high-yield, noninvestment grade bonds and later agreed to pay fines based upon false statements that Crédit Lyonnais personnel made to federal bank regulators.

Background

Founded in 1863 by politician Henri Germain in Lyon, France, Crédit Lyonnais had grown to become the largest bank in the world by 1900. Although nationalized along with most of France's other banks after World War II, Crédit Lyonnais remained one of the largest banks in Europe and the largest in France. During much of the postwar period, Crédit Lyonnais was known for its conservative and traditional approach to lending, guaranteeing the bank solid returns but only modest levels of growth. This changed during the mid-1980s, when a new management group sought rapid growth for Crédit Lyonnais. Viewing the United States, especially its film industry, as an area of potentially high levels of profits, Crédit Lyonnais's leadership began pursuing film financing deals.

Financing Hollywood

By the mid-1980s, Crédit Lyonnais had come to play the largest role in the financing of American films. Although such loans were often risky, they also could be highly profitable and bore the cachet that the bank's leadership coveted. Because of the bank's work in this area, it was approached by Italian financier Parretti, who sought financing in his bid to acquire assets in the film industry. Parretti had been interested in purchasing French filmmaker and theater owner Pathé SA. In anticipation of this purchase, Parretti had purchased a smaller film distribution company, the Cannon Group, and renamed it Pathé Communications. As had been the case when he acquired Cannon, to finance the purchase of Pathé, Parretti received support from Crédit Lyonnais's Dutch affiliate, Crédit Lyonnais Bank Nederland (CLBN). Despite his interest, Parretti's bid for Pathé was thwarted when the French government, after a brief investigation of his finances and business dealings, determined that he was an unfit steward for the legendary studio. Undeterred, Parretti again sought financing from Crédit Lyonnais to pursue the purchase of renowned film studio MGM/UA Communications Co. (MGM), home of Metro-Goldwyn-Mayer and United Artists.

Although MGM was one of the most storied of film studios, by the late 1980s, it was reeling as the result of several mergers and acquisitions. MGM was owned by investor Kirk Kirkorian after 1969, although he sold it briefly to entertainment mogul Ted Turner in 1986. After stripping MGM of its film library, Turner sold MGM back to Kirkorian after only a short time. With Crédit Lyonnais's financing, Parretti purchased MGM in 1990. Deeply in debt, Parretti produced few films while in charge of MGM and was criticized by many for looting the company. Parretti installed his 21-year-old daughter as senior financial officer at MGM and used corporate assets to purchase gifts for friends. Unable to make loan payments to CLBN, Parretti defaulted on his loan obligations and MGM was seized by the bank. After infusing billions of dollars into MGM to make it attractive to purchasers, Crédit Lyonnais resold MGM to Kirkorian in 1996. Parretti was charged with securities fraud and misuse of corporate funds, and he in turn alleged that Crédit Lyonnais officers had sought bribes and received other benefits. Parretti was convicted of financial impropriety by a French court for misstatements to financial regulators.

Secretive Dealings

During the recession of the early 1990s, California-based Executive Life Insurance Company also fell upon hard times. Long an investor in high-yield, noninvestment grade bonds, also known as "junk bonds," Executive Life was taken over by John Garamendi, California insurance commissioner, when the value of Executive Life's surplus, or equity reserves, fell. After Garamendi took control of Executive Life, he sought to sell off the company's various components, including its junk bond portfolio and insurance operations. Six months after the April 1991 takeover of Executive Life, the California insurance commissioner sold off its portfolio of junk bonds to Altus Finance and its insurance operations to Aurora National Life Insurance Co. Unknown to Garamendi, Crédit Lyonnais secretly controlled both Altus and Aurora. Crédit Lyonnais's ownership had been kept secret because under the now-repealed Glass-Steagall Act, banks could not own insurance companies.

In 1998, an anonymous French whistleblower alerted the California insurance commissioner and the U.S. Department of Justice about Crédit Lyonnais's actions, and these entities sued the bank to recover damages. After years of litigation, Crédit Lyonnais agreed to pay fines of over $700 million to settle claims against it resulting from Executive Life. In the aftermath of these problems, Crédit Lyonnais merged with former French rival Credit Agricole in 2003. Because Credit Agricole traditionally had focused upon rural and small town accounts, the combination with Crédit Lyonnais, with its focus on urban residents, proved fruitful. The combined operations represent the eighth-largest bank in the world and the second-largest bank in Europe.

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See Also: Accounting Fraud; Bank Fraud; Bankruptcy Fraud; Offshore Entities; Racketeer Influenced and Corrupt Organizations Act; Stock and Securities Fraud.

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Cressey, Donald

Donald Cressey was an American criminologist whose work focused on theories of crime, organized crime, and white-collar crime. Cressey taught sociology at the University of California and authored and coauthored a number of seminal works that are used as fundamental reference points for the study of criminality. Cressey coauthored the 1934 edition of the groundbreaking criminological text *Principles of Criminology* with Edwin Sutherland. It is considered one of the most influential criminological texts and is still referred to as a standard academic text in criminological theory. After Sutherland's untimely death in 1950, Cressey expanded on one of Sutherland's key theories of *Principles of Criminology*, the theory of differential association, which has become one of the historically central theories of crime and penology. Cressey also published works regarding fraud and embezzlement, and conceptualized the "fraud triangle." The foundation of much contemporary work in this field, the fraud triangle is composed of opportunity, motivation, and rationalization.

Theft of the Nation

The most infamous and controversial of Cressey's single-authored works is his study of American-based organized crime in *Theft of the Nation*, which was published in 1969. The impact of this work has led some to describe Cressey as the founder of modern organized crime research. American socio-politics at the time were gripped by an organized crime fever, fueled by highly symbolic imagery provided by frenzied media. For many years, successive government administrations had sought to tackle the allegedly growing problem of organized crime in the United States. Following a number of commissions and task forces instructed to enlighten policymakers as to the causes of organized crime and outline measures to defeat it, the temptation to lay the blame for organized criminality at the feet of an external threat found much favor in the minds of America's power elites. A series of colorful "show trials" took place as a procession of mysterious and flamboyant Italian American "gangsters" gave evidence of a massive, single, organized criminal threat that was seeking to corrupt American society, the Cosa Nostra.

From 1966 to 1967, Donald Cressey formed part of a presidential task force and subsequently published his findings in *Theft of the Nation*. Cressey relied heavily on the testimony previously given by alleged mafia informer Joseph Valachi, as he described a strict Italian/American bureaucratic hierarchy of organized criminality that exhibited many of the structural features of legitimate corporate enterprise. Cressey's claims were cemented by the detail of his assertions, in which he described 24 families, directed by a commission and a council. The families consisted of bosses, under-bosses, counselors, captains, lieutenants, and soldiers, all of whom followed strict orders. The structure of the organization, Cressey claimed, insulated the upper echelons from associations with the actions of the lower-level agents, thus granting protection to the most important members. Cressey further explained that the Cosa Nostra's principal aims were to establish monopolies over illicit goods and services and to pervert the democratic structures of the nation by way of corruption and extortion.

The conclusions of *Theft of the Nation* have been subject to heavy criticism by academic analysis. Cressey's allegations have been described as a leap of faith, particularly his seemingly unquestioning reliance upon Valachi's testimony, which was later proven flawed. Nevertheless, Cressey's model of organized crime and its participants was timely and found much favor among a curious and fascinated public, as well as law enforcement agencies, which appeared to feel vindicated by this depiction of organized crime. Cressey's depiction of organized crime absolved both the public and the government from any direct responsibility. No longer was organized crime seen as the outcome of contradictory laws; rather, it was a conspiracy of outsiders who were intent on undermining the country's moral policies. *Theft of the Nation* cemented the growing Alien Conspiracy Theory model of organized crime, and some argue that this is the model, albeit modified, that still underpins many national and supranational efforts to tackle organized criminality.

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See Also: Conspiracy; Differential Association Theory; Organized Crime; Sutherland, Edwin H.

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Criminal Facilitation

Although the rule of law differs by U.S. state, a person is guilty of criminal facilitation when, acting with knowledge that another person is committing or intends to commit a crime, he or she engages in conduct that knowingly provides this person with means or opportunity for the commission of the crime, and which in fact aids the person to commit the crime. As a category of crime, criminal facilitation essentially means that a person helped someone to commit a crime, but the person rendering assistance was not directly involved in the actual underlying criminality. It is often difficult to establish or define criminal facilitation. One example might be if a person who is a lawful owner of a firearm knowingly and willingly provides that firearm to another person, who intends to use the firearm for a crime such as robbery, assault, or murder.

In many states, a criminal facilitator is tantamount to an "accessory," or a person who assists in the commission of a crime, but who does not actually participate in the criminal activity as a joint principal. The joint principal is the person whose activity, accompanied by related *mens rea* (i.e., guilty mind), is the main cause of the *actus reus* (i.e., guilty act). In many jurisdictions, an accessory is different from an accomplice. An accomplice generally must be present at the scene of the crime and is also in some way directly active in the commission of the crime. In the same vein as a criminal facilitator, an accessory must only have knowledge that a crime is being, or will be, committed. In this regard, a person charged with criminal facilitation or being an accessory to a crime may aide or encourage the criminal toward the act, or may be charged for failing to report the crime to the proper authority. Criminal facilitation or being an accessory to crime may involve financial, emotional, or physical assistance to aide or conceal the crime.

In some jurisdictions, criminal facilitation laws do not require that the principal crime actually be committed as a requirement for criminal accountability. In many states, it is a crime to simply provide a person with the "means or opportunity" to commit a crime. This can occur before or after the criminal act and has also been conceptualized as "conspiracy." Similar to criminal facilitation, a charge of conspiracy may be leveled even if the criminal act was never committed, so long as the intent was present or a plan had been made. In this sense, criminal facilitation or conspiracy is a viable criminal charge when a person is active in planning the crime, incites another person to commit the crime, or aids in concealing, escaping, or failing to report a crime. If this form of criminal facilitation occurs before the commission of a crime, the guilty party is known as an "accessory before the fact"; if the criminal facilitation occurs after the criminal act, the guilty party is known as "an accessory after the fact." Thus, although criminal facilitation is often defined separately in many U.S. states as a criminal act, it overlaps significantly with definitions of conspiracy to commit a crime or being an accessory to the commission of a crime. The fundamental connecting factor to these terms, as criminal charges, is that the convicted person had knowledge that the crime was going to be, or had been, committed and then in some manner aided in the commission of the crime.

Criminal facilitation or being an accessory, especially at the federal level, has also been referred to as aiding and abetting. Derived directly from the U.S. penal code, aiding and abetting is defined as "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal; and whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." Once again, the "principal" is the person primarily responsible for the criminal act. Thus, aiding and abetting is another form of criminal facilitation, being an accessory to a crime, or conspiracy to commit a crime.

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See Also: Accounting Fraud; Conspiracy; Money Laundering; Stock and Securities Fraud.

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Critical Theory

Critical theory and criminology focus on the relationship between power, inequality, and crime. Their roots stem from the conflict perspective, which postulates that there are two groups in society, one with power (the bourgeoisie) and one without (the proletariat), and the proletariat is subject to societal change, legislation, and domination proffered by the bourgeoisie as a means of continued oppression. This oppression will constantly create class conflict, and within a system and society that is rife with class structure and status inequalities, the law, punishment, and justice will always be notably based upon a system of social inequality and blocked opportunities for those situated in the lower classes. Critical theory challenges the fundamental basis of traditional criminological theory through the provision of three alternative theories: Marxism, critical feminism, and power-control.

Three Alternative Theories

In 1848, Karl Marx and Friedrich Engels published the *Communist Manifesto*, a manuscript that focused on oppressive labor conditions, the exploitation of the proletariat, a focus on economic structures in society that control all human relations (productive forces/relations and the relationship between the capitalist bourgeoisie and the proletariat). Even though Marx did not produce much work on crime, his work provided the foundation for the idea of social conflict. William Bonger extended Marx's work in 1916 and argued that the system of production divides society into haves and have-nots, and in every society that is divided in this manner, criminal law is devised to protect members of the ruling class. By proxy, legislation will not mandate punishment for an act that does not harm the ruling class, and the legal system will discriminate against the poor and protect the wealthy. Ralf Dahrendorf and George Vold continued the concepts of Marxist theory with their arguments that society is made up of competing interest groups subject to processes of social change produced by dissent and conflict, and laws are created by groups of people that have the money to create them.

Whereas Marxist theory argues that economic structures dictate oppression, critical feminism argues that power is controlled and structured by gender within a patriarchal society. Under the capitalist system, they argue that women are a commodity that may be possessed and that the origin of class and gender differences can be traced back to the creation of private property. Property owners decide what and whom is valued, males benefit from the division of labor by gender (whereby women's work is compensated less, or not at all), and the powerlessness of women in society renders them more likely to be victimized and less likely to be able to commit violent crimes or crimes of power because they do not have access to powerful positions.

Power control theory is based on John Hagan's premise that crime is a function of class position (power) and family functions (control). Power control theory argues that power and control within the family sphere are translated into the work field, and when families are patriarchal and males hold dominant positions, they control households. This can be done either through direct control, like bringing in/allowing the use of money, or indirect control, such as devaluing women's work or not allowing their spouse an egalitarian position in the workplace or the home. Children raised in these households will mirror the power-control relationships that they see at home. For example, girls growing up in patriarchal homes are more likely to fear rules and punishment (by being controlled), and as a result they are more likely to commit behaviors such as running away or suicide. In contrast, girls who are raised in egalitarian homes view power as equal and learn that they may have equal power in a relationship, feel as though they are able to have successful careers, and feel more freedom to engage in less risky behaviors.

These three alternative theories have been applied individually, as well as in their totality, to explain white-collar and corporate crime. At the heart of conflict theory is the concept that society is characterized by conflict and power relations, rather than consensus. White-collar and corporate crime, by definition, must be committed by individuals with access to power, prestige, authority, and/or money. Conflict theory provides strong arguments as to why white males are more likely to commit white-collar or corporate crime; why laws and legislation appear to protect the wealthy; why when more women gain access to power, control, and authority, female rates of white-collar or corporate crime may increase; and why economic fluctuations are related to levels of white-collar and corporate crime. Policy implications of conflict theory include equalizing the distributions of power, wealth, and status; favoring minimum wage laws, sharply progressive taxation, government controlled health care systems, maternal leave, and national policies of family support; reforms of patriarchal societies; placing more women into positions held traditionally by males; equal treatment of boys and girls by families, schools, and juvenile authorities; increased educational choices; more opportunities for day care and family support; and gender-sensitivity education in schools and workplaces to address gender biases and sexist ideas.

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See Also: Conflict Theory; Gender Discrimination; Racial Discrimination.

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Crocker, Charles

Charles Crocker (1822–88) was born in Troy, New York, into a modest family. At an early age, Crocker began to work in order to support his family, leaving school after eighth grade. In 1836, Crocker moved with his family to a northern Indiana farm, and at the age of 17, he began to earn a meager living, first as a farmhand, then working in a sawmill, and later as an apprentice at an iron foundry. In 1845, he discovered an iron deposit nearby and established a forge known as Charles Crocker Company. Following the California gold rush, Crocker sold the company and set out west with a small band of men, including two of his brothers. The journey took Crocker nearly six months, and they arrived in Placerville in 1850. He later gave up mining, opened a store in Sacramento, and, in 1855, was elected to the city council. Crocker quickly became one of the wealthiest and most prominent men in the city.

In 1860, he was elected to the state legislature as a Republican, and soon after became one of four initial investors, along with Leland Stanford, Mark Hopkins, and Collis P. Huntington, all Sacramento merchants, who formed the Central Pacific Railroad. The men later became known as the Big Four, amassing a vast transportation and land empire. Prior to the start of construction, Crocker resigned from the Central Pacific and formed Charles Crocker & Company (later succeeded by the Contract and Finance Co.). Central Pacific awarded the newly formed company the construction contract for the western part of the first transcontinental railroad. Crocker was head of construction, tasked with the daunting task of building the railroad through the Sierra Nevada eastward. This was a formidable challenge in an era when labor was scarce, a problem that Crocker solved with the use of Chinese workers. In Promontory, Utah, the Central Pacific finally joined tracks with the Union Pacific on May 10, 1869.

Crocker profited enormously, though not without corruption, from contracts with the Central Pacific. In one billing, the jointly owned Contract and Finance Co. charged the government-sponsored Central Pacific $121 million for $58 million worth of work. However, unlike the Credit Mobilier and Union Pacific scandal, the reputations of Crocker and his associates went largely unscathed because records of the Contract and Finance Co. were destroyed prior to any investigatory work. With the line completed, the Big Four were major stakeholders in an invaluable transportation railway, the great majority of which was built at the expense of government loans and land grants authorized by President Lincoln's Pacific Railroad Act of 1862. With the monopoly transportation position established, the Big Four used the Central Pacific and other holdings to reap profits, prevent competition, and dominate politics. Crocker and his associates would often set price structures that milked the profits of farmers and ranchers who sought to ship their goods, a practice later regulated by the passage of the Interstate Commerce Commission Act of 1887. The Big Four also reputedly spent millions to influence legislation.

Crocker and his associates continued the expansion of their transportation and land empire by building additional railways north into Oregon and south into the San Joaquin Valley. They purchased inland and ocean steamship lines, monopolized dock facilities, won additional land grants, and bought all roadways. This allowed the industrialists to individually and collectively exert considerable financial and political weight on the business sector for years. Two years after he was seriously injured in a carriage accident, Charles Crocker died in the Del Monte Hotel on August 14, 1888. He left his wife, Mary Ann Deming, three sons, and a daughter with a fortune estimated at over $40 million.

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See Also: Hopkins, Mark; Huntington, Collis P.; Interstate Commerce Commission Act; Organized Crime; Robber Barons; Stanford, Leland, Sr.

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Cullen, Francis T.

Francis (Frank) T. Cullen may be counted among the top dozen criminologists in the world who study white-collar and corporate crime today. He is a Distinguished Research Professor of Criminal Justice and Sociology at the University of Cincinnati, in Cincinnati, Ohio. Cullen has been at the University of Cincinnati since 1982, and before that spent six years at Western Illinois University. Cullen earned a bachelor of arts in psychology at Bridgewater State University in 1972, followed by a year of graduate study at the University of Rhode Island. He completed a master of arts in sociology and education in 1974, and a doctor of philosophy in sociology and education degree in 1979, both at Columbia University. His doctoral dissertation, chaired by Richard Cloward, was titled "The Structuring of Deviant Behavior: Deviance Theory Reconsidered."

He is the author, or co-author, of hundreds of publications, including 25 books, journal articles, book reviews, book forwards, and government reports. His research interests have crossed a variety of topics including criminological theory, corrections, rehabilitation, juvenile delinquency, sexual victimization of college women, and white-collar and corporate crimes. Cullen has been the president of both the American Society of Criminology and the Academy of Criminal Justice Sciences, and has always been very active in professional service to the discipline.

Cullen's interest in white-collar and corporate crime can be tied to the historical period in which he began his career in criminology. This interest can best be described in his own words:

> I would say that my interest in white-collar crime was spurred by the same factors that led a generation of scholars to become interested in corporate and other forms of white-collar crime at the same time: the changing social context of the 1960s and 1970s that, during our days in graduate school, sensitized us to the crime not only of the poor but also of the rich. This was found most centrally in critical criminology, but its influence was felt across criminology and other disciplines.

Cullen's interests in white-collar and corporate crimes can best be described as falling into three underlying themes. One theme of his research dealt with public opinions of the seriousness of white-collar crimes versus crimes in general.

> My first article was published in 1982. In a different context, I redid a study on the seriousness of crime undertaken by Peter Rossi et al. My focus, however, was on whether, between 1972 (Rossi study) and 1979 (my study), attitudes toward white-collar crime had changed. The study showed that public views toward white-collar crime had shifted to see these acts as more dangerous.

A second theme of interest to Cullen (and co-authors) dealt with public opinions toward the punishment of white-collar criminals.

> I did several other studies and assessments of the extant literature—the last one in 2009 ("Bad Guys; Why the Public Supports Punishing White-Collar Offenders"). My central message of all these studies was as follows: the idea that the public opposes the punishment of offenders is a myth. Public opinion is not a barrier to the use of the criminal law against white-collar offenders (a popular view in the 1970s). Today, I would go even further, as I do in my 2009 essay: the public relishes the punishment of white-collar offenders.

A third theme of Cullen's work in white-collar crime dealt with the prosecution of white-collar offenses and offenders. In 1987, Cullen, William Maakestad, and Gray Cavender, published *Corporate Crime Under Attack: The Ford Pinto Case and Beyond*, which was reprinted in 2006 as *Corporate Crime Under Attack: The Fight to Criminalize Business Violence* (with Michael Benson added as a co-author).

In this book, which has become a classic in the field of white-collar and corporate crime, the authors told the story of an attempt by an Indiana prosecutor to criminally prosecute the Ford Motor Company for the deaths of young women who were burned to death in a Ford Pinto automobile. The trial, which led to a not-guilty verdict, exposed Ford's decision to place profits ahead of safety, even though the company engineers knew of the dangers associated with the vehicle. In Cullen's words:

> The other major focus of my work was on the use of the criminal law against corporations, especially for violent crime. My work on the Ford Pinto case is where this view is found most fully. My coauthored book (two editions) on this case was really about how it became possible, at a specific sociohistorical time, to use the criminal law against corporations—including for violent crime. I tie this mainly to the shifts in the 1960s and 1970s that caused confidence in big business to decline. State officials found that they could bolster their own declining legitimacy by cases against white-collar offenders that showed, in essence, that the law was applied equally to all.
>
> One of my coauthors on the Pinto book was William Maakestad. . . . Bill was the brother of the prosecuting attorney in the Pinto case. That is how we gained access to all the documents on the case and could do interviews with prosecutors—and the defense team.
>
> Mike Benson (mainly him) and I followed this with a book on local prosecutors using the

criminal law against corporations, detailing information on how they did their work.

Perhaps coincidentally, at about the same time as the first edition of *Corporate Crime Under Attack* was published, a trio of important books dealing with other aspects of white-collar crime prosecution and trial also appeared in print. All three books were tied to a large research project undertaken by the late Stanton Wheeler, his colleagues, and graduate students at Yale University. Kenneth Mann's (1985) book *Defending White-Collar Crime: A Portrait of Attorneys at Work*, described the roles and functions of the elite bar of defense attorneys who specialize in defending alleged white-collar and corporate offenders. In 1992, Wheeler, Austin Sarat, and Kenneth Mann published the book *Sitting in Judgment: The Sentencing of White-Collar Criminals*, which described the judicial processes involved in trying white-collar and corporate criminal cases. David Weisburd, Elin Waring, and Wheeler's book *Crimes of the Middle Classes: White-Collar Offenders in the Federal Courts* (1994), analyzed the characteristics of white-collar offenders who were tried in the federal court system. Until that time, it was generally assumed that the typical white-collar offender was a wealthy businessperson who viewed behavior as normal business activity, certainly not criminal behavior. Weisburd, et al. challenged this view of white-collar offenders in that they found that the average white-collar offender was more likely to come from a middle-class or upper middle-class background, and who generally did not engage in high-dollar crimes.

Currently, Cullen continues to publish across a broad range of criminological topics. He and several coauthors have seven books in progress, including one on white-collar crime.

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See Also: Ford Pinto; Weisburd, David; Wheeler, Stanton.

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Currency Fraud

Currency is cash money, whether paper or coin, and is a medium of exchange. While physical things such as wampum, shells, stones, or other objects have been commodity money, they are not currency. The first use of coins, according to the ancient Greek historian Herodotus, was by the Lydians. From virtually the beginnings of coinage, counterfeiters have debased currency. A type of counterfeiting occurred when Archimedes of Syracuse used water displacement to prove that a gold votive crown made for King Hiero II has been debased by dishonest goldsmiths who substituted some silver for the gold coins melted to make the crown. Casting a copy of a coin, rather than minting it, is another ancient form of counterfeiting. The invention of paper currency by the Chinese provided a more convenient form of money and new opportunities for counterfeiting. In the modern world, counterfeiting is a continuing problem.

During World War II, the Nazis forged British pounds and American dollars. The dominance of the dollar since World War II has tempted counterfeiters. Some have been so successful that their counterfeit dollars are called *superdollars*. These very high quality bank notes are thought to have been produced in North Korea or by criminals in Russia, Iran, or the Middle East. Since 2002, the euro, in currency and coin, has also been attacked by counterfeiters.

Currency Trading

Another form of currency fraud occurs in the business of currency trading. Money changers are familiar to readers of the Bible, where money changers set up shop in the temple in Jerusalem. In modern times, money changers such as Thomas Cook operate currency exchange centers for travelers at airports or other locations. Local exchange centers are often found in areas frequented by tourists. Banks such as Wells Fargo and financial services companies such as American Express are also often engaged in currency exchanges for their customers. From a financial point of view, money is a commodity that is bought and sold, just like bags of potatoes or bushels of corn. The exchange value (rate) of a currency is like an agricultural commodity in high demand versus one in low demand. Some currencies, for example dollars, are widely sought. Other currencies may not be very convertible because few people want them, like a fruit that is past its prime. The variations in the demand for currency create price differentials (the foreign exchange rate, forex rate, or FX rate) that can generate profits and losses. With a growing global economy, the exchange of currencies may be physical or electronic. In either case, there are opportunities for fraud.

New York U.S. Customs and Border Protection officers at John F. Kennedy Airport discovered this stash of nearly $300,000 in fake U.S. currency on December 22, 2011, during a luggage inspection of a passenger arriving from Columbia.

One major area is in trading foreign exchange contracts on the foreign exchange market. The foreign exchange market is globally decentralized, and international currencies are exchanged (converted). It is based in financial centers around the world, with the Internet used to trade currencies every hour of the workweek day (Sunday at 5:00 P.M. EST to Friday at 4:00 P.M. EST). It does international currency exchanges so that purchases of everything from bananas to foreign investments can take place in the currency of the locality. All that is needed is to purchase a quantity of foreign currency to pay the seller, using the home currency of the buyer. The same currency exchange happens when a tourist makes a credit card purchase abroad and, upon returning home, sees on the credit card statement an exchange rate expressed (possibly with a bank or credit card fee) for the purchase in the foreign currency at the point of sale abroad against the home currency.

Prior to the 1970s, foreign exchange rates were restricted by the rules of the Bretton Woods Agreement. Since then, foreign exchange rates have been floating on the market's supply and demand. The foreign exchange market is huge, very globally dispersed, and very liquid, and it generates profits and losses from low margins. The volume of exchange is several trillion dollars each day and growing. The actors trading in the forex include large banks, central banks, currency speculators, corporations, governments, hedge funds, institutional investors, financial institutions, exchange kiosks, and retail investors. Trading in currency exchanges futures occurs because fluctuations in currency demands vary over the course of a year. The market in exchange futures and options (puts or calls) allows traders who actually will need the currency to hedge on the prices of future deliveries of currency. The Chicago Mercantile Exchange has been a center for trading foreign exchange futures contracts since 1972.

Investment Scams

The decentralized nature of the foreign exchange market, along with the huge sums of money involved, makes it attractive to speculators and criminals. Confidence men (and women) use a variety of sophisticated-sounding advertisements to lure people into investing in foreign exchange companies. Their tactics include scams that make claims that are too good to be true. The fraudulent claims are that currency trading with them will involve low-risk, high returns that are made quickly. Among the false claims may be those that promise investors "leverage" so they can control large quantities of foreign currency for only a small sum. The fraudulent promise is a disguised get-rich-quick scheme appealing to greed. In some cases, the money is never invested; the con-artist just absconds with it.

Another common fraudulent claim by scam artists at fraudulent currency trading companies that is told to retail customers is that the firm is in the "interbank market." The victim hearing this may be fooled by not realizing that the term simply means the loose network of currency transactions made between banks, large corporations, financial institutions, and investment banks. Forex scam artists often target victims in ethnic communities. Chinese, Indian, and Russian immigrant communities have been frequent targets. Advertisements are placed in ethnic community newspapers, radio stations, or television stations. A bait-and-switch approach may be used by advertising "job opportunities" or "account executives." The "mark" is then recruited to use his or her personal money for currency trading. Victims may also be encouraged to bring others into the scheme.

The U.S. Commodity Futures Trading Commission (CFTC) was created in 1972 as an independent federal agency of the United States to regulate futures and options markets. The National Futures Association (NFA), an independent watchdog agency, and the CFTC seek to prevent fraud in the trading of commodities, including foreign currency trading.

The CFTC and NFA also work with state governments to stop illegal foreign exchange investments. Recent cases include judgments against National Investments Consultants Inc., operating in California; Premium Income Corporation (PIC), operating in Texas (civil and criminal judgments); Sunstar Funding, operated by Gregory Blake Baldwin in Utah; and Russell Cline, operating Orion International Inc. in Oregon in a fraudulent forex scheme.

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See Also: Counterfeiting; Forgery; Money Laundering; Stock and Securities Fraud.

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D

Daisy Chains

Crimes perpetrated through daisy chains generally involve groups of individuals who act together to commit fraud, such as avoiding paying taxes or manipulating stock prices or investments. Most daisy-chain crimes are fuel crimes. When they concern stocks, daisy chains may be used to control stock prices by making stocks appear more active than they are. The more links there are in a daisy chain, the more difficult it is to trace illegal activities back to the source. Perpetrators of daisy chains also create a "butterfly" or "burn" company that exists solely on paper for the purpose of hiding illegal activities. When the situation gets too hot, documents are burned so that such companies disappear. In fuel daisy chains, profits on the typical scam may average up to 50 cents per gallon because invoices are generated showing the price of the taxed product, whereas criminals actually pocket the tax money. Since daisy chains are often used by organized crime, they may occur in conjunction with other crimes such as kidnappings, assaults, bombings, and other forms of racketeering.

During the 1970s, the price of oil became a major issue, particularly during the Arab Oil Embargo of 1973, in which President Richard Nixon banned the purchase of Arab oil and froze fuel prices in response to a 70 percent increase in the price of oil by the Organization of the Petroleum Exporting Countries (OPEC). The OPEC countries initiated the price increase following the decision of the United States to continue supplying Israel during the Yom Kippur War. Some members of the media accused the Department of Energy, the U.S. Department of Justice, and the Federal Bureau of Investigation of working with oil companies to form a daisy chain for manipulating gasoline and oil prices during this period.

One particular daisy chain scam that occurred during this period concerned a group of Texas oilmen who bilked Florida Power Corporation out of $7.5 million. During the Arab Oil Embargo, the group began buying oil and transferring it along a chain of companies before it ultimately reached Florida Power at seriously inflated prices. The Florida Power daisy chain cases reached the courts in the late 1970s. In 1979, Ray Granlund, the middleman in the daisy chain and a retired oilman who served as a consultant for Florida Power, was found guilty of conspiracy to defraud and mail fraud. Despite a three-year sentence, Granlund managed to stay out of prison by continuing to appeal his conviction. When Granlund, who had pocketed $2 million from the daisy chain scandal, died in Houston in 1981, his estate was ordered to pay $600,000 in fines still owed. Angel Perez, the chairman of Florida Power, was found guilty of receiving kickbacks from the oilmen.

Fuel ration books—based on vehicle type, engine size, and horsepower—were issued by the British government during the 1973 oil crisis, when the Organization of the Petroleum Exporting Countries (OPEC) imposed an oil embargo on Western countries that had supported Israel during the Arab–Israeli Yom Kippur War. Oil prices quadrupled, and supplies were restricted.

When the scandal came to light, he worked with the government to target others involved in the deal. Three other oilmen were also given three-year sentences. Vice President Richard Raymond was acquitted of involvement. Separate civil cases were also filed on behalf of Florida Power's customers.

A large number of daisy chain scams have involved organized crime, and Russian and Italian crime groups engaged in such crimes were active in the United States throughout the 1980s and 1990s. Because the Russian connection was so strong in areas such as southern California and New York, the crime was referred to as the "red daisy chain scam." These activities were chiefly designed to avoid paying fuel taxes through falsifying tax records, setting up fake companies, diluting fuel with tax-free additives such as alcohol and transmix, rigging fuel pumps at gas stations owned by individuals involved in the scam, selling dyed fuels for use in off-road vehicles such as airplanes and farm equipment, selling low-grade gasoline at the price of premium gasoline, or moving fuel into lower-tax areas.

On September 13, 1995, officials arrested 13 members of a Russian-Armenian crime group, the Mikaelian Organization, headed by Horsep Mikaelian. The group was involved in a daisy chain scam in southern California and had been pocketing up to 42 cents per gallon from selling tax-free fuel designated for off-road vehicles to gas stations and truck stops. Members of the group were charged with mail and wire fraud, money laundering, extortion, and drug distribution. In 2009, American officials finally succeeded in arresting Aaron Misulovin, a Latvian American who had escaped justice for almost 13 years. Misulovin had been involved in one of the largest fuel daisy chain crimes in American history, which had operated in New Jersey in the mid-1990s. The scam involved selling tax-free home heating oil as diesel fuel and pocketing taxes paid by consumers. Misulovin was charged with wire fraud, money laundering, and tax evasion, and he was sentenced to five years in prison. He was also fined $2.5 million and ordered to make restitution. Ukrainian authorities returned his chief confederate, Igor Erlikh, to the United States to face charges in 1999.

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See Also: Organized Crime; Price Fixing; Tax Evasion.

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Daiwa Bank Ltd.

At its peak, Daiwa Bank Ltd. was one of the largest international banks by measure of asset size and was one of the top dozen institutions in Japan. Then, in the summer of 1995, with Daiwa still growing, Toshihide Iguchi (then executive vice president of the bank's New York City branch) penned a letter to the bank's headquarters in which he explained in great detail how he had lost more than $1 billion in U.S. Treasury bond trades between 1985 and 1995. Upon receipt of the letter, Daiwa began its investigation by speaking with officials at the Japanese Finance Ministry's Banking Bureau, where its representatives were told to investigate the matter on their own and then submit a report.

After receiving the findings of Daiwa's internal investigations roughly a month later, the finance minister reported what Daiwa had found to the U.S. Federal Reserve. Daiwa Bank was forced to admit to the international community that its head of bond trading in the company's New York branch had misappropriated $1.1 billion of customer securities over the previous decade in order to hide massive trading losses. The scandal hit both Japan and the United States as media rushed to determine how Iguchi had lost so much in trades and successfully got away with the cover-up.

After the U.S. Federal Reserve Board finished its own investigation, Daiwa was fined $340 million and forced to plead guilty to 16 felonies (the most serious of which included conspiracy to defraud the U.S. government, falsifying bank books, wire fraud, and obstructing an examination). Further, Daiwa was ordered to end all operations in the United States within three months of being notified of the ruling, effectively limiting the potential growth of the bank in the West.

Daiwa's Lack of Structural Control

Iguchi had been with the company for almost 20 years at the time of his confession, having started in 1977 as a manager within securities. He was eventually promoted to trader, but he never gave up his previous duties in the office. This dual role was the first of numerous breaches of internal controls within Daiwa's structure contributing to the scandal. The scam initiated in 1984 when Iguchi lost a few hundred thousand dollars and attempted to recoup his losses by using the bonds. Since he was both a trader and a manager, he was able to cover up the scam by falsifying the account statements that he managed. However, he failed to regain the lost money, so the debt began to grow exponentially. Since Iguchi was playing with customers' bonds, when they would come in to sell off or collect interest, he would sell the securities of others and then falsify more records. In order to cover all of the losses, it's estimated that Iguchi forged over 30,000 trading slips, yet not one customer ended up losing money in the scandal.

During the investigation, Iguchi told investigators that other traders had also incurred serious losses in the mid- to late 1980s. In order to prevent detection by regulators, Daiwa had shifted any evidence of the losses to a shell company in the Cayman Islands. It had also conducted business in an unauthorized trading area for many years and disguised it as a storage room during inspections. The United States was not unaware of Daiwa's in-house issues. Regulators had twice warned the company about a lack of appropriate internal controls, especially Iguchi serving as both trader and manager.

While Iguchi's actions of were enough to potentially sink Daiwa, what made the situation worse was that the banks leaders had clearly perpetrated a detailed cover-up to avoid the repercussions of the bank's actions. When they were first informed by Iguchi, they began selling assets. Further, they began shifting losses from the United States to Japan to avoid the more intensive scrutiny provided by U.S. banking regulations. U.S. officials were even unhappier with the Japanese Finance Ministry for failing to report the fraud to U.S. authorities immediately upon being notified, as required by law. In the end, Iguchi pleaded guilty to a series of felonies (including misapplication of bank funds, false entries in bank books and records, money laundering, and conspiracy). He was sentenced to four years in state prison and assessed a $2.6 million fine. In 2000, a Japanese court ruled that 11 board members and top executives who were allegedly responsible for the poor oversight had to pay the bank $775 million in damages. Daiwa has since abandoned the overseas banking industry, instead choosing to focus on regional banking in the area around Osaka.

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See Also: Accounting Fraud; Bank Fraud; Hedge Fund Fraud; Iguchi, Toshihide; Investment Trust Fraud; Offshore Bank Accounts; Offshore Entities.

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Dalkon Shield Case

The Dalkon Shield intrauterine birth control device (IUD) was a defective product manufactured and sold by the A. H. Robins Co. of Richmond, Virginia, from January 1971 through June 1974. It was cheap to manufacture, at only $3 apiece, yet caused numerous injuries, including miscarriages, loss of female organs, infertility, and death. The Dalkon Shield was designed to be inserted inside the uterus, just like other IUDs. IUDs are supposed to prevent pregnancy by making it difficult for a fertilized egg to attach itself to the wall of the uterus. A. H. Robins sold 4.5 million Dalkon Shields around the world, including 2.8 million in the United States. The Dalkon Shield was touted as a safer and more effective method of birth control than the pill.

When the Dalkon Shield was created, clinical trials for safety and effectiveness were not required by the Food and Drug Administration (FDA) for the manufacturing of medical devices like they were for drugs. If the device contained active medicinal ingredients, it would be subject to FDA review. A. H. Robins made several design changes that should have been reviewed by the FDA. One of those design changes added copper to the Dalkon Shield, thinking that it would improve its effectiveness. A. H. Robins convinced the FDA that the device did not contain enough copper to create a medicinal effect, therefore making it exempt from review.

The Dalkon Shield was defective because it had a major design flaw: The device had a nylon tail that hung through the opening of the uterus to allow doctors to easily check to make sure the device was in proper placement and to help with removal. The nylon material allowed bacteria to travel up the device's wick and into the uterus, causing infection, most notably pelvic inflammatory disease (PID). PID causes sterility and, in some cases, death.

Dangerous and Defective

Not only did the Dalkon Shield cause serious injury to women, but it also was not a very effective birth control device. A. H. Robins promoted it as the most effective form of birth control on the market, with a 1.1 percent failure rate. However, approximately 5 percent of the women using the Shield became pregnant. The women who became pregnant suffered miscarriages and other reproductive system problems such as PID. A total of 20 women died from complications associated with the Dalkon Shield. Hundreds of children were born with blindness, cerebral palsy, and mental retardation because the Dalkon Shield was not removed during pregnancy. Despite the fact that A. H. Robins had early indications of these problems, because the product was highly profitable, it neither voluntarily warned women nor withdrew the Dalkon Shield from the market. The company did not even order more testing of the product.

Instead, the company launched one of the most aggressive promotional campaigns in history. Even with knowledge that the Dalkon Shield was prone to causing PID, A. H. Robins promoted it widely to doctors and general practitioners. It also advertised that the Dalkon Shield could be safely left inside a woman's body for up to five years. Most medical evidence stated that the longer an IUD was in place, including the Dalkon Shield, the greater the risk of infection and complications.

As more incidences of infections, pregnancies, and miscarriages were reported, the FDA investigated the Dalkon Shield. After much stonewalling by the company, the FDA halted distribution in 1974. A recall was not ordered; instead, the FDA ordered a "voluntary" suspension of sales. A. H. Robins did nothing to warn the thousands of women who were already users of the dangers.

Between 80,000 and 500,000 women in the United States were still wearing the Dalkon Shield in 1983. A total of 100,000 women became pregnant despite its insertion, and an estimated 60 percent of them suffered miscarriages. This was mainly because of leaving the Dalkon Shield in place during pregnancy. The company's medical advisory board had warned of complications for pregnant women if the Dalkon Shield was not removed, but A. H. Robins told its clients that it was perfectly safe.

It was not until 1984, a full 10 years after the FDA halted distribution, that A. H. Robins undertook a massive media campaign to notify the women wearing the Dalkon Shield to have them removed at A. H. Robins's cost. This was done only after A. H. Robins's liability insurer, Aetna, dropped the company.

Two top executives were found guilty of criminal contempt. A. H. Robins sought bankruptcy protection from litigation in 1985. A bankruptcy filing automatically halts all litigation against a company, and the women injured by the Dalkon Shield were converted to creditors instead of plaintiffs. There were over 300,000 Dalkon Shield claims filed in the bankruptcy court. A $2.3 billion trust was set up by American Home Products Corp., a Madison, New Jersey, company that bought out A. H. Robins. The Dalkon Shield Claimants Trust was established in 1989, and during the 1990s, it paid out nearly $3 billion to more than 200,000 women who had used the IUD. The trust closed in April 2000. Through careful management of funds, the trust paid out almost $3 billion, making it the first mass personal injury trust to close after successfully paying all valid claims. The average claimant represented by a lawyer received about $21,000; however, most of the women received only about $725.

The A. H. Robins Company's handling of the Dalkon Shield is a classic tale of indifference to safety, obsession with sales and profits, misleading and fraudulent marketing, unethical conduct, corporate apathy, and greed at the expense of women's health. Today, premarket testing requirements exist for medical devices because of the Dalkon Shield catastrophe. In 1976, the Medical Device Amendment to the Federal Food, Drug, and Cosmetic Act of 1938 was enacted in direct response to the Dalkon Shield fiasco.

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See Also: A. H. Robins Inc.; Consumer Deaths; Food and Drug Administration, U.S.; Medical Malpractice; Negligence; Pharmaceutical Industry; Research Fraud.

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Debt Restructuring Fraud

Debt restructuring fraud, concealment, or fraudulent transfer is a type of bankruptcy fraud in which assets are hidden prior to declaring bankruptcy or are discharged for illegitimate purposes. It is a fraud committed by a corporate entity or an officer of that entity in preparation for bankruptcy proceedings, and it is different from personal bankruptcy fraud. It is not to be confused with fraudulent actions committed by companies against individuals facing debt or bankruptcy, such as fraudulent credit repair or debt consolidation services.

Debt restructuring is a legitimate activity, usually conducted in order to avoid bankruptcy. Regardless of the outcome of a bankruptcy court's decision, court and filing costs associated with bankruptcy filings are significant, and less than one-quarter of companies are estimated to survive the process. This puts considerable motivation toward legitimate restructuring in order to avoid bankruptcy, as well as on fraudulently gaming the system in order to survive the process and absorb the associated expenses. Restructuring is similar to refinancing, in which new debts with new payment terms replace old debts, but restructuring is done under financial distress. The simplest form of debt restructuring reduces the amount of each payment made on a debt by increasing the number of payments (usually resulting in a greater total amount paid, because of the interest).

Debt-for-Equity Swaps

Debt-for-equity swaps often resolve some of the debt burden during a debt restructuring by canceling debts owed to creditors in exchange for giving them equity in the company. This is more common in debtor companies that have good long-term prospects, in which case there is the expectation that the equity may someday exceed the value of the original debt. But it may also be an option when creditors accept equity in lieu of debt payments in order to assume control of the company, either to better manage its assets or to reap revenue from its whole or partial sale. This can be an attractive option for creditors because it may be realized faster than bankruptcy proceedings, and it may better preserve the value of the company's assets. Further, the creditors may be unsure of the results of bankruptcy proceedings and how the court's ruling will benefit them; the certainty of the equity offer may be more attractive than gambling on the court.

In the wake of the subprime mortgage crisis, debt-for-equity swaps for banks were advocated by Keynesian economists like Columbia professors Jeffrey Sachs and Joseph Stiglitz. Debt-for-equity swaps in this case would have broader ramifications by preserving bank solvency without a federal bailout, in such a way that improves the liquidity of the credit market.

Debt restructuring done by small businesses is usually called debt mediation. A rarity before 2008, after the global financial crisis, it became a cottage industry, with mediators performing similar services for small businesses that debt consolidation firms have offered to individuals and households. Debt mediation remained common as the credit landscape remained changed by the 2008 crisis. As with credit repair agencies, there are a number of fraudulent companies working in the debt-mediation field. The nature of the fraud ranges from promising results that cannot be achieved; to failing to disclose fees, or misrepresenting the financial picture of the business following the mediation process; to debt collection agencies that misrepresent themselves as working for the debtor rather than the creditor.

The purpose of bankruptcy proceedings is to avoid a result that favors the debtor over the creditor, or vice versa. If debts could be easily forgiven or lessened, simply because the debtor is unable to pay them, creditors would find themselves in a position in which they could not afford to offer credit because too few debtors would be properly motivated to pay the debt back in full. Many of the country's financial crises have been precipitated by households or businesses becoming overextended when the amount of credit offered was not proportionate to the amount that could realistically be paid back, either because of unwise lending practices (as in the subprime mortgage crisis and the earlier farm crisis of the early 1980s) or because a change in the financial landscape reduced debtors' capacity for repayment.

Debt restructuring fraud illegally tilts the results of bankruptcy proceedings in favor of the debtor by hiding assets that could otherwise be used to reduce or pay off debts, and then reclaiming those assets after proceedings have ended and debts have been reduced or discharged. Fraudulent transfers as part of debt restructuring are considered actual fraud when the debtor transfers assets to another party in order to make them unavailable for paying back the debtor's creditors. It is considered constructive fraud when the value received for the transfer of assets is considered too far below their value, which may be the result of mismanagement or incompetence, rather than fraudulent intent. Constructive fraud is still a civil cause of action, and the plaintiff—the creditors—may sue for damages represented by the value of the unpaid debt. A notable exception is when the disputed transfer was made to another creditor for the purposes of paying a debt, which is not considered fraudulent.

Bankruptcy Legislation

In the American legal system, the doctrine of fraudulent conveyance (fraudulent transfers) originates in English common law, in the case of a sheep farmer who attempted to defraud his creditors. It applies not only to debt restructuring cases but also to other fraudulent actions in the name of asset protection, including those of individuals such as the sheep farmer, and individuals who fraudulently transfer assets during estate planning. Today, the doctrine is encoded in both the federal Bankruptcy Code (11 U.S.C. 152) and the Uniform Fraudulent Transfer Act (UFTA), which has been adopted by 39 states and the District of Columbia. The Bankruptcy Code provides remedies for creditors who are victimized by fraudulent transfers by debtors who later declare bankruptcy, so long as the transfer was made within two years of the bankruptcy filing. The UFTA provides remedies for creditors, regardless of whether the debtor files for bankruptcy. The UFTA is held to apply to cases of defrauding either present creditors or future creditors, whose future claim was foreseeable at the time of the transfer.

Under the law, the "transfer" in a fraudulent transfer includes, according to the UFTA (the Bankruptcy Code's wording differs only trivially), every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance. The court generally "collapses the transaction," meaning the net result of a series of related transactions—not merely the legality or illegality of any individual transaction. This is particularly important given the number of ways that unscrupulous individuals attempt to manipulate the system or cover their tracks.

Constructive fraudulent transfers are a more common problem outside the corporate world, sometimes resulting from individuals transferring assets to their heirs prior to their decease, ostensibly in order to avoid the uncertainties of probate court or to avoid triggering the estate tax threshold. If this transfer is later followed by a debt that the debtor is incapable of paying, however, that transfer thereby becomes problematic; the creditors could be satisfied if the debtor still possessed that transferred property or had received fair value for it. The Bankruptcy Code provides only partial protection for good-faith recipients of fraudulent transfer; they are entitled only to the value they gave for it.

Forms of Debt Restructuring

Because the determination of whether or not an asset transfer is fraudulent is somewhat dependent on the financial health of the transferring entity across a particular period of time, debt restructuring fraud is easy for businesses to commit accidentally (or perhaps under the impression that they are guilty only of a minor infraction), when they act without the consultation of a bankruptcy attorney.

The line between legitimate and fraudulent debt restructuring can be narrow. In 2003, American Airlines restructured its finances in order to avoid bankruptcy, and in so doing was able to meet its debt covenant obligations—specific measures enforced by its creditors in order to measure economic health, in this case a ratio of EBITDAR (earnings before interest, taxes, depreciation, amortization, and rentals) to fixed-charge coverage. However, the restructuring included persuading the bank to lower that ratio; American Airlines investors, not paying close attention, had no means of realizing that an apparently steady performance actually represented a decline in health, as the standards to which the company was held had been lowered. Even with the lower standard, American had difficulty meeting its debt covenants the following year, and by the end of 2004, more severe changes had to be made. This behavior was arguably deceitful, at least from investors' perspectives, but creditors were not deceived. Had this transpired closer to the date of American's 2011 Chapter 11 bankruptcy filing, the question of fraud would more likely have been raised.

Debt restructuring fraud can be much more blatant than that, and the transfer of assets may not even be to the benefit of the business entity. Officers may instead act in their interests, especially if they anticipate that the business will not survive bankruptcy (or perhaps that their position with the company will not): some corporate officers have fraudulently used corporate funds to pay their personal expenses or debts, or have transferred corporate assets, such as vehicles or equipment, to themselves for personal use. There have been cases of officers collaborating to transfer cash to their personal accounts, directly or indirectly. Many of these examples constitute embezzling as well as debt restructuring fraud.

There are debt restructuring crimes in which bankruptcy is actually expected and is incidental to the criminals' concerns. These techniques are commonly associated with organized crime and its associates, but they may be used by groups and individuals who do not engage in other crimes. In what the Federal Bureau of Investigation (FBI) calls a "bust-out," for instance, a business is opened and run properly in order to establish a good credit rating. The business operator—often a front for the criminals providing the capital—then purchases goods on credit, maxing out the company's lines of credit. The goods are transferred elsewhere and sold under another business name, which is hidden by destroying records and often by destroying the physical property of the business. When bankruptcy is filed, creditors are left with little recourse.

The similar "bleedout" is conducted on an existing business, which is depleted of liquidity and assets over a longer period of time before being forced into bankruptcy. Bleedouts are typically conducted by corporate raiders after a leveraged buyout. Court cases in the 1980s and 1990s (such as *U.S. v. Tabor Court Realty Corp.*, 1986) established that leveraged buyouts, among other transactions, can be fraudulent transfers.

Assets may also be fraudulently transferred in a maneuver called the parallel entity, whereby the officers of a failing business create a second business, while the first business enters into Chapter 11 bankruptcy. Assets, as well as the customer base, are then transferred from the first business to the second, even to the extent of the first business entering into debts on behalf of the second business, with no intention of repaying them. Before the U.S. Department of Justice's late 1990s crackdown on bankruptcy fraud, the FBI estimated that 250 cases of bankruptcy fraud were committed every day in 1995, at which point bankruptcies in general had risen 500 percent since 1973. The subsequent Operation Total Disclosure from December 1995 to February 1996 resulted in 127 indictments. Once reserved for extreme cases, the bankruptcy system had been commandeered by opportunists as a way to manipulate finances and mitigate risks.

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See Also: Accounting Fraud; Bankruptcy Fraud; Collateralized Debt Obligations; Corruption; Embezzlement.

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Defense Industry Fraud

The U.S. Department of Defense (DOD) is the entity responsible for the coordination and supervision of all agencies of government that function as part of the U.S. armed forces and national security apparatus. The department, also known as the Pentagon, is the largest employer in the world, consisting of 2.13 million active duty soldiers, sailors, marines, airmen, and civilian workers. There are also 1.1 million national guardsmen and members of the U.S. Army, Navy, Air Force, and Marine Reserves, constituting a total of 3.2 million service members and civilians.

The chief executive of the DOD is the secretary of defense, which is a cabinet-level position, separated into three distinct military departments: the Department of the Army, Department of the Navy, and Department of the Air Force. The DOD also encompasses several defense agencies and joint services schools, including the National Defense University (NDU) and National War College (NWC).

The DOD is allocated the highest level of financial resources of all federal agencies, totaling approximately more than one-half of the annual federal discretionary budget. The cost of administering the DOD, which is astronomical in size and scope, raises concerns over the potential for fraud and various forms of criminal liability to emerge as part of a growing dynamic of white-collar crime in American society.

It is not likely that the DOD is inhabited by individuals who purposefully and knowingly commit fraudulent acts. However, the DOD bears some responsibility for allegations of intimidation within the ranks, retaliation against whistleblowers, lax oversight over the auditing process, and generally poor performance, all of which could contribute to fraud and some form of criminal liability in defense contract allocations and control. An overview of the history, organization, expenditures, defense contract management, and defense contract auditing procedures provides several insights into these aspects of white-collar crime.

The DOD originated out of the first U.S. Congress in 1789 with the creation of the War Department, along with the Navy Department. Both departments were headed by senior cabinet-level advisors, secretaries who reported directly to the president.

In 1945, President Harry Truman proposed that Congress create the Department of State Defense to counter the increasing propensity for wasteful military spending and interdepartmental conflicts occurring in the post–World War II years.

Many members of Congress expressed doubt about ceding too much military power to the executive branch. To offset the growing conflict within the ranks, Truman signed the National Security Act of 1947, which gave rise to a unified military command under the National Military Establishment. Under this command, several agencies dedicated to national defense were born: the Central Intelligence Agency, National Security Council, National Security Resources Board, U.S. Air Force (formerly Army Air Forces), and Joint Chiefs of Staff. Formal operations began on September 18, 1947, after Senate confirmation of James V. Forrestal as the first secretary of defense.

On August 10, 1949, the National Military Establishment was reclassified as the Department of Defense, and under the Department of Defense Reorganization Act of 1958 (Pub.L. 85-899), channels of authority within the department were streamlined while still maintaining the authority of the military departments. The legislation also provided a centralized research authority, the Advanced Research Projects Agency, also called DARPA, which transferred decision-making authority from the military departments to the Joint Chiefs of Staff and the secretary of defense. The act, which also shifted command of the military from the president to the secretary of defense, was signed into law on August 6, 1958.

Organization

The secretary of defense (SOD) is appointed by the president with the advice and consent of the Senate. He or she is the principal assistant to the president in all matters relating to the DOD. The secretary, whose powers are derived from constitutional authority, has the ultimate authority, direction, and control over the DOD. The office of the SOD is composed of mostly civilian employees who work on policy development, planning, resource management, and fiscal and program evaluation and oversight.

The DOD also houses the Joint Chiefs of Staff, which is a group of senior military officers who advise the SOD, Homeland Security Council, National Security Council, and the president on military matters. These are the chairman, vice chairman, senior enlisted advisor, and military service chiefs of the U.S. Army, Navy, Air Force, and Marine Corps. All are appointed by the president following Senate confirmation. This group is also managed by the director of the Joint Chiefs of Staff, who holds the rank of lieutenant general or vice admiral.

The DOD has central control over all components of the U.S. military complex. These units constitute the U.S. Army, Navy, Marine Corps, and Air Force. Each department is headed by a secretary, who is also appointed by the president with the advice and consent of the Senate. Department heads exercise authority by delegation through their service chiefs. These are the chief of staff of the Army, chief of naval operations, commandant of the Marine Corps, and chief of staff of the Air Force. Secretaries of military departments and service chiefs do not have operational command over troops assigned to the combatant command group. They are, however, responsible for training, provision of equipment, and troop administration.

The unit responsible for troop operations falls under the Unified Combatant Command, which is a single force composed of personnel and equipment from at least two military departments. Most operations are governed by a Unified Command Plan, developed by the DOD that lays out the command's mission, geographical/functional responsibilities, and force structure. During all military operations, the chain of command begins with the president, the secretary of defense, and combatant commanders.

The cost of managing an entity of this scope and size is astronomical. Expenditures for 2010 indicate that the DOD spends 4.8 percent of U.S. gross domestic product (GDP), which is more money spent than the next 17 largest militaries combined. The DOD constitutes 21 percent the U.S. federal budget and 53 percent of the overall federal discretionary budget.

In addition, the DOD is the largest single consumer of energy in the United States, expending 30,000 gigawatt hours (GWH) of electricity, totaling $2.2 billion in 2006. This constitutes enough electricity to power more than 2.6 million average American homes. In fact, if it were a country, the DOD would rank 58th in the world, which is slightly less than Denmark, and slightly more than Syria.

The DOD was also responsible for 93 percent of all U.S. government fuel consumption in 2007. This statistic encompasses the Air Force (52 percent), Navy (33 percent), Army (7 percent), and other military-related entities (1 percent). The annual fuel consumption of 4.6 billion gallons (17.4 billion liters) is incomprehensible to the average consumer. For example, the military uses 12.6 million gallons (48 million liters) per day. An Army division uses 6,000 gallons (23,000 liters) per day. The Air Force is the largest user of fuel energy in the federal government, equaling 10 percent of the nation's aviation fuel use. If the DOD were a country, it would rank 34th in the world in average daily oil use, coming in just behind Iraq and just ahead of Sweden.

Defense Contract Management

The Defense Contract Management Agency (DCMA), headquartered at Fort Lee, Virginia, is the organization responsible for performing contract administration services for the DOD and other authorized federal agencies, including foreign military sales. For example, the DOD announces contracts valued at $6.5 million or more at the end of each business day. This information is available in the "Top 100 Contractors Report," located in the Federal Procurement Data System, listing the top 100 contractors by sales to the U.S. military. Controls are supposedly placed upon contract auditing procedures and the manner in which contracts are distributed to a corporate entity.

The entity responsible for contract control for the DOD is the Defense Contract Audit Agency (DCAA), which employs 4,000 personnel, located around 300 field audit offices throughout the United States, Europe, and the Pacific. The overall agency is organized into five geographic regions and a field detachment group handling classified contracting services. Offices can be found in the following regions and cities: western, La Mirada, California; central, Irving, Texas; eastern, Smyrna, Georgia; mid-Atlantic, Philadelphia, Pennsylvania; and northeastern, Lowell, Massachusetts.

Each region houses between 15 and 22 field audit offices, also referred to as resident offices (single contractor) or branch offices (multiple contractors). Personnel in these offices provide cost accounting and financial advisory services related to contracts and subcontracts to departments responsible for procurement and contract administration. DCAA personnel also provide contract audit services to other government agencies and countries under the Foreign Military Sales (FMS) program, although many of these services are on a reimbursable basis. One major concern with this organizational structure is that the DCAA does not provide consulting/advisory services to contractors because of independence requirements.

What this means is that DCAA auditors are not allowed to provide guidance to contractors regarding the manner in which accounting systems should be set up, how costs should be treated, or how claims should be compiled. In fact, the primary role of the auditor is to express an audit

Lockheed Martin and Boeing were both awarded cost-plus, fixed-fee contracts for this Joint Strike Fighter 2000 concept program. To prevent fraud in military contracts, the Defense Contract Management Agency is given oversight.

opinion. Contractors not familiar with the federal acquisition process should consult private companies that provide advisory services in this field or view whatever resources are available online. Taken together, these factors raise the probability of fraud occurring within the agency.

For example, companies that are awarded cost type contracts, time and materials contracts, and contracts with more flexible cost arrangements are subject to annual DCAA audits. When these contracts are audited, contractors are required to maintain and supply supporting documentation for all costs incurred during travel and other expenditures. A recurring problem emerges in the fact that contractors often fail to follow procedures or provide adequate documentation, which exacerbates the auditing process. Although Federal Acquisition Regulations (FAR) give DCAA auditors the authority to view contractor records, violations of access to records delay and further exacerbate the auditing process.

Boeing Company and the Bechtel Group

For example, in 2008, a report by the Government Accountability Office (GAO) charged that DCAA managers threatened a senior auditor with personnel action if adverse data were not removed from a report criticizing a large federal contractor. The report charged that individuals employed by the Boeing Company were too close to DCAA management personnel and many contractors they were assigned to audit. The GAO report also stated that DCAA auditors who complied with the investigation were subject to harassment and intimidation from their supervisors. In response to the charge, the DCAA asked the DOD's inspector general (IG) office to investigate. Several problems emerged during the course of the investigation.

First, the investigation uncovered information revealing that DCAA auditors challenged only $4.6 billion, or 1.2 percent, of the contracts under audit with document tampering. Investigators charged that this practice had gone on for quite some time, indicating that the agency had not used its subpoena powers in at least 20 years. In short, the DCAA had the authority to demand defense contractors to produce the required paperwork. Whereas the GAO routinely saved taxpayers $94 for every $1 it spent, DCAA's return on investment was only $7. This is a large disparity in auditing control.

Furthermore, an audit of the Bechtel Group, also supervised by the DCAA regional director, directed attention to a "chronic failure" by Bechtel to produce the required documentation for the audit. DCAA auditors issued an arbitrary report, rating Bechtel's internal accounting procedures as "adequate," which suggested that all systems were clean and that DOD auditors should not concern themselves with what appeared to be several problems with the company. In addition, the DCAA report did not bother to mention Bechtel's failure to produce the required documentation. Therefore, DCAA auditors failed to follow basic auditing standards in 65 of 69 audits.

Second, the GAO also noted that the agency lacked "independence" from the contractors it audits and the DOD agencies doing business with those contractors. This lack of independence is seen as a major problem with the organizational structure of the DCAA, mainly because of its inability to provide consulting/advisory services to contractors. Pressure from outside groups helped create a hostile work environment, which caused agency auditors to rush reviews of contractor billing systems, falsify audit reports, and appease contractors when auditing their business methods and systems.

In the long run, the IG found that the DCAA was organized around an environment that was not conducive to performing quality audits. The IG report also cited an audit of Boeing in which the company was allowed to keep $217 million in taxpayers' money because of a DCAA regional auditor who failed to perform his or her duties properly. To make matters worse, when representatives of the Boeing Company were unresponsive to a request for information, the regional auditor ordered a subordinate to change the audit report in Boeing's favor.

These actions lead one to conclude that the willingness of supervisory personnel to harass and intimidate employees who adhere to proper auditing standards leads to an environment where the potential for fraud in defense contracting increases with every incident. For example, to further exacerbate the situation, the DCAA director lied in the IG report, stating that her agency concurred with the IG's recommendations. In the wake of these investigations, the director was removed from her position at the agency by the DOD comptroller and was reassigned.

Today, the Defense Contract Auditing Agency (DCAA) has undergone a major overhaul of its operations. Under new leadership, the agency is changing on a number of levels, including revamping its hiring process, employee training, and organization of committees dedicated to promoting change in specific areas of weakness. These changes place major emphasis on government auditing standards of quality, or what is considered Generally Accepted Government Auditing Standards (GAGAS). In this respect, a new agency culture has emerged, centered on critical values such as the much-needed standard of independence, quality of work, documentation, and timeliness. As a result, companies subject to DCAA audits should expect a more thorough audit, in lieu of increased audit testing and higher levels of evidence requirements.

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See Also: Academi; Contractor Fraud; Corporate Criminal Liability; Criminal Facilitation; Government Contract Fraud; Government Procurement Fraud; Whistleblowers.

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DeLay, Tom

Thomas Dale (Tom) DeLay (1947–) is a former member of the Texas Legislature (1978–84) who served in the U.S. House of Representatives (1985–2006), rising to Republican House Majority Leader (2003–05). He resigned from the House in 2006. Tom DeLay was born in the Rio Grande Valley in the border town of Laredo, Texas, and attended Baylor University as well as the University of Houston (UH), earning a B.S. degree in biology in 1970. DeLay was deferred from service during the Vietnam conflict and married his high school sweetheart, Christine Furrh, in 1967. Christine would follow a lifetime commitment to foster-parent programs; the DeLays fostered several teenagers during their marriage and have one biological daughter, Diane. Following his graduation from UH, DeLay found a career in the insect extermination business, purchasing a company in 1973. DeLay oversaw its operations until 1984, when he resigned to run for the U.S. House.

In his early career as a Texas House member, DeLay earned the nickname Hot Tub Tom through his hard drinking and partying around Austin. DeLay claimed that he was “born again” into Christianity in 1985 and focused his energy on electing Republicans to the U.S. House—and maintaining discipline among them once they arrived, rapidly gaining ground in the party and becoming minority whip. In the 104th Congress, DeLay’s relationships with the speaker (Newt Gingrich) and the majority leader (fellow Texan Dick Armey) were close, though not exactly cordial. When Armey retired in 2002, DeLay was elected majority leader.

The (Velvet) Hammer

DeLay’s style as majority leader may have been summed up in his nickname, The Hammer, but by the standards of the post-2010 House, his tactics were actually sharp and subtle. He carefully managed floor votes, counted the exact number needed for the passage or defeat of a given bill (depending on party preferences), and allowed for “platooning” votes, or votes in which GOP members were allowed to defect from the party line when the vote was sure to go the party’s way without them. He was also found “primarying” recalcitrant GOP members—if Republican House members dragged their feet or defected on a needed “party vote,” they ran the risk of DeLay and his powerful allies in the Republican National Committee (RNC) running a primary opponent against them when re-election time came around.

The legal troubles that would eventually derail DeLay’s political career and land him in federal prison had begun much earlier, innocently enough, with an attempt by the Republican Party in Texas to redraw legislative district lines. There were several oddities about the Texas redistricting from 2003 to 2004. First, most states redraw their lines, as required, following the decennial census; since that redistricting had been initiated by a House controlled by the Democratic Party, the process set in motion after the 2002 election—and a change of control of the House to the GOP—seemed a redundancy. However, there is no federal law that prevents states from redrawing lines at any time.

Second, the Texas House minority—the Democrats—reacted to the redistricting battle by fleeing the state en masse to prevent the required quorum from meeting. The House majority and the governor called on the Texas Rangers, an agency of the state police in Texas, to find them and force their return. The situation was exacerbated by the fact that practically no one seemed to know where they had gone. DeLay decided to use the Federal Aviation Administration, the Federal Bureau of Investigation, and other federal investigative agencies to effect their return. Eventually, DeLay was “admonished” by the House Ethics Committee for misuse of federal agencies in the matter.

Though the redistricting plan was probably legal, the means by which the Texas Republicans funneled money to candidates in these races was not. Using corporate money for campaigning was illegal in Texas, but DeLay had a plan to use that money to ensure the Republican majority in 2002: he simply collected $190,000 from friendly corporations and passed it on to the Republican National Committee via his Texans for a Republican Majority; the RNC then supplied checks totaling the same $190,000 to candidates running for office in critical Texas House races. After yet another censure by the Ethics Committee of the House for these activities, a grand jury in Houston indicted DeLay for money laundering. DeLay (following a tradition within the GOP) stepped down as majority leader until such time as the indictment was resolved.

On a new front, DeLay’s troubles intensified as congressional investigations into the activities of Republican lobbyist Jack Abramoff uncovered a series of questionable connections between DeLay and the disgraced influence peddler. Abramoff’s business connections to DeLay included free trips to luxurious destinations (including a golfing trip to Scotland's St. Andrews course) and tickets to sporting events and concerts. DeLay's wife, Christine, was on the payroll of a suspect "fund" connected to Abramoff, the U.S. Family Network, which was largely bankrolled by a consortium of Russian oil magnates who were directly connected to an effort to woo votes in the House from DeLay for a Russian bailout by the International Monetary Fund. Though cleared of illegal involvement with Abramoff, DeLay was eventually brought to book on the money-laundering charges and was sentenced to three years in prison. The case is currently on appeal.

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See Also: Campaign Finance; Kickbacks; Rove, Karl.

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Differential Association Theory

Differential association theory is a learning theory of criminality developed by American criminologist Edwin H. Sutherland (1883–1950). Sutherland's theory focused on crime as a set of learned behaviors. Sutherland posited that learning to "do crime" was not all that different from learning many other forms of conventional, accepted behavior. Thus, he argued that the primary difference was the acquisition of a set of attitudes that supported engagement in criminal conduct. Sutherland suggested that these attitudes were most easily acquired from others who engaged in criminal conduct, and therefore had already accepted attitudes that supported criminal involvement. If a person had access to social settings where positive attitudes toward criminality were held, and entered into intimate, friendly relations with those who already maintained such attitudes, Sutherland theorized that it was in this context that a person—such as a youth—who had no criminal proclivity or involvement would learn to "do crime." Sutherland's theory was one of the two most highly influential criminological theories of the mid-20th century in the United States, and it retains its influence through subsequent criminological elaborations of learning theory by Ronald Akers and others.

No One Is Born a Criminal

Sutherland developed his theory from the initial observation that no one is born a criminal. Early criminological investigators such as Cesare Lombroso (Italian, 1835–1909), Richard Dugdale (American, 1841–83), Henry Goddard (American, 1866–1957), and anthropologist E. A. Hooten (American, 1887–1954) focused on biological and genetic theories of criminality. Each of these researchers suggested that criminals were born with certain inferior features and proclivities that led them to criminality. Although some of these early criminological positivists were more deterministic in their thinking than others, all agreed that nature—as opposed to nurture—was a highly influential force in setting individuals on the road to crime.

By the time Sutherland was ready to develop his theory in the late 1930s, most of these theorists' works had already been discredited. Thus, Lombroso's *The Criminal Man* (1876), Dugdale's study of the Jukes family (1877), and Goddard's *The Kallikak Family* (1912) had been largely relegated to the realm of pseudo-science. Hooten, who was still working in the 1930s and 1940s, was busy assembling a massive database of physical and mental measurements of 14,000 prisoners and a comparison group of 3,000 noncriminals. In 1939, the year Sutherland also first published his textbook on differential association, Hooten released *The American Criminal,* in which he concluded that criminals were organically inferior in virtually every way measurable.

Sutherland's differential association theory was among the early influential alternative approaches that ultimately spelled the end for naïve positivistic approaches like these. Sutherland's theory in its mature form consisted of a series of nine propositions that Sutherland believed were each supported by observations of human behavior. These were set forth in the popular 1947 edition of his textbook, which became the leading text in the field for over 30 years.

He claimed that criminal behavior is learned. By denominating these behaviors as learned, Sutherland was disputing that criminal conduct arose spontaneously, naturally, or from inherited physical and/or mental qualities. Criminal behavior is learned in interaction with other persons in a process of communication. This proposition fixes the source of the learning as the social environment, as opposed to the physical environment or individual nature. Learning of criminal behavior occurs primarily within intimate personal groups. When criminal behavior is learned, the learning must include both techniques of committing the crime—whether complicated or simple—and the specific (criminogenic) direction of motives, drives, rationalizations, and attitudes. The direction of these motives and drives is learned from others who hold definitions of the legal codes as either favorable or unfavorable. A person will engage in delinquent behavior after acquiring an excess of definitions favorable to lawbreaking over definitions unfavorable to law violation.

This is the crux of the theory—hence the term *differential association*—as the balance of a person's socialization will be either differentially associated with lawbreaking attitudes or, alternatively, with law-maintaining attitudes. Differential associations may vary in frequency, duration, priority, and intensity. This suggests that persons can learn criminal involvement at different rates and retreat from criminality as environmental influences subside. The process of learning criminal behavior through intimate association and communication thus involves all the mechanisms involved in any form of learning. While criminal conduct may be indirectly a result of general needs or values, this is not a sufficient explanation because noncriminal behavior also arises from these sources.

In sum, individuals learn attitudes (and techniques) favorable to crime in the course of symbolic interaction with others whom they esteem in an intimate environment. If one wishes to reduce or eliminate crime, one must disrupt these crime-supportive milieus. Sutherland's theory, although highly influential, was not the only sociological theory of crime of note during the mid-20th century. Writing at virtually the same time, Robert Merton's 1938 analysis of social structural factors that lead to anomie shared the field. More recently, Ronald Akers and his collaborators have pursued variations of a learning theory of crime that owe a substantial debt to Sutherland.

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See Also: Conflict Theory; State Crime Theory; Sutherland, Edwin H.; Sutherland-Tappan Debate.

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Direct-Mail Fraud

Direct mail refers to communication, paper or electronic, sent to individuals in an attempt to persuade them into either purchasing goods or services or donating to a cause. This type of communication is sent through direct marketing. Direct marketing communications are sent based upon certain target marketing criteria such as sex, age, income level, profession, location, and purchasing patterns. Direct marketing differs from mass marketing in that communications are sent directly to potential customers. Companies that engage in direct marketing practices are able to efficiently track measurable responses from customers via the postal service, Internet browser cookies, e-mail addresses, mobile numbers, and fax numbers.

Direct-mail fraud occurs when unsolicited mailings are sent to individuals with deceptive or misleading offers. Claims often differ from what the consumer originally expected. This type of crime is often considered "honest services fraud," schemes that deprive citizens of "the intangible right of honest services." The elderly are the most common victims of direct-mail fraud schemes because of their vulnerabilities.

New mediums of communication, such as the Internet, have made direct-mail fraud flourish. There are approximately 100 billion unsolicited e-mails, or spam, transmitted worldwide every day. Many of these spam messages contain advertisements, some fraudulent in nature. In fact, findings from a study conducted in 2002 revealed that of all the spam mailings, approximately 6 percent were fraudulent e-mails. Direct-mail fraud via the Internet has had alarming monetary consequences. For instance, in 2001, financial losses of individuals and companies were approximately $7 to $8 billion a year.

Types of Scams

There are several general categories of direct-mail scams, including employment fraud, financial fraud, and sweepstakes/lottery fraud. Typically, they take the form of traditional mail via postcards and letters. More recently, they have appeared in e-mail in boxes. E-mail spam has enabled this type of fraud to flourish.

Employment fraud offers recipients the possibility of some type of desirable employment that appears too good to be true. Franchise fraud is a particular type in which recipients are offered illegitimate franchise opportunities. They are persuaded into investing in a business through promises of extensive and guaranteed profit. Employment may also be guaranteed if a recipient completes some type of training course. There is typically a fee for the course. Participants are assured of job placement upon certification. No experience or skills are needed to be involved in the training. In reality, the organization offering the training course has no relationship with potential employers and cannot offer the participant employment.

Financial fraud can take many forms. Perhaps one of the most notorious, which has existed in both electronic and nonelectronic forms, is known as the Nigerian scam, Nigerian letter fraud, advance-fee fraud, Nigerian 419 fraud, or the 419 scam. These schemes are all variations of the pyramid or chain letter scheme, in which individuals are told that they have won a lottery or prize. However, the winner must spend some money to claim the larger prize.

The writer of the letters or e-mails claims to have access to large sums of money, which may or may not have been obtained legally. The letter promises the recipient a significant percentage of the funds for assisting with the laundering of the money to an account in another country. If the recipient of the letter responds, he or she will receive additional messages, luring him or her further but reinstating the importance of confidentiality and the limited time frame. At this point, the recipient may also receive official and authentic-looking documents to further legitimize the deal. Participants are required to provide personal contact information, such as phone numbers, fax numbers, e-mail address, bank account information, blank business letterhead to send to other potential victims, and initial payments (which are for false expenses such as transfer fees or taxes). The scammers are not only able to keep the initial money that is sent, but with the recipients' contact and financial information, they are also able to access their financial accounts. They can easily withdraw income from the victims' bank accounts. The main goal of this type of scheme is to ensure that recipients are fully engaged and committed to the deal so that they can continue to contribute with "extra fees."

Credit card fraud is a type of financial fraud that is aimed particularly at individuals with bad credit or financial histories. They receive a letter stating that they are preapproved for a credit card that does not require a credit check. However, a fee will be charged to earn credit. When the recipient receives the card in the mail, it is simply a single-use credit card that can be used only at a certain store owned by a particular company.

Sweepstakes and lottery fraud promises the recipient that he or she has won some sort of prize. One of the most popular scams offers free vacations. The notification arrives by mail. However, to claim the prize, the recipient must call and purchase a membership in a travel club. Literature will then come in the mail about the trip. However, the recipient will be asked to pay additional fees, and the dates of interest may be unavailable. Very seldom does anyone actually receive the vacation, but the select few who do are shocked at the subpar accommodations.

Phony inheritance scams do not necessarily fit into these categories. The recipient receives a letter from a supposed "estate locator," claiming that there is an unclaimed inheritance awaiting the recipient. The scammers typically claim that they have conducted research to locate the recipient. However, the same letter has been mailed to thousands of recipients with the same last name. Recipient who respond are typically lured into paying a mailing fee for an estate report. The estate report supposedly contains important information as to where the inheritance is located and how the recipient can claim it. In reality, there is no inheritance, and none of the recipients is an heir.

Although all of these scams can occur via traditional mail, the Internet has scams that are solely virtual. The most popular type of Internet hoax is information verification spam. Recipients are sent e-mails that often appear as if they originated from a legitimate company or financial institution. These messages will ask recipients to verify some type of information for security measures. They may be asked to confirm their e-mail addresses, restate passwords, or even provide credit card numbers and bank PIN numbers. A legitimate organization or financial institution would never ask this of its customers.

Prevention and Prosecution

Prosecution of direct-mail fraud has been difficult because of jurisdictional issues. Each state maintains different laws and regulations, so prosecution lacks uniformity. However, various safeguards have been put in place to prevent direct-mail fraud. The Direct Marketing Association (DMA) was founded in 1917 to assist organizations with carrying out direct marketing practices efficiently and ethically. The organization is composed of companies and nonprofit organizations from the United States and 48 other nations. Approximately half of all Fortune 100 companies are members. The DMA represents the interests of the Federal Trade Commission, Federal Communications Commission, U.S. Postal Service, and other agencies.

DMA offers five main types of benefits to members: (1) they are advocates to ensure responsible marketing via the regulation of marketing standards; (2) they engage in reputation management to fight negative perceptions of marketers that consumers and the general public may have; (3) they educate and train professionals in direct marketing via seminars, conferences, in-house training programs, and certification programs; (4) they offer networking opportunities for members to build strong business relationships and connect with peers and community members; and (5) they provide market research information and other intelligence.

The Deceptive Mail Prevention and Enforcement Act was created by President Bill Clinton on December 12, 1999, and went into effect 120 days later on April 12, 2000. The law grants U.S. Postal Service employees powers to better protect consumers against deceptive mailings masked as games of chance, sweepstakes, skill contests, and facsimile checks. However, this law only protects mail sent through the U.S. Postal Service, not via the Internet or telephone. The law strictly prohibits the following false representations in promotions: (1) that the recipient is a winner, unless that person has actually won a prize; (2) that the recipient must order to enter; (3) that an entry must be sent in with payment for a previous purchase; (4) that the recipient must make a purchase in order to receive future sweepstakes mailings; (5) a fake check, if it does not include a statement on it that it is nonnegotiable and has no cash value; and (6) any seal, name, or term that implies a federal government connection, approval, or endorsement.

In addition, the Deceptive Mail Prevention and Enforcement Act requires that all mailings (1) display rules and order form indicating that no purchase is necessary to enter the contest; (2) state that a purchase does not improve the chances of winning; (3) state the terms and conditions of the sweepstakes promotion, including rules and entry procedures; (4) indicate the sponsor or mailer of the promotion and principal place of business, or other contact address of sponsor or mailer; and (5) provide estimated odds of winning each prize; the quantity, estimated retail value, and the nature of each prize; and the schedule of any payments made over time. Consumers are also protected if they would like to have their names removed from sweepstakes offers. Companies must offer the recipients the opportunity for name removal. They must also maintain a record of all the individuals who have requested to be removed for up to five years. Although such regulations have not made direct-mail fraud obsolete, they are a step in the right direction.

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See Also: Advance Fee Scam; Advertising Fraud; Credit Card Fraud; Internet Fraud; Mail Fraud; Marketing Fraud; Microsoft Corp.; Sweepstakes Fraud; Wire Fraud.

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Disaster Fraud

Disaster fraud is defined as obtaining or attempting to obtain disaster-related benefits despite having no entitlement to them. Several notable cases of disaster fraud highlight the prevalence of this problem. Prompt verification of claims makes disaster fraud less easy to perpetrate.

9/11 Disaster Fraud

In the wake of the terrorist attacks of September 11, 2001, the Victim Compensation Fund (VCF) was established by an act of Congress. The VCF was allotted $5.12 billion to compensate the injured and the families of those killed in the attacks. For those submitting a claim to the VCF on behalf of a deceased loved one, the required paperwork included an original death certificate, documentation of the victim's presence at one of the target sites on 9/11, a court document specifying a recipient of funds on behalf of the deceased, and proof that all relevant parties had been notified of the claim, as well as income and collateral asset verification. Once the required paperwork had been submitted to the VCF, staff verified it and determined an award amount based on what the deceased would have earned through the rest of his/her lifetime, minus any assets, plus a pain and suffering payment set at $250,000.

By the sunset date of December 22, 2003, the VCF had received over 7,300 claims and paid out approximately $2.6 billion to claimants. There were instances of disaster benefit fraud among these claims. The Office of Inspector General (OIG) conducted an audit of the VCF in 2003 and found that of the 792 claims processed at that time, 17 appeared fraudulent. A total of eight of the 17 were passed along to the OIG's Fraud Detection Office, and legal action was taken against the claimants. At least three other instances of fraud against the VCF came to light in subsequent years.

Fraud in the Aftermath of Hurricane Katrina

Disaster benefit fraud also occurred in the wake of Hurricane Katrina in August 2005. The local, state, and federal response to the disaster was a spectacular failure, and in part to mitigate that failure, the Federal Emergency Management Agency (FEMA) began to distribute monetary assistance to Katrina victims. Claiming FEMA benefits was nearly effortless. All one needed was a telephone or Internet connection and some patience. Upon contacting FEMA, claimants were asked for their names and Social Security numbers, the names and Social Security numbers of their dependents, address in the affected area, evacuation address, assessment of damage to property, estimation of employment situation, and bank account information. Days later, claimants would find emergency assistance in the amount of $2,000 directly deposited into their bank accounts. Nearly one million people registered with FEMA in September 2005, and during that time, $1.2 billion was distributed to FEMA registrants in Louisiana alone. Given the speed with which FEMA distributed benefits to unverified claimants, fraud was an early concern, and the U.S. Department of Justice established the Hurricane Katrina Fraud Task Force (HKFTF) in 2005. A total of 36 people were charged with disaster benefit fraud by the Task Force in the month after Katrina, and by September 2010, 1,360 people had been charged. Katrina fraud was spread over both time and place, with over one-third of those charged residing outside the immediately affected area.

Gulf of Mexico Oil Spill Disaster Fraud

In April 2010, an oil rig in the Gulf of Mexico exploded and sank, killing 11 workers. A leak in the pipe to which the rig was connected was detected several days later, and oil spewed into the gulf for months, with millions of gallons fouling the water, beaches, and wildlife. Those whose livelihoods were dependent on the gulf, including shrimpers, oystermen, fishermen, and hoteliers, lost millions of dollars in revenue. The government directed the owner of the oil pipeline, BP (formerly British Petroleum), to establish a $20 billion compensation fund known as the Gulf Coast Claims Facility and put Kenneth Feinberg in charge of paying claims. Feinberg was the special master after 9/11 and promised a quick turnaround for claimants, about two days for individuals and a week for businesses.

The speed with which Feinberg promised to pay claimants set the stage for fraud. It meant that claims could not possibly be carefully checked before payments were made. Complicating matters was that many shrimpers, oystermen, and fishermen run cash businesses and do not keep the detailed records desired to accurately determine

A Federal Emergency Management Agency (FEMA) community relations representative (right) shows an Ottawa, Ohio, resident her proper FEMA credentials after severe flooding hit the area in August 2007. The agency warns that during disaster recovery, affected residents must be on the lookout for possible fraud. The government electronically cross-checks information from FEMA, its partner agencies, and insurance companies to detect duplicate or fraudulent applications, and claims are inspected and verified.

benefit amount. Moreover, some early claimants complained that they received much less money than requested from the Gulf Coast Claims Facility; the fear of receiving less money than requested may have spurred later claimants to submit claims that exceeded actual losses. By January 2011, over 7,000 of the approximately 481,000 claimants to the Gulf Coast Claims Facility were suspected of fraud, and eight people had already been indicted for fraud by that time. Still, Feinberg called the compensation program a success, noting that over $3 billion had been paid to approximately 168,000 claimants by 2011.

An important safeguard against disaster fraud is making the crime more difficult to commit. In order to make disaster fraud a less attractive crime, it is essential that claims are fully and quickly verified by establishing a claims checking protocol that involves shared databases, effective communication, and clear delineation of responsibilities, before disaster strikes. With these steps, the costly crime of disaster fraud can be reduced and the revictimization of disaster survivors can be minimized.

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See Also: BP PLC; Charity Fraud; False Claims Act; Gulf of Mexico Oil Spill; Insurance Fraud; Nonprofit Organization Fraud; Telemarketing Fraud; Terrorism.

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Dodd-Frank Wall Street Reform and Consumer Protection Act

Short of any fundamental or structural reform of financial markets, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 contains many useful reforms. Although comprehensive in its approach to financial regulation, there are some reforms that are hollow or have no teeth, such as in the areas of executive compensation and corporate governance.

More significantly, Dodd-Frank provides several loopholes or escape clauses to bail out the financial industry as a whole and to reproduce the recent history of banking on the Federal Reserve System. For example, forcing insolvency and bankruptcy, breaking up the too-big-to-fail institutions, ending taxpayer bailouts, and eliminating certain types of derivative practices are all conditional. Consequently, the new law is not likely to do very much to hedge against or to reduce moral hazards, high-risk betting, or the next financially driven bubble in the economy. Dodd-Frank, like most other regulatory legislation, is also silent on the workings of the contradictions of bourgeois legal justice, with its waivers and exemptions from punishment for high-stakes securities fraud. Finally, the new law is also silent on the superfinancialization of global capital at the turn of the 21st century.

Domino Effect of the Mortgage Crisis

The financial crisis that began with the housing mortgage crisis in mid-2006 set in motion a regimen of regulatory reforms not seen since the Great Depression. Had the regulatory regime of the past engaged in better risk management, the financial crisis may not have occurred in the first place. Had the financial collapse not occurred, then the uncomfortable sequence of bailouts and exceptional favors for a privileged banking oligopoly in order "to right the U.S. system" would not have happened. Dodd-Frank ignores the speculative bubbles that caused the financial debacle. While authorizing studies on the subject, the act is silent about how the newly reformed agencies are to recognize these problems in the future. Similarly, although the new law has also introduced numerous legal reforms, these still represent only a starting place for a dialogue on how to move the financial system safely into the 21st century.

Markets and regulation have always gone hand in hand. The two were more or less invented together during the emergence of modern capitalism in the 17th century. For markets to exist, they have always needed to disconnect transactions from relationships and to formalize those into rules and regulations. Thus, "free" markets require both trust in the rules and trust in strangers to uphold the rules. Over time, periods of regulatory innovation have occurred in waves that are followed by long periods of relative inattention. Each period generally involves a financial collapse, a loss of faith in financial institutions, and an attempt at re-regulation.

Historically, financial regulation of banks and stocks can be traced back to the collapse of the tulip market in 1637, when the Dutch government shut down the speculative flower market. In 1720, the stock market crashes in both France and the United Kingdom were responsible for the establishment of new rules and regulations in an effort to prevent the recurrence of future crashes. Those early financial implosions also introduced the term *bubble*, referring to the lack of substance or trading irrationally based on nothing more than air. In the United States, the stock market crash of 1929 led to the recognition of behavioral and systemic risks to the financial system. The Great Depression that followed also prompted massive increases in financial regulation. After World War II, a period of financial and economic stability over subsequent decades helped support an intellectual drift toward the belief in the natural proper functioning of markets and to the eventual dismantling of many regulatory controls.

In the 1970s and 1980s, deregulation was aided by anti-Keynesian macroeconomic theory known as monetarism and by the efficient markets theory. Together, these theories argue that markets work best when they are free of human intervention or regulation. Unproven to this day, these theories still serve as part of an ideological mantra that spurs both privatization and a climate of financial deregulation. The latter recently peaked with the passage of the 1999 Gramm-Leach-Bliley Act and its evisceration of Glass-Steagall (1933). In turn, this law, also known as the Financial Services Modernization Act, did away with the separation of commercial and investment banks, which enabled the housing bubble and bust of 2000 to 2006 that caused the Wall Street financial collapse of 2007 to 2008. However, Dodd-Frank, with all of its new rules and regulations, does not repeal Gramm-Leach-Bliley or reinstate the key rule of Glass-Steagall, which made it a felony to engage in or combine the activities of both investment and commercial banks.

The consumer protection side of Dodd-Frank is effective. For example, the enactment of the Bureau of Consumer Financial Protection is a step in the right direction. It has the authority to collect information about financial practices. It also has the power to enact new rules to protect individuals against bad practices in credit cards, home mortgages, account overdrafts, payday loans, and other financial products. These rule changes should help focus the attention of financial regulators on the problems faced by common consumers, not unlike the successful Consumer Product Safety Commission.

There are other rules in place that need to be changed in the spirit of democratizing and humanizing finance capital. For example, the government already mandates extensive disclosure, and government policies have endorsed disclosure as central to regulatory processes. However, many of those disclosures unread by investors who rely on word of mouth, news media, and investment advisors for information make it harder for investors to sue issuers of credit. These lengthy contracts are full of legalese designed to skirt consumer protection laws and class-action lawsuits. The same has been true for some of the tort lawsuits involving securities fraud.

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See Also: Capitalism; Consumer Product Safety Commission; Reform and Regulation; Regulatory Enforcement.

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Domhoff, G. William

G. William Domhoff is a professor in psychology and sociology at the University of California, Santa Cruz. He has written a number of books and articles concerning the influence of the power elite and ruling class upon American politics. Domhoff became well known for his book *Who Rules America?* (1967), in which he argues that the upper class has a disproportionate influence over a plethora of social institutions, which reflects a power-elite hegemony. Subsequent books and articles refine this view. This sentiment challenged the pluralist perspective that diverse interests are politically represented in the United States' government structure. By "ruling class" and "power elite," he is referring to a group that has a disproportionate amount of wealth and income, has better life chances than other social groups, controls major economic institutions, and dominates governmental processes. However, the ruling class and power elite are not synonymous. The power elite is a subset of the ruling class, who act as an "operating arm," "leadership group," or "establishment" for members of the upper class. This upper class constitutes 1 percent of the U.S. population.

There are various mechanisms in which the interests of the ruling power elite develop cohesive and fairly consistent policies. He admits that there may be some disagreements and failures to advance their interests—which occur primarily in a few isolated pockets in metropolitan areas—but they are overwhelmingly successful in their policy implementations. One instrument of developing a consensus among political leaders was the attendance at elite clubs and organizations in relaxed, remote areas—such as Bohemian Grove. In *The Bohemian Grove* (1974), Domhoff lists names of prominent, national business and political leaders who attend the organization. Many of these leaders are also members of other influential national clubs, such as the Council on Foreign Relations and the Business Roundtable. Those who attend such organizations strengthen their in-group identity by witnessing and participating in extraordinary rituals, such as the Cremation of Care, which is described in detail at the beginning of the book.

Four Processes

In *The Powers That Be: Processes of Ruling Class Domination of America*, Domhoff describes the various processes by which the upper social class is able to wield considerable control over major social, economic, and governmental institutions. They are classified into four main processes: the special interest process, policy formation process, candidate selection process, and ideology process.

The special interest process includes activities such as concentrated efforts of bribery, conflict of interest, and lobbying. With the policy process, interlocking directorates, in which board members of one organization are also on boards of other business and political organizations, is a major mechanism by which policy consensus is more easily achieved. With the candidate selection process, the two-party system does not operate as suggested by pluralists. Both parties collude with one another and with business in selecting suitable candidates who will not present a threat to the status quo. Finally, with ideology, laissez-faire liberalism is promoted through educational institutions via grant funding, which reifies the power elite's interests. Individualism, free enterprise, and competition are promoted. For example, any idea that does not have a practicality is considered "theoretical," "utopian," or "impractical." Such ideas are reflected in and reinforced in myriad other social institutions, such as media outlets.

The policymaking process is not a social process that attempts to control all processes of government, but only intervenes on issues in which the power elite's interests become threatened. Nonintervention has been the modus operandi of the power elite. The processes by which large issues have been refined and agreed upon are through policy network organizations. These organizations, which are underwritten by members of the power elite who control major banks and corporations, utilize policy network organizations such as the Committee for Economic Development to discuss issues of concern.

Domhoff has refined these earlier works and has analyzed other pertinent issues. One of these issues is the increase of African Americans in the power elite; however, true to his original premise, these figures do not arise arbitrarily but are allowed to come into various positions of power because they do not represent a real threat to the political and social status quo. As for white-collar crime, those in political positions of power are not going to create laws and punitive criminal sanctions that are going to directly place themselves in jeopardy. Although many of Domhoff's critiques point to a lack of strong empirical evidence for his social and political theory—such as collating lists of members of various elite groups and examining not class, but the instruments of class oppression—his work provides criminologists with an overview of the major powerful figures and institutions in the United States and the world that yield considerable influence upon policy and ideology.

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See Also: Capitalism; Conflict Theory; Critical Theory; Ethics; State Crime Theory.

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Dow Chemical Co.

From its beginning as a small operation selling a single product line, Dow Chemical Company, headquartered in Midland, Michigan, has grown into one of the world's largest chemical companies. The diversified, multinational Fortune 500 company boasts over 5,000 products, 52,000 employees, and sales of $60 billion. Manufactured in 36 countries at 197 different locations, Dow's products are vital to many industries, including electronics, water, energy, packaging, medical, and agriculture. Dow has been embroiled in a number of controversies that have challenged its reputation.

Background

In 1897, Herbert H. Dow formed the company to manufacture bleach, using an innovative electrical process to separate bromides from brine. With heavy competition from the world's then-leading chemical firms based in Germany, Dow fought to remain an ongoing concern. However, with World War I naval blockades limiting access to German chemical companies, the U.S. government pressed Dow to manufacture phenol and magnesium, which were used in explosives and incendiary devices. Postwar tariffs protected chemical companies in the United States, and Dow expanded to produce calcium chloride, salt, and aspirin.

Under Herbert's son Willard Dow, the company focused on research and development. In addition to researching petrochemicals and plastics, Dow added iodine and ethylene to its portfolio of products. During this period, Dow labs were developing waste disposal bacteria, Styrofoam, vinyl chloride, and other products and processes. By World War II, Dow was producing 80 percent of the country's magnesium, leading to an investigation that Dow conspired to monopolize magnesium production, but that accusation was later dropped. In addition to these metals and chemicals, Dow produced synthetics, including rubber, styrene, butadiene, impregnite, phenol, and the plastic that forms Saran Wrap. Saran Wrap, introduced in 1953, was Dow's first consumer product.

Dow has continued to innovate and develop its product portfolio and geographic reach. The company owns over 3,000 patents nationally and over 14,000 internationally, approximately 80 percent with a remaining life of six years or greater. Dow's organization is structured around five operating segments: Performance Plastics, Performance Materials, Agricultural Sciences, Advanced Material, and Feedstocks and Energy.

Napalm bombs explode on Viet Cong structures south of Saigon during the Vietnam War in 1965. The burns, chemical poisoning, and deaths it caused horrified the American public, and protesters targeted its producer, Dow Chemical Company.

In 2011, Dow introduced three trademarked products: Enlight Polyolefin Encapsulant Films, which are used in solar panels; Evoque Pre-Composite Polymer Technology, which improves paint performance and reduces cost; and Pascal Technology, insulation designed to improve the energy efficiency of appliances. Dow espouses a commitment to sustainability, and it has invested in product lines to provide clean water, improve the efficiency of wind turbine systems, and contribute to the manufacturing of batteries for hybrid vehicles. Its plants have reduced greenhouse gas emissions and increased the energy efficiency of their operations.

Napalm

In 1965, Dow Chemical began producing napalm, a mix of polystyrene, benzene, and gasoline, for the Department of Defense (DOD). Soon, it was the DOD's exclusive supplier. The military cited the need for such a weapon for the theater of war in Vietnam, as traditional weapons were not effective against an enemy hiding in foxholes and tunnels. Napalm produced a burning, gel-like substance that could penetrate the enemy's secret bunkers. However, the effects of napalm horrified much of the American public. People exposed to napalm experienced significant burns, chemical poisoning, and often death.

As a result, in the late 1960s, student protesters targeted the company and demonstrated during campus visits of company recruiters. Protests continued even after Dow stopped manufacturing napalm in 1969. During the Vietnam War, Dow was one of several companies that produced Agent Orange, a defoliant that caused leaves to drop from vegetation, making the area safer for American soldiers. Agent Orange has been linked to cancer among Vietnam veterans and significant health issues for the Vietnamese population, including birth defects and many deaths. Vietnam sent a letter of protest to the International Olympic Committee when Dow Chemical Company was selected as a corporate sponsor of the 2012 Olympic Games in London.

Controversy and allegations of wrongdoing also engulfed Dow regarding silicone breast implants. Dow Corning, owned by Dow Chemical and Corning Inc., produces a number of silicone-based products, including adhesive, sealants, and breast implants. In the 1980s, these implants were linked to health problems, including breast tissue hardening, breast cancer, autoimmune diseases, and implant rupture. Dow Corning filed for bankruptcy in 1995 as a result of numerous lawsuits filed against it. Litigation against Dow continued with allegations that Dow did not properly test silicone for human implant use. Most plaintiffs were covered in a far-reaching $3.7 billion settlement.

Union Carbide Disaster

In 1984, a Union Carbide facility in Bhopal, India, leaked toxic gas; more than 20,000 died from contamination. A civil case against Union Carbide was settled in 1989, but other litigation remains active. Dow became entrenched in the dispute when it merged with Union Carbide in 2001. Although Dow argues that it did not inherit Union Carbide's liabilities in the merger, activists and the Indian government continue to seek remedy on behalf of the Indian people, and lawsuits remain pending in the U.S. federal court system. Closer to home, Dow has been accused of contaminating waterways in the Great Lakes region with dioxin runoff from the company's

Midland facility. The Environmental Protection Agency identifies dioxin as a dangerous chemical that can cause cancer or disrupt the reproductive or immune system. After over a decade of negotiation, Dow and regulatory agencies reached an agreement on the terms of a cleanup near the company's plant. Because of Dow's association with several destructive products and processes, the Public Interest Research Group has identified it as one of America's most dangerous companies. However, Dow is working to repair its reputation through its product line and philanthropic pursuits. Dow's strong financial performance indicates a successful strategy.

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See Also: Consumer Deaths; Pesticides; Polyvinyl Chlorides; War Crimes.

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Dream Homes Scam

The Dream Homes scam was a deceptive mortgage payment and investment program that used multiple corporate names to convince over 1,000 investors to part with close to $78 million. It operated from 2005 to 2007 and used the corporation names of Metro Dream Homes (MDH), POS Dream Homes, POS DH LLC, and Metropolitan Grapevine LLC. This scam promised investors that if they made a $50,000 or more investment and paid an administrative fee of under $5,000, MDH would pay their mortgage for them. The investors' money would be used for various investments in electronic public billboards such as flat-screen televisions with business advertising, Touch-N-Buy electronic kiosks that sold telephone cards, and automated teller machines (ATMs). These investment revenues would then be used to fund the investors' mortgage payments with a promise to pay off their remaining mortgage in five to seven years.

Instead of using the funds as promised for those business ventures, however, MDH executives used the funds for other purposes and stopped making mortgage payments. This left the investors having to pay their mortgages. Their investments were used fraudulently and in ways not disclosed to the investors, including third-party businesses. The funds were also used to pay off initial investors of a previously unregistered ATM business venture called Bankcard Group in a Ponzi-type scheme operated by the chief executive officer. Then, investor funds were used to pay off the personal mortgages of several MDH top executives. Investor funds were also used for several executives to enjoy $200,000-plus salaries, vacations, tickets to the 2007 Super Bowl, 10 luxury vehicles with chauffeurs, and other personal items.

The Scam

In order to appear as a high-end, legitimate company, DHS spent thousands of dollars on expensive presentations in upscale hotels. These included the Washington Plaza Hotel in Washington, D.C., the Marriott Marquis Hotel in New York City, and the Regent Beverly Wilshire Hotel in Beverly Hills, California. They even donated $50,000 several times to charities in order to appear more reputable and profitable. The program had multiple offices in the United States, including locations in Florida, Georgia, Maryland, Washington, D.C., Virginia, New York, Delaware, North Carolina, and California. Some initial investors had their homes paid off in a Ponzi-type scheme that was used to add legitimacy to the seminars. These initial investors were used for recruitment purposes. Homeowners or prospective homeowners were convinced to either refinance their current mortgages to pull equity out of their homes for this investment or to buy new homes at much higher prices to have the funding for this mortgage investment. This program ran during the height of the housing market.

In early 2006, it was expanded to a new program called POS Dream Homes. It operated similarly to the original program in investment and promise. Carole Nelson was hired in 2006 to be in charge of the program yet never reviewed documents showing any investment revenue. In fact, the business ventures barely made a profit. She worked for the company for less than 20 months but earned a salary of $413,075. Then, Ms. Nelson and the four key members stopped paying the investors' mortgages. On August 15, 2007, MDH and all of its subsequent companies were issued a cease and desist order. Their assets were frozen by a Maryland judge and were eventually placed into receivership.

During the course of the investigation, the U.S. Department of Justice, the Federal Bureau of Investigation, the Internal Revenue Service Criminal Investigations Division, and many other agencies were involved. The five co-conspirators were indicted. In 2009, several key members of the organization were federally charged, and by 2012, all five had pleaded guilty and were sentenced to federal prison. On November 10, 2011, 58-year-old MDH owner and founder Andrew Hamilton Williams, Jr., of Hollywood, Florida, was sentenced to 150 years in prison, followed by three years of supervised release for conspiracy to commit wire fraud, wire fraud, and conspiracy to commit money laundering. The chief financial officer from New York was Michael Anthony Hickson, age 46, of Commack, New York. He was sentenced to 120 months imprisonment for his charges.

President Isaac Jerome Smith, age 46, from Spotsylvania, Virginia, was sentenced to 70 months in prison, and vice president of operations Alvita Karen Gunn, age 31, of Hanover, Maryland, was sentenced to 60 months in prison. Carole Nelson, age 53, from Washington, D.C., was the chief financial officer for POS Dream Homes. She was sentenced to 29 months imprisonment, followed by three years supervised release, after pleading guilty to money laundering. She was also ordered to pay restitution of over $34 million. Another person charged in connection with the MDH fallout included its legal counsel, attorney Michael Ron Worthy, age 45, of Bowie, Maryland. He failed to file income tax returns in 2006 and 2007, showing income from MDH and other sources as a consultant. Worthy was sentenced to six months in prison, followed by one year of supervised release for two counts of failing to file an income tax return.

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See Also: Mortgage Fraud; Mortgage Modification Fraud; Ponzi Schemes.

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Drexel Burnham Lambert Inc.

Drexel Burnham Lambert Inc. was, by the end of the 1980s, one of the five largest investment banks in the United States. Drexel Burnham Lambert was especially well known for its work promoting and selling high-yield, noninvestment grade bonds, also known as "junk bonds," and its mergers and acquisitions business. Aggressive and uncompromising in its business practices, Drexel Burnham Lambert was one of the most profitable of all Wall Street investment banks, and its head of noninvestment grade bonds department, Michael Milken, was credited with creating the market for junk bonds. Often the investment bank of choice for corporate raiders, Drexel Burnham Lambert was closely scrutinized by the Securities and Exchange Commission (SEC) and pleaded guilty to six charges of stock parking and stock price manipulation after years of investigation.

Its business was severely damaged by this, and in 1990, Drexel Burnham Lambert declared bankruptcy and sold off most of its operations.

Background

In 1935, I. W. (Tubby) Burnham founded the retail brokerage firm of Burnham & Co. in New York City. Although the firm soon branched out into investment banking, because of unwritten rules in place on Wall Street at the time, Burnham & Co., which was considered a sub-major firm, was unable to take the lead role in underwriting stock or bond offerings, a privilege reserved for a handful of major firms. To circumvent this problem, Burnham & Co. merged in 1973 with Drexel Firestone, a "major" firm that had fallen on hard times, to become Drexel Burnham & Co. Following another merger with research specialist firm William D. Witter, owned by Groupe Bruxelles Lambert, the firm became known as Drexel Burnham Lambert. One of the few carryover employees from the Drexel Firestone firm, Michael Milken, served as the head of its bond trading division. Also joining the firm at about this time as co-head of corporate finance was Fred Joseph, known for his aggressive style. Joseph would be named president of Drexel Burnham Lambert in 1984.

Drexel Burnham Lambert soon became renowned for its aggressive practices, especially its willingness to work with start-up companies and firms that had fallen on hard times. When Drexel Burnham Lambert began working in the mergers and acquisitions field in the early 1980s, it often worked with corporate raiders such as Ivan Boesky, Carl Icahn, and T. Boone Pickens, who were often involved in hostile takeovers of other firms. The established Wall Street investment banks, which had dominated the field prior to Drexel Burnham Lambert's arrival, had eschewed hostile takeovers. Drexel Burnham Lambert soon established an almost legendary reputation for being able to market and sell any bonds that it underwrote. As a result, when the firm issued a letter stating it was "highly confident" it would be able to obtain financing for a hostile takeover, it allowed corporate raiders to launch leveraged buyouts of other corporations without having the debt portion of their financing package fully in place. These letters proved highly profitable for Drexel Burnham Lambert, because if the deal failed to go through, it did not have to raise any money; and if it did, the letters proved a valuable tool demonstrating the firm's sales acumen.

By 1986, Drexel Burnham Lambert had its most profitable fiscal year, netting nearly $550 million, a record at that time. During the same year, Milken had received a similar sum in compensation, also a record. This level of financial success made the firm a target for the SEC, which closely monitored its transactions and business practices. Dennis Levine, a managing director of Drexel Burnham Lambert, was charged with insider trading in 1986. Although Levine had worked at Drexel Burnham Lambert only since the previous year, when pleading guilty, he implicated one of the firm's clients, Boesky, the well-known investor and arbitrageur. Based upon information provided by Boesky, the SEC began an investigation of Drexel Burnham Lambert in November 1986, and the U.S. attorney for the Southern District of New York, Rudy Giuliani, launched an independent investigation at about the same time. Milken refused to participate in Drexel Burnham Lambert's internal investigation and would answer questions only through his attorneys. Boesky entered into a plea agreement with the SEC and was sentenced to three years in prison and fined $100 million.

Buckling Under Pressure

For two years, Drexel Burnham Lambert resisted the SEC's charges, insisting that the only evidence against it came from Levine and Boesky, both convicted felons. In 1988, however, the firm became aware that Giuliani was considering bringing an indictment against it pursuant to the Racketeer Influenced and Corrupt Organizations (RICO) Act. Had such an indictment been brought, Drexel Burnham Lambert would have been forced to post a performance bond in the amount of $1 billion to prevent having its assets frozen. This threat, coupled with Drexel Burnham Lambert's understanding that if indicted, its lines of credit would be cut off, caused Joseph to enter into negotiations with Giuliani to settle the matter. When news broke regarding a limited partnership (made up in part of Milken's young children) that purchased bonds from clients who had bought them from Drexel Burnham Lambert, the firm was forced to settle. Drexel Burnham Lambert pleaded nolo contendere to three counts of stock parking and three counts of stock manipulation, all felonies. Milken was also convicted. As a convicted felon, the firm was unable to continue in business, laid off over 5,000 employees, and shut down three divisions in 1989. In early 1990, Drexel Burnham Lambert filed for bankruptcy protection.

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See Also: Arbitrage; Boesky, Ivan; Crédit Lyonnais; Levine, Dennis; Milken, Michael; Racketeer Influenced and Corrupt Organizations Act; Securities and Exchange Commission, U.S.

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E

E. F. Hutton & Co.

Founded in 1904 by Edward Francis Hutton, E. F. Hutton & Co. was one of the most respected financial services companies in the United States and, for a period, the second-largest brokerage firm in the nation. Although it first did business in San Francisco, E. F. Hutton was based in New York City for most of its existence, although it was one of the first brokerage firms to have branch offices in vacation resorts such as Palm Beach, Florida, and Sarasota Springs, New York, to cater to its clients' needs. Although it was able to stay independent until the 1980s, E. F. Hutton's reputation was hurt by a check kiting scheme initiated by several of its offices. After allegations arose that the firm was involved in money laundering for the mob, E. F. Hutton was acquired by Shearson Lehman/American Express and ceased to exist as an independent entity.

Led for over half a century by legendary financier Edward Hutton, E. F. Hutton enjoyed a stellar reputation, based in part upon the activities of its leadership. Edward Hutton was for a time the chairman of General Foods Corporation and became well known to the general public with a nationally syndicated newspaper column he penned regarding investments. The firm also benefited from the acumen of Wall Street insider Gerald M. Loeb, who led the firm's trading operations. By the time of Edward Hutton's death in 1962, the firm was listed on the New York Stock Exchange as E. F. Hutton Group and was composed of a trust company, bank, and life insurance venture, as well as the brokerage firm. During the 1960s and 1970s, E. F. Hutton became well known to the general public through a series of television advertisements with the tag line, "When E. F. Hutton talks, people listen," which played upon the firm's stellar reputation. Although many of its competitors faltered during the 1970s and were forced to merge with others, E. F. Hutton maintained its independence and its presence as a major financial firm.

By the early 1980s, E. F. Hutton had one of the largest networks of branch offices of any brokerage firm in the United States. Around this time, several E. F. Hutton branch offices began the practice of "chaining," which entails writing a check on one account for an amount greater than the value of that account, while simultaneously making a deposit from a second account equal to the amount taken from the first account, but also with nonsufficient funds. Chaining, which is a form of check kiting, involves a form of check fraud that makes use of nonexistent funds to procure a "float," or an interest-free use of funds, through reliance on the time it takes banks to process transactions. What made the E. F. Hutton check kiting incidents unusual was not only the size of the scheme, which included over 400 mostly rural American banks and daily chaining of over $250 million, but also the level of knowledge of the system by E. F. Hutton's corporate officers. Thomas Morley, an E. F. Hutton executive, discovered the check kiting and sent a memo disclosing its scope to the firm's president, George Ball. Rather than curtail the scheme, Ball sent out a memo to E. F. Hutton's branch managers sharing Morley's memo and suggesting that since one branch had profited by over $30,000 per month as a result of check kiting, it was a process the rest of them might wish to consider.

Although the check kiting scheme worked well for E. F. Hutton for several years, by 1984, Genesee County Bank in rural New York noted that a local E. F. Hutton branch was making abnormally large deposits and withdrawals. After an investigation, the Genesee County Bank learned that the two Pennsylvania bank accounts that E. F. Hutton was using to make deposits to it lacked sufficient funds to cover the deposits, and it stopped honoring the firm's checks. After the Federal Deposit Insurance Corporation was asked to investigate, it discovered enough evidence of wrongdoing on E. F. Hutton's part to refer the case to the U.S. attorney for the eastern district of Pennsylvania, who began a criminal investigation of the firm and its officers. After internal documents made a conviction of E. F. Hutton appear likely, in 1985, the firm agreed to plead guilty to more than 2,000 counts of mail and wire fraud, pay nearly $3 million in fines and penalties, and make restitution to a group of small banks in the amount of $8 million.

Although the check kiting scandal hurt E. F. Hutton's business, the firm continued operating. In 1987, an internal company investigation disclosed that the firm's Providence, Rhode Island, office had been involved in a money laundering arrangement for the Patriarca crime family. While E. F. Hutton immediately reported this finding to the Securities and Exchange Commission (SEC), prosecutors indicated that the firm's indictment in the matter was inevitable. At the same time, E. F. Hutton suffered a series of financial reverses brought about in part by the 1987 stock market crash. Weeks from collapse, E. F. Hutton agreed to merge with Shearson Lehman/American Express in late 1987, resulting in a new entity after the merger was completed the following year, Shearson Lehman Hutton Inc. At this point, E. F. Hutton ceased to operate as an independent brokerage firm.

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See Also: Check Kiting; Money Laundering; Salomon Smith Barney Inc.; Securities and Exchange Commission, U.S.

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Economic Espionage

Economic espionage is a universal threat. Economic espionage deals with the theft of trade and economic secrets from businesses, industries, and governments for the financial and/or political gain of foreign nations or entities. For the most part, economic espionage does not involve violence, but it can include coercion, blackmail, and threats. As a white-collar crime, economic espionage is a high-stakes form of theft. It requires specific know-how and skills, either in social engineering or in computer crime, for individuals to gain access to the materials and information they are seeking. Economic espionage can be very profitable and is therefore mostly profit driven. Some individuals engage in economic espionage as a way to attack a target nation or as a form of patriotism or nationalism. Economic espionage is continuously adapting to changes in policy, investigation, and technology.

In 1996, the United States enacted the Economic Espionage Act (18 USC §§1831-1839) to focus on the investigation and prevention of foreign actors acquiring U.S. trade secrets. Diplomatic missions to the European Union and the Middle East throughout the 1990s included requests from the United States that the illicit collection of trade secrets and other forms of economic espionage be lessened. These diplomatic missions were reportedly successful but do not mean that the practice of economic espionage between enemies and allies ended completely. The greatest concern in economic espionage is the endangering of proprietary information or trade secrets.

Trade secrets include ideas, plans, patterns, programs, codes, prototypes, and formulas. These trade secrets exist in a wide range of enterprises, including the business, scientific, technical, and engineering fields. The theft of these trade secrets does not always mean that an individual has physically stolen a document or prototype; an individual may use clandestinely acquired information or photographs to reverse engineer the product or formula. Reverse engineering calls for the examination of the finished product or a portion of the finished product to re-create the object, and then experimentation with the result until its purpose has been ascertained.

Individuals engage in economic espionage for a variety of reasons; however, it is usually for the benefit of a foreign government or entity. Individuals commits economic espionage when they knowingly acquire trade secrets in one country for the benefit of another. The individuals committing economic espionage can include the employees, consultants, and/or customers of the company that has been compromised. Although sometimes referred to as industrial espionage, the theft of trade secrets from within a country for the benefit of a foreign entity is economic espionage, no matter what the relationship between the thief and the company. Economic espionage can be perpetrated at the request of countries and legitimate governments, but also by organizations without a recognized country, including terrorist groups, political parties, independent businesses, and contractors in intelligence.

With rapid changes in technology, economic espionage has become easier and more profitable. As new ideas and technologies are developed, foreign entities search for ways to acquire the information. In some cases, this is to create a competing product or to find ways to circumvent a new weapon or security measure. Samsung and Apple went to court because of concerns regarding economic espionage and the misappropriation of proprietary technology, through patent infringement in their competing cell phones.

Similar cases have been mediated by private individuals and the court between IBM and Fujitsu, regarding their collaboration and later use of proprietary material in products and programs beyond the scope of their partnership. Both of these situations created competing products and services based on the same technology and programming, one of the pitfalls of information sharing and increased globalization in business. In others, it is not so much about the product itself, but the raw materials needed to create it, giving a foreign entity the upper hand in trade negotiations for those raw materials. This advantage can be used and manipulated in a variety of ways, from demanding a higher cost for the raw materials to refusing to see the raw materials so that they may be used in the country for the manufacture of a competitive product.

Methods of Economic Espionage

One of the ways in which individuals engage in economic espionage is through the Internet. In these situations, malicious software or malware can be used to siphon information from a computer. This style of economic espionage provides the greatest anonymity and least risk and expense. Hackers readily share tools and information across the Internet, providing a wealth of techniques, decreasing the need for an individual to create a new malware program to infiltrate the target. Further, a hacker need not have a direct allegiance to the country that hires him or her, thereby distancing the foreign entity from the act. The level of anonymity that is available through the use of this method of economic espionage decreases the likelihood of discovery, even if the perpetrator has legitimate ties to the company. The ease with which these programs can be used also increases the likelihood of individuals engaging in economic espionage, independently of the directives of a foreign entity or nation.

Prior to the advent of the Internet and improvements in malware technology, it was necessary for individuals committing economic espionage to physically steal documents. This was the case of Dongfan Chung, whose espionage against his

House Speaker Nancy Pelosi and a bipartisan congressional delegation visit an electric car factory in Tianjin, China, in May 2009. The delegation also met with Chinese leaders on a variety of issues of concern, including intellectual property rights and the global financial crisis. According to the Council on Foreign Relations, China is one of the most aggressive players in economic espionage, especially in telecommunications, aerospace, energy, and defense, but it may be undercutting its own quest for indigenous innovation.

employer, Rockwell and Boeing, netted hundreds of thousands of pages of documents for the Chinese government from 1979 to 2006. Because of the physical nature of the documents, Chung and his contacts needed to be very cautious, both in the acquisition of these documents and in passing them on; however, today's technology allows for individuals to acquire the same volume and greater on a single external drive, which becomes easier to hide, explain, and pass to contacts.

Another way in which individuals acquire the trade secrets sought through economic espionage is through the use of requests for information. Either through the use of personal contacts or through social engineering, an individual contacts an individual within the target firm or business and asks for information regarding the classified product or project. These requests can be through telephone, e-mail, fax, mail requests, or other forms of communication. In the case of personal contacts, these requests can be very casual. In social engineering situations, where the individual requesting the information is impersonating someone who has rights to access the information, or a need to know the information that sounds legitimate, the communication is often far more formal. Some single-issue terrorist groups use social engineering against businesses to acquire customer lists or service provider lists in order to increase their list of potential targets for physical, economic, and cyber attacks.

Some economic espionage is perpetrated through the solicitation or marketing of services. In these situations, a foreign company, national company, domestic company, or national seeking to work as an agent of a foreign entity pursues a business relationship with the target. This relationship can be as a supplier of related or unrelated materials, such as raw materials or paper and office supplies. Others may opt to supply services, such as janitorial services, courier services, catering, or payroll, anything that might result in access to the trade secrets that are sought, either directly or indirectly. Examples of direct access may include a janitor's access to an office where documents are stored or a courier who is given the documents to take across town. Indirect access includes a member of the caterer's staff chatting up an individual working on the project or an external accountant keeping tabs on project-related expenditures.

Particularly vulnerable venues for economic espionage are events open to the general public or specialists in a particular field, such as trade shows, conventions, and conferences, or even Webinars sponsored by individuals who are experts in the field that is targeted. Universities can account for billions of dollars in development of new technologies and ideas. Part of the culture of universities and research institutes is the sharing of information at these public or semi-public venues. Likewise, the professional organizations tied to particular fields sponsor a plethora of trade shows, conventions, and conferences so that their members can share ideas and engage in professional development. Although most attendees do not come to these venues with malicious intent, individuals engaging in economic espionage can gain access to these events and the experts who attend them for purposes of exploitation or the creation of personal contacts that can be used later in requests for information.

Sensitive information and trade secrets have also been acquired through official visits, where a foreign government or entity makes specific arrangements for its assignees to visit a location or facility and take a guided tour. During the visit and/or tour, questions can be asked and information acquired for the benefit of the foreign entity. Along the same lines, joint research between companies or colleagues in different countries can be similarly exploited. In these situations, the information shared over the course of the collaboration is then siphoned off and used for other projects for the benefit of the foreign entity.

Individuals traveling abroad are also targets for economic espionage. In these situations, the acquisition of information can be overt or covert. This can include the use of recording devices in and the theft of electronic devices or other materials from hotel and meeting rooms. In some cases, a foreign entity may attempt to arrange seemingly chance or even romantic meetings between operatives and the visiting target. Depending on the information that the individuals may be traveling with or have access to when they return to their home country, these entanglements can be short- or long term. In the past, governments and espionage networks have set up electronic listening devices in brothels and have employed or had employees pose as prostitutes for this purpose. The Soviet Union and Nazi Germany (within their own borders and in other countries), engaged in this practice, and the disintegration of these governments provided the best information about this type of espionage.

Open-source information is also used in economic espionage. Media reports, professional journals, trade publications, company and trade Web sites, conference minutes, social networks, and other media provide a wealth of information that can be exploited for purposes of economic espionage. In some cases, this open-source information is used as background for a concentrated effort, such as determining which targets to exploit using malware or a specific individual to target for a request for information, or determining when they will travel into a territory accessible to or controlled by the foreign entity seeking the information. Individuals who are well versed in economic espionage can easily identify pertinent information and draw it together from a wide variety of sources. Foreign nations and entities engaged in espionage can pick and choose which of these tactics to employ against their targets and can use several in concert.

Costs of Economic Espionage

Economic espionage attacks countries where they are most vulnerable. The increased globalization of business has opened more possibilities and partnerships with untold benefits, but the downside is that the increased global interaction has also broadened the scope of economic espionage. The theft of trade secrets and other economic information puts the target nation or company at a disadvantage. Beyond the loss of proprietary information, a company may also lose money, development time, security, public support, or market stability. Theft of trade secrets has in the past allowed companies to be bought out by competitors as their products and services are rendered obsolete.

From the standpoint of a country, economic espionage can be used to exploit trade negotiations, influence the creation of policy, endanger civilian and military personnel, disrupt economic standing, and/or decrease national security. In the first situation, a country with clandestine knowledge regarding raw materials or manufacturing needs can alter trade negotiations in its favor, increasing the cost of the raw materials and thereby the finished product, giving its own companies or an ally's the time to exploit the available information to create a cheaper competitive product. A wide range of policies is tied to trade secrets, though the most dangerous regard economic espionage or those related to financial market regulation. As the economies of the world become increasingly intertwined, clandestine knowledge of one country's regulatory desires or practices can undermine the financial relationship between countries and decrease that country's standing in the world market.

The theft of trade secrets regarding technologies that are designed to keep people safe or provide a superior weapon, or that provide the recipe for a pharmaceutical, can be exploited to endanger lives, counteract the weapon, alter the chemical compound, and mimic the pharmaceutical, with dangerous and sometimes deadly results. The theft or exploitation of a logo can allow a foreign country or entity to mask one product as another. Trademark infringement is sometimes for profit in knockoffs or counterfeit designer goods. However, there have also been times, such as in the case of counterfeit pharmaceuticals, when the infringement has either unintentionally or intentionally been designed to do outright harm. Counterfeit pharmaceuticals have been marketed that contain nothing but benign materials and none of the prescribed medicine, as well as ones that contain harmful and even lethal ingredients.

The theft of economic secrets has been used in times of war to glut markets with counterfeit currency, in times of peace to devalue another country's currency in its rate of exchange or to improve the trade position of the opposing nation, and in both war and peace times to influence political and social unrest in the target nation. The lure of economic benefit to the individuals employed or targeted for information by a foreign entity destabilizes national security by compromising the positions of individuals who are supposed to be trusted to protect and hold in confidence the information to which they have access.

Economic espionage is not only a tactic between enemy nations. Nor is it always instigated by the nation that comes into possession of the clandestinely acquired trade secrets. Trade secrets have value, and therefore there is always someone who is willing to sell, if the price is right. Allied nations and organizations that have friendly relations with the target of the economic espionage can also seek this information. In the realm of economic espionage, everything becomes fair game, as even the closest of allies vie for the upper hand in a wide range of trade and policy negotiations.

The economy of a nation is directly linked to its political capital, both domestically and internationally. The more a nation is the target of economic espionage, the weaker that nation becomes in the eyes of its enemies and allies. The target nation's economic infrastructure becomes suspect, as does its ability to protect its citizenry and any information or secrets that have been entrusted to it by a foreign nation or entity. Nations may highlight successful economic espionage attacks against an enemy as a sign of that nation's weakness and their comparable strength.

Although intelligence communities in the United States and elsewhere seek to counteract economic espionage and tie this clandestine activity to particular places, countries of origin, requesting country, changes in technology, and the expanding availability of information through both legitimate and illegitimate channels, economic espionage continues to be one of the most pervasive and complex types of white-collar crime.

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See Also: Computer Hacking; Copyright Infringement; Employee Crime; Pharmaceutical Industry; Terrorism; Trademark Infringement; World War I; World War II.

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Edelhertz, Herbert

Herbert Edelhertz (1922–99) was a criminologist, lawyer, and scientist, best known for his significant contribution to the definition, conceptualization, and scholarship of white-collar crime. Edelhertz authored and co-authored numerous articles, books, and reports about organized crime business activities, corporate fraud, and the prosecution of white-collar crimes. He is most cited in contemporary literature for his definition of white-collar crime, which emerged in his 1970 *National Institute of Law Enforcement and Criminal Justice* publication titled "The Nature, Impact and Prosecution of White-Collar Crime," wherein he describes it as "an illegal act or series of illegal acts committed by nonphysical means and by concealment or guile, to obtain money or property, or to obtain business advantage."

When Edelhertz emerged as a significant contributor in the literature on white-collar crime, the number of scholars who had focused their attention on the subject had been relatively modest since the work of Edwin Sutherland—a sociologist who had published considerably on the subject about 30 years earlier. Although he expressed respect for Sutherland's pioneering advancements, Edelhertz attributed the hiatus in white-collar crime research to a disjunction between the goals of sociological researchers and criminal justice practitioners based on Sutherland's perspective, which focused (improperly, according to its critics) on the actor versus the act. Edelhertz (among others) found Sutherland's definition of white-collar crime ("a crime committed by a person of respectability and high social status in the course of his occupation") to be too limiting—particularly since it failed to consider that all persons at all levels of the social structure are capable of committing occupational crimes.

Additionally, he suggested that the definition should focus more on characteristics of the act, rather than the actor—a more effective approach in terms of law and policy. Edelhertz also argued that Sutherland's definition excluded a considerable number of white-collar offenses that have nothing to do with corporations or one's occupation. Thus, in sharp contrast to Sutherland, Edelhertz took an act-focused approach to the definition of white-collar crime and expanded the conceptualization of white-collar crime to encompass such acts as the filing of personal false income tax returns, fraudulent claims for social security and/or disability benefits, and planned bankruptcies or consumer fraud. Edelhertz was also criticized for the vagueness and breadth of his definition—primarily in relation to his use of the term *nonphysical* and sweeping incorporation of crimes that are nonoccupational.

Aside from his focus on definitional issues, Edelhertz contributed to the white-collar crime literature in his work on investigative strategies for federal, state, and local law enforcement agencies—work that centered on bridging the gap between researcher and practitioner to achieve more successful detection, enforcement, and prosecution of white-collar crimes. In his essay in the *American Behavioral Scientist* titled "White-Collar and Professional Crime: The Challenge for the 1980s," Edelhertz suggests that society is becoming more vulnerable to white-collar crime because of developments in technology, exposure to new opportunities, and social and economic trends. According to Edelhertz, the primary issue is the difficulty in distinguishing unlawful activity when many white-collar offenses occur during the course of what "appear to be thoroughly legitimate contexts."

He further notes the inconsistencies with respect to the handling of individual cases—particularly in terms of agency definition, enforcement, and conflicting legal remedies. He also comments on the lack of available data with regard to the nature and prevalence of white-collar crime, and the reluctance of law and accounting professionals to contain and report white-collar crimes. Consequently, he asserts, white-collar crime will continue to flourish, as long as the means to successful identification and prosecution are impeded. Edelhertz argues that, "such reconsideration may be encouraged by successful criminal prosecutions and massive civil judgments against major public accounting firms." According to Edelhertz, the proper focus of the criminal justice system should be equity in sentencing, which is dependent upon the elimination of disparities between the charging and prosecution of white-collar offenses and crimes of the poor and disadvantaged.

While employed as an attorney with the U.S. Department of Justice, Edelhertz worked for the Criminal Division as chief of the fraud section, where he managed nationwide prosecutions of a wide range of white-collar criminal activities. Beyond his accomplishments in the investigation, apprehension, and prosecution of white-collar offenders, Edelhertz established the Batelle Law and Justice Center in Seattle, Washington (where he served as staff scientist), created the National District Attorneys Association Economic Crime Project, and served as director of the National Center on White-Collar Crime, sponsored by the Law Enforcement Assistance Administration.

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See Also: Cressey, Donald; Organized Crime; Sutherland, Edwin H.

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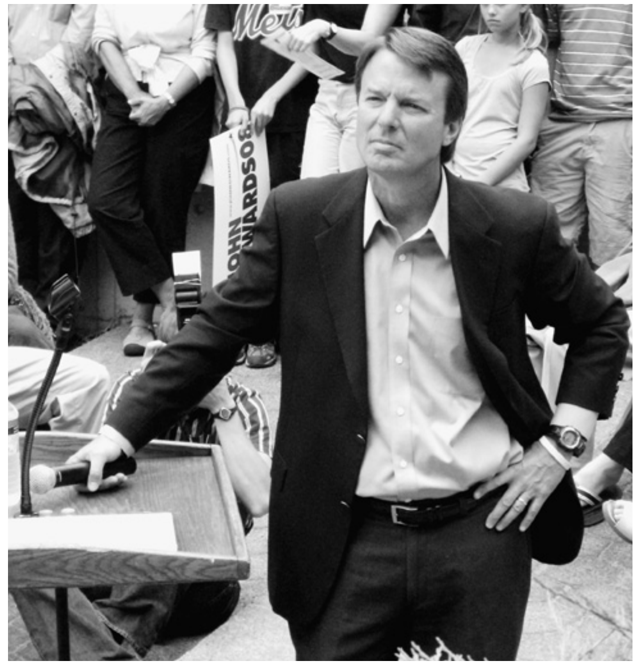
Edwards, John

John Edwards is a former Democratic Senator from South Carolina, the 2004 Democratic vice presidential nominee, and a two-time candidate for the Democratic presidential nomination. During his campaigns, he focused on populist themes, emphasizing his humble upbringing and family values. In 2008, Edwards became embroiled in an infidelity scandal; he later admitted to fathering a child with a campaign staffer, and in 2011, he was indicted for illegally using campaign funds to cover up the affair. Edwards was born on June 10, 1953, in Seneca, South Carolina. In 1974, he graduated from North Carolina State University, and in 1977, he earned a law degree from the University of North Carolina at Chapel Hill. While in law school, he met his wife, Elizabeth Anania; they were married in 1977 and later had four children. He began his political career in 1998, when he was elected to the U.S. Senate from South Carolina. In 2004, Edwards sought the Democratic nomination for president to challenge Republican incumbent George W. Bush. Although he failed to secure the nomination, the eventual nominee, Massachusetts Senator John Kerry, selected Edwards as his running mate. In the election, the Kerry-Edwards ticket lost to Bush and Vice President Dick Cheney by a margin of 51 to 48 percent. The day after the election, Edwards revealed that his wife had been diagnosed with breast cancer. Edwards returned to his private life; he had declined to run for a second term in the Senate during the 2004 election.

In December 2006, Edwards reentered national politics, announcing his intention to seek the 2008 Democratic presidential nomination. In October 2007, in the midst of the primary campaign, the *National Enquirer*, a tabloid newspaper, alleged that Edwards had engaged in an extramarital affair with an unnamed campaign staffer. In December, the *Enquirer* published a photo of the woman, campaign videographer Rielle Hunter, showing her pregnant; the paper alleged that Edwards was the father of the child. Edwards vehemently denied the affair, and the story gained little media traction. Edwards eventually dropped out of the race in January 2008, after finishing third in several primaries, behind New York Senator Hillary Clinton and Illinois Senator Barack Obama. On May 14, Edwards publicly endorsed Obama.



John Edwards, Democratic presidential primary candidate, at a campaign stop in Hanover, New Hampshire, August 23, 2007. Edwards was indicted for using campaign funds to stifle the scandal arising from his affair with a campaign staffer.

Campaign Fund Scandal

In July 2008, the *National Enquirer* published additional allegations regarding the relationship between Hunter and Edwards, reporting that Edwards had secretly visited Hunter and her daughter, Frances Quinn. In August, Edwards admitted that he had engaged in an affair with Hunter but denied fathering her child. An aide to Edwards, Andrew Young, claimed that he was the father of Hunter's child. The scandal acquired a legal dimension in August 2009, when a federal court in Raleigh, North Carolina, began investigating reports that Edwards's chief fund-raiser had illegally funneled campaign money to support Hunter and hide her affair with Edwards. On August 6, Hunter testified before a federal grand jury; she stated that she and her filmmaking company were paid over $100,000 from Edwards's political action committee (PAC) for her work on the campaign. A few months later, in December 2009, Young published a memoir revealing that he was not the father of Hunter's child and that he had lied in order to help Edwards avert a scandal and preserve his political career. In January 2010, Edwards admitted that he was the father of Hunter's daughter.

In June 2011, Edwards was indicted on six federal charges stemming from the attempted cover-up of his affair with Hunter. The charges filed in *U.S. v. John Reid Edwards* were the result of a two-year investigation revealing that Edwards had used nearly $1 million from two wealthy donors, including heiress Rachel "Bunny" Mellon, to pay for the travel, living expenses, and hospital bills of Hunter. Prosecutors alleged that Edwards had violated two aspects of the Federal Election Campaign Act of 1971. First, the law forbids any individual from contributing more than $2,300 to a single candidate during a primary campaign; second, the act requires the campaign to disclose the names of all individuals who donate more than $200 to the candidate. According to the indictment, Edwards had not only accepted contributions from Mellon totaling $725,000, but had also had filed "false and misleading reports" with the Federal Election Commission designed to hide the contributions. The charges carried a maximum penalty of 30 years in prison and $1.5 million in fines. Edwards maintained his innocence, arguing that the funds were personal gifts and thus were not subject to federal election law. Before the trial began, the two sides attempted to fashion a plea bargain that would involve fines but allow Edwards to retain his law license and avoid jail time. These negotiations failed, and the trial began on April 23, 2012. In June 2012, the jury acquitted Edwards on one count of the indictment but failed to reach a verdict on the other five counts; the judge declared a mistrial. The U.S. Department of Justice declined to retry the case. Although Edwards escaped criminal penalties, the affair and trial tarnished his image and ended his political career. The scandal also damaged his marriage to Elizabeth Edwards; the couple separated in December 2009, and she died from breast cancer in December 2010.

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See Also: Ethics; Hunter, Rielle; Young, Andrew.

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Eisenhower, Dwight D.

Dwight David Eisenhower was the 34th president of the United States, serving from 1953 to 1961. The former Allied commander during World War II and only general elected president in the 20th century, Eisenhower served two full terms as president. He was the first president prohibited from seeking re-election through term limits. Eisenhower's political success was based largely on his personality and the goodwill surrounding his Allied command efforts. He was not a traditional politician, ensconced in the world of partisan politics and party machinations. Eisenhower's presidency coincided with a period of unprecedented economic growth during the postwar expansion of the 1950s.

Critics at the time viewed the Eisenhower administrations as highly pro-business, an assessment that has held up under historical analysis. Eisenhower ran business-friendly administrations from the start and peopled his cabinet with business leaders. His policies, including tax concessions to big business, favored the interests of capital, reflecting Eisenhower's view that what was good for business was good for the country as a whole. Eisenhower's defense secretary, Charles Wilson, declared: "What's good for General Motors is good for America." Among the first acts of the Eisenhower administration was the giving away of federal offshore oil reserves. This move allowed private industry to exploit one of the public's most valuable resources. Eisenhower also tried to dismantle the Tennessee Valley Authority (TVA), favoring private utility companies and their profits at the expense of the public and its energy needs.

Notably, at least three business leaders named to Cabinet-level posts—Charles E. Wilson, George M. Humphrey, and Harold E. Talbott—were subjects of questioning by the Senate regarding their investments and possible conflicts of interest between their official and business activities. Talbott, secretary of the Air Force, eventually resigned over the charges. When questioned on the influence of big business on his administration, Eisenhower asked whether government should be run by "some failures" or by "successful businessmen." Despite his claims to economic prosperity, unemployment climbed through his second term, as did public debt. The first Eisenhower administration put in place an extension of insurance coverage under Social Security as well as an increase to the minimum wage. Eisenhower once criticized union busters, exclaiming that "only a fool would try to deprive working men and women of the right to join the union of their choice." At the same time, his first secretary of labor, Martin P. Durkin, resigned his position within a year because despite public utterances, the president failed to uphold his promise to press for revision of the Taft-Hartley Act, which severely restricts the union shop.

Politically, Eisenhower failed to oppose the machinations of Senator Joseph McCarthy, whose anticommunist witch-hunts were responsible for ruining numerous lives and careers, including causing the suicides of targeted individuals. During the campaign of 1952, Eisenhower cut from a campaign speech a defense of U.S. Army General George C. Marshall, his mentor, whom McCarthy had identified as a traitor. Political advisors convinced Eisenhower that he needed McCarthy's support in order to win the election. Eisenhower even went so far as to endorse McCarthy in his campaign for re-election. McCarthyism grew under Eisenhower, with a lasting impact on American social and cultural life. More recent research points to Eisenhower's role in maneuvers to oppose what he saw as communist influences within national liberation struggles. The Senate Select Committee on Intelligence, which reported on activities of the Central Intelligence Agency (CIA) over a 13-year period, concluded in 1975 that there was strong evidence that CIA officials planned the assassination of Patrice Lumumba, progressive leader of the newly independent Congo. The committee suggested that Eisenhower had given the orders for Lumumba's death. The committee report was published despite the opposition of President Gerald Ford and CIA Director William Colby.

Farewell Address

In terms of corporate and white-collar crime, Eisenhower is most often referenced for his 1961 presidential address, his farewell. This address represents a significant statement on the confluence of big business, particularly military contractors and defense firms, the Pentagon, and government. Eisenhower, who had long opposed growing defense budgets, notes not only the drain on public resources involved in military spending but also the expansion of undemocratic decision making within informal corporate-lobbyist-government networks. "In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex." Eisenhower drew the connection between military budgets, their expansion, and the inability of governments to meet other, more pressing, social needs. "Every gun that is made, every warship launched, every rocket fired signifies, in the final sense, a theft from those who hunger and are not fed, those who are cold and are not clothed." In the present context of military expansion and U.S. involvement in war and occupation, commentators note that Eisenhower's fears have, in fact, been realized.

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See Also: Corporate Capture; Defense Industry Fraud; Government Contract Fraud; Government Procurement Fraud; Revolving Door; World War II.

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Eli Lilly and Company

The manufacturer of the popular antipsychotic drug Zyprexa and the osteoporosis drug Evista, Eli Lilly and Company was charged in 2011 with illegally marketing both drugs. The company pleaded guilty to two criminal misdemeanors and was required to pay $2.7 billion, plus additional fines. Those fines accounted for the largest criminal fine ever levied against an American drug company. Eli Lilly also spent $1.2 billion to settle more than 32,000 injury claims and $62 million to settle charges of illegal marketing in 33 states. Eli Lilly spent $36 million to settle claims involving Evista, which Eli Lilly had marketed as reducing the risks of developing breast cancer and cardiovascular disease. Parties in lawsuits against Eli Lilly included individuals, insurance companies, pension funds, unions, and the Church of Scientology. In recent years, most of the attention on Eli Lilly has focused on Zyprexa. Eli Lilly has been accused of placing pressure on physicians and nursing homes to prescribe the medication, even when it was unwarranted. Between 1996 and 2008, the sale of Zyprexa grossed more than $39 billion for Eli Lilly. By 2010, Zyprexa was generating $23 billion annually.

Lobbying Activities and Scandals

Eli Lilly has maintained close ties to Republican presidents George H. W. Bush and George W. Bush. When the latter pushed through the Homeland Security Act in 2002, following the terrorist attacks of September 11, 2001, a special provision protecting drug companies was hidden in the bill. Amid public outcry, the provision was removed by Congress in 2003. Eli Lilly spent $3.4 million to lobby against the Barack Obama–sponsored government health plan in the first three months of 2011. Olanzapine, which is marketed as Zyprexa, was approved by the Food and Drug Administration (FDA) in 1996 for patients diagnosed with schizophrenia and bipolar disorder. However, Eli Lilly began marketing the drug for use in patients suffering from conditions such as sleep disorders, disorderly behavior, aggressiveness, and dementia. Patients ranged from young children to the elderly. Eli Lilly particularly targeted nursing homes, pushing the notion of "5 at 5," which advocated giving five milligrams of Zyprexa to patients at 5 P.M. each day to keep them under control.

Eli Lilly has had a long history of scandals. In 1982, itwas forced to pull Oraflex, an anti-inflammatory drug, after only three months because it was responsible for the deaths of more than 100 people. On September 14, 1989, Joseph Wesbecker, a mentally ill patient who was on Prozac, opened fire with an AK-47 in Louisville, Kentucky, killing eight and wounding 12 before killing himself. British journalist John Cornwell vilified Eli Lilly in his account of the Wesbecker incident, accusing the company of corrupting the judicial system. In 2002, *60 Minutes* accused Eli Lilly of illegally marketing its drug Prozac Weekly after its patent on Prozac had expired. In 2003, Medicaid and the National Alliance for the Mentally Ill charged Eli Lilly with charging twice the price of similar antipsychotic drugs, and some states threatened to ban Zyprexa for use with Medicaid patients. In December 2006, the *New York Times* was approached by a whistleblower, an Alaskan attorney who provided evidence that Eli Lilly was covering up evidence that the weight gain associated with Zyprexa was linked to the onset of diabetes and other metabolic disorders. *Rolling Stone* reported that patients on Zyprexa gained an average of 24 to 66 pounds a year. Both the United Kingdom and Japan began requiring warning labels on Zyprexa, alerting users to possible risks of diabetes, hyperglycemia, and death when taking the drug. Lily was also accused of recruiting homeless alcoholics when testing Cymbalta, an antidepressant.

In the fall of 2011, Eli Lilly was forced to remove Xignis from the market after it failed to meet its claims of combating sepsis. In the spring of that same year, Eric Bloomberg, the deputy chief of the FDA, announced that scholarly articles on Zyprexa purportedly written by respected physicians had actually been ghostwritten by Eli Lilly personnel. At least seven studies conducted by private researchers have indicated that Zyprexa is not effective for fighting dementia. Researchers also found that Zyprexa increased the rate of heart attacks in elderly patients and made them more vulnerable to infections such as pneumonia. According to a study funded by the U.S. Agency for Health Care Research and Quality and citied in an article published in the *Journal of the American Medical Association* in 2009, evidence has shown that patients taking antipsychotic drugs have died of sudden cardiac arrest at twice the rate of individuals not taking such drugs.

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See Also: Food and Drug Administration, U.S.; Marketing Fraud; Pharmaceutical Industry.

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Embezzlement

No organization is immune to embezzlement, which affects not only organizations but also people, communities, and countries. With advances in technology, embezzlers have found new and innovative ways to commit their crime, leading organizations to constantly examine their organizational policies and internal controls. The changing modus operandi of embezzlers and their motivations must now be re-examined by researchers, simultaneously with changing organizational dynamics. The strategy of the organization to combat the crime of embezzlement also may vary. Despite the changing environment in which embezzlement takes place, the extent of the problem is of great concern. The crime of embezzlement has been on the rise in many continents of the world, but with the changing dynamics, how should criminal justice system professionals and employers treat the crime of embezzlement?

Embezzlement refers to the act whereby an employee is authorized constructive possession of his or her employer's chattel, money, or valuable security and, in a position of trust, steals the property entrusted to him before it reaches the possession of the employer and converts it to his or her use or the use of another person who is not the owner. Academics and researchers have over the years, proposed a multiplicity of definitions to not only reflect new organizational policies but also incorporate the variety of ways that embezzlers have carried out their acts.

Some authors have contended that employees are placed in positions of trust and act on behalf of their employer in the conduct of the organization's business, but this position of trust can be debated, because many employers today have implemented a variety of checks and balances to prevent acts of embezzlement and other instances of occupational fraud. This position of financial trust is now only a position of financial responsibility because that trust no longer exists, and this epitomizes the changing dynamics of contemporary organizations.

Art of Embezzlement

An embezzler can be a very creative thief and is often a strategist. The theif may carry out his or her act on the spur of the moment, plan and execute in a short space of time, or make plans spanning a long period of time before executing it. The embezzler may steal small sums of money or a large sum that can cripple the organization and/or the economy in which he or she operates.

Embezzlement can occur in a variety of ways and is sometimes never discovered or discovered long after it has occurred. Some embezzlers are capable of successfully hiding their wrongdoing, often because of a low level of internal controls or the complicity or complexity of the act. Often, an act of embezzlement is only discovered when an audit is conducted, or through a whistleblower. Embezzlers may be sophisticated or simple, contemporary or traditional, in embezzling from the organization in which they are employed. The act of embezzlement may involve a single employee, or a group of employees. An embezzler can also outsource the assistance of persons who are not even employees of the organization.

Those who carry out acts of embezzlement are not defined by a particular race, color, religion, social standing, or financial position. Why should an employer have to guard against thieves on the inside, those who are already compensated for their work? To ensure that organizations maintain their viability, it is necessary for them to guard against internal and external thieves, although that may result in significant financial investment. The good or service the organization provides, whether it is a profit-making or nonprofit organization, the size of the organization, the country or countries in which the organization operates, and a host of other factors determine how a company can guard against embezzlement.

Changing Dynamics of Organizations

The contributions of an organization's human resources are required to achieve organizational goals. To provide goods and services, organizations must have not only the required human resources but also the requisite financial and physical resources. Employers must be cognizant of these facts when hiring employees because they can help or hinder an organization's progress and competitiveness in the marketplace. In addition to the technological and industrial revolutions that have taken place, globalization has also affected organizations in many positive and negative ways.

Organizations around the world, including companies, nongovernmental organizations, and faith-based organizations, adopt policies, set guidelines, and institute a variety of internal control mechanisms. However, they are still susceptible to embezzlement.

Small and medium-sized organizations can be more vulnerable to embezzlement because of their organizational culture or their inability to implement internal controls, which may be too costly for the company. However, acts of embezzlement are not limited to private organizations, nonprofit organizations, and faith-based organizations. Parliamentarians and other public officials often commit acts of embezzlement. Some of the most successful, profitable, and secure organizations in the world, as well as countries with good and successful governance models, have been victims of embezzlement.

What Drives the Embezzler?

An employee, who initially may not be motivated to embezzle from his or her employer, may do so once the opportunity presents itself and there is a great likelihood that he or she can successfully carry out the act and go undetected. On the other hand, others may carry out the act without any prior motivation, as it can be a spur-of-the-moment decision, not even considering the consequences or the possibility of the act's detection. Not all employees engage in embezzlement because of a need: some employees nurture a bad habit or an addiction, such as gambling; many simply seize an existing opportunity; whereas some simply are greedy and others are coerced or encouraged.

Although many have identified specific circumstances that motivate an embezzler to carry out his or her act, red flags are seemingly nonexistent in some acts of embezzlement. While some red flags can provide a warning for organizations, which would be helpful, they cannot completely prevent acts of embezzlement. However, the identification of red flags can assist the organization in determining what policy or strategy it will implement to combat a possible act of embezzlement.

Extent and Consequences of the Problem

Acts of embezzlement have occurred at Fry's Electronics Inc. and Koss Corporation. Other cases include the Dixon, Illinois, case with Rita Crundwell; the Washington, D.C., case with Hariette Walters; Korea Daewoo's Kim Woo-Choong; Saudi Arabia's Algosaibi conglomerate Money Exchange's Maan al-Sanea; and India's Hisar Forest Department. Acts of embezzlement at nonprofit organizations include those committed at ACORN and the Points of Light Institute.

Embezzlement can have negative consequences for the organization, which can become financially unstable or bankrupt as a result of the crime. Employees can be affected because their services may be terminated as a result of a major financial loss, and their level of supervision may increase physically or through technology, leaving them with feelings of alienation and a sense of not being trusted. The community in which the organization operates may no longer be able to obtain financial donations for community events or assistance in improving the community. The wider society can also feel the effect of an act of embezzlement because the cost is passed on to unsuspecting consumers through higher prices for goods or services. An act of embezzlement can also threaten the financial stability of the economy. Acts of embezzlement cost businesses large sums of money and can damage social relationships. A government may be unable to deliver or have difficulty in delivering, the basic infrastructure to its citizens.

A street crimes are usually considered more dangerous because they often involve high levels of interpersonal violence, it is difficult to quantify the debilitating consequences of embezzlement, which seldom involves violence. Embezzlement can have devastating consequences on employees, families, businesses, communities, and countries, and it is particularly distressing for the employer.

Dealing With Embezzlement

Although some acts of embezzlement are not detected, known cases provide an opportunity for the affected organization to reinforce its internal controls and develop other policies and guidelines that would make it much more difficult or impossible for an act of embezzlement to be carried out. Therefore, policy makers are critical in treating such crimes, which are different from street crimes.

Some of the primary issues in dealing with embezzlement are the reluctance of an employer to report it, the view that such publicity could tarnish the image of the organization, the desire to only obtain restitution, the view that embezzlement is not "real crime," the degree of trust placed in employees, the lack of appropriate internal controls and accountability, and the nonviolent nature of the act. Embezzlers, employees, and the wider society do not view embezzlement as real crime, which is primarily because embezzlement does not usually involve physical violence or harm to human beings, such as an act of robbery, a rape, or an assault. The key is to reduce or remove opportunities for a motivated employee to consider carrying out such an act. Many organizations resort to situational crime prevention strategies. The employer must therefore implement controls or policies that will counter the various employee motivations that make embezzlement in organizations not only difficult to treat but also dynamic. However, as advances in technology are made and organizations are becoming more global in scope, they must continuously examine and assess the effectiveness of their internal controls if they are to keep ahead of embezzlers' innovation.

Guarding against thieves on the inside requires significant investment in an organization's internal control system, which must be regularly checked and upgraded. Organizations must be flexible and innovative if they are to deal effectively with embezzlement at the workplace. While employers balance strategic decisions, such as strengthening the organization's internal controls, they must also promote a working environment that is comfortable and trusting, and that will not result in organizational inefficiency that could hinder the success and viability of the organization.

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See Also: Cressey, Donald; Employee Crimes; Forensic Auditing; Sutherland, Edwin H.; Whistleblowers.

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Employee Crimes

Employee crimes are a reality of the business world today, inflicting serious consequences on organizations, stakeholders, and society overall. These crimes, conducted by employees, refer to deliberate acts that violate moral and legal standards. Today's business media are filled with examples of unethical and illegal behavior, including financial fraud, employee theft, insider trading, bribery of government officials, corruption, and customer deception. Awareness and prevention of employee crimes is critical because these acts can result in serious financial and legal consequences for perpetrators. Public awareness of employee crimes can also significantly damage a company's reputation and result in declining levels of trust, lower customer sales, employee layoffs, and possibly even the closing of a company.

For example, in 2005, Groves Funding Corporation, a mortgage brokerage firm based in Cincinnati, Ohio, had to close its doors as a result of a $7 million mortgage fraud that the firm's chief executive officer and employees orchestrated. Additionally, many businesses that supported this fraud folded, and hundreds of people lost their jobs as a result of this massive banking fraud scheme. The case of Groves Funding Corporation is just one of many.

Academic scholars across the fields of accounting, management, psychology, and business ethics continue to be intrigued by what drives employees to engage in such illegal and immoral behavior. For more than 30 years, scholars have examined individual- and organizational-level factors that impact employees' participation in criminal activity in the workplace. Existing research suggests that causes of employee crimes range from individuals' lack of moral awareness and judgment to unethical leadership and poor organizational infrastructure. Recently, Abhijeet Vadera and Michael Pratt proposed a typology of workplace crimes based on the motivations of employees. Their framework creates three major categories of employee crimes: pro-organizational, antiorganizational, and nonaligned-organizational. Each of these three types of employee crimes is accompanied by distinct perpetrator intentions with regard to beneficiaries and victims of the crimes. Despite differences in intentions, pro-organizational, anti-organizational, and nonaligned-organizational crimes each go against societal and legal norms and can be very damaging to an organization and its members. The cases of Weston Smith, Diann Cattani, and Garrett Bauer illustrate the distinct natures of these three employee crime types.

Pro-Organizational Employee Crimes

Traditional views of employee crimes tend to emphasize the self-interest of employees, assuming that acts of lying, cheating, and stealing are conducted with the primary intention of benefiting the perpetrator. Self-interest often drives behavior; however, employee crimes can also be committed with the intention to benefit others, including one's organization and its members. Pro-organizational acts include illegal activities such as accounting fraud as well as unethical behavior such as exaggerating the benefits of a company's products to customers. Employees may participate in these acts to advance their company's reputation and financial goals. From the employee's perspective, overstating revenues might strengthen a company's position among shareholders, and customer deceit might increase product sales. Although the primary intent is to benefit the organization and its members, employees can also simultaneously personally benefit from these illegal and immoral acts.

For example, a company's chief financial officer could misrepresent earnings in financial statements to strengthen the company's position among shareholders, while benefiting personally from increased share prices. In contrast with other types of employee crimes, pro-organizational crimes are not committed with an intended victim in mind. Employees are motivated to commit these crimes out of a desire to advance their organization, not necessarily to harm any person or organization in particular. Although organizations may benefit in the short term from

Whistleblower Adrienne Kinne at an antiwar protest in New York City, April 9, 2011. As a National Security Agency (NSA) linguist and intercept operator, Kinne shared in 2008 how the NSA ordered the transcription of hundreds of personal (and intimate) calls from American service members and aid workers.

pro-organizational crimes, and there may not be an intention to victimize anyone, these crimes can lead to long-term consequences for organizations and may significantly harm others. For example, an employee who deceives customers to help the company meet its monthly sales goal will also put the company at risk of damaging customer relationships, losing sales, and possibly engaging in legal disputes.

Pro-Organizational Crime: HealthSouth

The case of HealthSouth, a former leading health care provider based in Birmingham, Alabama, illustrates the motivations behind and consequences of pro-organizational crimes. In 2003, Weston Smith, former chief financial officer (CFO) of HealthSouth, found himself in the middle of one of the largest reported health care financial scandals in U.S. corporate history. Under the direction of Smith and other corporate financial officers, HealthSouth initially used aggressive accounting methods to boost its financial statements. In response to rising pressure to meet Wall Street earnings expectations, Smith's boss and chief executive officer (CEO) of HealthSouth, Richard Scrushy, insisted that the company meet earnings expectations and asked Smith to "cook the books." As a result, Smith and his chief accountant falsely created journal entries in order to boost the financial statements, ultimately leading to the false creation of $3.8 billion. There was an entire accounting department devoted to managing the accounting fraud and disguising it from external auditors.

The department was charged with carrying out decisions made by the corporate leaders regarding what financial manipulations needed to occur each quarter. Although Smith felt very uneasy regarding the crime he committed, he strongly believed that he was doing what was right for the company. Smith rationalized his behavior by believing that he was preserving jobs, creating new jobs, and increasing the overall company's stock price. The employees believed that they were doing what was right to protect the company. This is often a common rationalization with pro-organizational employee crimes. When employees frame business ethical decisions, they may use a different cognitive framework than they use for personal ethical decisions. Concerns of personal gain and future benefits can dominate business ethical decisions, whereas concerns of fairness and harm tend to motivate personal ethical decisions. Ultimately, Smith blew the whistle to the Federal Bureau of Investigation (FBI) and served 14 months in a federal prison camp for his role in the accounting fraud.

Prevention of pro-organizational crimes can be effective with the appropriate tone from the top and from middle managers. Additionally, corporate management must properly train employees on how to handle internal crimes and be sure to reward the type of conduct that they want employees to exemplify. Management teams also need to be conscious of programs designed to incentivize employees to meet organizational goals. For example, if an organization sets overly aggressive goals and is solely focused on meeting analysts' expectations at any cost, internal fraudulent behavior may emerge. Pro-organizational crimes may also be reduced as as result of the 2010 passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which incentivizes corporate whistleblowers to come forward with perceived malfeasance. As more employees begin to feel protected by the Dodd-Frank Act, this could encourage more internal whistleblowing, thereby minimizing employee crimes.

Anti-Organizational Employee Crimes

In contrast to employee crimes that are committed on behalf of one's organization, actions can also be taken to deliberately harm an organization and its members. Employees may participate in acts of retaliation against their co-workers, managers, or company as a result of perceived injustice in the workplace. For example, perceptions of unfair compensation or favoritism in the workplace may trigger feelings of employee disgruntlement. Antiorganizational behaviors are driven by the desire to harm others and are intended to result in personal material (e.g., financial) or psychological (e.g., personal satisfaction) gain. Antiorganizational acts include both workplace deviance and unethical behavior that is illegal or immoral in nature. Deviant workplace behaviors range from seemingly minor acts, such as employee gossip or taking excessive breaks, to more serious offenses such as verbally abusing customers and sabotaging company equipment. Similarly, antiorganizational crimes also include more traditional unethical behaviors of stealing (e.g., filing false expense statements). These actions taken by employees can result in significant financial losses for companies. According to the 2012 "Report to the Nation on Occupational Fraud and Abuse" by the Association of Certified Fraud Examiners, the typical organization loses approximately 5 percent of its revenue to fraud each year.

The case of Diann Cattani, former human resources consultant for a privately held company based in Atlanta, Georgia, is an example of antiorganizational crime that resulted in significant consequences for the employee perpetrator and the company that was victimized. Cattani was initially hired to manage a large-scale project that entrusted her with significant responsibility and included setting up the business infrastructure of the company. Similar to many small businesses where duties are not segregated, she was directly involved with a number of important company processes, including determining who got paid, signing checks, reconciling bank statements, and calculating bonuses. Cattani did not originally set out to manipulate internal controls, operating procedures, or relationships with the intention to steal from the company, but with opportunity, she learned how. Her deception started innocuously.

Cattani's entry into company theft began when she noticed that a travel agency had made an error in charging a personal trip to her corporate American Express account. Things were hectic before leaving for the trip, and she did not get around to calling the travel agent to re-issue the tickets, but she planned to reimburse the company when she returned. However, months passed, and she had not reimbursed the company. As more time went by, Cattani's workload continued to increase, while her yearly bonuses were decreasing. She began to feel resentful toward her employers, and as her anger toward the organization grew, the error in the travel agency charge led her to rationalize stealing for personal reasons. For example, she felt that hiring babysitters because she needed to work should be considered a business expense. She also rationalized some gas and meals as additional business expenses.

When her company purchased office equipment, she took some for herself, justifying it as supplies for when she worked from home. The opportunities to steal were numerous, and she seized them in countless ways. She reimbursed herself from physical receipts, and when the credit card statement came in, she reimbursed herself again for the same items. She created "dummy" invoices and paid herself. Additionally, she paid personal credit card accounts with company checks and initiated other forms of deceit and criminal subterfuge. Cattani was able to get away with these crimes because her employers allowed her to control all accounts and decide what information to share. Over the course of a few years, she stole approximately $500,000. As the guilt of her fraud began to impact her health, she confessed to the company's owners and served 18 months in a Florida federal prison for her crimes.

Prevention of antiorganizational crimes can be difficult, especially in circumstances in which segregation of duties is difficult because of a company's size. However, routine training, mandatory vacation days, job rotations, and establishing effective internal reporting channels can help deter antiorganizational crimes. Also, informing employees about whistleblower protection provision offered under such federal statutes as the Sarbanes-Oxley Act and the Dodd-Frank Act can be beneficial in preventing antiorganizational crimes.

Nonaligned-Organizational Employee Crimes

Employee crimes do not need to be conducted with the intention to help or harm one's organization; rather, employees also engage in criminal activity with the primary motive of personal gain. Organizational corruption, defined as fraudulent behavior conducted by those in power, is considered such an employee crime. These crimes are more likely to be committed by employees at higher levels of the organization, such as managers and executives, who are more likely to have access to private company information and resources. Specific examples of organizational corruption include accepting bribes and insider trading. The acceptance of personal bribes is a serious issue across a number of industries, including government, sports, and global manufacturing. Bribes include material transactions in the form of gifts or cash as well as promises of job promotions or future contracts. Each of these exchanges of bribery is accompanied by the expectation that the employee who receives the bribe will make a decision in the briber's favor.

There are serious legal consequences for engagement in bribery. In 1977, the U.S. government passed the Foreign Corrupt Policies Act, which states that payments to foreign government officials for the purposes of obtaining or retaining business are illegal. Individuals engaging in insider trading, which involves illegal disclosure of nonpublic information, also seek personal financial gains at a high risk. In 2004, Martha Stewart, a celebrity businesswoman, was found guilty of insider trading and was sentenced to prison after ImClone's CEO, Samuel Waksal, shared nonpublic information about his company's anticipated financial performance. Nonaligned-organizational crimes can be devastating for organizations, their stakeholders, and employees who engage in such acts.

The case of Garrett Bauer, a former day trader based in New York City, demonstrates the ease with which employees can fall prey to insider trading. Bauer's involvement with insider trading began when he received anonymous tips on upcoming corporate mergers and acquisitions from an attorney who worked at some of the country's premier investment banks. The attorney would give the anonymous tips to a middleman, who then gave the tips to Bauer. Based on these illegal tips, Bauer would then exercise trades and give some of the proceeds to his fellow co-conspirators. Bauer and his co-conspirators used pay phones and several complex schemes to profit by millions of dollars for nearly two decades. During the first 10 years of their scheme, Bauer actually lost millions of dollars; he began to see profits only during the last five years of the scheme.

Although he knew his actions were illegal, he did not view his actions as harming anyone directly. The FBI arrested Bauer in late 2011, and in early 2012, Bauer began speaking to university students about his story and his regrets of engaging in insider trading. In June 2012, Bauer received a nine-year sentence for his involvement in a 17-year insider trading scheme that netted him over $33 million.

It is difficult to prevent nonaligned-organizational employee crime, but hearing from the experiences of convicted felons such as Garrett Bauer can be beneficial in helping individuals understand that these situations can happen to anyone who allows his or her internal moral compass to be compromised.

Future of Employee Crimes

Business executives, employees, and academic scholars all have a role in shaping the future of employee crimes. Organizational leaders must lead by example and create a corporate culture that encourages transparency, ethical business practices, and open communication. Additionally, training, financial controls, and employee incentive programs, if appropriately designed and implemented, can help deter employee crime. Employees across all levels of an organization can also help protect their organization by reporting suspicious behavior. Rather than protecting their colleagues, employees need to be conscious of the potentially severe consequences that others' actions can have on their organization, its customers, and society overall. Scholars can continue to explore the individual- and organization-level factors that influence employees' engagement in illegal and immoral activities, as well as the conditions under which employees feel compelled to cover up the illegal behavior of their colleagues.

Further, business school professors can challenge students, future business executives, to critically analyze issues of employee crimes. Students need to be aware that seemingly "minor" acts of lying can potentially ruin an individual's career. For example, Scott Thompson, former Yahoo! CEO, resigned on May 13, 2012, after falsely claiming that he received a computer science degree on his résumé. There is much work to be done in terms of detecting and deterring employee crimes; however, there is a great opportunity for business professionals and scholars to engage in building solutions.

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See Also: Accounting Fraud; Corruption; Embezzlement; Forensic Accounting; Insider Trading; Ponzi Schemes; Whistleblowers.

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Employee Safety

Every day, millions of Americans go to work with the expectation that they will return home unharmed; however, this is not always the case. Each year, approximately 6,000 employees in the United States die from workplace injuries, while another 50,000 die from illnesses caused by exposure to workplace hazards. In addition, 6 million workers suffer nonfatal workplace injuries at an annual cost to U.S. businesses of more than $125 billion. Effective job safety and health add value to the workplace and help reduce worker injuries and illnesses. In 2010, 4,690 workers were killed on the job. This breaks down to 3.6 per 100,000 full-time equivalent workers, more than 90 a week, or nearly 13 deaths every day. This is a slight increase from the 4,551 fatal work injuries in 2009 but the second-lowest annual total since the fatal injury census was first conducted in 1992. Many of these cases are caused by egregious and willful safety violations, yet it is rare for an employer to be held criminally liable, let alone be imprisoned, for violation of state and federal safety laws.

Occupational Safety and Health Act of 1970

With the Occupational Safety and Health (OSH) Act of 1970, Congress created the Occupational Safety and Health Administration (OSHA) to ensure safe and healthy working conditions by setting and enforcing standards and providing training, outreach, education, and assistance. The law has given employees a wide range of rights. Workers are entitled to working conditions that do not pose a risk of serious harm. To help ensure a safe and healthful workplace, OSHA provides workers with the right to receive information and training about hazards, methods to prevent harm, and the OSHA standards that apply to their workplace. The training must be in a language that workers can understand. Workers can access copies of results of tests done to find hazards in the workplace as well as review records of work-related injuries and illnesses. Workers are able to receive copies of their medical records. They are able to ask OSHA to inspect their workplace and may use their rights under the law to remain free from retaliation and discrimination.

The OSH Act provides for criminal sanctions in various situations. If an employer willfully violates a standard, rule, order, or regulation and the death of an employee results, the employer may be held criminally liable. If an employer makes a false representation regarding compliance with the OSH Act, this may also make it criminally liable. Employers may be subject to civil and criminal fines, and in rare instances imprisonment. A willful violation is a voluntary action that is done with either intentional disregard of or with plain indifference to the statutory requirements. Malicious intent is not required to impose liability.

OSHA is a small agency; with its state partners, OSHA currently has approximately 2,200 inspectors, responsible for the health and safety of more than 130 million workers, employed at more than 8 million workplaces across the country. This translates to about one compliance officer for every 59,000 workers. According to a report by the American Federation of Labor-Congress of Industrial Organization (AFL–CIO), it would take OSHA 129 years to inspect all workplaces under its jurisdiction. Inspections are the main tool used to make sure that companies comply with safety standards that are set for each industry. Because OSHA is so strapped for inspectors, it allows many of the states to take over this responsibility. Section 18 of the OSH Act encourages states to develop and operate job safety and health programs. OSHA approves and monitors state plans. Even so, OSHA regulations are violated on the federal and state level.

Examples of Unsafe Workplaces

Some historical cases of willful violations include particular occupations, products, and industries, like coal mining, asbestos, and textiles. One of the first major coal mine disasters of the television age occurred in 1968, when 78 men were killed in an explosion in a coal mine in Farmington, West Virginia. The ignition source that set off the original explosion could never be determined. However, investigators found a classic combination of factors, which included inadequate ventilation, inadequate control of explosive methane gas and coal dust, and inadequate testing for methane. All of these factors could have set the stage for the explosion.

The use of asbestos and its harmful effects have also created unsafe working environments. Many employees who have asbestosis, a type of lung cancer, have sued Johns Manville, a major manufacturer of asbestos. Court documents confirm that Johns Manville knew of the hazards associated with asbestos and intentionally kept the information from its employees. In fact, the asbestos industry had a long-standing policy of suppression. The industry did not warn workers of the dangers of asbestos exposure until 1964.

Textile workers in North and South Carolina have high rates of byssinosis, an irreversible respiratory disease caused by the ingestion of textile fibers like cotton dust. An estimated 35,000 workers are inflicted with this deadly disease. Working in a factory can be dangerous work. When one is not told of the dangers in the workplace or is fired for organizing protests, this is a violation of law and is unacceptable. Many in the textile industry spent decades denying the existence of byssinosis. Many times, the factories would hire company doctors who were told to tell employees that they were fine or simply had bronchitis. Many of the employees had no understanding that their illnesses were caused by the industry's criminal negligence in not creating a safe working environment.

There have been several cases where owners and managers have been held criminally liable under state law for willful violation of safety standards, but these convictions are atypical. Two instances of successful criminal prosecutions involve Film Recovery Systems Inc. and Imperial Food Products. On June 14, 1985, Steven O'Neil, Charles Kirschbaum, and Daniel Rodriguez, agents of Film Recovery Systems Inc., were convicted of murder in the death of Stefan Golab. Golab was made to work with cyanide with no safety equipment; even when he began to get sick, he was told to keep working. In 1990, the conviction was reversed and remanded for a new trial. On September 7, 1993, the three former employees entered guilty pleas of involuntary manslaughter. In September 1992, the owner of Imperial Food Products, Emmett Roe, age 65, pleaded guilty to involuntary manslaughter and was sentenced to 20 years in prison for his responsibility in the deaths of 25 of his workers when a fire occurred at his plant. The workers were killed because the fire doors were locked to prevent them from stealing chicken parts.

State and federal regulatory agencies like OSHA can only do so much, given the lack of budget and inspectors. It is the responsibility and legal duty of an employer and company to create and maintain a safe working environment for employees. Workers should not have to worry about injury or death on the job or risk their safety unnecessarily for a paycheck.

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See Also: Asbestos; Film Recovery Systems Inc.; Johns Manville Corp.; Occupational Safety and Health Act; Workplace Deaths.

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Endangered Species Act

The publication of Rachel Carson's *Silent Spring* in 1962 ushered in a new era of American environmental awareness, stewardship, and activism. Throughout the 1960s and early 1970s, human-made environmental disasters such as the Centralia, Pennsylvania, coal mine fire in 1962 and the Cuyahoga River fire in 1969 were juxtaposed with the creation of innovative environmental policies such as the Clean Water Act (1962), the National Environmental Policy Act (1969), and the Toxic Substance Control Act of (1972); powerful environmental interest groups like the Natural Resources Defense Council, formed in 1969; and federal agencies designed to safeguard the natural environment, such as the Environmental Protection Agency, created in 1970.

On December 28, 1973, the Endangered Species Act, which had undergone several transformations since the mid-1960s, was passed by Congress and signed into law by President Richard Nixon. The Endangered Species Act of 1973 (ESA) represented a significantly strengthened extension of several earlier legislative attempts to protect animals, plants, and their habitats from the destructive forces of human population growth and development.

The ESA ratified the treaty known as the Convention on International Trade in Endangered Species (CITES), which was designed to curtail international commerce in imperiled plants and animals. Seen holistically, the regulatory and enforcement mechanisms of the ESA represented a significant step toward combating the black market trade in rare and exotic species. Additionally, the ESA provided a mechanism for preserving plants, animals, and their habitats within the United States from careless, and sometimes unscrupulous, development. Since its enactment in 1973, the Endangered Species Act has undergone numerous revisions, with significant amendments in 1978 and 1979, 1982 and 1988, and the early 1990s.

The rapidly declining population of the American whooping crane in the 1930s spurred federal interest in endangered species. By the 1950s, with public interest in protecting endangered species growing, the federal government began to report annually on the status of the whooping crane population. Protection for imperiled species then progressed in piecemeal fashion throughout the 1960s. In 1962, the congressional Committee on Rare and Endangered Species was formed; it subsequently published a listing of 331 species in danger of extinction. A stipulation in the 1963 congressional Provision in Land and Water Conservation Fund Act earmarked funds to purchase crucial habitat for certain species. In 1966, the first incarnation of the ESA was created. The Endangered Species Preservation Act (ESPA) was primarily concerned with protecting habitats, not species. In 1969, the ESPA was significantly overhauled by Congress and renamed the Endangered Species Conservation Act (ESCA). The ESCA, among other things, expanded the scope of endangered species protection to species outside the United States, primarily by regulating the importation of imperiled species from other countries. By 1973, the ESCA was altered and expanded again into the Endangered Species Act. Further protections for indigenous species within the United States, as well as for species outside the United States (via CITES), were implemented.

Goal of the Endangered Species Act

The goal of the ESA is to protect animals (including vertebrates and invertebrates), plants, and habitats that have "esthetic, ecological, educational, historical, recreational, and scientific value to America and Americans." Oversight responsibility for the ESA resides with the secretary of the interior via the U.S. Fish and Wildlife Service, and also with the secretary of commerce. Species listed by the U.S. Fish and Wildlife Service as endangered or threatened have their statuses reviewed every five years. In addition, the ESA provides support to states in order to ensure adequate protective measures for plant and animal species and their habitats. Additionally, the ESA restricts or regulates the importation or exportation; taking; and unlawful possession, distribution, or sale of any listed species. Criminal and civil penalties for violating ESA prohibitions generally entail fines of between $25,000 and $50,000 per violation and potential imprisonment of between six months and a year.

Over 1,300 species currently listed as endangered or threatened receive protection under the ESA. Since the 1960s, only 13 species have been removed from the endangered/threatened list as a result of population recovery (including the bald eagle in 2007), leading some to criticize the efficacy and worth of the ESA. Proponents of the altruistic vision of the original ESA abhor the multiple amendments that have, in their view, reduced its usefulness. For example, the 1978 and 1979 amendments to the ESA created a special review committee that made it easier for federal agencies to undertake projects with potentially adverse impacts on endangered or threatened species (e.g., the Tellico Dam Project in Tennessee). Amendments in the 1990s also made the ESA more amenable to the development goals of state and private landholders. Despite criticism of the ESA's effectiveness over the last several decades, the landscape of the American natural environment would be quite different today had the ESA not been created.

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See Also: Carson, Rachel; Clean Air Act; Clean Water Act; Environmental Protection Agency, U.S.; National Environmental Policy Act.

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Enron Corp.

The December 2001 bankruptcy of Enron Corp., an energy firm headquartered in Houston, was the first in a series of major corporate scandals that followed in 2002, including scandals at Adelphia Communications, Tyco International, and WorldCom. Enron became a synonym for corporate greed and accounting fraud, and it was the most studied of the scandals. The bankruptcy was the largest in U.S. history, succeeded by WorldCom. The key element of the Enron debacle was the sophistication of methods used by senior executives to defeat corporate governance safeguards. The Enron story became a television film (*The Crooked E: The Unshredded Truth About Enron* [2003], based on a book by Brian Cruver), a documentary movie (*Enron: The Smartest Guys in the Room* [2005], based on a book by McLean and Elkind) and a stage play (*Enron* [2009] by British playwright Lucy Prebble).

Kenneth Lay formed Enron in 1985, through the merger of Houston Natural Gas and InterNorth. Subsequently, Jeffrey Skilling came in from McKinsey as chief executive and financial officer (CEO, CFO). Andrew Fastow and other executives allegedly used accounting manipulations; special purpose entities (SPEs) such as JEDI, Chewco, Whitewing, LJM, and Raptors; and concealment of debt to mislead the board of directors. Enron pressured the auditor, big-five accounting firm Arthur Andersen, concerning such issues. Skilling announced his retirement (for personal reasons) before the details were known. Sherron Watkins tried to alert Lay quietly concerning the problems. The stock price hit a high of $90 in mid-2000 but dropped to under $1 by the end of November 2001. Enron did not have sufficient cash to operate. When a Dynegy purchase did not materialize and Enron's credit rating fell to junk status, Enron filed for bankruptcy.

Various executives at Enron were indicted for a variety of charges and were later sentenced to prison, including Skilling and Fastow. Fastow and his wife pleaded guilty, and Andrew Fastow testified at the joint trial of Lay and Skilling. In May 2006, Lay and Skilling were convicted. The latter was sentenced to more than 24 years in prison on multiple charges. When Lay died of a heart attack prior to final sentencing, his conviction was vacated. Some 16 individuals pleaded guilty, including Chief Accounting Officer Rick Causey; five others, including four former Merrill Lynch employees, were found guilty. Skilling appealed up to the U.S. Supreme Court, which found that a prosecutorial theory of deprivation of "honest services" did not apply to the Enron situation. The Supreme Court restricted the theory to bribes and kickbacks. The result affected the sentence but not the conviction. Skilling was still appealing on the basis of alleged new evidence in 2012, so his case remained pending, although he was serving time in prison.

In January 2002, Enron fired Arthur Andersen, which argued it had already severed the relationship when Enron entered bankruptcy. Arthur Andersen was found guilty in federal district court of obstruction of justice for shredding thousands of documents and deleting e-mails and company files concerning the Enron audit. Andersen collapsed, as the firm had to surrender its CPA license in August 2002; 85,000 employees lost their jobs. The U.S. Supreme Court overturned the conviction on grounds that the jury was not properly instructed on the charge. Three British employees of Greenwich NatWest bank worked with Fastow on a special purpose entity called Swap Sub. The three were extradited to the United States for trial on wire fraud charges. In a November 2007 plea bargain, the three pleaded guilty to one count and received sentences of 37 months. In August 2010, two of the individuals retracted confessions.

Employees, shareholders, and creditors lost tens of billions of dollars in investments, pensions, and loans. Enron held auctions to sell assets to raise funds for the creditors. Employees have reportedly received about $3,100 each from a lawsuit. Multibillion-dollar settlements were received from several banks and other sources for investors, including the University of California.

Between December 2001 and April 2002, the U.S. Senate Committee on Banking, Housing, and Urban Affairs and the U.S. House Committee on Financial Services held multiple hearings concerning Enron and related issues. The resulting Sarbanes-Oxley Act became law in July 2002. Main provisions included establishment of a Public Company Accounting Oversight Board (PCAOB) to develop standards for the preparation of audit reports, restriction of public accounting firms from providing any nonauditing services when auditing, independence of audit committee members, requirements that executives sign off on financial reports, disgorgement of certain executives' bonuses in case of financial restatements, and expanded financial disclosure of firms' relationships with unconsolidated entities. In November 2003, the U.S. Securities and Exchange Commission (SEC) approved new governance requirements announced by the New York Stock Exchange (NYSE) in June 2002. Key provisions included a majority of independent directors; compensation, nominating, and audit committees composed of independent directors; financial literacy for audit committee members; one member of the audit committee being required to have accounting or related financial management expertise; special sessions of the board without management.

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See Also: Accounting Fraud; Adelphia Communications Corp.; Arthur Andersen LLP; Bush, George W.; Commodities Futures Trading Commission, U.S.; Corporate Capture; Corporate Criminal Liability; Creative Compliance; Ethics; Fiduciary Fraud; Financial Accounting Standards Board; Friedrichs, David; Global Crossing Ltd.; Insider Trading; Justice, U.S. Department of; Mail Fraud; Market Manipulation; Tyco International; Whistleblowers; WorldCom Inc.

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Environmental Protection Agency, U.S.

The U.S. government under President Richard Nixon passed landmark environmental protection laws, including, the Clean Air Act (1970), Clean Water Act (1972), and Endangered Species Act (1973). It also established the Environmental Protection Agency (EPA) on December 2, 1970, to apply and enforce the news laws. Under these new acts and the new agency, citizens were afforded the right to sue polluters and those who would exploit, damage, and/or alter land or assets held as commons. Immediately, businesses tried to undermine the new regulations. During the 1970s and through the 1990s, the government supported strong environmental protections. This changed when George W. Bush took office as president. As a proponent of industries with the largest environmental impact—logging, mining, and drilling—Bush reversed, ignored, or undermined environmental laws. Bush received millions of dollars in campaign funds from these industries, and in return he facilitated billions of dollars in benefits to his corporate contributors. In order to ensure industry success at circumventing environmental regulations, Bush altered the EPA's mission to reflect industrial agendas. EPA Chief Administrator Christine Whitman wrote a memo to Vice President Dick Cheney that "It would be hard to refute the charge that we are deciding not to enforce the Clean Air Act." Her correspondence reflected the acknowledgment that Cheney had met with energy company executives in closed-door meetings to write the nation's energy plan. Scientists representing government agencies were neither consulted nor involved in the process.

An indirect tactic employed by the Bush administration was to eliminate positions within

Entomologist Jeff Pettis inspects honeycombs at the U.S. Agricultural Research Service (ARS) in Beltsville, Maryland, as part of an effort to solve the mysterious syndrome known as colony collapse disorder. It is suspected to be caused by pesticides such as those used as seed treatments, particularly in genetically modified grains. Lack of regulation and enforcement of environmental protections such as those provided by the U.S. Environmental Protection Agency may have caused damage to or even failure of an entire industry.

the EPA's enforcement units. Just after Bush took office, 270 enforcement positions were removed, followed quickly by another 200. In order to reduce criticism, the EPA misled the public by boasting through press releases about its enforcement actions. These releases made claims about a record number of enforcement actions, but as news reporters from the *Sacramento Bee* discovered, the record was inflated because many of the cases were related to counterterrorism, not environmental violators. The reduction in enforcement benefited coal-burning power plants, many of which had been targeted jointly by the EPA and the U.S. Department of Justice for Clean Air Act violations prior to Bush's taking office. Enforcement requirements are significantly reduced when science is ignored, as shown by the following excerpt from Devin's book *Bush Versus the Environment*:

> An EPA draft study found that a process called hydraulic fracturing, used to extract oil and gas, could pollute drinking water with excessive amounts of benzene. A week after discussing this problem with Congressional staffers, EPA changed its tune and said there would not be excessive amounts of benzene, but it offered no scientific explanation, saying merely that the change was "based on feedback" from an industry source.

There are some objections that environmental enforcement costs businesses too much. Not only is there ample evidence to suggest otherwise, but failure to strongly regulate and enforce environmental protections also caused some industries to fail. In 2006, 50 percent of American honeybee colonies died because of colony collapse disorder. Honeybees pollinate 40 percent of the fruits and vegetables consumed in the United States. The cause of the disorder has not been definitively determined, but a strong suspect is the use of systemic pesticides, which are specifically designed to leave residues in the soil. Further, the pesticides include neonicotinoids, neurotoxins that are used as a seed treatment. They are particularly toxic to bees when they travel through the plant and leave residues in the nectar. Nearly all genetically modified corn grown in the United States is treated with the pesticide.

The EPA did not require chemical companies to test the pesticides on juvenile or developing bees. Additionally, the EPA relied solely on the chemical companies' reports to determine whether the products were safe. Farmers and beekeepers relied upon the EPA to adequately mitigate risk. Since 2006, American farmers have imported honeybees from Australia because the domestic honeybee population has not recovered, and the application of neonicotinoids continues, without oversight or restriction. In March 2012, several U.S. beekeeper organizations filed suit against the EPA for violating its rules by permitting use of neonicotinoids without knowing their effects.

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See Also: Bureau of Safety and Environmental Enforcement, U.S.; Bush, George W.; Clean Air Act; Clean Water Act; Global Warming; National Environmental Policy Act; Pollution, Air; Pollution, Water.

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Equity Funding Corporation of America

The Equity Funding Corporation of America carried out a massive accounting fraud regarding mutual funds and life insurance policies in the 1960s and 1970s. Employees of Equity Funding used computers to create fictitious life insurance policies, then sold the policies to other life insurance companies. When Equity Funding went public in 1964, the sale price of a stock share was $6, and at that time it had sold about 100,000 shares. In 1969, five years later, the price of a single share of Equity stock was up to $80, and the company had 5.2 million shares of stock. The total value of the company was estimated at $420 million at this time.

The scandal was exposed in 1973, when Ray Dirks and Ronald Secrist blew the whistle. By the spring of 1973, the entire company had collapsed. Equity Funding incorporated the purchasing of insurance policies, along with mutual fund investments. The concept behind the idea of Equity Funding included (1) the investor would buy a life insurance policy and some mutual fund shares from a representative of Equity Funding, (2) the investor would pay for the shares but then leave them in the possession of the corporation, (3) Equity Funding would then use the clients' shares as collateral for a loan, and (4) this loan was given to the client, so that he or she could pay the premium on the insurance policy.

These steps were followed for 10 years, with the loan increasing each year. In order for the loan to remain collateralized, the insured had to purchase more and more mutual funds annually. At the end of the policy's term, the insured would have to pay off the loans, including interest. Usually, selling some of their mutual shares would do this. The policyholder would then keep the rest of his shares and an insurance policy with cash value. It was soon evident that this type of investment could not be legally executed because it involves too many assumptions. First, this strategy assumes that the market is constantly expanding. If the market crashes, or even drops slightly, the policyholder is unable to pay off the loan, thus disqualifying the insurance policy. It also assumes that the value of the mutual funds is enough to make the final payment of the bank loan.

Bogus Insurance Policies

In late 1964, realizing that his company was not progressing at the desired rate, Stanley Goldblum, a founder and chief executive of Equity Funding, told the company's treasurer to record commissions from brokerage firms that had not yet been received. Since it was illegal to book money from transactions that have not occurred, Goldblum informed the treasurer that he should record the money as profit gained from mutual funds and insurance sales. In reality, there were no commissions due to Equity Funding, thus starting the fraudulent business practices. The next major development in the scandal was the sale of bogus insurance policies. Equity Funding bought Presidential Life and Insurance and renamed it Equity Funding Life Insurance (EFLIC). Because of a prior contract with Penn Life Insurance, the acquisition forced Equity Funding Life Insurance into a reinsurance agreement with Penn Life. Under the reinsurance agreement, Penn Life would pay Equity Funding for insurance policies at prices greater than the initial premium paid to Equity Funding, then receive the annual premiums. Penn Life was required to make a final insurance payment in the event of a client's death.

Fictitious Policyholders

This reinsurance agreement would have worked for both corporations if Equity Funding had not resorted to fraudulent practices. Instead of selling Penn Life to real customers, it sold policies to fictitious customers. Fabricating policyholders created a problem because Equity Funding Life Insurance was in need of an audit. Something had to be done because none of its fictitious policyholders had any type of file, and the auditors would ask for files to check figures. Equity funding executives had to create files for the bogus policyholders. This fraudulent work was done at parties held by top executives. They would meet, have some drinks, and create fictitious people. They filled out medical documents, credit applications, and other paperwork that required detailed information. These "fraud parties" involved hard work, and the executives went to great lengths to cover their tracks.

The executives of Equity Funding realized that their bogus policyholders would never die because they were made up, so they began to kill off their fictitious clients by forging death claims. Penn Life would then have to send the insurance payoffs to Equity Funding, since these fictitious policyholders did not have any family members. The executives would then cash in the payoffs. Equity Funding also swindled money from its employees in 1968. Through Equity Funding Life Insurance, it offered "special class" insurance to all of its workers. This "special class" insurance included a 50 percent discount on the first annual premium. It encouraged employees to buy this not only for themselves but also for all of their family members. The company then sold all of these policies to Penn Life, which was unaware of the "special class." In reality, there was nothing special about the insurance except that the next year, the premiums would skyrocket and none of the purchasers could afford to pay Penn Life.

Ronald Secrist Talks

By 1972, a former executive, Ronald Secrist, who had participated in minor fraudulent activities, was the first to talk. He had been removed from Equity Funding because the corrupt practices made him extremely difficult to be around. When he left, he left with all of Equity Funding's secrets. When Secrist found new employment, he told two people about the deviance at Equity Funding. One person was Ray Dirks, who was a securities analyst, and the other was the insurance regulator. During March 1973, insurance examiners from the states of California and Illinois (Illinois was where Presidential Life, now EFLIC, originated) found that $24 million in bonds were bogus. Most of them never existed, and the counterfeit bonds that the executives had created were phony. On April 21, 1973, the Equity Funding Scandal was featured on the front page of the *Wall Street Journal*. Dirks had tipped off the newspaper. Immediately, investors who had not already heard the rumors sold their stocks. By the spring of 1973, the entire company, once worth billions of dollars, had collapsed.

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See Also: Insurance Fraud; Insurance Policy Churning; Ponzi Schemes.

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Ethics

The term *ethics* has several related meanings. Ethics can mean the moral principles or morality of an individual. Ethics can mean a widely practiced system of moral principles, as in the mores of a culture. Ethics can mean the rules of conduct for a particular profession, as in medical, legal, or business ethics; or a group, as in Christian, Islamic, or Buddhist ethics. Ethics, or moral philosophy, is the branch of philosophy that studies values determining rightness and wrongness of actions, goodness and badness of motives and ends of such actions, and the nature of virtues and vices. A value is the relative worth, utility, or importance of something. Empirical ethics studies how people behave. Normative ethics concerns how people should behave. There can be powerful conflicts of interest between the desire for money and other values and duties. Ethics and morals can be regarded as synonyms for many purposes. Ethics is about how each individual decides to live and make moral decisions. There are important implications for professional and business conduct.

Three Normative Frameworks

There are two broad categories of ethical theories: consequentialist and nonconsequentialist. These two categories are associated with three major normative frameworks: utilitarianism, Kantianism, and virtue theory. Consequentialism (or teleology) argues that moral choices depend on good versus bad outcomes (i.e., consequences), independently of motives or means. The most important version of consequentialism is utilitarianism, which assesses outcomes in terms of the most good for the most people (paraphrasing Jeremy Bentham, founder of utilitarianism). Two other major approaches are nonconsequentialist in approach. Kantianism (or deontology) argues that moral choices should arise from a sense of absolute duty or binding rules. It is not the consequences of actions that make them right or wrong, but the motives of the person who carries out the actions. Kantianism thus emphasizes duties or rules in relationship to motives. Also nonconsequentialist in orientation, virtue theory concerns moral character, or the nature of virtues and vices, in individuals.

The three normative approaches thus involve, respectively, good versus bad consequences (in consequentialism), right versus wrong choices (in Kantianism), and moral character defined in terms of virtues and vices (in virtue theory). Utilitarianism and Kantianism are Enlightenment rationality theories originating in the 18th century in Britain and continental Europe, respectively. Virtue theory is much older and is typically discussed in terms of Aristotle's discussion of ethics. Confucianism is similarly an ancient theory of virtue.

A standard illustration of the three major approaches is as follows. Someone is in need of help (as in the parable of the Good Samaritan). Utilitarianism, or broadly consequentialism, justifies help on the basis of maximizing well being: Benefits of helping exceed costs of helping. Kantianism, or broadly deontology, emphasizes that help is in accordance with a moral rule, such as treating others as you would wish to be treated in similar circumstances (i.e., the Golden Rule). Virtue theory justifies help as charitable or benevolent conduct, whereas taking advantage of another's distress is, in contrast, a vice. A way of reconciling the three approaches is for a particular action to be governed by a moral rule that aligns virtuous behavior with maximization of well-being.

Consequentialism

Egoism and utilitarianism are the leading consequentialist theories. An egoist judges actions by personal consequences. Egoism is all about self-interest. There is a body of literature defending egoism on various bases. Such egoism may have a strong role in the actual behavior of business executives. Agency theory posits that investors strictly seek return and must align egoist managers with that purpose through financial incentives. Concern for group or community welfare is the basis for utilitarianism, which judges actions by the consequences for aggregate welfare. Cost–benefit analysis, in economics, rests on this utilitarian principle. In the Pareto efficiency criterion, if one person gains at no cost to another person, then aggregate welfare has increased, and no compensation is required. In the Kaldor-Hicks hypothetical compensation criterion, there may be winners and losers, so long as the winners gain more than the loss caused, and thus can in principle compensate the losers. The utilitarian principle aligns with capitalism to the extent that competitive markets tend to increase aggregate welfare of the whole society.

Utilitarianism was a British philosophical development, coming after Adam Smith's *The Wealth of Nations* (1776). Smith earlier published *The Theory of Moral Sentiment* (1759); he was influenced by the earlier work of David Hume. The key works in the early development of utilitarianism are Bentham's *An Introduction to the Principles of Morals and Legislation* (1789) and John Stuart Mill's *Utilitarianism* (1861). Bentham (1748–1832) was a radical legal reformer who also wrote extensively about the philosophy of law. Bentham gave a strictly hedonistic account of motivation and value, in which pleasure and avoidance of pain are the measures of happiness, and one value is just as good as another value. Mill (1806–73) was a political economist and civil servant who served as a member of Parliament. In utilitarianism, one has to determine the ethical community for which consequences matter, and how to weigh differences in values or opinions. Animal rights and nature protection advocates tend to assert equality of weighting of animals and trees to that of people. The Kaldor-Hicks criterion involves the potential difficulty that great harm to a small number of people might yield small benefit to a great number of people.

A basic issue in consequentialist theory concerns whether it is possible to reconcile egoism and utilitarianism. Henry Sidgwick (1838–1900), a philosopher and economist at Cambridge University, proposed the following solution. A person must consider self-interest (or prudence) and other-regardingness (or benevolence). The balance between the two considerations can depend on the situation. Sidgwick's key work is *The Methods of Ethics* (1874).

Kantianism

A nonconsequentialist theory judges the rightness or wrongness of an action based on properties intrinsic to the action, and not on its consequences. The German academic philosopher Immanuel Kant (1724–1804) emphasized the necessity of grounding morality in a priori, rational principles. Kant based morality in a conception of practical reason, in which the motive of duty uniquely expresses a person's commitment to morality and thus gives a special moral worth to human actions.

The development of continental European moral philosophy has basically the same logical structure as the development of consequentialism. Existentialism is broadly analogous to egoism, and social contract theory is broadly analogous to utilitarianism.

In libertarianism, as expounded in John Stuart Mill's *On Liberty* (1859), people should be free to do as they like, as long as they respect the freedom of others to do the same. The theory of liberty and rights arose in the American and French revolutions. The continental European version of liberty is existentialism, which means basically being one's authentic self.

Contractarianism, from the theory of social contracts developed by Thomas Hobbes, John Locke, and Jean-Jacques Rousseau, is based on the idea of a rational agreement within a community, basically stating not to cause uncompensated harm to anyone and to promote the common welfare.

Kant proposed a rational reconciliation of existentialism (i.e., self) and contractarianism (i.e., others) paralleled by Sidgwick's solution for reconciling egoism and utilitarianism. The essential philosophical concept of Kant's approach is the categorical imperative, which is a moral rule that is unconditional or absolute for everyone, and the validity or claim of which does not depend on any ulterior motive or end. The Ten Commandments are categorical (or absolute) in this sense. A hypothetical imperative, by contrast, is associated with an ulterior motive or desire, such as never lying because of a concern for maintaining reputation for truthfulness; never lying is necessary, instrumentally, to the end of maintaining a reputation. Whatever the practical worth of reputation, it is not a moral goal or duty. Of several formulations of the categorical imperative, the leading one is universalizing one's will, as in the formulation in the *Groundwork for the Metaphysics of Morals* (1785): "Act only according to that maxim whereby you can, at the same time, will that it should become a universal law." There is only one categorical imperative in Kantianism; all other imperatives are hypothetical. Imperative simply refers to a reason. Kant also argued that people are ends only and never means, because human beings occupy a special place in creation. All duties and obligations derive from the categorical (and ultimate) imperative. A categorical imperative denotes an absolute, unconditional requirement that asserts its authority in all circumstances, both required and justified, as an end in itself.

Kant's main works on ethics are the *Groundwork for the Metaphysics of Morals* (1785), the *Critique of Practical Reason* (1788), and the *Metaphysics of Morals* (1797). The last named work contains relevant materials on right and virtue. There are other important works in the canon of Kant's moral philosophy.

The modern theory of rights, developed out of the American and French revolutions, can be attached to the theory of duty. The relationship is basically that one's rights imply duties for others. My right to life implies your duty not to endanger me. Rights are entitlements to perform certain actions, or to be in certain conditions, or entitlements that others should perform certain actions or be in certain conditions. Rights dominate modern understandings of acceptable and unacceptable actions, as well as justice versus injustice of governmental and other institutions. The Arab Spring sweeping across the Middle East was a rights and justice revolt against authoritarian governments. The U.S. Constitution is a combination of governmental powers, limitations on those powers, checks and balances, and a Bill of Rights. Any set of rights is a distribution of liberties and authority.

Virtue Theory

Virtue theory is a pre-Enlightenment nonconsequentialist approach. This conception of virtues was the central aspect of ancient Greek ethical theorizing. For Aristotle, ethics is about lifelong self-improvement, and thus the nature of human well-being. Like Socrates and Plato, in whose tradition he followed, Aristotle regarded virtues as the key to a well-lived life. There is a set of identifiable ethical virtues, such as courage, justice, and temperance. Virtue is developed through appreciation of the role of friendship, honor, wealth, and pleasure in well-being. Proper education and habituation help develop the skills to discern in specific cases which course of action is best. Virtue theory is therefore about practical wisdom as distinct from the formal study of metaphysics. The moral theory of caring and empathy, particularly as developed by modern feminist writers, is a variant of virtue reasoning. Business ethics scholars have paid considerable attention in recent years to virtue theory as a form of practical guidance for managers.

Some Alternative Perspectives

In addition to the three major normative frameworks, alternative perspectives include pluralism, pragmatism, and justice theory.

Pluralism, or mixed frameworks, is a method of addressing religious precepts and moral intuition. Christian ethics, for example, includes both the Ten Commandments of the Old Testament and the principle of love of the New Testament. The Ten Commandments are by divine order. Situation ethics, properly defined, argues that in particular circumstances, the principle of love should override the Ten Commandments, which is to say fixed moral rules. Moral intuition, or conscience, means that individuals have moral sentiments, as explained by Adam Smith in *The Theory of Moral Sentiment* (1759).

Pragmatism is a philosophical approach that links theory and practice through reflecting on how best to achieve desired outcomes. Niccolò Machiavelli's *The Prince* is a manual in the exercise of political realism. The precept that the end justifies the means reflects this pragmatic approach.

Justice theory concerns substantive fairness defined in terms of each person receiving what he or she deserves (i.e., just deserts) and procedural fairness defined in terms of appropriate treatment. The leading exponent of modern justice theory was John Rawls. In *A Theory of Justice,* Rawls argues for a principled reconciliation of liberty and equality. The reconciliation approach thus resembles Kant and Sidgwick. For this reconciliation, Rawls constructs a situation in which parties face particular circumstances of justice, involving fair choice for which the parties need principles of justice. The parties face a moderate scarcity of resources and are neither purely altruistic nor purely egoistic. The parties have ends that they seek, but they prefer to achieve those ends through mutually acceptable cooperation. Rawls proposes that the theory of justice proceed from an original position within a veil of ignorance. The parties do not know in advance how they would fare in the future and would hypothetically choose mutually acceptable principles of justice in this condition.

Within this set of constraints, Rawls thinks that the parties would prefer his proposed two principles of justice to be superior to utilitarianism and libertarianism. First, each person has an equal right to the most extensive basic liberty compatible with a similar liberty for others. The basic liberties include political liberty to vote and run for public office, freedom of speech and assembly, liberty of conscience, freedom of personal property, and freedom from arbitrary arrest. The basic liberties do not include ownership of all kinds of property or freedom of contract, the basic requirements for laissez-faire capitalism. Beyond a minimum, low level of economic development (which is not explicitly specified), the first principle may not be violated. The basic liberties may conflict such that trade-offs may be necessary in order to obtain the largest possible system of rights. The second principle of justice addresses social and economic inequalities. Changes should be of the greatest benefit to the least-advantaged members of a society (what Rawls terms the difference principle), and offices and positions must be open to everyone under conditions of what Rawls terms fair equality of opportunity.

Rawls's approach is basically a defense of egalitarianism, subject to a constraint that equality should not be achieved by worsening the position of the least advantaged. Inequalities can be justified if they are to the benefit of the least well off. The reason is that morally arbitrary factors (e.g., family or class, a condition involving accident of birth) should not determine life chances or opportunities. A person does not morally deserve inborn talents, which are distributed accidentally. Therefore, one is not automatically entitled to all the benefits that could be derived from inborn talents.

Professional and Business Ethics

Publicly traded corporations are managed, staffed, and advised by many licensed professionals (e.g. accountants, lawyers, and engineers) and by many individuals who have received undergraduate and/or graduate degrees in business. Professional bodies typically have formal codes of ethics binding on their members. A licensed professional has a high duty to clients (including employers) and the public interest. A licensed professional should avoid even the appearance of conflict of interest and impropriety. Publicly traded corporations typically have formal codes of conduct binding on their employees. Individuals educated for business, although not licensed, are also professionals in the broad sense of having received specialized preparation for their roles.

Senior executives and others at corporations such as Adelphia Communications, Enron, Global Crossing, Tyco, and WorldCom failed in ethical and legal duties. They all engaged in various forms of misconduct, such as accounting fraud. Ethics can be understood as voluntary acceptance of responsibilities beyond legal duties. It is wrong morally to violate laws for personal gain. These corporate scandals and other problems such as the mortgage fraud crisis raise the possibility that there are serious deficiencies in business school education. A serious controversy has been underway, as a result, concerning how to prepare business personnel for legal and ethical issues.

A Mozambique woman and daughter with anti-HIV/AIDS drugs, December 2, 2010. Lawrence Kohlberg's stages of moral development theory can be applied to the question of pricing and distribution of HIV/AIDS drugs in developing countries.

Stages of Moral Development

Building on the work of Jean Piaget concerning the theory of cognitive development, American developmental psychologist Lawrence Kohlberg propounded a theory of seven stages of moral development. At a preconventional level, in childhood, there are three stages: egocentric judgment, punishment and obedience orientation, and instrumental relativist orientation. Basically, a child interprets cultural rules and labels about good and bad, or right and wrong, in terms of the physical or hedonistic consequences of action. In the first stage, a child egocentrically likes (or dislikes) or wants (or does not want) something. In the second stage, a child avoids punishment and defers to power. In the third stage, the child learns to practice the reciprocity of a marketplace in order to satisfy felt needs.

At a conventional level, in early adulthood, there are two stages: interpersonal concordance or "good boy–nice girl" orientation and the "law and order" orientation. In the fourth stage, good behavior is what pleases or helps others and is approved by them. This stage involves conformity to stereotypical images of majority or natural behavior on one hand, and intention on the other hand. In the fifth stage, an individual becomes oriented toward authority, rules, and social order maintenance. There is a sense of performing one's duty and showing respect for authority and the social order. At a postconventional level, there are two more stages of development: the social-contract legalistic orientation and the universal ethical-principle orientation. This level involves autonomy and principled judgment. The social contract orientation defines right action in terms of general individual rights and standards that have been critically examined and agreed upon by the whole society. This stage has a generally utilitarian underpinning. There is a sense of rational law and order, free contracting, and moral obligation.

Kohlberg's final stage of universal ethical-principle orientation defines right by a decision of conscience in accord with self-chosen ethical principles. These principles are abstract (e.g., the Golden Rule or Kant's categorical imperative), rather than concrete (e.g., the Ten Commandments); the principles appeal to logical comprehensiveness, universality, and internal consistency. There is a sense of a theory of justice.

An illustration developed by Kohlberg concerns a drug that might save a person's life. The druggist (or firm) making the drug charges 10 times the cost of production. A sick person's spouse can raise (including borrowing) half the price. The spouse proposes to the druggist a reduction in price or a staged payment over time of the remaining price due. The druggist refuses both options. In desperation, the spouse breaks into the drugstore and steals the drug. In this illustration, there is a conflict between private property and human life. The government might also intervene in some way, such as by controlling patents. The purpose of the illustration is less the answer and more the reasoning process leading to the answer. Kohlberg's stages of moral development have been used in business ethics research. This situation arises concretely in connection with pricing and distribution of human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS) antivirals in developing countries.

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See Also: Accounting Fraud; Advertising Fraud; Bank Fraud; Bond Fraud; Bribery; Economic Espionage; Ethics Reform Act; Fiduciary Fraud; Legal Malpractice; Racial Discrimination.

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Ethics Reform Act

The Ethics Reform Act (ERA) of 1986 was passed to curtail conflicts of interest among government employees of all three branches, to increase the public confidence in government, and to amend the Ethics in Government Act of 1978. Prompted by ethical scandals in the executive and legislative branches, the ERA addresses honoraria, outside income, postgovernment employment restrictions, gifts, financial disclosure, ethics committee procedures, and use of official resources. The ERA allowed a 25 percent increase in salary for members of Congress, certain legislative branch positions, the judiciary, and senior executive branch personnel to offset potential income loss from not receiving honoraria. The Ethics in Government Act and subsequent ERA prohibit federal employees, except members of the Senate, from receiving honoraria or earning money from speeches, writings, or appearances. Initially, the ERA banned even low- and mid-level employees from receiving honoraria, but in 1995, the Supreme Court upheld the rights of federal employees under the First Amendment. Since 1995, federal employees at the level of GS-15 and below can receive compensation for speeches or articles that are outside their official duties. For example, a computer technician in the executive branch can write articles on remote-controlled airplanes or sewing, as long as the employee is not representing the government in his or her official capacity.

The ERA limits outside employment by members of the House of Representatives, as well as officers and employees of the judicial and executive branches. Federal employees in the Senior Executive Service and Executive Schedule cannot work outside the government for organizations that present or may present a conflict of interest, unless they get prior authorization from the appropriate ethics office. Generally, this means that the higher-ranking federal employees cannot have an additional paying job. Other opportunities include sitting on a board, certain endorsements, and teaching.

The ERA expands application of postgovernment employment restrictions to the legislative branch, as well as the previously included members and employees of Congress. This revolving door policy prohibits former government employees from being employed as lobbyists for up to two years after federal employment. Although exceptions occur, the intent was to limit the use of connections made while a public servant to improve one's financial position. A significant aspect of the ERA is the requirement for public disclosure of an individual's and immediate family's financial situation. One criticism of the ERA is that it deters highly qualified candidates and applicants because the public disclosure of employment and finances may seem too intrusive.

Other areas of conflicts of interest, investigation, and enforcement were amended by the ERA. Restrictions on the nature and value were placed on gifts to federal employees from outside and inside the federal government. There are limitations on travel and funding for specific travel activities. For employees or family members forced to sell property to comply with the conflict-of-interest rules, there is a rollover provision for the deferment of tax on a capital gain realized. In addition to addressing ethical standards, the Ethics in Government Act of 1978 and the ERA instituted investigative responsibilities for the attorney general, and set up enforcement and penalties for violations. Initially, the Ethics in Government Act of 1978 established the Office of Government Ethics as the supervising ethics office for the executive branch and created the Office of Independent Counsel to investigate higher-ranking government officials. The House Committee on Ethics and the Senate Select Committee on Ethics were designated as the ethics offices for the legislative branch, and the Judicial Conference Committee on Codes of Conduct was so designated for the judicial branch.

In 1989, the ERA further created conflict-of-interest rules for the legislative branch staff and further delineated the attorney general's investigative powers. It provides a civil fine, increased the criminal fine, and added a jail sentence of one to five years for a criminal conviction. Providing regulations for the executive branch, the Office of Government Ethics establishes requirements for civilian federal employees and for those in the uniformed services, such as the military.

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See Also: Public Corruption; Reform and Regulation; Revolving Door; Watergate.

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Extortion

Extortion refers to the use of threats, violence, or force to extract unlawful gains and rewards to which one is not morally or legally entitled. This kind of criminal behavior takes many forms and occurs in all societies. The threat of harm could be to property, personal safety, privacy, or economic interests, which makes this a major concern for governments and business firms alike. A central ingredient of extortion is a severe imbalance in the power relationship between the offender and the victim—the former has the power to cause a kind of harm that the victim feels cannot be avoided unless payment is made. However, specific legal criteria vary across major jurisdictions. In the United States, the emphasis is on public officials abusing their power to extort payments from victims. It is also applied more generally to private individuals, groups, or organizations making similar demands. In Japan, the term *sokaiya* is used to refer to groups of highly trained, well-organized extortionists operating parallel to legitimate business organizations as they conduct routine commercial activities. Sensitive information is often the currency for demanding payments in exchange for secrecy.

The Theft Act of 1968 and Hobbs Act of 1951

Extortion is often treated as a more aggravated species of bribery, or it may be classified as blackmail. However, bribery as distinct from extortion does not have an element of threat, whether in the form of violence, force, or fear, and involves a significant degree of cooperation among all parties involved. The payee of a bribe is not a victim of a demand and usually initiates the transaction, though this is not always clear. Current legal understandings of and official responses to extortion, especially in common law jurisdictions such England and the United States, are more easily explained through the long connection with the term *blackmail*. Before the 19th century, blackmail was associated with the use of physical threats to obtain some material gain, and it was deemed a form of theft. By the mid-19th century, the term gained additional connotations to include an attack on a person's reputation. In England, the significance of demands made under "threat of menace" was recognized in a series of legislative innovations, culminating in the Theft Act of 1968. Section 21 of that act sets out the key elements: (1) making a "demand with menaces"; (2) that the demand with menaces must be "unwarranted," unless the defendant is of the belief that there were reasonable grounds for making that demand, and that using menaces was appropriate; and (3) the demand was made "with a view to gain for himself or another or with intent to cause loss to another."

A counterpart to this in the United States is the Hobbs Act of 1951. This statute criminalizes extortion affecting interstate or foreign commercial activities, whether within the context of industrial disputes, corruption by public officials, or a more general set of cases not classifiable under the preceding categories. Following the *Shieldler II* case, the requirement is that the defendant had intent both to deprive the victim of property and to obtain or acquire that property, and that this was induced by violence. The decision in the case *United States v. Tropiano* gives the word *property* a broad meaning, to include tangible and intangible property or interests. In *Bianchi v. United States,* the term *property* was taken to include ". . . any valuable right or interest considered primarily as a source or element of wealth" to which a person or entity is entitled.

Forms of Extortion

For the most part, criminalization targets those engaging in extortion activities who occupy positions of power—public officials, people with controlling authority in corporations, crime syndicates, criminal organizations, or gangs that wield power over territory or individuals—and have the capacity to inflict the harm threatened. This is reflected in the number of lows and range of legislation, especially laws directed at corporate and commercial contexts. There are many examples across the world of police officers planting evidence that could mean imprisonment or worse for the victim. The officers then threaten to bring charges if payment is not made. Other examples include organizations that face threat of harm to assets to which they are legitimately entitled, or delays in the release of funds owed to them for services done, or payments to continue to do business in particular places. Advances in Internet technology now mean that firms face threats to information systems if demands for payment are not met, called cyber-extortion.

Threats of physical harm are often classified as true extortion, and those that threaten harm to investments or other assets are classified as economic extortion. In most jurisdictions, corporations or their employees who make payments to avert threats of extortion could nonetheless be engaging in the wider offense of corruption, or may be answerable to charges under the usual term of bribery. However, in the United States, the distinction between true extortion and economic extortion is of some significance, especially where major corporations that may have business interests overseas are concerned. To bring a charge of bribery under the Foreign Corrupt Practices Act of 1977, the prosecution must show intention to induce an official to use his or her office for improper purposes in order to gain or retain business (it is useful to compare the United Kingdom's Bribery Act of 2010). Given this starting point, it is not clear precisely how bribery amounting to extortion is to be treated.

Responses to Extortion

In cases of true extortion, making payments in the face of such threats negates the necessary intent to induce corrupt practices. However, those facing payment demands that amount to economic extortion do not generally have such a favorable cover in law. In the case *SEC v. Summers*, an employee of Pride International, John Summers, was charged for making payments for the release of fees owed by Venezuela's state-owned oil company to his employers. That this occurred against the background of considerable public unrest that threatened the organization had little effect on the Security and Exchange Commission's decision to bring charges against Summers. However, there is some suggestion in *United States v. Kay* that where the nature of the economic loss is sufficiently serious, some analogy may be drawn with cases of true extortion to negate intent.

Often, several actors work together within and across organizations, or in particular units within an organization. In some contexts, extortion is linked to political power, where demands for payment take place with the tacit approval of the state, in the absence of effective official capacity or political capital to confront offenders. This type of extortion linked to political power is more common in weak states, or may be associated with the drug trade. Some characteristics of this type of extortion include "protection payments" demanded by organized criminal gangs that control specific territory. Organizations or individuals subject to these demands face threats to their businesses or access to particular locations over which they otherwise have some right.

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See Also: Bribery; Organized Crime; Police Corruption.

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Exxon Valdez Oil Spill

Prior to the 2010 oil spill off the Gulf of Mexico, the worst incident in American history related to petroleum loss was the crash of the *Exxon Valdez* off the coast of Alaska shortly after midnight on March 24, 1989. The *Valdez* ran aground on the Bligh Reef in the Valdez Narrows and proceeded to lose over 11 million gallons of crude oil into Prince William Sound. The ship had been scheduled to make a five-day run from Valdez to Long Beach, California, and had over 1.2 million barrels of North Slope crude aboard at the time of the accident.

The primary causes of the incident involved the crew. First, the crew was overworked and unrested. More important, Captain Joe Hazelwood had been drinking vodka in the time preceding the ship running aground. He was borderline intoxicated, based on his slurred speech and inability to properly identify which vessel he was captaining at the time. His blood alcohol content, had it been taken soon after the accident, would have suggested a strong explanation for the poor decisions he made that night. Using a process called retrograde extrapolation on the blood test taken 11 hours after the accident, a blood-alcohol expert would testify that Hazelwood's blood alcohol concentration at the time of grounding could have been as high as 0.37. A jury would later fail to accept that speculative evidence.

The Accident

Hazelwood had been worried about the possibility of icebergs in Prince William Sound and opted to undertake a series of unusual maneuvers. When encountering ice, most ships opt to go slowly or even stop and wait for the ice to pass. Hazelwood, however, turned the ship around, ordered its speed increased, and had it placed on autopilot. The area he aimed to take the ship was narrow, and the captain's decisions would exacerbate that situation. Hazelwood left only one officer in charge of the dangerous maneuvering, and shortly after he left the bridge, the *Exxon Valdez* ran aground. An investigative report in 2008 made a similar finding. The report claims that Hazelwood was drinking and below decks when the third mate ran aground, in addition to not having the radar turned on—which it could not have, since it had been broken for over a year. Ultimately, the 2008 report blames Exxon for determining that repairing the radar was prohibitively expensive.

The floundering ship immediately began spilling high volumes of oil into the water. The captain spent nearly 30 minutes trying to push the boat forward but was eventually forced to await help from the U.S. Coast Guard. Although the immediate cause of the grounding was clearly the inability of the officer to successfully maneuver the tanker through the strait, numerous other variables were in play. First, Hazelwood's decision making was clearly blurred. Second, the crew was overworked and exhausted. Third, Exxon had not replaced radar equipment in the tanker. Fourth, Exxon did not have any recovery plans in place if such an accident occurred.

The Aftermath

Although the initial incident was troublesome enough, the bigger concern was the environmental effects of the oil spill. Given Prince William Sound's location (which can be reached only by plane, helicopter, or boat), it was nearly impossible for either the U.S. government or Exxon to respond efficiently and effectively to the incident. The oil spill occurred during a time period in which most of the native wildlife (mainly salmon, otters, seals, and birds) were in the middle of reproductive cycles, those jeopardizing both current and future populations. Over 200,000 birds and thousands of otters were lost as a result of the oil spill.

Beyond the wildlife victims, local economies struggled mightily in the aftermath. Commercial fishing had been a staple of the economy, and it was all but eliminated by the accident. Exxon desired to assist with recovery, but everything moved very slowly. The area is still not fully recovered. Most shellfish cannot be safely consumed by humans, and many animals have not returned to their previous numbers. Other animals—such as seals, ducks, and killer whales—have rarely been seen in the region since the *Exxon Valdez* crashed. Most concerning, large volumes of oil still exist in the geology of the area.

Exxon suffered in the aftermath of the wreck, as its reputation continued to nosedive. The company was required to pay billions of dollars in criminal and civil fees. The surrounding ecosystem received the largest sum of money, nearly $900 million, from a civil suit filed under the U.S. Clean Water Act and the U.S. Comprehensive Environmental Response, Compensation, and Liability Act. The company paid a $100 million fine for a criminal conviction and was ordered to pay an additional $5 billion in punitive damages to help natives harmed by the spill. An Anchorage jury ultimately awarded just under $300 million for actual damages and $5 billion in punitive damages. To come up with the $5 billion, the jury used a one-year profit yardstick for Exxon. In order to protect its business in the event the jury's awards were upheld, Exxon utilized a line of credit from J. P. Morgan for $4.8 billion. Ultimately, the U.S. Supreme Court found the amount excessive and rolled back the punitive damages to $507.5 million (equal to compensatory damages in the case).

As for Hazelwood, he was ultimately convicted of negligent discharge of oil, a misdemeanor. Jurors also decided that Hazelwood's decision to leave the bridge in the hands of others was questionable enough for a finding of negligence, but not recklessness. He was acquitted of operating a watercraft under the influence of alcohol and reckless endangerment. He ended up serving many thousands of hours of community service.

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See Also: Clean Water Act; Corporate Criminal Liability; Environmental Protection Agency, U.S.; Gulf of Mexico Oil Spill; Negligence; Pollution, Water.

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F

Fair Housing Act

The Fair Housing Act (FHA) became law in 1968, upon the passage of the Civil Rights Act of 1968. The definition and laws related to fair housing made up Title VIII of the Civil Rights Act. Prior to 1968, the only law governing fair housing was the Civil Rights Act of 1866, which included language that only alluded to fair housing and had no details about federal enforcement. The impetus for the law came from post–World War II growth of suburbia and attempts by realtors to restrict the purchase of homes on the basis of race. The Supreme Court had already ruled against the legality of covenants to segregate neighborhoods in 1948, and in 1964, it ruled against Proposition 14 in California, which sought to deny equal access to housing. In the decision of *Reitman v. Mulkey* (1967), the Court ruled that the proposition violated the Fourteenth Amendment. On the federal level, the Civil Rights Act of 1964 also made some provisions for fair housing but lacked federal enforcement guidelines.

The Civil Rights Act of 1968 corrected the problems of the 1964 legislation by detailing enforcement provisions in Title VIII, titled the Fair Housing Act. Prior legislation addressed the public rights of nonwhites, whereas the 1968 law specifically addressed the private housing market. Initially, the act prohibited landlords, realtors, and others who sold, leased, or rented property from denying approval because of race, color, religion, sex, or national origin. Further, these discriminatory terms could not be included in contracts or advertisements for dwellings. The act also forbade the use of coercion, threats, or similar actions that prevent or interfere with a person's right to fair housing. Exceptions include owner-occupied buildings with less than four units, houses rented or sold by the owner without a realtor, and properties owned by organizations or clubs requiring membership for occupancy. Mortgage lenders cannot take certain actions based upon race, color, national origin, religion, and sex. Persons cannot be denied information about loans or be denied for a mortgage loan or a purchased loan based on the protected categories.

Because of the expansion of federal enforcement rights in 1968 and 1988, those who believe that they have been discriminated against can file a complaint with the U.S. Department of Housing and Urban Development (HUD). Under the law, these are investigated by the Office of Fair Housing and Equal Opportunity, which will issue a determination and a charge of discrimination that is heard by a HUD administrative law judge. Alternatively, the two parties may opt to have the case heard in federal court. The 1988 Fair Housing Act Amendments (FHAA) addressed weaknesses in the 1968 act, as noted in the *Federal Fair*

In Teaneck, New Jersey, protesters march against housing discrimination in 1970. Beginning in the 1960s, the African American population in parts of Teaneck grew substantially. Along with that came a "white flight" triggered by the blockbusting efforts of local real estate agencies. Blockbusting is the real estate and building practice that uses subterfuge and fear to prompt white homeowners to sell their homes at below market value; the real estate agency then sells the property at inflated prices to African Americans.

Housing Enforcement Effort report, published in 1979. Advocacy groups and citizens who tried to use the law found that the federal enforcement portion of the law still left the Department of Housing and Urban Development with little power, and realtors and rental agents knew that there was little chance of penalty. The FHAA also expanded the coverage of the law to prohibit discrimination against the disabled and families with children. Reasonable accommodations to a building must be offered, at the renter's expense, and changes to rules and policies must make the building usable for the disabled. New buildings, built after 1991, must have an elevator and access to public areas. Families must be allowed to rent housing unless the community is for older persons. Communities can no longer discriminate against families, pregnant women, and those who have custody of children.

In 1995, the Housing for Older Persons Act further amended the FHA with regard to the 55-and-older exemptions. Facilities must have at least 80 percent of their units occupied by persons 55 and older, and the FHA established further policies for facilities to qualify as 55-and-older housing. Families can reside in exempt properties that are for the elderly, but as long as the 80 percent rule is followed, families are not required. Since its passage in 1968, the coverage provided by the Fair Housing Act includes all persons and housing situations, and it has since become a stronger law in order to meet the needs of all American citizens.

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See Also: Age Discrimination; Gender Discrimination; Mortgage Fraud; Mortgage Reform and Anti-Predatory Lending Act; Racial Discrimination; Redlining.

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False Claims Act

The False Claims Act (31 USC §§ 3729-3733) imposes liability on persons and organizations who defraud government programs. The False Claims Act (FCA), or the Lincoln Law, was passed in 1863 to combat fraud against the government. The FCA is notable because it includes a *qui tam* ("who as well") provision, allowing individuals not affiliated to file actions on behalf of the federal government. A person filing such a claim, known as a "relator" or "whistleblower," may receive a portion of the damages recovered.

The FCA prohibits the following:

1. Knowingly presenting or causing to be presented a false or fraudulent claim for payment or approval;
2. Knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved;
3. Conspiring to defraud by getting a false or fraudulent claim allowed or paid;
4. Delivering or causing to be delivered less property than the amount for which the person receives a certificate or receipt;
5. With intent to defraud, making or delivering a receipt without completely knowing that the information on the receipt is true;
6. Knowingly buying public property from a government employee who does not have the legal right to sell the property; and
7. Knowingly making or using a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the government.

The federal government recovered more than $30 billion from 1987 to 2011, not including criminal fines, portions allocated to the states, and unreported cases. Typical cases involve a corporation overcharging the government for goods or services, making and/or presenting false records, and insufficient testing or defective products. Used previously with defense contractors, the FCA currently is used in the health care sector to combat fraud, such as receiving government payments for medically unnecessary treatment or regulatory noncompliance. In 2011, approximately $2.4 billion of the $3 billion recovered was from the health care sector. Some compliance managers recommend reducing corporate risk by encouraging internal whistleblowing.

A complaint must be made in federal court under seal and is served on the government, but not on the defendant. The plaintiff must also provide documentation to the government, but not file it in court, to detail the complaint. The U.S. Department of Justice (DOJ) then decides whether to pursue the case. If so, the percentage reward for the plaintiff is less, but the success rate tends to be higher. If the DOJ does not pursue the case, the plaintiff can continue the lawsuit. Claims may be prejudiced if disclosure of the alleged unlawful act has been reported in the press, if complaints were filed with an agency instead of a lawsuit being filed or if the person filing a claim is not the first to do so. The FCA does not provide for claims against certain government employees and members of the armed forces, and it does not apply to claims made under the Internal Revenue Code.

FCA amendments in 1986 provided employment protection for whistleblowers and established defendant liability for deliberate ignorance of and reckless disregard of the truth. The amendments increased the potential rewards to 15 to 30 percent of recovered funds. The Fraud and Enforcement and Recovery Act of 2009 amended the FCA by expanding the scope of potential liability, expanding conspiracy liability, redefining claim, defining obligation to include retention of any overpayments, and increasing protection for *qui tam* plaintiffs, including contractors and agents. The Patient Protection and Affordable Care Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 further amended the FCA, including changes to the public disclosure bar, the original source requirement, timely return of overpayments, and the statutory antikickback liability.

As of 2012, over 25 states, the District of Columbia, and several municipalities have some type of false claims act equivalent, with varying procedures, limitations, penalties, and division of proceeds. Several of these equivalents apply only to the Medicaid program, but all states with a qualified equivalent may be eligible for an increased share of monetary recovery from certain lawsuits.

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See Also: Government Contract Fraud; Government Procurement Fraud; Medicare and Medicaid Fraud; Unnecessary Surgery; Whistleblowers.

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False Foreclosures

In order to obtain a mortgage, a borrower presents a security interest to a lender. The borrower can pledge a number of acceptable assets, based on the financial lending institution's criteria, with the goal of securing a mortgage loan. Once the borrower has successfully met the criteria to secure the loan, the financial lending institution will then issue a loan to a borrower, and this will commence the initiation of a mortgage agreement. Foreclosures provide financial lending institutions a legal mechanism to attempt to secure unpaid balances left by borrowers who have defaulted on loans granted by the lenders. Courts of equity assist borrowers in gaining equitable right of redemption against foreclosure, upon the borrower's repayment of the unpaid balance. In foreclosure, the financial lending institution moves to acquire legal and equitable ownership of the asset and to foreclose on the borrower's equitable right of redemption. This allows the financial lending institution the opportunity to sell or repossess the property for which the financial institution lender has previously authorized the loan. In many foreclosures, additional entities with liens on the borrower's assets will also seek to foreclose on the borrower's equitable right of redemption. These debts usually include a number of other bills related to the home. When the borrower is successful in obtaining equitable right of redemption, a gray area exists regarding whether or not the financial lending institution can actually repossess the property in payment default. Thus, with the borrower's securing of equitable right of redemption, there is no assurance to the financial lending institution that it has a legal opportunity to sell the property in an effort to recover the defaulted debt.

False Foreclosure Issues

False foreclosure involves the presentment of false, misleading, erroneous, or fraudulent documentation in a court of law for the purpose of repossessing a home in which a borrower has defaulted on the loan repayment (or mortgage payment). Many of the country's leading financial lending institutions have been scrutinized and investigated for gaining access to legitimate legal foreclosure support, from the courts, through the unfair submission of false and misrepresenting foreclosure documentation. Numerous law firms, representing these prestigious lending institutions that are staples in society, have been investigated for their foreclosure practices. In a number of cases, attorneys general across the nation have discovered a common practice of lending institutions signing legal affidavits without confirming the accuracy or completeness of the information upon which the court is petitioned to act.

For several months, state and federal officials and the nation's largest financial lending institutions sifted through and reviewed evidence, revealing that financial lending institutions were regularly engaging in a practice termed "robo-signing" (among other malpractices). Robo-signing refers to the use of poorly constructed and fraudulent paperwork to speed the process of moving along massive amounts of foreclosures through an already overburdened process. At the heart of the robo-signing problem is the inattention of financial lending institution employees to fully verifying the accuracy of the information contained in the affidavits. State law, however, requires that employees of these financial lending institutions must actually read the foreclosure documents signed in order to verify their accuracy and legitimacy. A further issue is the implementation of illegal fees embedded into refinancing terms of an agreement without the knowledge or consent of the borrower. Many employees of these financial lending institutions have completed depositions and attested to their blatant omission of the reading requirement, prior to signing the questionable foreclosure paperwork. Allegations of false foreclosures became so widespread that the Senate Banking Committee held a hearing to investigate false foreclosure practices, with Senate Majority Leader Harry Reid encouraging financial lending institutions across the nation to review their practices and ensure fairness to homeowners.

Notable Legal Actions

In 2010, Massachusetts sued several of the nation's major financial lending institutions over false foreclosures and related practices. The lawsuit cited robo-signing of documents and deceptive practices regarding loan modifications as the cause for the suit. In 2011, the attorney general's office in Florida initiated a case against financial lending institutions in that state over false foreclosures. The Florida attorney general cited rampant robo-signing practices as the cause for the suit. In 2012, the state of New York settled a $130 million lawsuit with five of the state's largest financial lending institutions regarding false foreclosures.

Later in 2012, government officials filed a complaint in U.S. federal court alleging that certain financial lending institutions took advantage of the housing crisis and began a pattern of unfair and deceptive practices. According to the complaint, these practices ranged from the filing of false documents, to the passing of illegal fees to borrowers, to deceiving homeowners regarding loan modifications, to hiring inept staff, to the most egregious—foreclosing on members of the military engaged in active duty. The Federal Housing Finance Agency also sued law firms, in the billions of dollars, who were handling foreclosures for various financial lending institutions. The Federal Housing Finance Agency cited varied and complex illegal mortgage practices as the cause for the lawsuit.

Publicized Relief From False Foreclosures

In February 2012, New York settled a $130 million lawsuit with five of the largest financial lending institutions in the state of New York, regarding false foreclosures. A complaint filed in March 2012 on behalf of the federal government requires $25 billion in relief to struggling homeowners, by offering a list of settlement options intended to maximize the homeowners' ability to take advantage of incentives to prevent foreclosure. These incentives include making several thousands of dollars available to assist with lowering the homeowners' interest rates, provided they are current on their loans.

Further, homeowners who have already been foreclosed upon would be granted eligibility for a few thousands of dollars in payouts. Other notable incentives for homeowner borrowers include counseling, mediation, and legal services that would also be available upon request, as a result of the monies provided to states that are implementing housing and foreclosure prevention procedures and programs. Further, the foreclosure actions against several hundred active duty military members, resulting in the loss of their homes, have also been revisited. Active duty military members have already received settlements from all of the major financial lending institutions to include any equity that may have been lost as a result of the false foreclosures. It is expected that numerous financial lending institutions will implement improved mortgage-servicing standards.

False Foreclosure Legislation

New York State Attorney General Eric Schneiderman presented a bill in the summer of 2012. The goal of the bill is to reduce a propensity of financial lending institutions toward fraudulent foreclosures and subsequent practices. The bill would make fraudulent practices Class A misdemeanors and up to Class E felonies, increase existing penalties for fraudulent foreclosures, and result in a period of incarceration for employees of financial lending institutions who engage in false foreclosure practices. In early 2012, President Barack Obama detailed his ideas regarding the eradication of false foreclosures. President Obama expressed his support of an expansion of existing investigations, indicating that new initiatives are in the process that will control unfair lending practices. Subsequently thereafter, U.S. Attorney General Eric Holder discussed the U.S. Department of Justice's immediate execution of civil subpoenas to several financial lending institutions.

After probing into their institutions' practices, and settling numerous lawsuits, many of the nation's major financial lending institutions have suspended the practice of foreclosing. They are currently focused on developing and instituting better guidelines for lending practices across the country. At least one financial lending institution has committed to a nationwide moratorium (of all of its branches) on foreclosures until practices become more amenable to homeowner repayment success. Financial lending institutions provide access to the American dream for borrowers who could not otherwise have access to home ownership. Abusive mortgage practices have overshadowed, and in some cases derailed, a process originally established to empower borrowers toward home ownership.

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See Also: Foreclosure Fraud and Rescue Schemes; Liar Loans; Mortgage Fraud; Mortgage Modification Fraud; Mortgage Reform and Anti-Predatory Lending Act; Predatory Lending; Predatory Practices; Robo-Signing; Subprime Loans.

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Fear of Crime

Fear of crime is concerned with individuals' perception of whether or not they are likely to be a victim of crime. The typical analytical starting point is the assumption that more people experience fear of crime than actually experience crime. This point is particularly salient because it has been recognized internationally in the Anglo American, European, and Australasian contexts that the total recorded crime rate has by and large steadily declined over the last decade or so, while the level of fear of crime has risen. Key longitudinal victimization surveys, such as the National Crime Victimization Survey (NCVS) in the United States and the British Crime Survey (BCS) in the United Kingdom, readily attest to this state of affairs. This reinforces the need to focus on a range of possible factors that can influence a person's perception of the level of risk that he or she faces with regard to crime.

Gender

Several factors correlate with a person's fear of crime. Research shows that individuals from lower socioeconomic backgrounds and ethnic minority groups tend to report that they are more afraid of becoming a victim of violent assault, mugging, and motor vehicle crime. Victimization surveys such as the NCVS reinforce that a respondent's gender, age, and geographical location all play key roles in shaping a person's fear of crime.

Perhaps the most consistent finding internationally is that women are more fearful of crime than are men, in spite of the fact that they are less likely to be victimized. It has been suggested that fear of crime means different things to men and women. Studies show that men are likely to be most fearful of violent assault and women are afraid of sexually motivated attacks. Women are also more likely to be afraid of types of crime such as home burglary, which may place them in a vulnerable position and increase their likelihood of being the victim of a sexual assault. Nevertheless, fear trends between the genders are generally not reflective of the actual likelihood of reported victimization. Even though statistically, men are more likely to be victims of crime than are women, like women, they tend to overestimate the likelihood of their victimization.

Age

Age also plays a role in shaping people's perception of whether they are at risk of being a victim of crime, even though elderly people are not as much at risk from crime as younger people. For example, people over 60 years of age often report that they are fearful of being mugged on the street, when most victims of this crime are between the ages of 16 and 40. In contrast, women over 60 years of age frequently report that they are less fearful of being sexually assaulted than younger women. Such trends reinforce how gender and age interact in complex ways to help shape people's perception of the likelihood that they will be a victim of crime. While early research indicated that elderly people are the most fearful of crime, more recent studies have started to report the opposite. This may well be because the anxieties of the elderly concerning crime in general are tempered by a degree of awareness—perhaps reinforced by the news media—that crimes such as sexual assaults typically involve comparatively youthful victims.

When questioned about the steps they take to avoid being a victim of crime outside their home, the evidence indicates that both men and women over 50 years of age tend to adopt preventive behavioral strategies similar to those sometimes reported by young women, such as avoiding walking by themselves in city centers at nighttime, traveling with a companion for safety, or avoiding certain streets and particular types of people, such as groups of young men.

Location

Geographical location plays a key role in shaping a person's self-reported fear of crime. Most reported crime occurs in inner cities, and city residents living in inner-city areas with high levels of victimization and social disorder, such as graffiti and vandalism, frequently report that they are fearful of crime. However, the level of familiarity that an individual has with an area influences his or her fear of crime. This suggests that people living in high crime areas do not necessarily automatically feel a high risk of victimization once they become familiarized with the location. Research has found that those who have lived in inner-city properties for longer periods of time are more likely to report adopting preventive behavioral strategies, such as avoiding particular streets at night; are less likely to be fearful of crime and are more likely to install additional security devices in their homes and general property. Research also suggests that older people may be more affected by the presence of social disorganization factors, such as run-down housing, graffiti, and the presence of incivility between neighbors, than cosmopolitan young professionals, who sometimes report that they consider such things to add to the colorful tapestry of life within inner-city neighborhoods. Nevertheless, neighborhood disorder and incivility is a significant indicator of perceived risk among both men and women, young and old. This is consistent with contemporary situational crime-prevention theories, such as J. Wilson and G. Kellings's broken windows theory in 1982, which suggest that negative features in the physical environment are related to the presence of high levels of criminality, deviant behavior, and fear of crime within inner-city areas.

Underreporting and Crime Rates

Researchers face a number of methodological issues when analyzing fear of crime and actual crime rates. Victimization surveys such as the NVCS are often used to identify crime patterns and rates and are also frequently used to act as a contrast to the level of fear of crime that people self-report. Problems arise because a significant number of crimes are underreported, such as physical assault, domestic violence, and rape. Also, respondents' answers to fear of crime survey questions are often influenced by their personal, families', friends', and acquaintances' unreported victimization experiences. However, for a mixture of personal and sociocultural reasons, individuals may be unwilling to admit if they, their family, friends, or acquaintances or have been victims of crime, particularly when issues such as gender-based violence and sexual assault in the home are discussed. As a result, differences between a person's self-reported fear of crime and the officially recorded crime patterns and rates found in the NVCS and BCS must be treated with some caution. Actual crime may well be higher than reported, and a person's fear of crime may be heavily mediated by his or her awareness of other people's direct and indirect experience of crime.

Social Media

Finally, it is also important to consider external factors, such as news media coverage and the growth of modern mass communication technologies, in shaping public perceptions of crime and the risk of being victimized. Research shows that the volume of crime stories and the presentation format used by the mass media to report them can significantly influence, for better or worse, the level of fear of crime possessed by individuals. Fear of crime must be seen as a dynamic, rather than static, construct that varies over time and place, is mediated by external factors such as news media reporting, and is not solely definable by social categories such as age, gender, and geographical location. The rapid development of social media technologies, such as Twitter, YouTube, and Facebook, is adding an extra dimension to the ongoing exploration of the role played by technology and mass communications in dynamically influencing the fear of crime.

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See Also: Corruption; Ethics; Predatory Practices; Public Corruption; Sexual Harassment; Victim and Witness Protection Act.

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Federal Deposit Insurance Corp.

The Federal Deposit Insurance Corporation (FDIC) was established by the Banking Act of 1933, also known as the Glass–Steagall Act, in response to the bank failures caused by the stock market crash of 1929 and poor business practices in the financial sector. The purpose of the FDIC is to insure the deposits of bank account holders in the event of a bank failure and to promote consumer confidence in investments. Legislation to establish the FDIC was sponsored by Senator Carter Glass of Virginia and Representative Henry B. Steagall of Alabama, who introduced separate bills in Congress. Both bills proposed a version of deposit insurance and established differing versions of how banks would become members of the insurance corporation. The administration of Franklin D. Roosevelt also had two requirements that could be found in both bills, including a sliding scale for deposit coverage and a one-year delay before the corporation would begin operations.

Operations Begin on July 1, 1934

The final version of the bill, signed by President Roosevelt—despite his personal reservations—on June 16, 1933, amended section 12B of the Federal Reserve Act and created the FDIC, which began operation on July 1, 1934. The agency has a six-member board of directors, including two ex-officio members, the comptroller of the currency and the director of the Consumer Financial Protection Bureau; and four members appointed by the president to six-year terms. One appointee serves as the chairman of the board, and another as the vice chair, both with five-year terms. Like other federal commissions, no more than two persons on the committee can be from the same party.

The purpose of the FDIC is to insure deposits, regulate financial institutions to ensure soundness, and manage receiverships. Under this legislation, the FDIC oversees banks that are not part of the Federal Reserve and their member banks. The main office for the FDIC is located in Washington, D.C., and the agency has eight regional offices, three temporary satellite offices, and field offices located all over the United States. The eight regional offices are located in Atlanta, Boston, Chicago, Dallas, Kansas City, Memphis, New York, and San Francisco. Each regional office has three or more field offices in the surrounding area.

When the FDIC was first established, the insurance coverage for deposits was $2,500, and over time the amount has increased nine-fold. Currently, the FDIC insures deposits in American banks and savings and loan institutions up to $250,000 and monitors the business practices of all financial organizations. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 created a $250,000 maximum liability per account. The FDIC is funded not by Congress, but by the insurance premiums paid annually by member banks. Under the rules of the FDIC, only member accounts can be insured; securities, mutual funds, and other investments are not included. Participating banks must post notices indicating that their deposits are insured by the FDIC. In its regulatory role, the FDIC monitors all state-chartered financial institutions to make sure that they are following consumer protection laws. When a bank fails, the FDIC steps in and typically organizes the transfer of loans and deposits to another institution, with little interruption in accounts and service. In this practice, the users become account holders in the new bank, and they do not lose their investments.

The 2006 Federal Deposit Insurance Reform Act made major changes to the FDIC. It created the Deposit Insurance Fund (DIF) as the repository for the insurance premiums paid by member institutions. The new DIF replaced two separate funds that insured bank and savings and loan accounts separately. Participating institutions are assessed an amount based upon the deposits in the bank and the amount of risk to the fund by the institution. Additional requirements under the law include reports and surveys to the agency on a periodic basis.

In response to the economic situation in 2008–10, the FDIC now maintains a list of banks that are in trouble and reports on them quarterly. Since 1934, the FDIC has met its mission to stabilize the financial industries of the United States. Since that time, investors have received their deposits up to the insured amounts when banks failed. FDIC procedures have worked well to ensure that, even during the savings and loan failures of the 1980s and 1990s, American's deposits were safe.

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See Also: Dodd-Frank Wall Street Reform and Consumer Protection Act; Hoover, Herbert; Roosevelt, Franklin D.

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Federal Gambling Regulation

The federal government has historically offered little gambling regulation, aside from the organization of the original large-scale lotteries. In the early United States, lotteries were used to fund the original colonies, universities, and other community projects. Until the 1960s, little federal law directly dealt with gambling regulation. In 1961, the Federal Wire Act was passed, which made sports betting conducted through any wire communication in the United States illegal.

Along with the Wire Act, the Travel Act was passed, which made any participation in a gambling through the mail or by traveling across national or state lines illegal. Both of these acts were passed with the intent by the federal government to halt and prevent organized criminal enterprises involved in illegal gambling. The federal government again stepped into the role of regulator with the passage of the 1970 Illegal Gambling Business Act. The act was aimed again at organized criminal gambling institutions that facilitated, through funding, more serious organized criminal activity. With these acts, the federal government strictly regulated the types and methods of gambling in the United States.

The federal government was thereafter inactive in federal gambling regulation until the late 1980s. In 1988, the federal government passed the Indian Gaming Regulatory Act, which sought to outline the structure of Native American gaming jurisdictions. Under this act, reservations were able to continue revenue generation through organized gaming. This federal gaming regulatory law sought to further protect Native American gaming from infiltration by organized criminal enterprises. The framework of the act allowed for a system of regulation to ensure gaming integrity and just revenue transmission, by tribes, to rightful Native American communities.

During the early 1990s, the U.S. Congress took action that would not only regulate gambling but also seriously limit the power of individual states to regulate gambling activities within their jurisdictions. In 1992, the Professional and Amateur Sports Protection Act was passed, making it illegal for an individual, business, or state to operate gambling schemes or accept wagers on any professional or amateur sporting event. The bill allowed for the inclusion of states that were operating sports betting schemes prior to the passage of the bill through a grandfather provision. Furthermore, the bill allowed state governments a one-year period after the bill was passed to set up legislation legalizing gambling in their states. The federal government exempted horse and dog racing events from the act. Also in 1992, the Illegal Money Transmitting Business Act aimed to prevent the transfer of money through illegal gambling institutions. The bill prevented criminal gambling organizations from bypassing banks and other legal financial institutions to move funds.

Online Gaming

As the Internet proliferated, the need for further gambling regulation at the federal level was realized. The American Gaming Association and other organizations have pressured Congress to outline regulatory guidelines that would make online gambling legal and safe for Americans. This is in response to several unclear interpretations of the Wire Act and its implications for online gaming. The U.S. Department of Justice (DOJ) has sought out online gaming institutions and their users, often seizing hundreds of millions of dollars in an

A dealer works a table at Harrah's Hotel in Las Vegas, April 23, 2011. Until the 1960s, few federal laws directly dealt with gambling regulation. In 1961, two acts were intended to prevent organized criminal involvement in illegal gambling: The Federal Wire Act prohibited sports betting via any wire communication, and the Travel Act prohibited gambling through the mail or across national or state lines. The 1970 Illegal Gambling Business Act was also aimed at organized criminal gambling institutions.

attempt to stem the proliferation of online gaming. Most of these attempts to prosecute gaming institutions and their users have hinged on interpretation of the 1961 Wire Act. The DOJ took the position that all online gaming involving the transfer of funds is illegal and has used the Wire Act to justify this stance.

Adding to the confusion about Internet gaming in the courts, the federal Fifth Circuit has found that the Wire Act only applies to sporting events. In an effort to further regulatory power on Internet gambling, the federal government passed the Unlawful Internet Gambling Enforcement Act (UIGEA) in 2006. The law makes it a federal offense to accept funds for the use of or payment to Internet gaming services. In response to the UIGEA, many Internet gaming businesses withdrew from the United States market altogether. There are many supporters of Internet gaming who have pressured Congress to take a step away from strict prohibition and toward more tolerant Internet gambling regulation. Justification for this stance cited by such supporters includes the loss of taxation revenue and the propagation of illegal Internet gaming, where users are at greater risk because of the absence of federal regulators.

States have stepped into the debate to exercise their rights to prohibit or regulate online gaming activities. Future bills have been proposed that would license and create a tax structure for modern gambling through federal regulation. Many gaming institutions argue that certain games should be exempt from strict gambling regulation. This is centered on the idea that certain games are not reliant on mere chance. These games, like poker, are said to be driven by the players' level of skill. Online gaming, the classification of gaming activities, and the role that states play in exercising regulatory power will continue to shape federal gambling regulation. As the gambling industry grows, so will the money that federal and state governments stand to collect through effective regulation. How long governments can legitimize the loss of revenue that could be generated through regulation may be a driving force for law in the current economic environment.

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See Also: Gambling and Lotteries; Organized Crime; Racketeering; Reform and Regulation.

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Federal Trade Commission

The Federal Trade Commission (FTC) was established in 1914 after the passage of the Federal Trade Commission Act of 1914 by Congress. The legislation was proposed by President Woodrow Wilson in response to the antitrust stance of the Progressive movement and the recent breakup of the Standard Oil Trust. The FTC replaced the existing Bureau of Corporations, which was created in 1903 under President Theodore Roosevelt.

The purpose of the commission is to protect American consumers from the results of anticompetitive business practices. The commission helps enforce not only the FTC Act but also the terms of the Clayton Antitrust Act of 1914. The commission hears complaints from individuals and businesses and conducts investigations. It also has partnerships with other federal agencies, like the U.S. Department of Justice, when investigating antitrust violations. A five-person Board of Commissioners is appointed by the president to rolling seven-year terms, and all commissioners must be approved by the Senate. Under the rules in the FTC Act, no more than four board members can be from the same political party. One of the commissioners is appointed to the position of chairman.

The commission has eight offices and three bureaus that report to the commissioners and handle the day-to-day workings of the commission. Offices include: Congressional Relations, Public Affairs, Policy Planning, Secretary, and International Affairs. Legal offices include three areas: Administrative Law Judges, Inspector General, and Equal Employment Opportunity. The three bureaus include the consumer protection, competition, and economics bureaus. Rounding out the organization are the general counsel and executive director. The commission also has seven regional offices, located in Los Angeles and San Francisco, California (western); Dallas, Texas (southwest); Atlanta, Georgia (southeast); Chicago, Illinois (Midwest); Seattle, Washington (northwest); Cleveland, Ohio (east central); and New York City (northeast). These offices serve multistate areas and provide education and outreach services to both consumers and businesses.

Among the powers granted to the FTC, the largest are its investigative powers granted by the FTC Act and the Clayton Antitrust Act. The agency has the power to investigate proposed mergers and antitrust violations, conduct line of business studies, and work with foreign governments investigating spyware and Internet safety problems under the U.S. SAFE Web Act of 2006. The Hart-Scott-Rodino Act of 1976 required companies to submit a premerger notification and mandated a waiting period before commencing the merger. Pharmaceutical companies and generic drug manufacturers also have to file their agreements with the FTC for oversight purposes. The FTC has oversight privileges that are designed to protect American consumers. Among its administrative powers are adjudication and rule making. The commission can file a complaint against a company that has violated a consumer protection statute and, if necessary, pursue a trial with an administrative law judge. The commission can also address problems with trade practices by issuing regulations and enforcing them. The FTC also enforces the antitrust laws that impact unfair trade practices under the Sherman Antitrust Act and Clayton Antitrust Act.

With the rise of the Internet and electronic information, the FTC has expanded its consumer protections beyond what was imagined in 1914. In recent years, the agency has filed against major corporations like Countrywide and debt collectors for using aggressive practices. Other companies have had their assets frozen for false advertising on the Internet by posing as a news site or claiming false endorsements. Today's FTC is on the lookout for instances where private information is collected by people posing as legitimate companies on the Internet. Today's FTC still pursues the same mission and goals it had in 1914 to protect the American consumer. The world has changed, and consumer protection has expanded from price fixing and monopolies in the times of Standard Oil and Bell Telephone, to monitoring the Internet for scams and people who steal personal information by posing as legitimate companies. The FTC has increased its role in educating the American consumer and has created ways for Americans to control who gains access to their information through services like the National Do Not Call Registry. The agency was nearly a victim of the deregulation movement during the 1970s and early 1980s, when Congress felt that the agency had outlived its purpose.

The role of the FTC in government and business often places it at odds with major companies and legislators that hold power in Washington. Despite this, the agency has moved into the 21st century and uses the Internet and other online tools to provide options for the public to relay their concerns and to investigate identity theft, illegal debt collection practices, and other problems that come with a weakened economy. In its 100th year, the FTC is a strong regulatory agency that works to protect the American consumer.

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See Also: Antitrust, Federal Trade Commission; Clayton Antitrust Act; Federal Trade Commission Act; Internet Fraud; Telemarketing Fraud; Wire Fraud.

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Federal Trade Commission Act

The Federal Trade Commission Act became law on October 17, 1914, and was intended to enforce antitrust laws and protect American consumers. Today, the act encompasses not only trusts and monopolies but also oversight of the National Do Not Call Registry and the protection of consumers from false information on the Internet. The origins of the FTC act began on January 20, 1914, when President Woodrow Wilson proposed an antitrust initiative to Congress. He sought an agency to advise and investigate to help courts and businesses—an interstate trade commission. Senator Henry Clayton drafted a series of four bills related to the FTC act, together called the "five brothers." These acts made up an antitrust package containing numerous procedures and provisions to be overseen by the commission. The U.S. Department of Justice had a role in enforcing the civil aspects of regulation, and subsequent criminal sanctions that could be assessed on corporations and individuals. The proposed bills ran into problems in the House and Senate when various interests argued about the amount of power the commission would have, and Wilson changed his emphasis as the 1914 fall elections neared.

The act was heavily debated in both houses of Congress before the final version of the act was passed by the Senate on October 5 and the House on October 8. The major disagreement was over Section 5 of the bill, which discussed enforcement powers of the commission. Wilson signed the bill into law on October 17, 1914. After all of the versions had been through the committee and changes were made, the act kept sections on price discrimination; the biggest change was to limit the commission to administrative enforcement. The final version of the bill created the Federal Trade Commission (FTC) as an independent regulatory agency, replacing the Bureau of Corporations, created in 1903. The president could appoint five commissioners to rolling seven-year terms, and only four of the seven commissioners could belong to the same political party. The commission had the ability to investigate cases of monopoly and unfair competition. It had the formal powers granted to investigate and prosecute, while having informal powers to educate and work with businesses to increase compliance.

Amendments have been passed to update the act. The Webb-Pomerene Act of 1918 made it possible for export companies to avoid regulation. The purpose was to free the companies from regulation during World War I. The Wheeler-Lea Act of 1938 gave the commission authority over advertising and provided penalties for not obeying Section 5 orders. These amendments protected citizens from false advertising. The 1976 Hart-Scott-Rodino Act expanded the commission's powers to prevent monopolies by requiring companies to declare their intention to complete a merger to the FTC. As a result, the commission could investigate the merger and intervene through the courts to protect consumers. The advent of the Internet led Congress to pass the SAFE Web Act of 2006 to protect American consumers from problems associated with spyware and persons posing as online companies to collect personal information from consumers for the purpose of fraud and identity theft. In connection with the SAFE Web Act, the commission is authorized to work with international governmental agencies to investigate spam activities originating outside the United States.

The Federal Trade Commission Act of 1914 has survived well since its passage and remains a vital force in regulatory legislation. Originally, the commission's role included the enforcement of antitrust regulations that fell under the Sherman Act of 1890. Progressive reforms that began in 1903 under Theodore Roosevelt to break up the trusts and monopolies that dominated American industry continued into the presidency of Woodrow Wilson. The resulting legislation has needed amendment and expansion over the years, but the agency it created remains intact, fulfilling its role of protecting the American consumer. The legislation now includes handling consumer complaints about excessive phone calls, protection from Internet spam, and continual education of consumers about protecting their information. The act and its resulting amendments are landmarks in their oversight and regulation of American business and related interests.

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See Also: Antitrust, Federal Trade Commission; Clayton Antitrust Act; Federal Trade Commission; Internet Fraud; Telemarketing Fraud; Wire Fraud.

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Fertility Fraud

Fertility fraud refers to instances where doctors and other medical professionals exploit opportunities that arise when people use assisted reproductive technology (ART) to address fertility issues. The Centers for Disease Control and Prevention (CDC) defines ART as any process in which human eggs are removed from ovaries and combined with sperm in order to facilitate a pregnancy. Procedures can involve use of a woman's eggs, donated eggs, donated sperm, placement of an embryo in a woman seeking to become pregnant, or placement of an embryo in a surrogate mother. In addition, eggs, sperm, and embryos can be used immediately after harvesting or can be frozen for extended periods.

These procedures are possible because of the relatively recent explosion of reproductive technologies managed by health care professionals who stand to profit from their use. Since the first "test-tube" baby was created in 1978, the number of infants conceived using ART has grown exponentially. In 1996, ART was responsible for 14,507 live births in the United States. By 2010, that number more than tripled, to 47,090 live births, some involving multiple infants, for a total of 61,564 babies that year. Those figures reflect only procedures associated with successful, full-term pregnancies. Some estimate that as many as 138,000 ART procedures were performed in the United States in 2010. Because these procedures are notoriously expensive—an infant conceived using ART costs anywhere from $20,000 to $400,000—a booming fertility business has flourished. However, development of ART has outpaced regulation and has allowed unscrupulous health care professionals to exploit ART in a variety of ways. Attempts have been made to address that regulatory void, but some critics argue these measures are inadequate. Moreover, there is evidence that some rogue medical and legal professionals actively attempt to avoid regulation through international means.

Types of Fertility Fraud and Notable Scandals

Fertility fraud can take many forms and can occur at different stages. Fertility clinics competing for patients have made false or misleading statements about the success rates of their ART procedures in advertisements and during patient counseling. Because many ART procedures are not covered by insurance, treatment providers have performed ART services and have then fraudulently billed insurers for covered procedures. Some critics have asserted that because patients lack access to information about what constitutes proper fertility treatment, or because they are desperate to conceive, unethical doctors have subjected patients to unnecessary or untested procedures that have little chance of success or have agreed to perform services for patients who are physically unable to benefit from them. Some physicians take such deceptions even farther. Noted Virginia physician Cecil Jacobson injected women with hormones so that they erroneously believed that their ART treatments resulted in pregnancies. He then charged the patients for follow-up care and visits before eventually telling them that their fetuses had died.

A number of the most chilling frauds, however, involve misuses of sperm, eggs, and embryos. In addition to using hormones to induce fake pregnancies, Jacobson used his own sperm to impregnate unsuspecting patients over a 12-year period, fathering as many as 70 children before he was convicted of fraud in 1992. Similarly, a doctor admitted to using his own sperm for donations during his residency at Georgetown University Hospital. Those donations resulted in 33 women becoming pregnant, even though professional guidelines limited sperm donations to 10 recipients. Robert Edwards, the doctor responsible for the first test-tube baby in 1978, allegedly used eggs without obtaining donor consent to do so.

In addition, in the most notorious fertility fraud, doctors Ricardo Asch and Jose Balmaceda at the University of California (UC) Irvine's Center for Reproductive Health stole eggs and embryos from patients and used them to impregnate other patients. Neither the patients providing eggs and embryos nor the patients receiving them were aware of the misappropriation, which later came to light after three whistleblowers complained to officials about laboratory misconduct. Both doctors fled the country after they were federally indicted for fraud. A third doctor, Sergio Stone, was also accused of stealing and misusing eggs and embryos at UC Irvine, but he was acquitted of those charges and convicted of mail fraud for his role. Over 100 patients filed civil suits against the university, asserting a number of claims, including civil fraud and racketeering. The last of those suits was finally settled in September 2009.

However, the case has had a lasting impact. When a California couple who had their embryos frozen in 2008 returned to Santa Monica Fertility Clinic in 2011 to have their embryos implanted in the couple's wife, they were told that their embryos had been accidentally destroyed. The couple filed suit, alleging that the embryos had likely been implanted into other patients, and demanded that all patients receiving treatments from the clinic have their babies undergo genetic testing to determine biological parentage. That case is pending.

U.S. Public and Private Regulation

In the United States, medicine, including fertility medicine, is subject to federal and state regulation, as well as self-regulation through professional organizations. At the federal level, only one statute, the 1992 Fertility Clinic Success Rate Certification Act (FCSRCA), directly governs ART. The FCSRCA and its implementing regulations allow clinics to voluntarily participate in a data-collection system, reporting fertility treatment success rates, and authorizes the CDC to develop a model program for certifying embryology laboratories. Adoption of the certification program is left up to the states, and no state has adopted it yet. In addition, other federal regulations relate to, but do not govern, ACT. For instance, standards for testing the health and safety of sperm and eggs are set by the federal Food and Drug Administration, while standards for fertility tests are set by the Centers for Medicare and Medicaid Service.

At the state level, prohibitions against medical malpractice and fraud are generally applicable, but specific regulation of ART varies widely. For instance, New Hampshire has adopted a comprehensive regulatory scheme governing in vitro fertilization. In contrast, Pennsylvania merely sets reporting requirements for fertility clinics, whereas Louisiana requires that fertility clinics adhere to guidelines set by professional organizations such as the American Society for Reproductive Medicine. Most governing has been done through standards set by professional organizations, which can set standards quickly and are thus better at keeping pace with rapid technological developments than are legislatures.

This combination of federal, state, and self-regulation has prompted one group to claim that reproductive technologies are highly regulated in the United States, but critics complain that these measures, many of which are voluntary, are not comprehensive. Because of that, in 2008, the American Bar Association set forth a model act governing ART and encouraged states to implement it. No state has done so.

Recent International Developments

Because the United States lacks a comprehensive regulatory scheme, couples have recently begun traveling to the United States to avoid strict regulation of ART in their home countries. In particular, British citizens have avoided strict regulations in the UK by engaging in "fertility tourism" in the United States. Moreover, U.S. citizens have used international means to evade the relatively lax regulations that do exist.

For example, one California company, Planet Hospital, deliberately seeks out egg donors from one European country, sperms donors from a second, and surrogate mothers from a third, to "assemble" an overseas baby for U.S. couples. In the process, the company manages to avoid U.S. regulations and skirt surrogacy restrictions abroad. Some in the United States have gone even farther. For instance, in 2011, two prominent U.S. attorneys, Theresa Erickson and Hilary Neiman, pleaded guilty to an elaborate international surrogacy and baby-selling scheme that was designed to work around minimal regulations on surrogacy enacted in California, which, unlike other states, allows commercial surrogacy if certain guidelines are followed. One of those guidelines is that a surrogacy contract be in place before a surrogate is implanted with an embryo. This requirement is designed to prevent pregnant women from selling their unborn infants after they are conceived. Erickson and Neiman avoided this requirement, however, by recruiting surrogates from across the United States and sending them to Ukraine, where they were implanted with embryos created with donor sperm and eggs. After waiting until the second trimester, when the highest risk of miscarriage had passed, Erickson and Neiman found buyers in the United States who were willing to pay as much as $150,000 for the unborn infants. The surrogates were told that the process was legitimate and that they were sent abroad for innocuous reasons. The full impact of this international dimension to fertility fraud remains to be seen.

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See Also: Dalkon Shield Case; Health Care Fraud; Insurance Fraud; Medical Malpractice; Racketeering; Unnecessary Surgery.

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Fiduciary Fraud

A fiduciary is a person who acts as an agent, trustee, partner, corporate officer, or director, while the represented person is the principal, beneficiary, partnership, corporation, or other person to whom a fiduciary owes trust and confidence. The fiduciary, therefore, is in a position of financial trust for the represented person or organization. A fiduciary has the duty to act for the benefit of the one seeking the fiduciary's services. The fiduciary relationship is premised on the special knowledge and expertise of the fiduciary. As a result, there is a fundamental imbalance of information that necessitates the represented person placing significant trust in the fiduciary. Given this vulnerability on the part of the represented person, the fiduciary is the dominant party and is held to high standards. Fiduciary fraud occurs when one person or entity intentionally deceives or lies to another person or entity.

Determination of Fraud

To determine when and to what extent one is operating in a fiduciary relationship depends on the facts and circumstances of each case, particularly the relationship of the parties involved. The fiduciary relationship requires the parties to comply with rules stipulating such things as: neither party may deal with a subject matter of the trust in such a way as to benefit one party or prejudice the other, except in the utmost good faith and with the full knowledge and consent of the other. Examples of fiduciary relationships are those between attorney and client, guardian and ward, principal and agent, executor and heir, and landlord and tenant. Stockbrokers, insurance agents, investment advisors, and financial planners are types of fiduciary agents.

If it is determined that a person acted in a fiduciary capacity, the burden of proof shifts from the plaintiff alleging fiduciary fraud to the defendant fiduciary, to prove that he or she acted honestly. To prove fiduciary fraud in court, the plaintiff must show that an intentional misrepresentation or omission was made, with the intent to defraud the other party; that the plaintiff relied on this misrepresentation or omission; and that the plaintiff suffered reasonable damage as a result of the reliance on the information. If the client is successful in showing that the fiduciary engaged in fraud, the client can recover monetary damages for the injury or loss. The client can sue for such monetary damages as the contract fees, in addition to actual loss resulting from the fraud. The client may also be able to recover punitive damages.

Embezzlement is a common fraudulent act committed by the fiduciary. A bank, as a third party, may be sued if it takes an instrument by a fiduciary (such as a check) in clear violation of its fiduciary duty. The bank is on notice of a breach of fiduciary duty when a check that is payable to the represented person or the fiduciary is deposited in an account other than a fiduciary account or account of the represented person.

The Uniform Fiduciaries Act and the Uniform Commercial Code are the sources for the law in civil suits. In a case that was brought to court in 2009, the defendant allegedly squeezed the plaintiff out of the company the plaintiff founded and was an officer member of the board of directors by fraudulently misrepresenting that an investment firm was willing to invest large sums of money, on the condition that the plaintiff divest his shares of stock and become an at-will employee. The plaintiff was told that if he did not comply, then the investment would not occur, and the corporation would become insolvent. The plaintiff complied and was later fired.

Enforcement

Criminally, the federal government is increasingly using 18 U.S.C. § 1346 to prosecute company executives for breaching fiduciary duty. This statute makes it a felony to engage in a scheme to "deprive another of the intangible right of honest services." Following revelations of the massive fraud and wrongdoing in corporations such as Enron and other public companies, the U.S. Department of Justice has invoked §1346 to criminally indict executives for breaching their fiduciary duties. Chief Executive Officer Jeff Skilling from Enron is one of the corporate executives to be found guilty of the fraudulent acts that occurred during the massive breach of duty. One reason to apply this statute to gain criminal convictions for fiduciary fraud was because of pressure that Congress had exerted for more prosecutions. Under this law, fiduciaries may be criminally liable for conduct that would not subject them to civil sanctions.

Fiduciary liability insurance is protection for fiduciaries against losses resulting from a breach of fiduciary duty.

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See Also: Embezzlement; Enron Corp.; Financial Industry Regulatory Authority; Insurance Fraud; Legal Malpractice; Predatory Practices; Stock and Securities Fraud.

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Film Recovery Systems Inc.

The Film Recovery Systems (FRS) case put corporate executives on notice that there was a possibility that extremely serious consequences could ensue if they were not diligent in obeying rules regulating their company's workplace and its products. In the first time such a charge had been leveled against corporate moguls, four FRS officers were indicted by a state grand jury in 1983 for the crime of murder, as well as for more than a dozen counts of reckless conduct.

Poisoning at the Plant

FRS, located in Elk Grove Village, a Chicago suburb, operated a plant that extracted the small quantities of silver residual in X rays taken in hospitals and clinics. Workers cut the X-ray films into pieces and then put them into huge tanks containing 500 gallons of water and seven and a half pounds of sodium cyanide. Further increments of cyanide were added over the following three days. After constant stirring, the mixture separated the film from the silver, which was routed by a continuous flow system into a polyurethane tank. Inside each tank were two stainless steel electrode plates with positive and negative charges that detached the silver from the cyanide. Workers then scraped off the accumulated silver. Afterward, they had to pump the liquid and shovel the remnants of the cyanide-coated film out of the tank. Their work brought FRS income of $20 million the year before legal proceedings against it and its leaders were set in motion.

Cyanide is absorbed into the human body by various routes, with serious health-impairing consequences. The FRS workers, mostly undocumented aliens, were subject to constant bouts of dizziness and nausea. The situation came to a head on February 10, 1983, when Stefan Golab, a 59-year-old undocumented worker from Poland, had convulsions, frothed at the mouth, and died. The cause of his demise was determined by the coroner to be acute cyanide toxicity.

Investigators learned that the FRS workers were never told of the risks they were running. They generally were unwilling to complain to management because they were vulnerable to deportation. Also, their unfamiliarity with English kept many of them from understanding the dangers of working with cyanide. The skull and crossbones on a vat, the universal sign of danger, had been defaced and partially burned off so that it was barely visible. The prosecuting attorney would describe the FRS workplace as a huge gas chamber and point out that the workers were not permitted to wash their hands before eating lunch. They were supplied with inadequate paper masks on a regular basis, but when a safety inspection was scheduled, they were given proper face protectors.

The Prosecution

One of the accused was dropped from the case before trial, but the president of FRS, the plant manager, and a foreman were found guilty after a two-month trial before a judge hearing the case without a jury. The men were sentenced to 25 years in prison and given a 364-day sentence for each of the 14 charged acts of reckless conduct. This second term was to run concurrently with the longer period of incarceration. In addition, the convicted men were fined $10,000 for the killing and $1,000 for each of the episodes of reckless conduct.

The prosecutor was able to avoid having to prove criminal intent, a requirement that often proves an insurmountable barrier in white-collar crime cases, because the Illinois criminal code specifically defines as murder instances in which the accused "knows that such acts create a strong probability of death or great bodily harm." An unusual twist marked the FRS case when Michael MacKay, vice president of the company, also under indictment, fled to Utah, and that state's governors refused on three occasions to extradite him back to Illinois for trial on the stated ground that he was more useful in Utah than he would be in Illinois. MacKay, the co-owner of FRS, was an upstanding member of the Mormon Church, a war veteran, a philanthropist, a Boy Scout leader, and, like most alleged white-collar criminals, a model citizen once he moved out of his business role.

In 1990, an Illinois appellate court overturned the conviction of the three FRS officials because of what it deemed a technical flaw in the original proceeding. The court ruled that it was legally impermissible to charge both murder and reckless conduct for the same conduct because the behaviors require incompatible states of mind. The state supreme court declined to consider the case. Thereafter, the defendants negotiated a plea bargain on a charge of involuntary manslaughter. One went to prison for three years and a second for two years, and the third, the foreman, was placed on probation.

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See Also: Employee Safety; Hazardous Waste; Negligence; Occupational Safety and Health Act; Toxic Substances Control Act; Workplace Deaths.

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Financial Accounting Standards Board

The Financial Accounting Standards Board (FASB), a subsidiary of the independent, tax-exempt Financial Accounting Foundation (FAF), sets financial accounting and reporting standards, the core of generally accepted accounting principles (GAAP). The Securities Act of 1933 provided for the Federal Trade Commission to regulate reporting for public companies and the practice of public accounting. The Securities Exchange Act of 1934 assigned this to the Securities and Exchange Commission (SEC). Between 1936 and 1938, the SEC allowed some authority to revert to private entities, such as the American Institute of Certified Public Accountants' (AICPA) Committee on Accounting Procedure (1936–59) and Accounting Principles Board (1959–73).

Because these lacked enduring influence, the profession developed a new framework in 1973, including the FASB. Two advisory and oversight bodies promote FASB independence: the Financial Accounting Standards Advisory Council (FASAC) and the FAF. The FASAC consults for the FASB, assists in setting priorities, recommends issues for consideration and action, and helps establish task forces for research and implementation. Its more than 30 members reflect constituencies that prepare, audit, and use financial statements and collateral information.

The FAF selects members of the FASB and the FASAC (and Governmental Accounting Standards Board), finances them, and supervises them. Its board emphasizes efficiency and effectiveness in financial reporting in the public interest through nominations by prominent accounting organizations and at-large members. This framework prevailed for decades, though problems arose with savings and loan audits and auditor independence by the 1980s. When frauds involving Enron, WorldCom, accounting firm Arthur Andersen, and others emerged in 2001; confidence in the integrity of accountants, corporate leaders, capital markets, and the economy dropped as millions lost jobs and wealth. The profession and the George W. Bush administration resisted additional regulation through early 2002, when the indictment of Arthur Andersen for obstruction of justice, and its dissolution as clients departed, made a federal response necessary to restore confidence. Accountants focused on influencing what became the Sarbanes-Oxley Act. This law resumed federal oversight of the profession through the Public Company Accounting Oversight Board (PCAOB), a tax-exempt organization with rule-making authority over corporations listing securities in public capital markets, as well as their auditors. The SEC oversees the PCAOB and appoints its members. Under the act, the SEC designated the FASB a "private-sector standard setter" on April 25, 2003.

Mission of the Board

The FASB's mission is "to establish and improve standards of financial accounting and reporting for the guidance and education of the public, including issuers, auditors and users of financial information." It promotes efficient and effective capital markets, and it safeguards the interests of stakeholders who depend on them. The FASB consists of seven full-time members with five-year terms (renewable once), who must sever relationships with their organizations during their service. Members must possess "knowledge of accounting, finance and business, and a concern for the public interest in matters of financial accounting and reporting." A staff of 60 from public accounting, industry, academe, and the public sector assist the FASB and task forces, perform research, contribute to meetings, analyze public comments, and draft recommendations and responses.

The FASB promulgates the following: statements of financial accounting standards, statements of financial accounting concepts, interpretations, technical bulletins, and staff positions. Bulletins include material from the 1984 Emerging Issues Task Force, which it formed to address timeliness of financial reporting and other issues. On September 18, 2002, the FASB and the International Accounting Standards Board agreed to promote convergence of international financial reporting standards (IFRS) and GAAP. The migration from historical to fair-value asset cost has been controversial for risk of undue influence, as some alleged in June 2009 regarding accounting for toxic bank assets. On July 1, 2009, the FASB launched the Accounting Standards Codification as "the single source of authoritative nongovernmental U.S. [GAAP]" to organize promulgations underwriting these principles.

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See Also: Accounting Fraud; Arthur Andersen LLP; Enron Corp.; Federal Trade Commission; Savings and Loan Fraud; Securities and Exchange Commission, U.S.; WorldCom Inc.

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Financial Crime Kingpin Statute

The Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Act of 1990 is a U.S. federal law that is theorized to have stemmed from the savings and loan scandal of the 1980s. The act contains the Continuing Financial Crimes Enterprise Statute, which is also known as the Financial Crime Kingpin Statute. For conviction under this statute, the offender must have been a creator, organizer, manager, or supervisor of the continuing operation and have obtained income or resources from these violations of $5 million or more in a 24-month period. The act contains three new criminal offenses and new sentencing guidelines, under which the offender can be fined $10 million and sentenced to a maximum of life in prison. It is the white-collar counterpart to the Continuing Criminal Enterprise (CCE) drug law. The similarities between the two laws are primarily in their composite makeup: both the Financial Crime Kingpin Statute and the CCE discuss "modern compound crimes" in that they require the commission of a series of specified acts to occur, and the establishment of a "criminal enterprise."

The purpose of the financial kingpin statute was to punish those responsible for causing the rash of savings and loan failures in the 1980s. Criminal misconduct was not the primary cause of the savings and loan scandal. The multiple reasons included high interest rates, decline in the housing market, government deregulation of the banking industry, regulatory controls, and high-risk investments with government-insured money. All of these made for an environment that was unstable and allowed for some individuals act criminally within the industry. The public pushed Congress to enact statutes to allow the persons involved to be sanctioned to the fullest extent of the law. Congress took the public's outrage seriously, as evidenced by the "retributive tenor of many comments made by members of Congress."

The first individual to be prosecuted under the Financial Crime Kingpin Statute was Roy Harris, former president and chief executive officer of Arochem. He was convicted of 22 counts of felony fraud for illegally obtaining $245 million in loans from several banks to keep the business operating. He hid the true financial condition of the company when applying for the loans. One critique of the statute is that it allows more discretion on the part of the prosecutor, especially in the plea bargain area. Prosecutors can amend charges according to what they feel will be most negotiable, thus using the fine and life imprisonment as leverage. Prosecutors are allowed great leverage and discretion with these types of statutes. Some scholars feel that the laws are not pursued as diligently as others because of the types of offenders they target: those of great financial means. In 2009, 83,000 cases were prosecuted under federal jurisdiction. Out of these cases, approximately 11.7 percent were for white-collar offenses. Most of the cases prosecuted still tend to be for immigration and drug-type offenses (63 percent).

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See Also: Organized Crime; Racketeering; Savings and Loan Fraud.

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Financial Crimes Enforcement Network, U.S.

The Financial Crimes Enforcement Network (FinCEN, or FCEN) is a federal bureau headquartered in Vienna, Virginia, under the auspices of the U.S. Department of the Treasury, which collects and analyzes information on financial transactions in order to undercover "dirty money" and fight a range of related crimes such as money laundering, terrorist financing, organized crime, and other financial crimes, including frauds and scams. Its overall mission is to "provide a government-wide, multisource intelligence and analytical network in support of the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes by federal, state, local, and foreign law enforcement agencies." The director of FinCEN is appointed by the secretary of the Treasury. James H. Freis, Jr., assumed office in March 2007.

The Anti-Drug Abuse Act (1988) closed a loophole in the Bank Secrecy Act to expand the definition of "financial institution" to include some large businesses used as fronts by money launderers, such as car dealerships and real estate agencies.

Although FinCEN was officially established on April 25, 1990, by the secretary of the Treasury, the history of FinCEN dates back to 1970. In that year, the U.S. Congress passed, and has since then amended, the Bank Secrecy Act, which requires private individuals, banks, and other financial institutions in the United States to create and maintain records of monetary or negotiable instruments—documents guaranteeing payment, either on demand or at a set time, of a specific amount of money—in order to help identify the source, volume, and movement of currency, whether transported or transmitted into or out of the United States, or deposited in financial institutions. Specifically, the act requires banks to file reports of cash transactions over $10,000, using the Currency Transaction Report; requires financial institutions to provide assistance to federal agencies for the detection and prevention of money laundering; and requires the reporting of any related suspicious activity, such as tax evasion.

Over a decade later, in a time of increased credit card usage and concern over the war on drugs, two more key laws were passed. In 1986, Congress passed the Money Laundering Control Act, which officially made money laundering a federal crime by prohibiting individuals from participating in financial transactions generated from unlawful activity and concealing the source or true ownership of such proceeds. Similarly, two years later, Congress passed the Anti-Drug Abuse Act, which essentially was created to cover a loophole in the original Bank Secrecy Act to expand the definition of "financial institution" to include various big and popular businesses created and used as fronts by money launderers, such as car dealerships and real estate agencies, and therefore requires these entities to file reports on large currency transactions and, as a second line of defense, requires the identity verification of monetary instruments over $3,000. Shortly after creation of FinCEN, the bureau was further strengthened through new legislative power with the Annunizo-Wylie Anti-Money Laundering Act in 1992, Money Laundering Suppression Act in 1994, and Money Laundering and Financial Crimes Strategy Act in 1998.

In ensuring that these acts are upheld and executed efficiently and effectively, FinCEN is engaged in a number of initiatives. For example, in the Agent Request Initiative that was instituted on April 27, 2011, the network requests lists of money service business (MSB) agents, which must be maintained and updated annually, and provides an additional source of information for all parties involved in financial transactions.

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See Also: Fiduciary Fraud; Financial Industry Regulatory Authority; Money Laundering.

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Financial Industry Regulatory Authority

The Financial Industry Regulatory Authority (FINRA) is a private, independent membership organization through which brokerage firms and securities exchanges develop, promulgate, and enforce regulatory standards so as to operate fairly and efficiently in the United States, and to safeguard the interests of investors. It is "dedicated to investor protection and market integrity through effective and efficient regulation of the securities industry."

It discharges this mission by (1) validating qualifications of sellers of security products through testing and licensing, (2) ensuring that advertisements for securities products are truthful and not misleading, (3) aligning promotional and sales activities for securities to suitability of investors' needs, and (4) promoting a regime of disclosure so that investors receive all relevant information they require prior to purchasing an investment.

The organization operates with more than 3,400 employees out of principal locations in New York and Washington, D.C., with 20 regional offices across the country. It maintains the Central Registration Depository, the nation's largest database of brokers and brokerage firms. It regulates these service providers according to the aforementioned approach to protecting investors by training, examination, and licensing of registrants; alternative dispute resolution services; and regulation of major financial exchanges under contract. It also can discipline registered representatives and firms for violating securities laws and regulations and FINRA rules, such as by fining, suspending, or expelling firms or individual brokers from practice in the industry. It sometimes orders payments of restitution as well.

The founding of FINRA's principal predecessor, the National Association of Securities Dealers (NASD), came in 1939 in the wake of the Maloney Act of 1938, which amended the Securities Exchange Act of 1934 and enabled the creation of self-regulatory organizations (SROs), including national securities associations. These assist the SEC in regulating association members. In 1971, the NASD extended its scope by creating an electronic stock trading system, the National Association of Securities Dealers Automated Quotations (NASDAQ). This served as an alternative stock exchange and grew in competitive influence.

Formation of the Authority

In 1996, the U.S. Securities and Exchange Commission (SEC) criticized the NASD for incongruities between its mission and this exchange. The result was that the NASDAQ recapitalized and separated from the NASD in 2000 so that each could focus on its respective role. In the meantime, in 1998, the other two major exchanges had merged: the New York Stock Exchange (NYSE) and the American Stock Exchange. In 2007, the NASD merged with the New York Stock Exchange's regulatory arm, NYSE Regulation, to form FINRA, making it the largest SRO in the United States.

Under its bylaws, FINRA operates under the governance of a board consisting of its chief executive officer (CEO), the CEO of NYSE Regulation, 11 public governors, and 10 industry governors representing firms of various sizes.

Funding is mainly through assessments of member firms' registered representatives and applicants, members' annual fees, and fines it imposes. The annual fee includes a basic membership fee, an assessment reflecting gross income, a fee for each principal and registered representative, and a charge by number of branch offices.

Because of industry complexity, as well as information and power asymmetries between (1) brokers and brokerage firms and (2) their customers and employees, the dispute-resolution role for FINRA rapidly rose to prominence. Service and employment contracts with brokerage firms routinely include mandatory arbitration clauses, and courts generally have upheld these as valid and enforceable. In class-action lawsuits, however, courts have allowed plaintiffs to bypass these agreements.

The organization follows a systematic procedure for assembling arbitration panels. It initially drew from pools of thousands of industry and nonindustry arbitrators, depending on circumstances, including the amount in dispute. However, after criticism about fairness of such participation and concern about congressional intervention, FINRA gradually amended its procedure to allow for panels consisting solely of nonindustry arbitrators. After a testing period of almost three years, it implemented this policy in February 2011.

The number of arbitration cases varies annually but usually exceeds 5,000 nationally. The rules do not require or prohibit representation by legal counsel, but many do rely on such representation because the brokerage firms routinely do so. This has led to additional concerns about the elusiveness of the distinctive value proposition for such "alternative" dispute resolution in terms of efficiency, expeditiousness, and fairness.

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See Also: Advertising Fraud; Bureau of Consumer Financial Protection, U.S.; Dodd-Frank Wall Street Reform and Consumer Protection Act; Marketing Fraud; NASDAQ; Predatory Practices; Reform and Regulation; Regulatory Enforcement; Securities and Exchange Commission, U.S.; Securitization Fraud; Stock and Security Fraud.

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Firestone Tire and Rubber Co.

Soon after founding his company in 1900, Harvey Firestone capitalized on his friendship with Henry Ford to become the tire supplier to the Ford Motor Company. To associate the company with driving, Firestone equipped many Indianapolis 500 racers with tires beginning with the inaugural event in 1911. Between 1920 and 1964, every winner was driving with Firestone tires. The company's positive public image and bottom line were damaged by several accusations of illegal or immoral behavior, including violations of the Sherman Antitrust Act, patent laws, and human rights and child labor laws; making illegal contributions to politicians; paying bribes to foreign officials; and in two distinct instances, knowingly selling defective tires. By 1979, Firestone was more than a billion dollars in debt and continued to lose money. It was forced to close factories, move its headquarters, and spin off non-tire-related businesses; and it negotiated the sale of the company to the Bridgestone Corporation of Japan in 1988.

From 1936 until 1950, the Firestone Corporation, along with General Motors, Standard Oil of California, Mack Truck, the Federal Engineering Corporation, and Phillips Petroleum, conspired to purchase over 100 streetcars and electric train systems in 45 urban areas with the intent of dismantling them and replacing them with buses. In total, nine corporations and seven individuals were convicted in 1949 for their roles in what became known as the Great American Streetcar Scandal. Firestone was accused of having a $1.1 million political slush fund and making $330,000 in illegal contributions to local, state, and federal politicians between 1970 and 1973.

To account for these funds, it falsified books by indicating that the funds were paid to executives. During this period, the U.S. Securities and Exchange Commission (SEC) alleged that Firestone paid Mexican government officials $39,600 to obtain a price increase for its tires. The company agreed to settle, without admitting or denying the SEC's charges. Accusations leveled against the company's operations in Liberia included purported payments of $2 million per year to Charles Taylor's National Patriotic Front for "protection" after the 1992 abduction and torture of several of its Liberian rubber plantation employees. In 2005, Firestone was accused of human rights and child labor law violations in Liberia, which, according to a plantation manager, must be viewed within the context of the country's 15 years of civil war.

Responding to Goodrich and Michelin's introduction of radial tires to the U.S. market in the late 1960s, Firestone developed and produced its Firestone 500 radials. The tires, manufactured on equipment designed to produce bias-ply tires, soon showed signs of tread separation at high speeds—a problem the director of development acknowledged in a 1973 internal memo. Despite company tests in 1975 that documented a serious problem tread separation problem, it continued to manufacture, advertise, and sell these defective tires. When the National Highway Transportation Safety Authority (NHTSA) requested a voluntary recall, the company sold the tires at clearance prices. Firestone recalled 400,000 of the 500 model tires and 5,000 of its Primero tires in 1977, as well as about 10 million additional tires in 1978, which resulted in an after-tax charge against earnings of $147.5 million in 1978.

Investigation and Fine

In 1978, the NHTSA began an investigation of and Congress held hearings on the tire problem. Despite Firestone blaming consumers' underinflation and poor tire maintenance for the problems, the NHTSA declared the tires defective and responsible for 41 deaths. It fined Firestone $500,000—the largest civil penalty imposed since passage of the 1966 National Traffic and Motor Vehicle Act—for illegally delaying the recall of tires that did not meet federal safety standards. The bond between Ford and Firestone, which began in 1900, ruptured in 2000 as the two companies blamed each other—in Senate hearings, court cases, and exchanges in Venezuela—for the deaths and injuries caused when Ford Explorers, Mercury Mountaineers, and Mazda Navajos rolled over after the tread separated on its Bridgestone-Firestone tires. Public Citizen blamed the deaths and injuries on poorly designed tires (designed to Ford's specifications), production deficiencies, and design flaws in the Ford Explorer.

Firestone's Wilderness AT, Firestone ATX, and ATX II tires experienced an unusually high level of tread separation (a problem more pronounced in vehicles with high inflation, driven in hot climates, at high speeds) that led to between 271 and 476 deaths and over 800 injuries. Ford and Bridgestone-Firestone learned of tire failures in Fords in Saudi Arabia in 1988. Firestone eventually admitted that it made bad tires. In 1999, Ford and Bridgestone-Firestone conducted a limited recall of SUV tires in Middle Eastern countries, Malaysia, Thailand, and Venezuela. Only after a Houston television station aired an exposé in 2000 did Bridgestone/Firestone announce a voluntary recall of 6.5 million tires. Nine months later, Ford recalled all 13 million Firestone Wilderness AT tires that remained on its vehicles. In 2001, the company asked the Department of Transportation to investigate whether the Explorer's high-center-of-gravity design made the vehicles unstable and susceptible to rollovers.

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See Also: Automobiles; Consumer Deaths; Corporate Criminal Liability; Ford Motor Co.; Negligence.

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Fisher-Price Inc.

Fisher-Price was originally opened in 1930 by Herman Fisher and Irving Price. Since its conception, the toy manufacturer has become the most recognized company in its field. Fisher started his career in New York working for a game manufacturer; Price operated his own variety store. The duo was aided by Helen Scheele, who had a strong sense of the toy market given that she owned a toy store. While Fisher-Price is well-known for its numerous products and lines of toys, the company faced two major scandals in its history related to toy defects.

Two Major Scandals

Fisher-Price has faced two major scandals in the history of the company related to problems with its toys. The first related to its popular Power Wheels toys. The company manufactured and sold roughly 10 million of the battery-powered units between 1994 and 1998. The vehicles, designed for 2- to 7-year-olds, came with six- or 12-volt batteries, had nearly 100 models, and retailed for between $75 and $250. The U.S. Consumer Product Safety Commission (CPSC) found that in just that four-year period, there were over 100 incidents of fires in the vehicles as well as almost 2,000 reported incidents of overheating, short-circuiting, melting, or failing electrical components. Approximately 10 children were burned, and 25 structures sustained property damage.

Fisher-Price was also aware of approximately 75 cases in which a Power Wheels unit failed to stop an accident when the vehicle hit a stationary object with a child driving. Most damaging, however, was the fact that the company chose to not disclose this information until the CPSC asked for a full report. Such a decision violates immediate disclosure laws. The company further opted not to voluntarily recall and replace Power Wheels vehicles in the interest of safety.

In the end, Fisher-Price ended up in a significant amount of legal trouble. It agreed to settle with the CPSC and was forced to pay $1.1 million, the largest civil penalty ever assessed on a toy manufacturer. As part of the settlement, Fisher-Price was able to deny knowingly violating the Consumer Product Safety Act. To go along with the civil penalty, Fisher-Price recalled over 10 million Power Wheels vehicles spanning 14 years of production.

Learning from the Power Wheels fiasco, in August 2007, Fisher-Price chose to voluntarily recall almost 1 million of its most popular toys (including ones based on Dora the Explorer and Sesame Street) due to the possibility that the toys were coated in lead-based paint while being manufactured in China. Lead is toxic if ingested, especially by children, and even exposure to lead can have adverse health effects. The general manager of the company, David Allmark, publicly claimed that the problem was detected internally during a routine examination and was immediately reported to the CPSC. The CPSC and Fisher-Price jointly issued statements warning parents to remove the toys from their children and contact the company for further information. Allmark further explained that well over half of the toys falling under the recall notice for high lead were taken off the shelves before being purchased. Parents were told to still be careful and check their children's rooms and play areas to make sure none of the toys were present. What the lead paint recall clearly showed, however, was the increased level of detail and attention paid by Fisher-Price. There was clearly no cover-up or debate on whether to voluntarily recall.

Not all of the company's recall demands were equally serious, however. Toward the end of 2008, Fisher-Price introduced a new baby doll in the United States known as the Little Mommy Cuddle & Coo. It took only a few weeks before customers began complaining about things the doll said. Many parents claimed they heard the baby doll state that "Islam is the light." As a result, a large number of stores stopped selling the doll, and eventually Fisher-Price had to rework the doll's statements to clarify its language. The range of concerns over the toys run the gamut, but Fisher-Price's willingness to revise this product demonstrated the type of behavior that is expected from a company that has learned to exercise due diligence.

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See Also: Consumer Product Safety Commission, U.S.; Consumer Product Safety Commission Act; Negligence.

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Food and Drug Administration, U.S.

The Food and Drug Administration (FDA) is the federal agency located under the Department of Health and Human Services that is responsible for regulating food and drug safety in the United States. The origins of the Food and Drug Administration date back to the establishment of the Division of Chemistry in the Department of Agriculture in 1862. Prior to the establishment of the agency, states oversaw food and drug laws, resulting in varying degrees of coverage. As agriculture and science made advances, it became necessary to investigate adulteration of food and labeling of both food and drugs to protect the American consumer.

Whistleblowing Publications

Two publications led to the call for a federal law regulating food and drugs in the United States. A 10-part study, "Foods and Food Adulterants," was published by chief chemist Harvey Wiley between 1887 and 1902, exposing the use of additives in foods. The publication of *The Jungle* by Upton Sinclair in 1906 detailed the actions of the meatpacking industry. In 1906, the Food and Drug Act established the first overall regulation of the food and drug industry, overseen by the Bureau of Chemistry. The agency became known as the Food and Drug Administration in 1930 and remained under the Department of Agriculture until June 1940, when it was transferred to the Federal Security Agency. The FDA transferred in April 1953 to the Department of Health, Education, and Welfare, then to the Public Health Service in 1968. In May 1980, it moved to its current location, the Department of Health and Human Services.

The FDA is responsible for enforcement of laws and establishing regulations related to the food, drug, and cosmetic industries in the United States. The 1906 legislation addressed the use of additives in food and drug products, the false labeling of products, and the prosecution of those responsible. The agency worked for improved language in the law because many products on the market contained false information. Change in the agency's governing statute came during the 1930s, when Franklin D. Roosevelt was president, and it became apparent that the 1906 law needed updating. Congress worked on the legislation for five years with little success, until the 1937 deaths related to an untested drug, Elixir Sulfanilamide, raised national awareness of the problem. In 1938, Congress passed the Federal Food, Drug, and Cosmetic Act which broadened the agency's scope far beyond that of the 1906 law.

The FDA could now oversee not only food and drug additives but also medical devices and cosmetics. Agency regulations addressed labeling of all food products, testing for new drugs, and labeling and instructions for medical devices, and allowing for inspections of factories. The agency began issuing standards for food production and established a process for the inspection and approval of new drugs. Agency standards were strengthened further in the 1950s, when Congress passed laws related to pesticide residues and food and color additives, and banned the use of additives that could cause cancer. This legislation, called the Delaney clause, placed a restriction on approving the use of any additives in food for humans that was found to cause cancer in lab animals.

The FDA today continues to monitor the nation's food and drug supplies. Recent cases include outbreaks of *E. coli* and salmonella in the food supply, including a major recall of peanut products in 2011, and problems with infant formula over the years. The FDA continues to track prescription drugs and the production of generics, and it issues recalls of medications that have undeclared ingredients, problems with the containers, or dosing discrepancies. All new drugs to be marketed in the United States must be approved through an application process that includes clinical trials. Over-the-counter medications undergo a similar process that includes a monograph published in the *Federal Register*. In 2008, the agency recalled over-the-counter children's medication to clarify dosing instructions and warnings about giving the medication to children under the age of 2. Agency recalls include animal food products, medications, and biologics.

Oversight of medical devices ranges from syringes to ventilators that might not work properly during procedures. The role of the FDA extends beyond just regulating food and drugs. During times of national emergency, such as floods and hurricanes, the agency can be consulted to ensure the safety of the food supply and to provide information about medications that might be contaminated. The agency works with states to make sure that facilities are inspected annually to ensure the safety of foods and drugs produced throughout the country. The role of the FDA is to ensure the legal production of foods, drugs, and related products in the United States.

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See Also: Consumer Deaths; Food and Drug Administration, U.S.; Infant Formula; Pharmaceutical Industry.

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Food Fraud

Food fraud, along with the subcategory of food-related economically motivated adulteration, is a white-collar or corporate crime. The often extremely complex planning and product distribution networks of the food industry are fluid and flexible. While only recently defined by the food industry as a distinct threat, food fraud is a type of product fraud that is growing in scope and scale. A subcategory under food fraud is economically motivated adulteration (EMA) of food.

The Journal of Food Sciences *lists honey as one of the most frequent cases of faked foods. U.S. Food and Drug Administration guidelines state that any product that does not contain pollen cannot be considered honey, and testing conducted for* Food Safety News *found that more than three-fourths of the honey sold in U.S. grocery stores lacked sufficient amounts of pollen to be considered pure honey. Pollen filtering hides honey origins; honey imported from countries such as China and India is a common culprit.*

These fraud incidents have led to companies closing, industries on the verge of collapse, thousands of lost jobs, and severe public health threats. As with EMA, the food fraud incidents are growing in the number of incidents and the severity of impact. The perpetrators are often individuals or small groups, but there are examples of large-scale organized crime groups or even terrorist involvement. The planning is often similar to white-collar crime, but the implementation involves direct contact with, and threat to, a consumer. The actions are often conducted within a corporation, but often without tacit approval, or even knowledge, by management. In some cases, the act is not a violation of a criminal or civil law. Regardless of the exact offense, this type of product fraud is leading to increased regulatory and enforcement prioritization because of public health threats and intellectual property rights infringement efforts.

Public Health Threat

Food fraud is a collective term used to encompass the deliberate and intentional substitution, addition, tampering, or misrepresentation of food, food ingredients, or food packaging, or false or misleading statements made about a product, for economic gain. Food fraud is broader in scope, and includes concepts beyond adulteration such as misbranding, tampering, theft, and smuggling. Although the objective is economically motivated, and any public health threat would be through negligence rather than intent, the public health vulnerability is real. The fraudsters are probably not following the regulations for good manufacturing practices.

The types of food fraud include actions to adulterate, tamper, overrun, steal, divert, simulate, or counterfeit. The types of risks are direct, such as acute toxicity leading to an immediate public health consequence; indirect, such as chronic toxicity leading to a public health consequence after repeated exposure, or lack of a benefit such as with a vitamin; and technical, such as nonmaterial in nature or involving country of origin. The level of fraud is estimated at 5 to 10 percent of the world's food supply, regardless of product or country.

Although there is evidence of intentional adulteration of food back to Roman times, the classification as food fraud was only defined in 2011. The concept evolved from the goal of focusing on prevention rather than just intervention. A follow-up article in 2012 provided insight on the incidents from 1980 to 2010. The regulatory and statutory authority is defined in food and drug laws, such as the Federal Food, Drug, and Cosmetic Act, under terms such as adulteration and misbranding. The fraud is also often defined as a violation under a criminal statute for smuggling, theft, intellectual property rights infringement or counterfeiting. The Food Safety Modernization Act of 2011 has 11 mentions of "intentional adulteration," which applies to the adulteration aspects of food fraud. This is also covered under other acts, such as the Protect Intellectual Property Act of 2008, focusing on trademarks and patents; and the Prescription Drug Marketing Act of 1987, focusing on drug safety and security.

Worldwide Prevention

Although the subcategory EMA is a focus of the FDA, it is currently explicitly defined only in a *Federal Register* notice. Food fraud is a concept that is receiving attention by the likes of certification bodies such as the U.S. Pharmacopeia (the body assigned to oversee the specifications for food and drug ingredients, with several expert panels on adulteration, as well as a new draft general chapter) and the International Standards Organization (ISO) Technical Committee 247 on Fraud Countermeasures and Controls, with an explicit focus on all consumer product fraud. The prevention concepts and efforts are similar to other food industry quality efforts, such as Six Sigma and Hazard Analysis and Critical Control Point (HACCP) programs.

As with other types of hybrid and complex crimes, a variety of criminology theories can be applied to understand and prevent the crime opportunity. The full process of the crime often defies a clear classification because the preparation is similar to that of white-collar crimes, but the interaction with the end consumer is similar to that of traditional crime. The fraudsters are often very skilled at evading detection and avoiding enforcement. These factors emphasize the importance of applying prevention theories such as situational crime prevention and the crime triangle. There is a nearly infinite number of fraudsters and types of fraud, so reducing opportunity is a key to reducing the public health threats.

The trend for food fraud, as with EMA, is that it will continue to grow in scope, scale, and threat. Globalization is a major driver of this growth through expanding power of brands, a worldwide growing middle class expecting more specialized and higher value products, and the impact of wider geographic distribution. As globalization is supported by the increased speed of product transportation, it also increases the economics toward manufacturing consolidation. Both of these benefits of globalization create an additional fraud opportunity and public health threat because more products will move faster around the world. This increasing complexity and speed will increase the demands on the detection regulations and enforcement, which will emphasize deterrence. The deterrence and prevention focus will continue to emphasize the application of the criminology concepts of situational crime prevention and the crime triangle. Although this shift to prevention may seem logical—especially considering the industry acceptance of quality programs such as Six Sigma and HACCP—the shift will be difficult. The current management and enforcement infrastructure and metrics are focused on detection rather than prevention.

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See Also: Adulteration, Economically Motivated; Counterfeiting; Food and Drug Administration, U.S.; Globalization.

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Ford, Gerald R.

White-collar crime played a significant role in the rise and fall of the political career of the 38th president of the United States, Gerald R. Ford. The crimes committed by Spiro Agnew and Richard Nixon paved the way for Ford to become president in August 1974. Ford's September 1974 pardon of his predecessor for all crimes committed while in office was perceived as a major contributing factor in Ford's electoral loss to Jimmy Carter in 1976. Ford returned to his hometown of Grand Rapids, Michigan, following his World War II service in the U.S. Naval Reserve. He joined the law firm of Butterfield, Keeney and Amberg, and during his law practice, family and friends encouraged him to seek the Republican nomination for the House of Representatives in 1948. Ford won the nomination and the election, and he would go on to serve consecutive terms in the House from January 1949 to December 1973.

Spiro Agnew's rise to the second-highest office in U.S. politics was meteoric. A politically moderate local official in Baltimore in 1962, he ran for and won the Maryland governorship four years later. Just two years after that, he became Richard Nixon's running mate on the national ballot. By virtue of winning the elections of 1968 and 1972, Agnew served one term as vice president of the United States and was looking forward to serving a second complete term in early 1973. As vice president, he took on a more conservative persona, alienating liberals and Democrats as well as surprising longtime friends and political observers. Agnew's fall from grace was as stunning as his rise; he resigned from the vice presidency in October 1973, after he was investigated for bribery, extortion, and income-tax violations allegedly committed since his term as Maryland governor. He pleaded no contest to a single income-tax charge and was fined $10,000. In lieu of jail, he was sentenced to three years of unsupervised probation. Because of the vacancy in the office of vice president, Ford was nominated to fill Agnew's unfinished term. Ford easily passed the confirmation process in both chambers of Congress and became vice president on December 6, 1973.

Nixon's Impeachment

In July 1974, President Nixon was charged with three articles of impeachment by the House of Representatives. In Article 1, it was alleged that he prevented, obstructed, and impeded the administration of justice related to his role in covering up the Watergate break-in of June 17, 1972. The article alleged that six days after the break-in, the president used his power to redirect the Federal Bureau of Investigation's (FBI) inquiry of the incident, thus obstructing justice in federal law enforcement's efforts to follow the trail of the money found with the Watergate burglars.

Article 2 accused the president of using the power of his incumbency to disrupt the finances of his political enemies and to violate their civil rights. The article states that the Internal Revenue Service was used to audit the tax returns of political enemies and that the Federal Bureau of Investigation (FBI) and Secret Service arranged electronic surveillance of the president's opponents.

Article 3 stipulated that the president failed to comply with subpoenas issued by the Judiciary Committee. When irrefutable evidence emerged in early August 1974 that the allegations in Article 1 were true, President Nixon resigned from the presidency at noon on August 9. Gerald R. Ford became the 38th president in the hour following the resignation of President Nixon. On September 8, 1974, 30 days into his tenure as president, Ford issued a full and complete pardon to his predecessor for any crimes that Nixon committed while holding the office of president. Ford's rationale for the pardon was to put the divisive period of the Watergate scandal behind so that the nation could begin to heal from the partisan political fallout that was left in the scandal's wake.

Early in his presidency, Ford appeared to launch a crackdown on white-collar crime. Working hard to clean up the tarnished image left by Nixon, he directed the U.S. Department of Justice to develop enforcement priorities to combat antitrust violations, price fixing, fraud, embezzlement, and similar infractions because the cost of such crimes to the public exceeded $40 billion in 1974. He also asked that public corruption cases become high priorities of law enforcement. However, Ford's pardon of Nixon prompted critics to suggest that the new president's commitment to enforcement of white-collar crime laws was actually very weak.

By his actions, rather than his words, he was showing that political loyalty, backstage dealing, and granting amnesty to one of the nation's most famous white-collar criminals were more important than strengthening or enforcing the laws against white-collar crime. President Ford lost his bid for re-election by an electoral college margin of 297–240 to Jimmy Carter on November 4, 1976. Carter promised to be a champion in the fight against white-collar crime.

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See Also: Agnew, Spiro; Antitrust, U.S. Department of Justice; Carter, Jimmy; Nixon, Richard M.; Price Fixing; Public Corruption; Watergate.

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Ford Motor Co.

Ford Motor Co. has a history of engaging in anti-consumer behavior, cover-ups, and purported criminal behavior. The company's questionable behavior began in 1904, when Ford was accused of violating George Selden's patent on gasoline engines. Since then, Ford has allegedly profited from its relationship with Nazi Germany; environmental violations, including falsifying Environmental Protection Agency (EPA) test results; and putting consumers' lives at risk by refusing to address problems that would have delayed production or were deemed too costly to fix. Ford was tried on reckless homicide charges for deaths associated with the Ford Pinto. Some of its sport utility vehicles (SUVs) were deemed dangerous and environmentally harmful.

The Fateful Pinto

Losing sales to foreign subcompact manufacturers, Ford rushed its Pinto, a vehicle designed at 2,000 pounds and that cost less than $2,000, to market within 25 months. Ford's managers and engineers knew from preproduction crash tests that Pintos were susceptible to fires from low-to-moderate-speed rear-end crashes that damaged gas tanks. This problem, which could have been rectified with an expenditure of $11 per vehicle, caused approximately 500 deaths and numerous burns. A cost-benefit analysis estimated that repairs would cost $137 million, while payments for 180 burn deaths, 180 serious burn injuries, and 21,000 destroyed vehicles would cost only $49.5 million. Purportedly, the memo stating this conclusion was not used for internal decisions; rather, it was sent to the National Highway Transportation Safety Administration (NHTSA) as part of Ford's eight-year campaign to delay issuance of safety regulations that would have fixed the gas tank problem and saved lives. In 1978, Ford recalled 1.5 million Pintos manufactured between 1971 and 1976. That year, three teenagers died when their Pinto was rear-ended. Ford was charged with reckless homicide for their deaths. Outspending and outmaneuvering the state prosecutor, Ford's attorney received an acquittal from the jury.

The NHTSA determined that many Fords manufactured from 1966 through the early 1980s had transmissions that slipped from park to reverse.

These defective transmissions, which Ford knew about at least 10 years prior to the recall, were responsible for 1,710 injuries and 98 fatalities. The failure of Ford's thick film ignition module in vehicles sold between 1983 and 1995 caused unexpected stalls. The 11 deaths and 31 injuries attributed to the failure could have been avoided if the module had been repositioned. By concealing internal documents and delaying its response to the NHTSA's requests for information, Ford allowed the statute of limitations to expire. In 2000, a California judge found Ford guilty of fraudulent concealment for failing to report this known safety defect and ordered the recall of 1.7 million Ford cars and trucks sold in California.

Ford's SUVs were essentially passenger bodies on a truck chassis. The top-heavy, narrow-wheelbase design had a propensity to roll over, even at low speeds, a fact that Ford knew in 1984 when it produced its first SUV, the Bronco. The rollover problem would have deceased if the wheelbase had been just two inches wider, a fix that would have required re-engineering the chassis system and delayed production. This problem therefore remained unaddressed, even when Ford created subsequent models. The Explorer was introduced in 1990 with the same frame, similar wheelbase-to-height ratio, and stability problems as the Bronco II. Although its engineers recommended several changes to the design and suspension—increasing its track width, lowering its center of gravity, and using smaller tires—to counteract the rollover problem, Ford only lowered the recommended tire pressure.

Placing Bridgestone-Firestone tires, which had a tread separation problem, on vehicles that had a propensity to roll over was a recipe for disaster for which both companies shared responsibility. Ford provided Bridgestone-Firestone with tire specifications for its SUVs and F-series pickups, and it approved the design prior to production. Once aware of a tread separation problem on Ford vehicles in Saudi Arabia as early as 1988, Ford's engineers tried to address the problem without interfering with the Explorer's 1990 release date. Lawsuits related to tread separations and rollovers began appearing in 1991. The tire problem escalated enough in hot climates that by 1999, Ford began replacing Firestone tires on its SUVs in Middle Eastern countries, Malaysia, Thailand, Colombia, and Venezuela. Ford treated the problem as if it belonged to individual foreign units instead of recognizing it as a corporate concern, which would have required it to notify U.S. authorities and all consumers. The rollover/tire separation problem did not receive much attention in the United States until a report in 2000 by a Houston television station led to a Senate hearing. At the Senate hearing, in court cases, and in exchanges in Venezuela, the companies blamed each other for the 271–476 deaths and over 800 injuries caused when Explorers rolled over after Bridgestone-Firestone tires failed. Public Citizen blamed the deaths and injuries on poorly designed tires, production deficiencies, and design flaws in the Ford Explorer. To date, Ford has faced criminal charges related to rollovers only in Venezuela.

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See Also: Automobiles; Consumer Deaths; Firestone Tire and Rubber Co.; Legal Malpractice; Public Citizen Health Research Group.

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Foreclosure Fraud and Rescue Schemes

Foreclosure fraud and rescue schemes target homeowners who have defaulted on their mortgage or are facing foreclosure and, as a consequence, are vulnerable to schemes that offer ways to allow them to remain in their homes. The perpetrators of these frauds make aggressive overtures toward the mortgage payees, offering them a means of refinancing their existing mortgage loan or paying off their mortgage in its entirety. However, these schemes result in various forms of harm to the homeowner, including a loss of money paid in fraudulent fees, exorbitant monthly rent being paid to the perpetrators for people to remain in their own homes, and even the loss of their home.

Spike in Foreclosure Fraud Since 2008

There has been an increase in the number of foreclosure frauds since the economic crisis of 2008. Contributing to the crisis were predatory lending practices that saturated the lending market prior to 2008. These included deceptive, unfair, and abusive practices that occurred during the process of securing a home loan or at the origination of the mortgage loan. Although there are many practices associated with predatory lending, most often associated with this time period were loans secured with lax qualification criteria, little federal oversight, aggressive selling of variable-rate loans, and inflated monthly loan payments. This increased the number of people eligible to purchase a home, some of whom would not have previously qualified.

As a result of the increase in buyers, property prices soared, with many buyers purchasing their homes for prices in excess of the property's value and holding loan repayment plans they could not maintain over the length of the loan. As homeowners failed to meet the conditions of their loan repayment plans, lenders began to tighten their qualifications, which restricted the number of buyers on the market. Individuals trying to sell their homes had fewer buyers to work with and could no longer charge the inflated prices that had become characteristic of the housing market. This in turn caused a dramatic drop in housing prices. Homeowners who could not afford to pay their large mortgage payments were left with properties with a considerably lower values than the loans secured for their purchase. As many homeowners entered delinquency, the housing market entered into a state of crisis.

The housing crisis led to an increase in the number of housing foreclosures, with as many as 2.1 million properties in foreclosure in 2010. The number of foreclosure filings also dramatically increased—by 120 percent. The Federal Housing Administration (FHA) reported that since 2009, the number of borrowers who have instantly defaulted on their loan (that is, before making a single payment) has increased by 320 percent. With increased foreclosures, instant defaults, slow sales, and loan delinquencies, the pool of potential victims vulnerable to foreclosure fraud and rescue schemes has considerably increased. In 2010, the Federal Bureau of Investigation (FBI), in conjunction with the U.S. Department of Justice (DOJ), indicated that as homeowners continue to default on their mortgage loans and file for foreclosures, the perpetrators of foreclosure frauds and rescue schemes will continue to grow as they prey on the desperation of delinquent homeowners.

In early 2009, in an effort to assist families who otherwise qualified as responsible homeowners but were facing foreclosure, the Barack Obama administration announced the Making Home Affordable Program and Home Affordable Refinance Program (HARP), overseen by the Treasury Department, the U.S. Department of Housing and Urban Development, and the U.S. Department of Urban Affairs. The goal of the program is to assist 5 to 7 million families by restructuring and/or refinancing their loans to make the monthly payments more affordable, preventing foreclosure and further financial hardship. Despite the initiation of this program, in late 2009, the Treasury Department reported that less than 10 percent of delinquent homeowners eligible for HARP assistance were seeking it. Furthermore, the FBI reported that the numbers of foreclosures continued to increase, creating the perfect conditions for a growing pool of potential victims and the perpetration of foreclosure frauds and mortgage rescue schemes.

The emergence of many fraudulent actors offering illegitimate schemes to assist increasingly delinquent and desperate homeowners can be tied directly to the housing crisis. For example, in a 2009 survey of online and print advertising, the Federal Trade Commission identified 71 companies running advertisements for fraudulent mortgage foreclosure rescue schemes. Furthermore, in 2013, the DOJ reported that foreclosure frauds and rescue schemes have amounted to billions of dollars in losses to the mortgage industry. These schemes are extremely complex, relying on the victim's lack of understanding of the complex financial and legal processes involved. Compounding the issue of complexity are the many variations of both foreclosure frauds and rescue schemes, so that not all schemes follow the same pattern in their execution. Generally, however, there are five different types of schemes that can be identified: the lease buy-back, equity stripping, consulting services, fractional transfer, and reverse mortgage schemes.

Lease Buy-Back Schemes

The most common form of foreclosure fraud, also termed a lease buy-back scheme, typically results from a solicitation that is mailed to the mortgagee promising short-term financing, sourced by a private financer, to pay off a delinquent loan. Although solicitation through the mail is typical, other methods are more informal, such as e-mails and roadside signs. This type of rescue scheme makes promises to homeowners such as allowing them to stay in their home while effectively renting back their own property from the investor. As a means of securing this deal, the homeowner is convinced to transfer the title of the property to the private investor. The homeowner believes that this provides collateral for the deal and that he or she can reacquire the title at a later date, either through a repurchase or by refinancing. The rent charged to the homeowner is extremely high and impossible to afford over a long period of time. The homeowner then defaults on the rent and is evicted by the perpetrator, who has acquired the property through a legal deed and is then free to sell, refinance, or keep the property.

Equity Stripping Scheme

As with the lease buy-back scheme, an equity-stripping scheme begins with a solicitation that promises short-term financing to pay off a delinquent loan through private financing. Again, this type of rescue scheme makes promises to homeowners allowing them to stay in their home, renting back their own property from the investor. The homeowner is convinced to transfer the title of the property to the private investor as a means of collateral for the deal based on the belief that he or she can reacquire the title at a later date. The rent charged to the homeowner is typically highly inflated and impossible to maintain. When the homeowner defaults on the rent, the perpetrators of the fraud evicts the homeowner. They are then left with the property, which they sell for the equity. This type of scheme is a form of predatory lending of which there are many variations, including a version that involves a third party who is introduced to the scheme under the pretense of offering new financing to the original homeowner. The process is more complex if there is an offer for new financing, as this involves a straw borrower.

A straw borrower, as it relates to equity stripping, is an individual who provides personal details, such as name, social security number, and credit history to qualify for a loan. The straw borrower is used to conceal the identity of the organization and the individuals involved in perpetrating the rescue scheme. The perpetrators are also reliant on the straw borrower to qualify for the loan or new financing that they could not, or do not, wish to otherwise obtain without a third party. Typically, the straw borrower is told that he or she is purchasing an investment property that has an existing tenant who will make the loan payments. The straw borrower is often compensated for his or her time and information with a financial payment and told that he or she bears no responsibility for the mortgage payments. However, this is false, as the new mortgage financing is acquired with the straw borrower's name and credit details and therefore becomes that person's legal responsibility. The perpetrators of the fraud, who have previously acquired the home through obtaining the title or deed from the original homeowner, sell the home to the straw borrower and appropriate all the existing equity in the home.

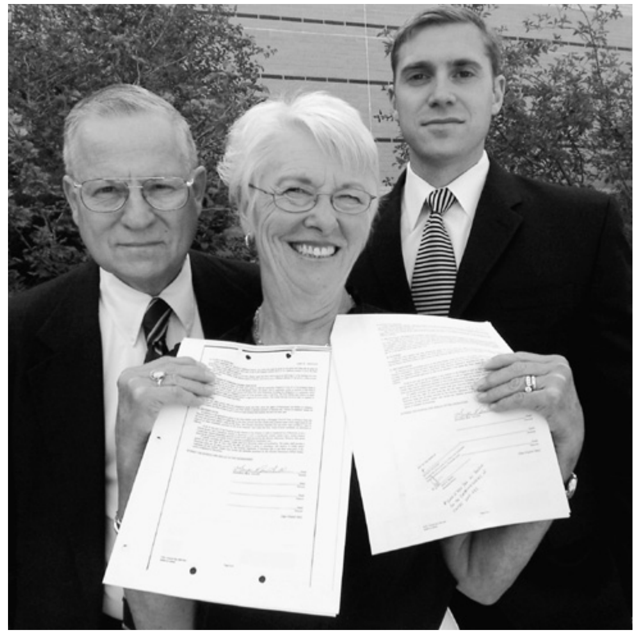
When new financing is secured through the straw borrower, the perpetrators of the scheme then secure a lease with the original homeowner, charging an exorbitant monthly rent for staying in the home. When the original homeowner cannot make the payments, an eviction is initiated and executed. The straw borrower is then responsible for the mortgage payments. If the straw borrower cannot pay, then the mortgage company initiates foreclosure proceedings against the straw borrower, negatively impacting his or her credit history. There is no paper evidence tracing the organizers of the scheme to the fraud, and they are able to disappear with any equity obtained from the refinancing of the home as well as rent payments by the original homeowner.

Consulting Services

Another common foreclosure fraud and rescue scheme is when a company offers a consulting service to homeowners who are experiencing financial hardship and facing foreclosure. The consulting firm offers to act as an intermediary for mortgagees with their mortgage company in an effort to renegotiate better loan terms. In exchange for this service, the fraudulent company charges a fee. The consulting firm does not have any greater negotiating power or skill than the homeowner and is not able to negotiate better terms for the loan. The fee charged is therefore disproportionate to the service offered; in some cases, the consulting firm does not even contact the mortgage lender to discuss the loan on the behalf of the mortgagee. The consulting firm advises homeowners to avoid contacting the mortgage company themselves under the pretense that it may compromise their efforts at negotiating a loan reduction or better payment.

In reality, if mortgagees did contact their mortgage company during this time, they would expose the consulting firm—which had not contacted the mortgage lender at all—as acting fraudulently. In some cases, if the consulting company does contact the mortgage company, it negotiates a deal in its own self-interest, such as purchasing the property from the lender itself. This is most likely to occur when the equity value of the property is less than the loan (also known as being "upside down"), as the mortgage lender can limit its loss by selling the property immediately, taking a smaller loss on the loan than it may incur if it retained the property and the defaulted loan and gambled on the future housing market.

If the consulting firm is successful in securing a deal with a lender for a purchase of the property, then the scheme takes on the characteristics of the aforementioned lease buy-back scheme, where the homeowner rents the property from the consulting firm at an inflated cost.



Flanked by her attorneys, Margaret Sadler, of Larkspur, Colorado, holds two promissory notes: an original (from Countrywide Home Loans) and an altered version (from the Bank of New York) from the foreclosure on her daughter's house. On June 19, 2008, a state court dismissed the foreclosure when the Bank of New York was unable to show that it was the real party in interest.

Fractional Transfer Schemes

Other schemes, such as fractional transfer schemes using fictitious corporations, also lead to other financial abuses such as filing fraudulent bankruptcy claims. This scheme convinces homeowners to deed only a partial interest in their property to a third party, which in this case is a fictitious company that is created by the perpetrators. The perpetrators fraudulently file for bankruptcy in the name of the fictitious company. This stops the foreclosure process by initiating an automatic stay, which immediately stops the lender or creditors from collecting any monies against the property. When the case goes to bankruptcy court and relief is granted from the automatic stay, effectively allowing the creditors and lenders to resume efforts to collect on the delinquent loans, another fractional interest is transferred to another fictitious corporation.

This second fictitious company then files a fraudulent bankruptcy claim, which again invokes the automatic stay, freezing any pending litigation and/or claims from creditors until the matter is heard in bankruptcy court. This process prolongs the foreclosure process and generates extra profits for the perpetrators.

Reverse Mortgage Schemes

A mortgage scheme that is increasingly widespread involves federally insured home-equity conversion mortgages, which are more commonly referred to as reverse mortgages. This scheme is targeted toward older people, as the eligibility criteria requirements offer this type of scheme to individuals 62 years of age or older. The criteria also provide that to be eligible, the individual must own his or her home or be in the process of purchasing a primary residence. If he or she meets the eligibility criteria, then he or she may borrow the total equity in the home and do not have to pay mortgage payments. The only condition attached to this scheme is that the homeowners have to occupy their home. The eligibility criteria to qualify for a reverse mortgage are less stringent than for a traditional mortgage, as there is no requirement that the applicant has any credit, employment, or an income. The mortgagee then receives the equity payment either as a lump sum or through monthly payments. When the mortgagee dies, the lender then acquires the property, which it sells to recover the loan amount.

This scheme becomes fraudulent when the organizers of the reverse mortgage are rescue-scheming family, friends, or neighbors of the homeowner. These perpetrators, through either solicitation or proximity, may become aware that the homeowner is experiencing financial difficulties. Additionally, this population is particular vulnerable to these schemes because of the age requirement, which in some instances means the homeowners have health difficulties that may impact their memory or other mental faculties. The perpetrators use the victims' health difficulties to their advantage by having them sign documentation transferring their control over the lending process, such as power of attorney. The perpetrators are then able to have the equity distributed as a lump-sum payment, which they then use for themselves, depleting the amount available to the borrower.

In some cases, the perpetrator organizes a false appraisal of the home to generate the illusion of greater equity and a larger payment. Therefore, the homeowner loses the equity in his or her home, the loan proceeds, and, in some instances, the home as well. This occurs when the perpetrator, having depleted the funds from the loan through the power of attorney, files bankruptcy on the homeowner's behalf to stop creditors and lenders from collecting money and to eliminate other unsecured debt it may have acquired using the homeowner's name.

Conclusion

Foreclosure fraud and rescue schemes are extremely complex and depend on the vulnerability of those who are faced with the prospect of losing their homes. There are many variations on these schemes, and the techniques used to perpetrate these frauds are constantly changing, making detection difficult. All 50 states have legislation specifically addressing this type of fraud, and the federal government has increased collaborative efforts between state and federal law enforcement to better identify perpetrators and hold them accountable. Notably, in November 2009, the Obama administration established the interagency Financial Fraud Enforcement Task Force, which utilizes both civil and criminal legislation and resources at all levels of government to hold these types of perpetrators accountable. This multilevel approach improves the ability of law enforcement to identify schemes that use the federal court system to perpetrate these frauds and victimize individuals vulnerable to these schemes. Civil and criminal remedies can now be brought against perpetrators, straw borrowers, third parties involved in preparing fraudulent documents, and lawyers who represent the perpetrators.

Other prevention efforts focus on educating potential victims to differentiate between legitimate and illegitimate schemes. For those who are most vulnerable, the goal is to apply caution in seeking financial help, know the questions to ask in order to detect fraudulent schemes, and report suspicious solicitations and transactions to the authorities.

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See Also: Debt Restructuring Fraud; Dream Homes Scam; Equity Funding Corporation of America; Fair Housing Act; False Foreclosures; Home-Stake Swindle; House Stealing; Housing and Urban Development, U.S. Department of; Identity Fraud or Theft; Mortgage Fraud; Mortgage Modification

Fraud; Mortgage Reform and Anti-Predatory Lending Act; Mortgage-Backed Securities; Operation Malicious Mortgage; Predatory Lending; Predatory Practices; Racial Discrimination; Real Estate Investments; Real Estate Settlement Procedures Act; Reverse-Mortgage Fraud; Wells Fargo Mortgage.

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Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act of 1977 (FCPA), as amended, makes it unlawful for U.S. persons, some foreign nationals, and issuers of stocks and other securities in the United States to bribe officials of foreign governments or conduct close business with those who do so. The FCPA lays the legal groundwork necessary to combat the problem of international bribery but is not enforced on a scale that sufficiently impacts international commerce.

Several incremental advances offer hope. Whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act make whistleblowers eligible to receive from 10 to 30 percent of settlements that have reached $1.6 billion. Changes to federal sentencing guidelines in 2010, U.S. Securities and Exchange Commission (SEC) guidance, and the Sarbanes-Oxley Act make it more attractive for companies to provide a path for whistleblowers to alert upper management, which reduces the likelihood that rogue divisions will be used to partition enforcement and allows internal controls to respond in collaboration with enforcement officials and external auditors. Similarly, accounting practice requirements in the FCPA amendments make it harder to conceal foreign bribes.

U.S. persons, U.S. corporations, or corporations regulated by U.S. securities laws are forbidden from making corrupt payments to foreign officials. Because the FCPA is a mechanism of the federal government's control of interstate commerce, violations occur only if the action takes place across U.S. borders or uses a means of interstate commerce, such as the mail, telephone calls, wire transfers, or interstate or international travel. In 1998, the FCPA was amended to include foreign nationals and corporations acting directly or indirectly to make corrupt payments within the United States. The FCPA defines foreign officials as those with substantial influence or the perception of substantial influence within a foreign government. Recent enforcement actions have also considered state-controlled corporations and individuals acting as "instrumentalit[ies] of the government."

The FCPA contains three essential provisions, as follows:

1. *Antibribery*: the FCPA operationally defines an array of unlawful payments to foreign governments while delineating actions that are not considered corrupt. For example, paying a permit fee to a foreign government office is not usually considered a corrupt act, but paying a fee to a closely aligned engineering consultant required to get a permit may be considered corrupt, and paying a fee directly to a foreign official with control over permits is considered a corrupt act.
2. *Record keeping*: companies are required to accurately record expenses. Bribes cannot be recorded as bribes, so violators are subject to enforcement of the

record-keeping provisions. It is a violation to hide corrupt payments.
3. *Internal controls requirement*: companies are required to implement internal controls to remain compliant with the record-keeping provision and to prevent payments to foreign officials. It is a violation to lose track of corrupt payments.

The Organisation for Economic Co-operation and Development (OECD) reports that 199 individuals and 91 entities were sanctioned under the FCPA between 1999 and 2010. Individual sanctions include 54 individuals sentenced to prison. Corporate sanctions include Siemens's record fine of $1.6 billion and KBR, Halliburton, and Technip's collective sanctions of $917 million. Worldwide corruption statistics are collected under the convention, but other members of the OECD did not start reporting until 2010. The Fraud Section of the U.S. Department of Justice (DOJ) is responsible for enforcement of both the criminal and civil provisions of the FCPA. Fraud Section attorneys, investigators, and accountants investigate and prosecute complex white-collar crimes like FCPA violations. The Fraud Section also coordinates and supports law-enforcement efforts and the activities of U.S. attorney offices in multidistrict litigation.

International enforcement is coordinated by the Fraud Division under the stipulations of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, ratified with other member nations of the OECD in 1998. This agreement was enacted through an amendment to the FCPA, called the International Anti-Bribery and Fair Competition Act of 1998. This act gave the SEC responsibility for the enforcement of the antibribery provisions of the FCPA against issuers of certain securities within the United States. To fall under SEC jurisdiction, a corporation must either have registered securities within the United States or be required to make periodic reports to the SEC. Joint efforts by governments around the world may offer hope of curbing abuse in developing nations.

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See Also: Accounting Fraud; Bribery; Halliburton Co.; Justice, U.S. Department of; Securities and Exchange Commission, U.S.

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Forensic Auditing

An audit is an examination of a subject; in forensic auditing, the subject is financial. *Black's Law Dictionary* defines the word *forensic* as "belonging to courts of justice." Accordingly, forensic auditing is a financial examination within the judicial system. Accountants specializing in forensic accounting apply their profession's standards and practices to disputed financial issues, but their activities are not restricted to courts. Other professionals, including lawyers and investigators, can support or lead efforts to resolve financial disputes outside the courts that may include forensic auditing. There is no clear, unified professional discipline to set standards and define a role for forensic auditors, outside their base professions. However, there is a body of subject matter requiring input from multiple disciplines.

Forensic audit practice includes both fraud investigations and disputes not involving fraud. In fraud investigations, the "crime scene" often exists in reports and ledgers describing the conduct of business. For example, in recent cases involving loan fraud, forensic auditors duplicated the standard banking industry auditor's practice of verifying supporting documentation for loans. Toxic loans were distinguished from good loans, based on the documentation present. Fraud committed by the borrower and abetted by loan officers can be discovered in these "crime scenes."

Forensic auditors also help establish the facts in a financial dispute that may not involve fraud. Large mergers and acquisitions are enormously complex deals that are negotiated over time. During that time, the value of assets or entire businesses may change before a critical date. Sometimes, one party to a transaction overstates the value of assets or understates liabilities. Given the natural change in values, it can be difficult for one party to distinguish intentional overstatement, which allows the purchasing party to recover its overpayment, from natural changes in value, which yield fewer recovery options. Forensic auditors can establish the value of assets in the deal. Once the facts are presented to both parties, the deal can proceed or fall apart.

Forensic auditors also support litigation by providing expert reports and witness services. An expert witness may be called upon to render a professional opinion to the court in a case in which the facts are in dispute. Because a forensic audit is a review of documents, it is common for a lead auditor to send team members to compile information. The lead auditor reviews the compiled evidence and writes an expert report. The expert does not have to be an investigator to draw conclusions from the facts found in business documents. A well-supported expert report can cause the opposing side to seek settlement. In fact, the vast majority of cases initiated do not end in trial; authoritatively establishing the facts may make it clear to both sides how the dispute will be resolved. The professional skills and knowledge used to derive expert reports for the court may also be used to inform negotiations in a dispute.

Legal Authority and Audit Standards

In the United States, auditing standards for public companies are set by the Public Company Accounting Oversight Board (PCAOB). The Sarbanes-Oxley Act of 2002 instituted the PCAOB and gave it the authority to define Generally Accepted Audit Standards (GAAS). PCAOB is a private, nonprofit organization. However, it exercises the powers defined by Sarbanes-Oxley under the oversight of the U.S. Securities and Exchange Commission (SEC). This authority had previously rested with another private organization, the Auditing Standards Board (ASB) of the American Institute of Certified Public Accountants (AICPA). The ASB retained the authority to set audit standards for nonpublic companies. However, standards established in one context are applied from one situation to others based on their utility. It is also more practical to operate under unified standards.

In theory, the standards reflect the right way to conduct an audit and should generally be applicable. The International Organization of Securities Commissions (IOSCO) includes 95 percent of the world's securities regulating agencies. It does not have binding authority, but its members have binding authority in their respective countries. Self-regulatory organizations such as the ASB may join, but only in consulting roles. The IOSCO recognizes the international nature of business and the burden of meeting multiple, conflicting standards for audits. Members can implement practices that reflect a consensus of the world's regulators, and they may serve to regularize practices across jurisdictions. The IOSCO also allows members to establish enforcement efforts for international crimes like bribery in foreign countries. The Foreign Corrupt Practices Act (FCPA) includes several provisions for record keeping and audits facilitated by IOSCO standards.

Forensic Accounting

Forensic accounting is the practice of applying standards and practices of accounting to questions in the courts or disputes. The generally accepted accounting principles (GAAP) serve as guidelines for how financial information should be recorded. Departures from these principles may indicate problems including fraud, abuse, or intentional misstatement. Public accountants are trained to know these standards and can often readily identify such departures during normal audits. Audits require records reconciliation in financial statements and many interviews with the accountants who prepared the statements. Using their skill bases, accountants with a forensic specialty can derive meaningful conclusions based in matters under dispute, even though forensic accountants may not be able to rely on even minimal participation from those preparing the records or statements because of the dispute. In some cases, the forensic auditor may work directly with attorneys in a dispute to compel production of documents and supporting materials for analysis.

Certifications

The AICPA is the self-regulating and self-certifying body of public accountants in the United States. Although bookkeepers and uncertified accountants work throughout the United States, only accountants who hold a bachelor's degree and pass the CPA exam can earn the designation of certified public accountant and become members of the AICPA. In light of their certification, public accountants hold a position of trust in the same way as attorneys or physicians. They also enjoy special recognition under the law and have special legal responsibilities. Failure to meet the profession's standards can result in criminal penalties for egregious violations.

Certified fraud examiners (CFEs) must also meet educational or experience standards, adhere to a code of ethics, and pass an exam with continuing certification requirements. However, the CFE, although respected in the industry, does not enjoy special status under the law, and not all certifications enjoy this level of respect. Short, 40-hour certification courses with minimal testing and quick certifications do not convey the investment of time and personal effort that underlie professional credentials.

California has identified certain "loan auditor" certifications as subject to abuse by those seeking to defraud mortgage holders. Certified Forensic Loan Auditors, Forensic Loan Auditors, and similarly entitled specious certifications have been implicated in a new variation of foreclosure rescue scams and loan modification scams. Loan auditors claim to be able offer homeowners relief from mortgage payments or foreclosure by identifying errors in the mortgage. Forensic audit does not function in that manner. Reports from forensic auditors may be used in court in a lawsuit, but they do not offer quick relief to desperate homeowners. The abuse of these certifications emphasizes the lack of value of short-course certifications. Even if the holders of these credentials intend to act ethically, they lack professional investment, education, and experience for a position of trust implied by the title.

Activities of Forensic Auditing: Case Example

Forensic audits often focus on a single instance. A regular audit is inductive because it attempts to draw in all the information within its defined scope and seek a statement about the phenomena observed. A forensic audit is often deductive because it starts with a specific proposition and seeks to confirm or refute that proposition.

For example, a bank suspects that loan officers and possibly managers at a bank branch have conspired to fund loans that do not meet the bank's criteria. A number of the questioned loans are in default. An internal audit team finds that there are too many similarities in the summary statistics of documents used to support loan applications from the branch. The internal team also finds evidence of missing documentation in a few of the loans approved by the manager. The bank makes all necessary reports to regulators and engages a forensic audit team from a small audit firm specializing in consumer loan fraud. The team includes CPAs, nonaccountant CFEs, and audit associates trained by the firm or with extensive banking experience.

CPAs and CFEs begin interviews with a few of the loan officers, while audit associates begin to examine all loan document packages for the last three years. The paper audit reveals that numerous packages from three loan officers are missing essential documentation, such as proof of income. Some packages contain photocopies of other people's proof of income. The interviews and analysis of financial reports submitted by the bank reveal patterns in the abusive loans clustering around goal deadlines for bonuses. The CFEs and computer forensic investigators find e-mails between the three loan officers and the assistant manager detailing a plan to subvert internal controls by bypassing the branch manager. The investigation also discovers a protracted exchange between a fourth loan officer and the branch manager to fund a loan that does not meet the criteria of the bank but is fully documented. The loan was funded, but details were omitted in the reports sent to the bank's headquarters.

Follow-up interviews with the three loan officers and the assistant manager flesh out details of the plan in the report and lead to voluntary separation of these individuals from the bank. The final report from the forensic audit firm's partner is submitted by the bank to regulators and law enforcement. The evidence collected by the audit team has a full chain of custody and is admissible in court. The bank acknowledges the losses to regulators, and meets all remediation requirements.

In the banking example, forensic auditors performed a semiskilled review of source documents, assessing them in terms of policy, regulation, and law in light of the suspected fraud. Forensic auditors performed interviews with key employees and decision makers, while also reviewing written statements and reports. In this case, the team left the bank and put together an initial report. The professional staff members reviewed the document packages prepared onsite. At the same time, the team began to draft submissions to the partner in charge of the engagement. Questions raised by the partner and new issues identified in the document review were pursued in a second round of interviews, focusing on key players. The out-of-policy loan endorsed by the manager was acknowledged and documented well enough that it did not appear to be fraud, so it was noted but not pursued. The supporting documentation for the final report was compiled according to the rules of evidence, indicating that the source and continuing custody were documented with signed chain of custody forms.

In theory, each person having custody of the data should be listed on the chain of custody, and each person on that chain could testify to his or her custody of the evidence. In practice, such testimony would lead to little more than a recitation of facts on the form. However, this information is useful to track events and can be called into question if it is missing. The final report prepared by the partner may be supported by highly credentialed expert testimony from the partner, even though the partner never appeared onsite.

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See Also: Accounting Fraud; Bank Fraud; Foreign Corrupt Practices Act; Investigation Techniques; Securities and Exchange Commission, U.S.

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Forgery

Forgery is the fake making or altering of handwritten or electronically produced documents, artwork, or cultural artifacts with the intent to deceive or defraud. A person may commit the crime of forgery for a variety of reasons, including personal financial gain, prestige, to avoid criminal or financial liability, or political reasons (i.e., to influence public opinion).

The crime of forgery is similar to, and often overlaps with, the crime of counterfeiting, which is the intentional reproduction of currency, documents, and products, primarily for financial gain. However, unlike forgery, counterfeiting is not always done with the intent to deceive or defraud.

Although there is a wide variety of items that are subject to forgery, such as artwork (e.g., paintings, drawings, and sculptures) and cultural artifacts (e.g., arrowheads, beads, fossils, pottery, and tablets), the items that are most commonly associated with the crime of forgery are handwritten, historic, and electronically produced documents. In order to understand how forgery has evolved and its impact in society, it is important to know the history of forgery law, the different types of forgery, and how forgeries can be detected using forensic techniques and technology.

Evolution of Forgery Law

Archaeological findings date the existence of counterfeit items back to ancient Greece and Rome. Some scholars estimate that the law of forgery may have originated in Rome around 80 B.C.E. In his book *Law of Disputed and Forged Documents*, J. Newton Baker contends that the forging of documents occurred in every place where writing was used to communicate. Under Roman law, the Code of Justinian (c. 539 C.E.) outlines the rule for the identification and comparison of handwriting in cases of questioned writing. Therefore, forgery law predates 539 C.E.

In England, the statute that prohibited the forging of officially recorded and sealed documents was established in 1562 and was expanded in 1726 to include the forging of signatures and seals on private documents. In the United States, the federal statute that made forgery or the alteration of any writing a crime was enacted in 1823. Since then, individual states have adopted forgery laws; however, what constitutes a forgery and the severity of the punishment varies from state to state. For example, the type of forgery and the severity of the crime determine if a person will be charged with a misdemeanor or a felony.

Although a person who commits forgery can be charged with a felony and is ultimately convicted of this crime, in today's society, the crime of forgery is viewed less harshly than it once was. In England in 1729, and early in American history, a person convicted of forgery was often tortured and in some cases was sentenced to death. Now, a person found guilty of forgery is rarely sent to prison and is never sentenced to death. Instead, most forgers are given probation and are ordered to pay restitution.

Forgery is a difficult crime to prosecute because the prosecution has to prove beyond a reasonable doubt that the accused reproduced or wrote something with the intent to defraud. In many cases, proving intent is difficult to do. Furthermore, obtaining legally admissible evidence that demonstrates to the court that the accused is the person who forged the item in question, or proving that the item in question is not genuine, can be challenging. As a result, many forgery cases go unsolved or uncharged, are pleaded outside the courtroom, or are dealt with in the civil court system, where the burden of proof is much less.

Types of Forgery: Artwork

Forgery can be divided into three main categories: artwork, cultural artifacts, and handwriting and documents. Artwork includes items such as paintings, drawings, prints, and sculptures. People who forge artwork do so primarily for financial gain and, in some cases, to win prestige. The art industry is estimated to be a $50 billion market, and according to the Federal Bureau of Investigation (FBI), art and cultural property crimes are estimated to cost $6 billion annually. However, this estimate is not for art forgery alone; it also includes the theft, fraud, looting, and trafficking of art across state lines. In this regard, calculating a total dollar value for art forgery is further complicated by the large number of art crimes that go unreported. Nonetheless, the impact of art forgery on businesses and private citizens who are involved in this niche market is astounding. For instance, the Dutch painter Han van Meegeren, who is considered one of the best art forgers of the 20th century and is known for his Jan Vermeer forgeries, sold his forgery of *Christ With the Adulteress* for $7 million. Before Meegeren's arrest and conviction, he had reportedly earned from $25–$30 million selling his art forgeries to collectors.

Cultural Artifacts

People who forge cultural artifacts are also driven by financial gain and prestige to commit forgery. Because most cultural artifacts are hard to find and carry a high degree of historical value, people who collect them are willing to pay large amounts of money to acquire them. Examples of cultural artifacts include arrowheads, jewelry, beads, gemstones, fossils, pottery, dishes, tablets, stonework, wood carvings, and historical and religious relics. Given the uniqueness and invaluable worth of some cultural artifacts, history is rich with examples of this type of forgery. One such example, dating back to the Old Babylonian period, is the stone cruciform monument from Sippar, which is located in the southern region of Mesopotamia (today's Iraq). More recently, fossils and Native American artifacts have attracted the interest of forgers, resulting in a flood of forgeries in this market.

Handwriting, Documents, and Data

Although the costs associated with forged artwork and cultural artifacts are significant, the oldest and most prevalent kinds of forgeries are those involving handwriting and documents. Handwriting and document forgery is composed of a large list of items that includes contracts, wills, deeds, trusts, checks, money orders, invoices, receipts, stock certificates, coupons, gift certificates, airline vouchers, vehicle titles, college transcripts, diplomas, credentials, medical records, identity documents (e.g., birth certificates, passports, social security cards, driver's licenses, identification cards, and visas), historical documents, postage stamps, autographs, letters and notes, literary works, and scientific data. People who forge handwriting and documents are primarily motivated by four things: personal financial gain, prestige, avoiding criminal or financial liability, or political reasons.

The forging of handwriting and documents is most commonly committed for personal financial gain. The kinds of document forgery cases that typically end up in the criminal courts involve checks, credit cards, medical records, and identity documents. Because charges of forgery often overlap with other crimes, people who are accused of forgery may also be charged with identity theft or other forms of financial fraud. For example, the complicated fraud schemes that are often involved in white-collar crime typically include forgeries in the form of signatures or electronically produced documents. Many handwriting and document forgery cases never make it to the criminal courts; rather, they are litigated out in the civil court system. In addition to contract disputes between individuals and businesses, an overwhelming number of forgery cases involve family disputes where issues related to wills, deeds, trusts, and private property are in question.

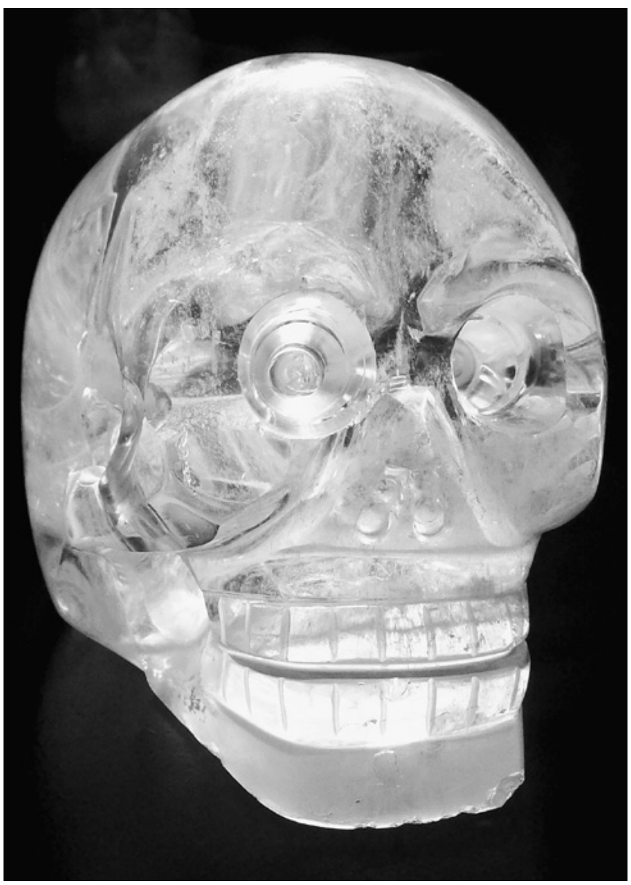
The desire for admiration and respect also motivates people to fabricate documents and information. Some examples include the forging of college transcripts, diplomas, awards, credentials, and autographs of famous people. One of the most famous cases in which forgery was used to obtain money and prestige was turned into a movie called *Catch Me If You Can*. The movie is based on the exploits of Frank W. Abagnale, Jr., who over a five-year period passed more than $2.5 million in forged checks and used fake identity documents and credentials to create several highly respected fictitious identities. As a phony U.S. Bureau of Prisons agent, commercial airline pilot, medical doctor, and lawyer, Frank Abagnale, Jr. found the respect and admiration that he desired, and criminal prosecution.

An individual wanting to avoid criminal or financial liability may resort to forging signatures and creating documents. The motivation behind this kind of document forgery is commonly associated with terrorist groups, drug dealers, war criminals, car thieves, criminal fugitives, undocumented immigrants, and people involved in business fraud. In 1976, an in-depth study conducted by the Federal Advisory Committee on False Identification (FACFI) reported that 100 percent of all federal fugitives and 80 percent of all drug traffickers who were apprehended by the police were using fake identification. In 2002, the Center for Immigration Studies issued a report claiming that most undocumented immigrants use fake documents to obtain genuine identity documents, which give them access to a variety of social benefits and services. Most recently, the "9/11 Commission Report" asserts that the terrorists who carried out the September 11, 2001, attacks were able to do so because they were using fake documents.

Political forgeries are committed to influence public opinion and to shape public policy. In this regard, forged handwriting and documents are used to falsify scientific data, rewrite history, and wage propaganda campaigns.

The forging of scientific data, although uncommon, can have a significant impact when it occurs. An example of how the falsification of scientific data can be used to influence public policy involves the issue of global warming. In 2007, the United Nations released a report on global warming claiming that the Himalayan glaciers would melt by 2035 because of dramatic rises in global surface temperatures. After the report was released, it was determined that the scientist behind the study had reported misleading data to, allegedly, put pressure on world leaders. In 2008, scientists from the United Nations' Intergovernmental Panel on Climate Change (IPCC) were accused of citing false data that supported the notion that human-made global warming was accelerating. In 2009, the global warming campaign came to a head when one of the world's leading climate scientists, from the University of East Anglia in England, had his e-mail account hacked. The e-mails that were obtained appeared to demonstrate that the reporting of misleading climate data had been an attempt to influence public policy related to global warming.

The rewriting of history is another way in which forged documents are used to further a political agenda; the *Protocols of the Elders of Zion* is a famous example from the 20th century. The document claims to hold the details of a secret meeting among Jewish leaders late in the 19th century, at which they outline the Jewish plan for world domination. The *Protocols*, which has since been determined to be a forgery, was first published in Russia in a St. Petersburg newspaper in 1903 and was translated into English in 1920. Henry Ford, the American industrialist and the founder of the Ford Motor Company, purportedly funded the printing of at least 500,000 copies that were then distributed throughout the United States. The source material for the forgery was later found in two literary works: the first, a political satire by a French lawyer named Maurice Joly, who wrote a fictional dialogue in Hell between Niccolò Machiavelli and Baron Montesquieu; the second, a violent anti-Semitic novel by Hermann Goedsche, a German novelist. Despite being identified as a forgery, some people and groups, such as the anti-Semitic Christian Nationalist Crusade, continue to accept and distribute the *Protocols* as an authentic piece of work.



This crystal skull at the Musée du quai Branly, Paris, is almost certainly a forgery. Eugène Boban, a controversal "relics" dealer from the 1870s, sold the skull (and two other crystal skulls) to Alphonse Pinart, a young explorer. In 1878, Pinart donated it to the Museum of Ethnography at Trocadéro, Paris.

During propaganda campaigns, forged documents can be used to misrepresent reality. Although propaganda campaigns tend to take place during wartime, there are instances when forged documents have been used to ensure that political leaders or political parties win elections. During the British general election campaign of 1924, a letter purportedly authored by the president of the Communist Party in Moscow, Grigori Yeusevich Zinoviev, and addressed to the Communist Party of Great Britain, was published in the conservative newspaper the *British Daily Mail,* a few days before the election. The contents of the letter asked the British Communist Party to pressure the ruling Labour government into finalizing a proposed Anglo–Soviet trade treaty and to continue preparing for an armed revolution by infiltrating the military. The letter had an effect on the outcome of the 1924 election because it ensured the fall of the Labour Party and put the Conservative Party back in power. Although the letter was later determined to be a forgery, the damage it had caused was irreversible. Historians argue that the primary effect of the Zinoviev letter was on Anglo–Soviet relations, and they credit the letter with causing the isolation of the Soviet Union from the West in the late 1920s and 1930s, which eventually led to a Nazi–Soviet partnership.

A more recent example of political forgery occurred in Iraq in 2003, when the Italian Military Intelligence and Security Service (SISMI) obtained documents that suggested that the president of Iraq, Saddam Hussein, had tried to buy yellow-cake uranium powder from Niger during the Iraq disarmament crisis. The documents were regarded as proof that Iraq was trying to acquire nuclear material to develop weapons of mass destruction. This information was then used by the United States and the United Kingdom to justify going to war with Iraq. Soon after, a thorough and detailed analysis of the documents revealed that they were poor-quality forgeries.

Scientific Detection of Forgeries

The scientific detection of forgeries is accomplished by people who have received specialized training, and it involves the use of a variety of tools and techniques. The examination of artwork and cultural artifacts often includes the use of radiocarbon dating, thermoluminescence, dendrochronology (i.e., tree-ring dating), radiography, microscopy, and ultraviolet (UV) and infrared (IR) luminescence. For example, when the Shroud of Turin was discovered, it was subjected to a series of scientific examinations including the use of radiocarbon dating, through which it was determined that the shroud dated to sometime around the end of the 13th century and the beginning of the 14th century, which made it far too recent to be associated with the tomb of Jesus.

The examination of questioned handwriting, signatures, and documents is performed by a forensic document examiner. Additionally, the forensic document examiner investigates issues involving paper, ink, writing instruments, font styles, typewriting, computer-generated documents, printing processes, copy machines, stamps, and impressions. The document examiner uses several different tools during the process of examination. These instruments include microscopes; cameras; ultraviolet and infrared lighting techniques; an electrostatic detection apparatus (ESDA), which is a forensic device used to detect writing indentations in paper; and a video spectral comparator (VSC), which is used in the examination of inks and paper.

As the crime of forgery continues to grow and evolve with society, the criminal justice system faces the challenge of preventing, investigating, and prosecuting forgery cases in a timely and assertive manner. Not only are people's identities, reputations, and financial assets at stake, but also their safety, as national security is repeatedly threatened by this crime. In 2003, as part of a security test, the Government Accountability Office (GAO) created fake identity documents using inexpensive computers, printers, and photo editing software that could be purchased at any electronic, or business supply store. Using these fake identity documents, undercover government agents then attempted to gain entry into the United States; they got through security and re-entered the country. The advancement of computer technology and photo editing software has made it easier for forgers to create documents and pass them off as genuine. In this regard, the challenge of those who are charged with investigating forgeries will have to develop the appropriate tools and techniques to detect and deter this persistent crime.

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See Also: Antiquities Fraud; Art Fraud; Bad Checks; Caveat Emptor; Conspiracy; Counterfeiting; Currency Fraud; Global Warming; Identity Fraud or Theft; Investigation Techniques; Public Corruption; Yellow-Cake Forgery.

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Frankel, Martin

Martin Frankel was one of the 20th century's biggest con men, an international fugitive, and then a convict. According to Ellen Pollock's *The Pretender,* Frankel created a fairly slipshod Ponzi scheme that involved phantom trades of stock, imaginary stock portfolios, money laundering, and asset skimming. He collected $208 million in five states, pocketing the premiums. Before it fell apart in 1999, his scam became the largest in U.S. history.

The Scam Begins

Frankel operated his first firm, the Frankel Fund, from the bedroom of his Toledo, Ohio, home in the 1980s. In 1991, he formed Thunor Trust. In 1992, the U.S. Securities and Exchange Commission (SEC) barred him from trading stock. He continued using Thunor to buy small insurance companies, generally those that specialized in burial policies for poor people, usually companies that were in financial trouble. He spent $71 million on purchasing companies, primarily in states with lax oversight. In 1994, he began his insurance scam. Thunor claimed to be enhancing the profitability of the companies by improving returns on their portfolios. Instead, it put all the money into Liberty National Securities, the unregistered brokerage that Frankel ran from his house. Frankel gave the companies fraudulent statements showing market-beating returns. By the spring of 1999, Frankel's Liberty National managed at least $335 million. It managed to avoid investing any of the money, moving it to accounts controlled by Frankel for his personal use.

He posed as a successful investor, acquired insurance companies, siphoned off their money, and spent it on two mansions and $1.8 million worth of automobiles. Before fleeing, Frankel headed Franklin American Life Insurance, headquartered on his four-acre Greenwich, Connecticut, estate. In 1998, he used his knowledge of Catholicism and St. Francis of Assisi to establish a fake Catholic charity and dupe priests tied to the Vatican into giving his charity $55 million. They also provided bona fides for the charity that Frankel used in an unsuccessful attempt to attract Lee Iacocca and Walter Cronkite to the board of directors. Even after the two declined, Frankel used their names in company publicity.

Up in Smoke

By March 1999, the foundation had almost $2 billion in assets, and Liberty National, a Frankel company, managed part of it. Mississippi regulators became suspicious in 1999 because of the concentration of funds at Liberty National. When they started investigating and ordered Frankel to return millions to the insured, Frankel left town. He asked an assistant to destroy the evidence, but the smoke alarm went off, the fire department came to the mansion and saw the bags of shredded documents, and detectives were soon on the scene. Among the mass of evidence was Frankel's to-do list containing items such as "launder money" and "get $ to Israel, get it back in." Frankel's documents included an astrological chart with the question, "Will I go to prison?"

Investigators found Frankel four months later in a Hamburg, Germany, motel with about a dozen fake passports under different names and hundreds of diamonds. The diamonds he had in Hamburg were worth over $8 million. He was imprisoned in Germany for 18 months for failure to pay taxes on his diamonds and for holding fake passports. His crimes in the United States were fraud and racketeering. In prison, he attempted to saw through the window bars. He attempted to beat extradition by arguing that life in prison would violate his human rights because it was an effective death sentence. German officials gave him to U.S. marshals.

In 2004, in New Haven, Connecticut, Frankel received a sentence of 16 years and 8 months from federal district court judge Ellen Bree Burns. He had a court-appointed attorney who attempted to show that the fraud was not $200 million but was instead under $80 million, the threshold for harsher sentences. The judge rejected the defense claim and also agreed with the prosecution witnesses who testified that Frankel knew right from wrong and, despite some degree of mental disorder, could control his behavior. The defense lawyer also sought to elicit sympathy by pointing out that the only friend Frankel had in the courtroom was his former driver, Joseph Ghattie, who later told reporters that Frankel was a good man and that he was in court to cheer him up. The judge also rejected Frankel's claim that he deserved some sympathetic treatment because the German prison was harsh. The judge gave Frankel credit for helping prosecutors find some of the money and his accomplices.

Frankel's address to the court lasted 45 minutes and included biblical quotations, jokes, settlement of grudges, and a plea for clemency. His presentencing statement was a rambling tale of remorse, massive losses, and mental health issues. He apologized for looting his insurance companies. He blamed his problems on his desire to give coconspirator Sonia Howe and her children money. He also said that he didn't set out to take $200 million but had to continue the scheme because after the first fraud it would have fallen apart if he'd stopped. He also justified his fraud by claiming that he was trying to raise funds to fight world hunger. In 2004, at the age of 50, Frankel began serving his nearly 17-year sentence. He also surrendered $88 million in personal assets and $30 million in Swiss bank accounts. Regulators in the states where his fraud occurred sued him for $600 million. A total of 16 accomplices were convicted, including a former Roman Catholic Church official in Rome, who claimed to be running a Vatican-endorsed charity. Several of the Thunor insurance companies went into receivership, and St. Francis's $1.98 billion was gone, if it ever existed at all.

John H. Barnhill
Independent Scholar

See Also: Charity Fraud; Insurance Fraud; Money Laundering; Nonprofit Organization Fraud; Offshore Entities; Ponzi Schemes; Predatory Practices; Religious Fraud; Self-Control Theory.

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Friedrichs, David

David Friedrichs, born in 1944, is a distinguished university fellow and professor of sociology and criminal justice at the University of Scranton, in Pennsylvania. He is a prolific writer on white-collar and corporate crime, including state crime. He has authored over 130 articles, book chapters, encyclopedia entries, and essays, many addressing various dimensions of white-collar crime. His work has focused on addressing definitional, conceptual, and typological issues, and the "mapping" of the terrain of white-collar crime scholarship, and his publications have been cited over 900 times. Friedrichs attended New York University for his undergraduate and graduate studies, completing a B.A. in sociology, an M.A. in sociology, and doctoral studies. While at NYU, Friedrichs studied criminology under Richard Quinney, who developed (with Marshall Clinard) an influential typology differentiating between corporate and occupational crime. This mentorship paved the way for Friedrichs's extensive work on white-collar and corporate crime. After teaching for nine years at the City University of New York-College of Staten Island, Friedrichs accepted a faculty position at the University of Scranton, where he has been since 1977. In addition to his teaching and research at Scranton, he has been a visiting professor and guest lecturer at many universities, including the University of South Africa, Flinders University (Australia), and Ohio University (Rufus Putnam visiting professor). Throughout his tenure, he has inspired many to take an interest in white-collar and corporate crime. He collaborated with his daughter, Jessica, to introduce the concept of "crimes of globalization": the crimes of international financial institutions such as the World Bank and the International Monetary Fund.

Trusted Criminals

In 1996, Friedrichs wrote what is now considered the most comprehensive text on white-collar crime and its control: *Trusted Criminals: White Collar Crime in Contemporary Society*. This text covers definitions of white-collar, corporate, and occupational crime, differentiating these crimes from crimes like those committed by the government; presents theories explaining why these crimes occur; and reviews various responses to these crimes. In the first edition of the book, Friedrichs developed a typology of white-collar crime, including core forms (corporate and occupational), cognate (governmental), hybrid (state-corporate, crimes of globalization, and finance crime), and marginal (avocational, enterprise, contrepreneurial, and technocrime)—a typology that has been used extensively. According to Harzing's Publish or Perish author impact analysis software, *Trusted Criminals* is cited on average 75 times each year. As a testament to its influence and Friedrichs's commitment to the study of white-collar and corporate crime, *Trusted Criminals* won the White Collar Crime Research Consortium 2011 Outstanding Publication Award.

In addition to his abundant, oft-cited writing, Friedrichs has worked on the other side of publishing. He served as editor of *State Crime, Volumes I & II*, published by Ashgate in 1998. Additionally, since 2005, Friedrichs has participated in international symposiums on state crime and political white-collar crime in Jerusalem, Prato, Maastricht, Onati, Utrecht, and Wellington, and has contributed chapters to anthologies emerging from many of these symposia. His extensive research on white-collar and corporate crimes has been lauded by other scholars in the field. Friedrichs was elected as the second president of the White Collar Crime Research Consortium, serving from 2002 through 2004. In 2005, he was awarded the Lifetime Achievement Award by the American Society of Criminology Division on Critical Criminology.

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See Also: Clinard, Marshall; Corporate Criminal Liability; Corruption; Globalization; Nonprofit Organization Fraud; Public Corruption; State Crime Theory.

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G

G. D. Searle & Company

G. D. Searle and Company, or Searle, was a company with interests in the life sciences, specifically pharmaceuticals, agriculture, and animal health. Its best-known products include Metamucil (a laxative), Dramamine (for motion sickness), Enovid (the first commercial oral contraceptive), and perhaps most controversially, NutraSweet (aspartame). Searle was founded in 1888 in Norman, Oklahoma, by Gideon Daniel Searle, and was purchased by Monsanto in 1985, and later, in 2003, by Pfizer, which retired the Searle name.

Sweet Poison

The history of the approval of aspartame is one of state and corporate intersection and the transferability of executives from the corporate world into offices of governance. According to a growing number of scientists, aspartame is the most dangerous food additive, accounting for more than 75 percent of adverse reactions reported to the U.S. Food and Drug Administration (FDA). Among the numerous highly serious reactions are birth defects, brain tumors, hearing loss, and seizures causing death. A 1976 FDA investigation of Searle's laboratory practices found Searle's testing procedures shoddy, full of inaccuracies and "manipulated" test data. Senator Edward Kennedy's Sub-committee on Health of the Senate Judiciary Committee, between 1975 and 1975, became convinced that Searle's testing procedures were characterized by widespread fraud and incompetence.

In 1977, the FDA directed the U.S. Attorney's office to begin grand jury proceedings to investigate whether indictments should be filed against Searle on the basis that the company knowingly misrepresenting findings and "concealing material facts and making false statements" in aspartame safety tests. This event represented the first time that the FDA initiated a criminal investigation of any manufacturer. The investigation would almost immediately come under a cloud of suspicion. As the grand jury probe began, the law firm representing Searle, Sidley and Austin, would initiate job negotiations with the U.S. Attorney in charge of the investigation, Samuel Skinner. Later that year, Skinner would indeed take a position with Searle's law firm. The resulting delay associated with Skinner's resignation and the need to replace him meant that the statute of limitations on the charges associated with the aspartame tests expired.

Still in 1977, concerned over the difficulties in the capital, Searle hired longtime Washington insider Donald Rumsfeld as its new chief executive officer (CEO). A former member of Congress and secretary of defense in the Gerald Ford administration, Rumsfeld brought in several of his Washington colleagues to fill top management positions in the company. Aspartame was banned by FDA on the basis of findings from a 1980 FDA board of inquiry, comprising three independent scientists, which concluded that the substance "might induce brain tumors." On January 21, 1981, the day following Ronald Reagan's inauguration, Searle reapplied to the FDA for approval to use aspartame as a food sweetener. Reagan's transition team included Rumsfeld.

Reagan's newly installed FDA commissioner, Arthur Hayes Hull, Jr., appointed a five-person scientific commission to review the board of inquiry's decision. When it became clear that the panel would uphold the ban by a 3–2 decision, Hull installed a sixth member on the commission, resulting in a deadlocked vote. Hull then personally intervened to break the tie in favor of approving aspartame, ignoring the recommendations of the FDA and overruling the public board of inquiry. Hull would later leave the FDA under allegations of impropriety involving unauthorized rides on a jet belonging to General Foods, a major purchaser of NutraSweet. He went on to a position with Burston-Marsteller, the chief public relations firm for both Monsanto and G. D. Searle. Despite objections of the National Soft Drink Association, which had concerns about the volatility of aspartame and lawsuits by consumer lawyers and doctors over safety issues associated with aspartame, the first carbonated beverages containing aspartame were available for public sale in late 1983. In 1996, the FDA removed all restrictions on the use of aspartame, allowing its use in heated and baked goods.

Faulty Birth Control Devices

Searle was also the subject of lawsuits and questions about testing practices with regard to its line of intrauterine devices (IUDs) for birth control. In 1988, a federal jury awarded a woman nearly $9 million after finding that Searle made intentional misrepresentations of the Copper-7 IUD, which had been the best-selling IUD in America prior to withdrawal from the U.S. market in the face of mounting legal cases. Finding that the Copper-7 IUD contributed to women's sterility, the jury decided that the company had been negligent in testing, but not in manufacture, of the product. During that trial, internal documents revealed that Searle had been aware that use of the IUD was associated with a three to five times increase in the risk of pelvic inflammatory disease, a cause of infertility. Around 500 lawsuits were filed over the Copper-7. The Copper-7 had been the first IUD to receive premarketing approval from the FDA and, over 12 years on the U.S. market, had earned Searle an estimated $80 million in profits. The company continued to sell the IUD in the developing world, where threats of lawsuits were minimal.

Rumsfeld served as CEO and then as president of Searle between 1977 and 1985. During his tenure at Searle, Rumsfeld directed the mass downsizing of employees, cutting the number of workers by 60 percent. The resulting increase in company profits and rewards to shareholders led Rumsfeld to claim awards as the Outstanding Chief Executive Officer in the Pharmaceutical Industry from the *Wall Street Transcript* (1980) and *Financial World* (1981). In 1985, Rumsfeld was instrumental in the acquisition of G. D. Searle and Company by Monsanto. He would serve as Secretary of Defense under George W. Bush from 2001 to 2006.

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See Also: Adulteration, Economically Motivated; Consumer Deaths; Food and Drug Administration, U.S.; Food Fraud.

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Gambling and Lotteries

Gambling in general and lotteries as a specific form of organized gambling fall within the set of

This nighttime photo by Lewis Hine captures a group of messengers absorbed in their usual game of poker in the "den of the terrible nine" (the waiting room for Western Union messengers) in Hartford, Connecticut, March 5, 1909. Playing for money, some would lose a whole month's wages in a day. By the early 20th century, gambling's depiction as a social ill led to legislation and enforcement that was modeled after Prohibition. The efforts were primarily successful in driving gambling underground.

activities often categorized as "games of chance." The functional premise underlying such games is that of investing a comparatively small amount of funds in a transaction wherein one or more, but not all, of the participants will receive a larger portion of the pooled money. The person who receives the payout is considered the winner of the game, and the opponent is not the other entrants but the probability of losing the invested money. This adversarial notion is often symbolized as luck or chance. Unlike more conservative forms of investment and return, gambling offers the prospect of rewards within a short period of time.

The methods of offering such chances include lotteries, raffles, drawings, and games played with cards, dice, and machines. Other forms of organized gambling involve wagering on the outcomes of sporting events or even natural occurrences.

As an enterprise and as personal behavior, gambling lends itself to the sort of exploitation and profit motivation that is involved in other forms of corporate and individual deviance.

History of Gambling

The connection between numbers and unknown outcomes is a fundamental social artifact in human history. Almanacs developed from folklore as devices to ensure better outcomes in hunting and agriculture by assigning quantitative values and then laying out numbered patterns of weather, climate, and other observed phenomena. Those who understood the patterns were able to use them to their advantage in acquiring the basic necessities of life. Early documents such as the *I Ching* from China purported to determine the future by randomly selected combinations of numerical groupings from an arrangement of 64 possible clusters. For each portentous reading, sticks, coins, or other binary representations would be dropped or thrown in a manner that allowed gravity to control the distribution. It was believed that future events might be known or even perhaps controlled through this method, setting forth a human willingness to equate a desirable outcome with a chance grouping of numbers.

From this concept were developed both the notion of the scientific testing of hypotheses against mere chance and the popular belief in luck as a source of revenue. In each culture, there was a period where those who applied such methods of divination were considered to hold some skill or ability to account for their predictive successes. Whether in the form of soothsayers or professional gamblers, "beating the odds" has acquired its own particular mythos. In contrast, behavioral psychology has studied in primates the ability to grasp the concept of monetary symbols along with values such as work and stealing to acquire concrete benefits, but so far there is nothing to support the notion that animals engage in anything that could be defined as gambling to gain possible but undetermined rewards.

As human technologies developed, the methods of predicting future outcomes appeared in various forms; dice, cards, and even wheels were set up to generate random number combinations in place of the earlier sticks and coins. Some individuals realized the profitability of matching the random numbers strictly by chance, and gambling enterprises soon developed. As with the early oracle pursuits, those who became successful in gambling endeavors were seen as possessing some special traits in either ability or luck. Games of chance began to develop the trappings of games of skill with rules, with impartial distributors of the gaming devices functioning as referees among several competitors.

Advances in machine making among the industrial segment of society were reflected in the appearance of purely mechanical games where the player would deposit money and participate via levers or buttons in the production of the "winning" numbers. This in turn led to gambling machines in their current forms, from slot machines to electronic poker to the casino-based, large-screen interactive video games offering large prizes and entertainment.

From the early oracle-based systems to these modern, sophisticated electronic gaming devices, humans have refined the concept of using randomness to link to unknown outcomes into an enormous enterprise that affects a very large number of people around the world. A parallel set of gambling enterprises has evolved by following the premise that the end results of athletic competitions are random future occurrences from which people can profit by correctly choosing among their possible outcomes in advance. Contests between humans and animals such as horses and dogs range from speed matches to brutal displays of violence and even death. The attraction to betting on the outcomes of spectator sports also harkens back to the era where gladiatorial events were first staged in Rome.

Illicit Gambling

As governments became more structured and religions gathered more centralized power, there was a noticeable rise in disapproval of gambling. Whether declared a civil crime against public order or a moral violation against religious doctrine, gambling was firmly assigned a place in the category of deviant or immoral social behavior. As with other deviant behaviors, gambling was not diminished in the long run by any prohibitions. In fact, it flourished in the company of other vices such as drugs, prostitution, and smuggling as a traditional profit center for organized crime. The selling of chances in competitive events or on a random series of numbers continues to make vast profits both inside and outside legal strictures.

By the early 20th century, the depiction of gambling as a social ill led to legislation, and both political and law enforcement campaigns were modeled after similar efforts against such moral turpitude. The efforts were similarly unsuccessful at accomplishing much except driving gambling underground.

Because of the legal and law enforcement situation of the era, many operators of gambling establishments developed partnerships with cruise lines and installed gaming devices on passenger ships that traveled in international waters. In the case of violent contests, bouts of human or animal fighting were conducted in a variety of places and manners hidden from the common view. In the case of selling numbers or taking bets away from racetracks and sports arenas, off-site betting offices or parlors were again profit centers for organized groups of criminals who divided such establishments up along territorial lines similar to their drug and sex-traffic enterprises.

Legal Gambling

In contrast to gambling suppression attempts in most municipalities, there were several locations around the world, such as Hong Kong, Macau, Havana, Las Vegas, and Monte Carlo, that developed enclaves combining many formats of open gambling with lavish entertainment and an aura of opulence. They were very beneficial to modern organized crime as places to transfer large amounts of money from criminal enterprises into the general circulation, and vice versa. In popular culture, these resorts and casinos were portrayed as centers for famous entertainers and other celebrities and for the public to aspire to visiting. Casinos and their environs became staple settings for movie producers, adventure novel authors, and popular singers and dancers. They even offered an arena for the resurgence of large-scale stage magic acts and prospered as a result.

Today, the popularity of casinos has spread to countries in the Middle East, South America, and Asia, and to other, far less glamorous sites in the United States such as Tunica, Mississippi, and multiple parcels of land owned by Native American tribes. The public perception of casinos has shifted away from the exotic and the taboo and toward family-friendly resort sites found in the most popular vacation destinations. The casino industry has followed a standard corporate pattern of merger and takeover, with a small number of large companies dominating the market. As these companies gain market share, their ability to apply more expensive marketing and advertising in mainstream outlets increases, as does their ability to lobby local governments for expansion. This leads to a modern duality in which gambling is still referred to as a sin in religious circles and still treated as a crime in prosecutorial domains but is marketed as a normal facet of recreation if packaged in a legitimate fashion.

State Sponsorship of Gambling

In order to maintain this apparently contradictory premise, governments adopted methods similar to those brought about by the failure of Prohibition and began licensing certain gambling establishments while continuing to censure others. In this manner, churches were allowed to operate games of chance to raise money for good causes in the form of bingo games, raffles, and other similar activities. As a function of sovereignty for Native American tribal authority, the federal government allowed casinos to be built and operated on tribal properties as a means of increasing funding for the tribe as a whole.

Once the concept of regulating gambling to raise money for a good cause became accepted, the notion of state-operated lotteries spread. Only seven U.S. states do not currently have a state-sponsored lottery. All states allowing gambling in any commercial fashion have an agency in charge of regulating gaming and enforcing codified restrictions on the operators of gambling premises.

In a state-operated lottery, drawings are held at weekly or biweekly intervals, and tickets are sold through licensed vendors until a cut-off point hours before the drawing. The more tickets that are sold, the larger the amount of money awarded to the people holding the tickets that match the drawing numbers for that date. In addition to the repeating drawings, the same retail establishments offer cardboard tickets with random numbers or symbols concealed by a layer of paint that is scratched off to reveal number or symbol combinations. More matches after a preset number of scratch-offs equals a higher payout.

Whereas the advertised value of prize money ranges from thousands to hundreds of millions of dollars, the reality is that the profit to the states is in the billions. This is because of the high rate of sales for the drawings and scratch-off tickets as well as the severely disproportionate chances of any one individual receiving a large prize award. Each state's lottery legislation earmarks a significant portion of the proceeds for a predetermined budget area such as education.

Effects of Gambling

A fundamental principle of gambling in all of its forms is that the actual chances of a participant receiving more money than he or she has paid in for any given game or event are low enough to guarantee a very large return for whoever is operating the game. This ratio applies across the board, from those who put penny bets into slot machines to those who participate in games that require high-dollar buy-ins with rapidly increasing wagers. It is because of this imbalance between revenue and return to the gamblers that casinos are able to build and operate very lavish facilities and offer enticements such as free meals, alcoholic beverages, and hotel accommodations.

Although the various governmental regulatory agencies set mathematical limits on each casino's rate of return, for all practical purposes, customers (gamblers) as a whole face insurmountable odds. In spite of this, gambling remains a very popular activity, as people apply a form of "gambler's fallacy" to rationalize a behavior that appears to offer no practical value or logical benefit. In that fallacy, any event that does not profit the gambler is evaluated against a potential future event where winning will occur at a size that erases the losses and gives the gambler an overall net benefit. In reality, each occasional win creates a skewed perspective that minimizes the total losses into a less significant amount and magnifies the money won into a perceived, but artificial, profit.

For some gamblers, this cognitive dissonance is manageable as a choice of where and how to use expendable income as a form of recreation. The enjoyment of the casino or racetrack environment, various enticements such as accommodations, or the vicarious thrill of watching a wagered contest unfold can all deliver some form of satisfaction equal to the money wagered.

There is cause for concern regarding those who do not manage their gambling expenditures carefully. In those cases, failure or inability to stop gambling has led individuals to suffer financial distress ranging from minor to extreme. Beyond the purely budgetary issues, there are emotional and personal problems affiliated with gambling, which affect not only the gambler but also those in the gambler's family, workplace, and community. The American Psychiatric Association considers problem gambling as an impulse control disorder when it interferes with the ability to function normally in important areas of life. Whether considered a disorder or the more common designation of gambling addiction, the inability of some individuals to stop gambling merits examination and discussion because of the large percentage of society that engages in some form of gambling.

In the eyes of some analysts, gambling is acting against the statistical logic that dictates little to no chance of an actual win for the vast majority of players. Considering its similarity to chemical and emotional addictions, some argue for designating gambling as a social ill along the lines of poverty or prejudice. In any case, the sheer profitability of gambling is the most obvious reason that such criticisms will do little to effect change in the near future.

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See Also: Federal Gambling Regulation; Holley, Louis Malcolm; Knapp Commission; Money Laundering; Organized Crime; Police Corruption; Pontell, Henry; Predatory Practices; Prostitution; Racketeer Influenced and Corrupt Organizations Act; Racketeering; Self-Control Theory; Teamsters Pension Fund.

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Geis, Gilbert

Gilbert Lawrence Geis was a professor emeritus in the department of criminology, law, and society in the School of Social Ecology at the University of California, Irvine. He published nearly 500 articles, chapters, and books, with scholarship appearing every year from 1947 through 2012, the year of his death. Born in 1925, Geis served in the U.S. Navy during World War II and earned a B.A. in English and journalism from Colgate University (1947). He earned sociology degrees from Brigham Young University (M.S., 1949) and the University of Wisconsin, Madison (Ph.D., 1953). Geis married three times: his first wife was Ruth Geis, his second wife and occasional co-author was Robley Geis, and his third wife, Delores Tuttle, preceded him in death.

Geis first read Edwin Sutherland's book *White-Collar Crime* in his fall 1952 term. Geis's 1962 article in the journal *Sociological Inquiry* concludes that white-collar crime should begin its focus on the elements of the crime instead of the social status of the actors, thus differentiating his approach from Sutherland's. Geis edited a collection of 32 readings that appeared in a 1968 book, *White-Collar Criminal*. This collection was followed by a 1977 second edition, co-edited with Robert F. Meier, and by a third edition in 1994, co-edited with Robert F. Meier and Lawrence M. Salinger. His introductory essay notes that white-collar crime must be related to theories of behavior and deviance; in order to evaluate the meaning of white-collar crime for a country's survival, anthropological and historical studies are needed, relating it to social well-being. The 19-page essay covers intellectual history from Aristotle and Harry Elmer Barnes to George Vold and Max Weber, and is reprinted in Geis's book of 12 articles, *On White-Collar Crime*.

In the preface to his collection of articles, Geis posits that studying white-collar crime moves scientists closer to the social system's guts than scrutiny of street crime; fashioning a better world requires redirecting the behavior of the powerful. Geis at first advocated a white-collar crime definition of "corporate offenses" but found no takers. He wrote that he later abandoned definitional questions as a maze of verbiage that trapped the novice and the nitpicker. In 1982, Geis considered "whether the term *white-collar crime*" would survive; 30 years later, it is thriving.

Geis's case study "The Heavy Electrical Equipment Antitrust Cases of 1961" is much anthologized after initially appearing in Marshall B. Clinard and Richard Quinney's collection *Criminal Behavior Systems* in 1967. Using press accounts and congressional hearing testimony, Geis found information on the high-level corporate managers who committed price-fixing crimes in violation of the Sherman Antitrust Act of 1890. The managers euphemistically termed their schemes "stabilizing prices." Geis described and interpreted the firms' cultures and the managers' practices within them over time, relating them to Sutherland's hypotheses on white-collar crime and Sutherland's differential association theory of crime causation.

From 1979 to 1983, Geis was a principal investigator on state and federal grants, studying automobile repair fraud, employers' attitudes and actions regarding occupational health in California, and practitioner fraud and abuse in government medical benefit programs. The last study became the basis for a 1993 book he co-authored with Paul Jesilow and Henry Pontell, *Prescription for Profit: How Doctors Defraud Medicaid*. The book states that the prevalence of Medicaid fraud shows that the medical profession is not able to detect and discipline wayward doctors. Fraud by doctors is found by government auditors, ex-employees, and patients.

In 1994, Geis delved into corporate crime theory with "A Review, Rebuttal, and Reconciliation of Cressey and Braithwaite & Fisse on Criminological Theory and Corporate Crime," reprinted in his reader. Geis wrote that a theory of corporate crime must demonstrate how it is the result of particular conditions and processes—only then might corporate crime be accurately predicted. The search for a corporate crime theory is "worthwhile" even if it will not be as elegant as a physics formula. The American Society of Criminology bestowed the Edwin H. Sutherland Award for Outstanding Contributions to Theory or Research in Criminology on Geis in 1985. In 2008, the National White-Collar Crime Center presented Geis with its Lifetime Achievement Award for Outstanding Contributions in the Field of White-Collar Crime, now named the Geis Award. Geis continued to write well into his eighth decade. He died on November 10, 2012, after a lengthy illness.

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See Also: Braithwaite, John; Clinard, Marshall; Cressey, Donald; Pontell, Henry; Sutherland, Edwin H.

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Gender Discrimination

Gender discrimination is exhibited when women and men are treated differently on the basis of perceived differences in ability, physical prowess, intellectual capacity, or proper societal and cultural roles. This differential treatment can be manifested in a wide variety of policy areas, such as the workplace, education, the criminal justice system, health care, and childcare. Both men and women can be victims of gender discrimination, and they can be discriminated against by members of both sexes. The practice of gender discrimination is rooted in the philosophy of separate spheres for men and women. According to this theory, men maintained an influence within the public sphere, where they served as the primary provider for their families, while women's influence resided within the private sphere, where they served as the primary caregiver. Attempts to redefine this belief structure in the 19th and early 20th centuries were met with resistance.

The first wave of the feminist movement was concentrated on women gaining the right to vote. An early step in this journey was the first women's rights convention in New York. The Seneca Falls Convention in 1848 aimed to publicly call attention to inequalities in women's rights by creating the Declaration of Rights and Sentiments, which used the Declaration of Independence as its prototype. The convention was organized by Elizabeth Cady Stanton and Lucretia Mott, two strong proponents of women's equality and the elimination of slavery.

Women protest against Walmart in Utah, July 14, 2005. The largest class-action employment discrimination suit in U.S. history, Dukes v. Wal-Mart, *was dismissed in 2011 as a class-action suit because there were too many differences among the plaintiffs.*

After the Civil War, women continued to work for the right to vote, although it would take another 55 years before the ratification of the Nineteenth Amendment, which granted women suffrage. Antisuffragists resisted women earning the right to vote because they maintained discriminatory attitudes that women were too emotional, were not intelligent enough, or simply should remain in the private sphere. Others feared that if women voted en masse, it would change the power structure in politics, and could lead to the prohibition of alcohol. On the other hand, many activists felt that the vote would give women a voice in politics and the means to indirectly change policies that discriminated against women through the careful selection of political leaders. However, following suffrage, women voted at lower rates than men, and this pattern of turnout continued until approximately 1980. Despite lower turnout, women and men continued to work to address other areas of gender discrimination, using the legislative, executive, and judicial branches of government. The economic, political, and social change that resulted helped reduce gender discrimination in many areas, including the workplace.

Prior to World War II, few women worked outside the home; however, this pattern shifted dramatically as women began to take over the workplace responsibilities formally held by men, who were away at war. Women also gained traction in industries that produced materials for the battlefield. Women were encouraged to enter the workforce by way of the U.S. government's Rosie the Riveter campaign. Rosie appeared everywhere from posters to newspaper articles, and she became the defining image of women at work in wartime America. The propaganda met its objectives as, according to at least one estimate, in just four years (1940–45) the number of women in the workforce rose by around 50 percent. However, peacetime brought a reduction in the rate of female employment as men returned home from the war and the production of wartime products declined. This workforce expulsion did not last long, and the rate of women in the workforce began to rebound as early as the 1950s. According to the U.S. Department of Labor, as of 2010, women made up approximately 47 percent of the total U.S. labor force. Although women and men still face occupational obstacles in areas pertaining to equal pay and sexual harassment, the U.S. government, various labor groups, and individual employees have worked to create more equitable workplaces through the passage of legislation and the pursuit of litigation. These techniques have been used in an effort to address grievances in matters of hiring, termination, promotion, salary and benefits, and sexual harassment.

Workplace Legislation

One of the first major pieces of federal legislation designed to address gender discrimination in the workplace was the Equal Pay Act of 1963. This act, along with subsequent amendments in 1972, required employers to provide equal pay to men and women who work at the same location and in positions that require basically the same degree of talent and accountability. Exceptions were allowed for differences based on seniority, merit, or the amount and type of work produced by employees.

This act was followed by Title VII of the Civil Rights Act in 1964. Title VII was originally conceived to ban discrimination in the workplace on the basis of race, color, national origin, and religion. In a fortuitous twist, one representative, Howard W. Smith (D-Virginia), added the word "sex" into the text of the legislation. Many scholars argue that this was done in a deliberate attempt to prevent the legislation from passing, because Smith was a conservative representative who was thought to oppose the act. Smith counter this claim, stating that his amendment was a testament to his support of women's rights and his work with the National Women's Party. Regardless of Smith's intention, the act became law with the addition. The Civil Rights Act went well beyond the scope of the Equal Pay Act by making it illegal to discriminate in a wide variety of areas, such as hiring or termination, compensation and benefits, and promotion and training. However, as with the Equal Pay Act, exceptions exist on the basis of merit, seniority, and the type of work produced. To help ensure proper enforcement of these stipulations, the Equal Employment Opportunity Commission (EEOC) was created to oversee the law's implementation.

Less than 10 years later, in 1972, Congress passed the Equal Rights Amendment (ERA). The passage was achieved partly as the result of strong lobbying efforts by interest groups advocating for women's rights. The ERA stated that sex should not be a reason to deny or abridge anyone's rights. Although the amendment had support in many circles, it was also opposed by conservative women. The ratification process was contentious, with women on both sides of the issue engaging in letter writing campaigns, media blitzes, and marches. The amendment was given a seven-year window to achieve ratification, and this window was later extended. By 1982, the ERA had still not achieved approval by the requisite three-fourths of the state legislatures, and it failed to become part of the U.S. Constitution.

Although this amendment fell short of ratification, it was not the end of legislation designed to eliminate gender discrimination. The Pregnancy Discrimination Act was passed in 1978, barring employment discrimination against expectant mothers. The act states that a woman cannot be fired or denied employment or promotion within her occupation as a result of the intent to become pregnant or because she is pregnant. Employers are also restricted from requiring a woman to take pregnancy leave.

Another major piece of legislation designed to reduce discrimination in the workplace was the Family and Medical Leave Act. This act was passed by Congress in 1993 and provides men and women with the opportunity, albeit unpaid, to leave the workplace for up to 12 weeks under certain circumstances. These conditions include grave illness on the part of the worker or on the part of the worker's family (e.g., a spouse or child). In addition, employees can take a leave of absence for the same duration if they give birth to or adopt a child. The bill contains some limitations and exceptions. For instance, employees must have been employed with the company for no less than 1,250 hours before they can qualify, and small businesses (those with fewer than 50 employees) are exempt. The bill was meant to ensure a better work–life balance for employees and to make it more difficult for an employer to fire an employee impacted by these circumstances.

One of the most recent pieces of antidiscrimination legislation is the Lilly Ledbetter Fair Pay Restoration Act. This act was signed into law by President Barack Obama in 2009, becoming his first law as president of the United States. This law was passed by Congress in reaction to a 5–4 decision by the U.S. Supreme Court in the case *Ledbetter v. Goodyear Tire & Rubber Co*. The case made its way to the U.S. Supreme Court after Ledbetter filed suit against her employer, Goodyear Tire and Rubber Company. She filed suit after discovering through an anonymous letter that she was being paid substantially less than male employees at the same management level. The U.S. Supreme Court denied her pay-equity claim, ruling that Ledbetter should have filed suit within 180 days of the receipt of her first discriminatory paycheck. Ledbetter's case was then taken up by Congress. The legislative branch disagreed with the ruling of the judicial branch and changed the timeline under which an employer can be held accountable for pay discrimination. Now, employees can file a complaint with the government within 180 days of any discriminatory paycheck they receive.

In June 2012, the U.S. Senate fell eight votes short of the 60 needed to open the floor for debate on the Paycheck Fairness Act, an expansion of the Lilly Ledbetter Fair Pay Restoration Act. The Paycheck Fairness Act was designed to prevent companies from taking retaliatory action against employees who question employers about salary differences. In addition, the act sought to make it easier for employees to sue their employers for punitive damages when they have suffered from pay inequity.

Occupational Litigation

The passage of federal legislation was not the only vehicle whereby opponents of gender discrimination could work for change. In *Ledbetter v. Goodyear Tire & Rubber Co*., the courts set the precedent for decisions on many gender discrimination suits from the 20th century through today.

In support of the Equal Pay Act, in 1970, the court ruled in the *Schultz v. Wheaton Glass Co.* case that employers could not simply change job titles in order to avoid paying female employees as much as equivalently situated male employees. According to the ruling, jobs need not be "identical" but must meet the standard of being "substantially equal" in order for employees to qualify for the protections granted in the Equal Pay Act.

The provisions in the Equal Pay Act were again reaffirmed in the 1974 *Corning Glass Works v. Brennan* case. This case addressed the differential pay rates received by male and female shift inspectors at the Corning Glass Works plants. The court ruled that male and female employees were performing the same work, regardless of the time of day at which the inspections occurred, and must receive equal wages.

In 1984, the court took up a different gender discrimination matter when it produced a ruling in the *Meritor Savings Bank v. Vinson* case. This case dealt with the issue of sexual harassment. In the case, Mechelle Vinson, an employee of Capital City Federal Savings and Loan Association, alleged that her supervisor, Sidney Taylor, had asked her for sexual favors and sexually harassed her and other employees of the association. The court declared that Vinson had alleged that the advances made by Taylor were not welcome, and as such, they created a "hostile work environment." As a result, they constituted the basis for sexual discrimination under Title VII of the Civil Rights Act and were a violation of the standard of equitable employee treatment.

In another case involving Title VII of the Civil Rights Act, the U.S. Supreme Court ruled in 1999 that Carole Kolstad had been the victim of gender discrimination. Carole filed suit against the American Dental Association when it promoted a male colleague over her. The Supreme Court ruled that gender discrimination did not have to meet a level of severity in order for an employee to file suit for punitive damages. Instead, an employee must only be able to demonstrate that the employer knowingly violated the law.

Another act that received consideration by the U.S. Supreme Court is the Family and Medical Leave Act (FMLA). In the case *Nevada Department of Human Resources v. Hibbs*, the Supreme Court ruled in favor of William Hibbs, an employee of the Nevada Department of Human Resources. Hibbs was granted leave to care for his ailing spouse as per the conditions of the FMLA; however, he was subsequently fired by the department when he failed to return to work at the end of his leave. The U.S. Supreme Court declared that the Eleventh Amendment did not prohibit an employee of the state from suing his employer for monetary compensation in federal court if that employer violated the provisions of the FMLA.

Perhaps the most discussed gender discrimination case of late, *Dukes v. Wal-Mart*, deals with the class-action suit brought by female employees of Walmart. This case, sparked by Walmart employee Betty Dukes in 2000 and dismissed on June 19, 2011, is the largest class-action employment discrimination case in U.S. history and marks a reversal in rulings favorable to employee. The court did not make a determination as to whether Walmart had violated standards of equitable pay and promotion between their male and female employees. Instead, the court restricted their ruling to whether the case could proceed as a class-action suit. The court ruled that it could not because there were too many differences among the women who had brought suit. For instance, the justices held that the women worked in stores all across the United States and were employed under disparate managers.

Following the Supreme Court's decision, female employees filed a new class-action discrimination lawsuit against Walmart. This time, the suit is restricted to employees of stores within the state of California. In addition, almost 2,000 women brought individual claims to the Equal Employment Opportunity Commission against Walmart in 2012. These charges mark the first step before women can bring individual lawsuits against the company for gender discrimination.

Demonstrating Employment Discrimination

Employees may file an official complaint with the Equal Employment Opportunity Commission (EEOC) in person, over the phone, or through the mail if they feel that they have been discriminated against by their employer. The period of time in which an individual may file a formal complaint with the EEOC varies by state but typically ranges from 180 to 300 days following the date on which the alleged discrimination took place. Prior to filing a complaint, the Equal Rights Advocates, a nonprofit legal organization, recommends that employees keep a record of the discriminatory actions and keep any relevant communications with their employer. In addition, employees who feel that they have been victims of gender discrimination can ask to see their personnel file and can file a report through their employer or with their union representative. An official charge must be filed with the EEOC before a lawsuit can be brought before the courts.

When courts are deciding employment discrimination claims, they typically use one of three criteria. The first criterion is proving that there was intent to discriminate. This is a very difficult standard to meet because it involves providing the court with written or verbal testimony from the employer that it intentionally discriminated against an employee. The second criterion involves the use of a "disparate treatment test." The court will apply this test when, for example, a female candidate is not hired for a position, whereas a male candidate is hired, even though both met the requisite qualifications for the position. In this case, the female candidate must provide evidence that she was not hired because of discrimination. The final criterion involves the use of "disparate effects." The court will apply this test when a victim alleges that some type of employment criterion (e.g., height or weight) had a distinct, negative impact on him or her. At this point, an employer must provide evidence that this criterion is relevant to the performance of the job in question, and is not an unfounded justification for refusing to hire women or other groups protected under Title VII of the Civil Rights Act.

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See Also: Age Discrimination; Class-Action Lawsuits; Differential Association Theory; Ethics; Racial Discrimination.

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General Dynamics Corp.

Criminal investigations and criminal and civil penalties are concentrated in the defense industry. General Dynamics (GD) is currently the fourth-largest defense contractor in the world. Notable projects of GD have included the F-111 and F-16 fighter aircraft, as well as the M1 Abrams and Stryker armored vehicles. The F-16 was the most produced jet fighter in the West in the postwar period. Founded through various mergers, GD has its headquarters in Fairfax County, Virginia, and, following divestment of its aircraft division, is focused on four divisions: Marine Systems, Combat Systems, Information Systems and Technology, and Aerospace. The long history of questionable or unethical corporate practices dates back to GD prehistory in its forerunner, the Electric Boat Company. In 1904 and 1905, Electric Boat gained a reputation for unscrupulous arms dealing for practices of selling submarines to both the Imperial Japanese Navy and the Imperial Russian Navy, combatants at war with each other.

Recent investigations into GD have focused on suspected procurement fraud, overcharging, conflicts of interest, underestimating income, and sale of defective products. GD has a long history of defense fraud convictions. During the mid-1980s, GD became emblematic of defense procurement fraud and the overcharging of government for questionable or unaccountable services. It was reported that charges were made for such expenses as country club memberships for executives and kennel charges for an executive's dog. In 1985, the company was charged with criminal fraud over its work on an air defense gun system, the Division Air Defense weapon (Divad), for the U.S. Army. That same year, notice was given by the secretary of the U.S. Navy that it would cease business with the company until management was changed and fraudulent practices were ended.

In response, GD hired Kent Druyvesteyn of the University of Chicago School of Business to develop and oversee an ethics program. In 1988, 206 sanctions were leveled against company personnel, with 35 leading to discharges and four resulting in criminal referrals. In 1986, under Defense Secretary Caspar Weinberger, the U.S. Navy lifted the suspension of GD. The company was given promises that it would not be suspended again for additional indictments stemming from earlier practices, even though such a suspension from further contracts typically accompanied any indictment. A government complaint in 1987 claimed that in the 1970s, GD, through its Quincy Shipbuilding division, had falsified an estimate for purposes of winning an $80 million government subsidy. The charge declared that GD kept two sets of books—one with accurate costs and profit projections, and another with inflated costs and improbable estimates. A lawsuit in 1991 to recover $240 million from the company was abandoned, and in 1996, the government was forced to pay GD $25 million in legal fees.

$4 Million Settlement

On August 19, 2008, GD agreed to pay a $4 million settlement in response to a lawsuit brought by the U.S. government. The government claimed that a unit of GD fraudulently billed the government for defective parts that were used in U.S. military aircraft and submarines. The U.S. government claim alleged that from September 2001 to August 2003, GD failed to test parts or produced defective parts used in U.S. military aircraft, including the C-141 Starlifter transport plane. The GD unit implicated in the allegations closed in 2004. In addition to issues of corruption, GD has been responsible for harm to workers. In 1984, General Dynamics was charged with involuntary manslaughter and criminal violations of state occupational health and safety standards following the death of a worker exposed to fluorocarbon solvent at a military tank plant in Center Line, Michigan. A state court eventually dismissed the charges, citing the worker's "hypersensitivity" to the solvent.

In 1991, during a period in which GD was in the process of laying off 30 percent of its workers, Chairperson William Anders proposed to shareholders an increase of $7.6 million in bonuses to the top 25 executives at the company. Bonuses were approved by 77 percent of stockholders, a decision that was met by public demonstrations by angry GD workers. The concerns over specific issues, such as fraud or corruption, are limited within a legal-objectivist framework. From a more critical perspective, one might highlight the vast numbers of people, civilian as well as military, killed, injured, and maimed by military products, and the communities and environments destroyed. These outcomes are typically not criminalized or pursued within criminal justice systems in Western countries.

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See Also: Defense Industry Fraud; Government Contract Fraud; Government Procurement Fraud.

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General Electric Co.

General Electric Co. (GE) is a household name because it makes light bulbs and consumer appliances, but that accounts for less than 10 percent of its revenue. GE is a diversified company that also makes parts for power plants, jet engines, nuclear power plants, and medical equipment. Its lending division, GE Capital, provides more than half of its profit and would be among the 10 largest banks in the United States if it were classified as a banking company. This diverse base of operations has led GE to diverse criminal activity and abuse of power. In 2010, GE was the fourth-largest company in the United States. If company revenue was ranked against the gross domestic product of countries, GE would have the 54th-largest economy in the world—smaller than Pakistan or Romania but bigger than Peru or New Zealand. This size insulates it from some consequences of wrongdoing and allows it to shape the tax code; therefore, GE's legal tax avoidance usually results in little to no U.S. corporate income tax, in spite of billions of dollars in profit. GE also owns media interests through NBC Universal, which allows it to shape perceptions of its actions and corporate wrongdoing.

In the 1950s, GE and several companies agreed in advance on the sealed bids they submitted for heavy electrical equipment. This price fixing defeated the purpose of competitive bidding, costing taxpayers and consumers as much as $1 billion. In the 1970s, GE made illegal campaign contributions to Richard Nixon's presidential campaign. Widespread illegal discrimination against minorities and women resulted in a $32 million settlement. Also during this time, three former GE nuclear engineers—including one who had worked for the company for 23 years and managed the nuclear complaint department—resigned to draw attention to serious design defects in the plans for the Mark III nuclear reactor because GE placed more emphasis on sales than on safety.

In the 1980s, GE pleaded guilty to felonies involving illegal procurement of highly classified defense documents. In 1985, it pleaded guilty to 108 counts of felony fraud involving Minuteman missile defense contracts. In spite of a new code of ethics, GE was convicted in three more criminal cases over the next few years; it also paid $3.5 million to settle cases involving retaliation against four whistleblowers who helped reveal the defense fraud. GE subsequently lobbied Congress to weaken the False Claims Act, which protects whistleblowers. In 1988, the government returned another 317 indictments against GE for fraud. A 1990 jury convicted GE of fraud for cheating on a $254 million contract for battlefield computers, and the $27.2 million fine included money to settle government complaints of improper billing on 200 military and space contracts.

GE is also one of the prime environmental polluters and is identified as contributing to 52 active Superfund sites in need of environmental cleanup in this country alone. In 1999, it agreed to a $250 million settlement to clean up the Housatonic River in Massachusetts. GE is responsible for one of America's largest Superfund sites, the Hudson River, where the Environmental Protection

Agency claimed that the company dumped over a million pounds of toxic waste. Instead of cleaning up its part of the 197-mile site, GE mounted an eight-year challenge to the Superfund law that requires polluters to remedy toxic situations that they created.

In 2010, GE reported $5 billion in profits from U.S. operations but paid almost no federal income tax and actually claimed a tax credit; the pattern for the previous five years was similar. Although GE was not originally eligible for government support through programs enacted to help with the financial crisis, it engaged in lobbying and received $74 billion in loan guarantees. GE is one of the entities sued by the Federal Housing Finance Agency over "securities law violations or common law fraud" in the sale of mortgage-backed securities to Fannie Mae and Freddie Mac.

GE also has the ability to shape public opinion through its ownership of NBC Universal, which owns television networks NBC, A&E, USA, MSNBC, and CNBC. From 1985 until 2011, GE owned a controlling interest in NBC Universal, which fell to 49 percent after selling a portion to Comcast. This ownership provides a means through which GE can shape public opinion. For example, the NBC *Nightly News* did not cover the story of GE not paying corporate income tax, and critics charge that this is consistent with the news program's lack of coverage of safety issues in GE-designed nuclear power plants and environmental pollution. Some call CNBC an "economic infomercial" because of a little-discussed conflict of interest between owning a financial news outlet, being one of the world's largest financial operations, receiving government support during the economic crisis, and being charged with mortgage-backed securities fraud. The USA network airs a series called *White Collar*, nominally about white-collar crime. However, the crimes portrayed on the program are a narrow, apolitical set of white-collar crimes that do not challenge abuses of power by corporations or government.

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See Also: False Claims Act; Great Electrical Equipment Conspiracy; Hazardous Waste; Mortgage-Backed Securities; Whistleblowers.

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General Motors Co.

One of the icons of U.S. industry in the 20th century, General Motors Co. (GM) was founded on September 16, 1908, in Flint, Michigan, by William C. Durant. Its headquarters later moved to Detroit, Michigan. Its brands came to include Buick, Cadillac, Chevrolet, Daewoo, GMC, Holden, Opel, Vauxhall, and Wuling, which are all still held by the company, and at various times it also owned Hummer, Oakland, Oldsmobile, Pontiac, Saab, and Saturn. With a presence around the world, GM was well regarded and had a reputation for looking after its employees. From 1931 until 2007, GM led global sales of automobiles for 77 years, and it was the second-largest global automaker by sales from 2008 to 2010, regaining its position as the leader in global sales in 2011.

In 1973, Robert Eldridge Hicks published that General Motors had been involved in a policy, along with road builders, to increase car usage at the expense of public transport by trying to eliminate competition. In the Great American Streetcar Scandal, from the 1920s until the 1940s, streetcars were replaced with autobuses, and then the public transport system was gradually replaced by cars. GM had an interest in encouraging the use of cars, which would maximize its profits, but it is uncertain whether GM broke any laws.

Financial Downturn

From the mid-1970s, with the increase in the purchase of Japanese cars in the United States, there was a decline in the market share of GM. This was partly because the Japanese competitors were better structured to deal with a downturn, but also because of a rise in the price of gasoline, which saw many more people seeking smaller and more fuel-efficient automobiles. Many people outside the United States also turned to buying Japanese cars, and GM had to restructure, changing its designs and remaining the leading automaker in the world in terms of sales, although its profits declined. The decline in the stock market following the September 11, 2001, attacks led to the GM pension and benefit fund having less financial resources than it needed to meet its liabilities. General Motors then helped formulate the Keep America Rolling campaign, which initially boosted sales. The main problem facing GM was a serious downturn in business for new automobiles in the late 1990s as a result of the global financial crisis and a number of other factors. Because GM maintained its position as the major automaker in the world by sales, this problem was not quickly recognized. It is claimed that the management at GM was so keen on maintaining its corporate position that it paid less attention to ever-declining profits, and continued to pay staff more than many of their competitors, with better terms, conditions, and pensions.

In the late 1990s, GM was badly hit because it had been heavily involved in the sale of light trucks and sport-utility vehicles. The share price, which had reached \$80 at the peak in the late 1990s, fell, forcing GM to restructure, sell some subsidiaries, and halve its dividend. GM sold many car brands. There were many accusations of mismanagement at GM, which was slow to react after posting a loss of \$10.6 billion in 2005. The George W. Bush administration managed to put together a package to keep the company going, but with auto sales continuing to decline, on March 30, 2009, President Barack Obama said that he would not provide future financial aid to GM, which then had to seek Chapter 11 protection from bankruptcy on June 1, 2009. At that time, it was stated to own \$82.29 billion in assets and owe \$172.81 billion in debt. A week later, the company was removed from the Dow Jones Industrial Average. The company was then totally restructured, and Rick Wagoner resigned as GM chairman and chief executive officer.

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See Also: Automobiles; Corporate Capture; Ford Motor Co.; United States.

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Georgia-Pacific LLC

Georgia-Pacific LLC faced serious legal battles in 1991 and 2002, related to major infractions committed by the company. Georgia-based Georgia-Pacific is an international leader in making tissue, pulp, paper, toilet and paper towel dispensers, packaging, building products, and related chemicals. The company has over 300 locations internationally and employs just fewer than 50,000 employees. As indicated by an instance of tax evasion and unwillingness to pull asbestos-containing products, Georgia-Pacific appears to have been dominated by a culture of greed during its growth years.

Problems Begin

The company's legal problems began in 1984 when it took a tax credit for a \$24 million donation of a large swamp in Santa Fe, New Mexico, to the River Water Management District.

Although it was entirely legal to claim the contribution, the plot of land was only worth \$2 million, leaving a \$22 million discrepancy. As a result, the company was forced to plead guilty to tax evasion in 1991. It paid $21 million in fines and back taxes—a record for corporate criminal penalties at the time.

Asbestos Investigation

While the tax evasion case was costly and concerning, it pales in comparison to the asbestos predicament that Georgia-Pacific encountered at the turn of the 21st century. Since the 1940s, the public has been aware of the dangers posed by asbestos exposure. Individuals who are exposed to the mineral over the long term can develop mesothelioma, an aggressive cancer that eats away at the lining of the lungs and heart. Those who suffer from mesothelioma are likely to have symptoms similar to those of pneumonia at first, before the disease quickly develops. Most concerning is that asbestos can remain dormant in the body decades before causing the disease. Even with an early diagnosis and aggressive treatments, the disease can be deadly after minimal exposure.

However, it was not until the 1970s that federal regulators became fully knowledgeable about the health hazards linked to the substance. At that point, the U.S. Occupational Safety and Health Administration began forcing factories using asbestos to add ventilation and worker protections. Construction workers and home-improvement workers were also at risk from continual exposure. The *Atlanta Journal Constitution* provided an investigative series in 2002, looking at Georgia-Pacific's past usage of asbestos in some of its major products, especially Ready-Mix joint compound.

In 1965, Georgia-Pacific acquired Bestwall Gypsum, a Pennsylvania-based company that manufactured products made out of gypsum, a soft mineral used to make drywall, plasters, and fertilizers. Like many companies at the time, Bestwall used asbestos in a number of its gypsum products. The naturally occurring mineral was readily available, inexpensive, and extremely effective as a binding and strengthening agent. The newspaper report found that Georgia-Pacific was well aware of the dangers posed by asbestos prior to 1970. However, it willingly continued making products containing the dangerous mineral and sold them through 1977, likely because Ready-Mix needed asbestos to adhere to drywall. Aware of the concerns, Georgia-Pacific tried a version of the product without asbestos for a period in the early 1970s, but it failed to sell and was pulled from the shelves.

By 2002, more than 314,000 claims had been filed against Georgia-Pacific. More and more are likely to come forward, even into the new decade, as other companies facing similar claims have opted to declare bankruptcy to avoid the legal cases and costs. Georgia-Pacific ultimately found itself having to pay roughly $221 million for its share of approximately $1 billion in payments over the course of a decade to settle asbestos-related complaints. Insurance money covered the remainder. Since December 2003, Georgia-Pacific has faced 269,700 asbestos lawsuits, including settled, dismissed, and pending cases. With more than 66,000 pending cases, the company decided to increase its defensive spending on asbestos claims in response to escalating settlement demands. In 2004, the number of new claims fell 32 percent from the year before as Georgia-Pacific began to take a more aggressive approach to litigation. There was a notable increase in affirmative defense and medical research regarding asbestos illnesses. The overall number of cases taken to trial nearly doubled. These actions resulted in a decrease in the average payments for mesothelioma, cancer, and nonmalignant cases in 2004. Georgia-Pacific continued its aggressive defense in the following years and expected the trend to continue for years to come. The company has decided to increase its asbestos defense reserve by approximately $11 million per year through 2014, before tax benefits.

In 2012, new allegations emerged, and the case was granted class-action status in July. Effingham County, Georgia, residents filed suit against the company, alleging that hydrogen sulfide emitting from the plant's waste treatment facility has damaged their property and caused loss of property values. The lawsuit includes over 100 plaintiffs.

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See Also: Asbestos; Corporate Dumping; Employee Safety; Hazardous Waste; Johns Manville Corp.; Occupational Carcinogens; Occupational Safety and Health Act; Owens Corning Corp.; Tax Evasion; Toxic Substances Control Act.

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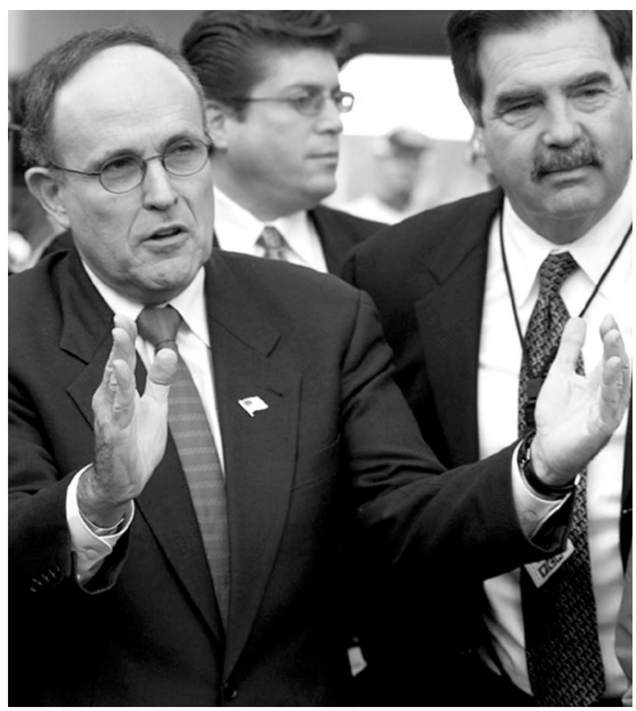
Giuliani, Rudy

Rudolph William Giuliani was dubbed with the title of America's Mayor after his exceptional leadership in the aftermath of the terrorist attacks of September 11, 2001. Giuliani is also known for his get-tough-on-crime strategies on street and violent crime as the mayor of New York City from 1994 to 2001. According to C. R. Sridhar, Giuliani's policies, directed through Police Chief William Bratton, were very successful in reducing total violent crime in the city, by 51 percent. He also acted as the U.S. attorney for the Southern District of New York. While in this position, Giuliani made substantial efforts to eliminate organized and white-collar crime as well as government corruption. His success fighting white-collar crime, Wall Street corruption, and major organized crime set the stage for Giuliani's rise to national prominence.

Giuliani, a product of Brooklyn, New York, was raised by working-class parents. His grandparents were Italian immigrants who had aversion for the Italian mafia in New York. This animosity was passed down to Giuliani and had an impact on his dedication to investigate and prosecute crime.

In the early 1980s, Giuliani became the U.S. attorney for the Southern District of New York, where he developed the reputation for fighting white-collar crime. One tactic, which some perceived as a scare tactic, was to effect arrests of white-collar criminals at their place of business during working hours. For example, in February 1987, federal agents entered the arbitrage department at Goldman Sachs & Company, where they handcuffed Robert Freeman and arrested him for insider trading. Giuliani made these top-level white-collar professionals do the "perp walk" before media cameras. Richard Wigton, who was a vice president at Kidder, Peabody & Co., was also handcuffed in his office during business hours. Some high-profile business leaders accused of white-collar crimes were taken to jail after hours and consequently had to stay overnight until they could be arraigned the next morning.

Arresting white-collar criminals at their place of employment, rather than asking them to turn themselves in, was unusual at the time. Giuliani considered white-collar crimes as serious, and the individuals whom he arrested as real criminals. Giuliani pursued white-collar criminals just as tenaciously as he did street or other violent criminals. He used an organized crime statute, the Racketeer Influenced and Corrupt Organizations Act (RICO), rather than traditional



Rudy Giuliani at the World Trade Center's Ground Zero, New York City, November 14, 2001. Giuliani was dubbed America's Mayor for his leadership after the terrorist attacks of September 11, 2001. He was tough on perpetrators of white-collar crime.

criminal statutes as an avenue to indict white-collar criminals.

During his time as the U.S. attorney for the Southern District of New York, Giuliani also engaged in criminal prosecution of politicians and politicos who operated outside the law. This tenacious dedication to ending political corruption may have galvanized his first run for mayor, an unsuccessful attempt in 1989. The crime rate in New York after his failed election remained high, and Giuliani offered his crime control alternative in the next election, which he won in 1993.

Giuliani's managerial attributes have helped him in his role as investigator, prosecutor, and manager. Author Fred Siegel describes this attribute as an innate ability to see things from a managerial perspective. Giuliani has the ability to see things from the top down. For example, when he goes to a New York Yankees baseball game, he watches it as if he were the manager of the team, keeping notes of which batters are hitting and which are not. When he investigated organized crime, he imagined himself as the "boss." He used this same perspective to investigate and prosecute white-collar crime. Giuliani was able to understand how white-collar criminals, operating within a business structure of an organization, affected its performance. Giuliani was able to see weaknesses in business models that left the door open for criminal activity, taking advantage of the weaknesses in businesses and exploiting profit from criminal activity.

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See Also: Goldman Sachs Group Inc.; Kidder, Peabody & Co.; Organized Crime; Public Corruption; Racketeer Influenced and Corrupt Organizations Act; Racketeering.

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Global Crossing Ltd.

Global Crossing Ltd. was founded in 1997 by Gary Winnick, a former junk-bond trader, who was tutored under the watch of Michael Milken. Winnick established the company for the purpose of revolutionizing data transmission by the creation of a global fiber-optic network. The company went public on August 13, 1998, and its stock price immediately soared 300 percent on its first day of trading. The stock price continued to rise, and by 1999 the company was valued at over 30 times its earnings, fueled in large part by mass telecom deregulation, the craze of the Internet boom, and the U.S. Commerce Department's prediction that Internet traffic would double every 100 days. The company was a Wall Street favorite, in part because it often paid handsome fees for underwriting and other services, and in part because Winnick used his natural charisma to sell a deceptively simple plan for a global data network. Just five years from its inception, however, the company filed for bankruptcy protection, in January 2002, then the fourth-largest bankruptcy in U.S. history.

Massive Network

To construct such an ambitious fiber-optic network, Global Crossing purchased the largest independent undersea cable-laying firm in the world, ultimately laying 100,000 fiber-optic miles to 27 countries and 200 major cities on four continents. The construction cost for the global network was high, reaching $15 billion. Much of the construction cost was financed with debt underwritten by investment banks. The total debt exceeded $12 billion when the 2001 market downturn hit the company, triggering a subsequent write-off of $17 billion in assets.

Global Crossing filed for bankruptcy soon after, unable to overcome its mounting debt, combined with rapidly falling bandwidth prices because of increased competition and a glut of network capacity. The stock price plummeted with the bankruptcy announcement, yet just a few weeks prior to the company's collapse, Winnick sold shares valued at $123 million, bringing the total value of shares cashed out during Winnick's tenure to $734 million. Winnick also received other expensive perks, spending hundreds of thousands of dollars for lavish redecorations of corporate offices and millions for political contributions; and he also required Global Crossing to maintain a fleet of five jets. In addition, Winnick purchased a $94 million mansion in Beverly Hills, setting the record for the highest single-family home in the United States. After it emerged from bankruptcy reorganization, Singapore Technologies Telemedia purchased a 61.5 percent stake in Global Crossing for only $250 million, eliminating $52 billion of combined stock and debt investor value, while Winnick became nearly $1 billion richer.

Global Crossing was later charged by the U.S. Securities and Exchange Commission (SEC) with accounting manipulations. The SEC investigated Global Crossing's use of swap transactions, in which telecom companies trade equal amounts of network capacity, each paying the other for offsetting capacity. The seller recorded the trade as revenue, and the buyer recorded the trade as a capital expenditure. The effect of the swap transaction was that actual cash payments were offset by the parties, but the capital expenditure was amortized over time, keeping the expenses related to the sales of bandwidth off of the income statement until future years. The accounting mechanism overinflated sales and cash flows and underreported expenses.

A class-action suit alleged that swap revenues totaled over $700 million in 1999, or one-half of the company's revenue. The 2000 and 2001 financial statements also failed to show losses of $25.7 billion. Global Crossing did not report these losses until December 2003, after it had filed for bankruptcy. The SEC investigation concluded that there was no evidence of fraud or insider trading. However, the SEC noted that the accounting treatment of the swaps was wrong, and that Global Crossing executives failed to adequately disclose the transactions, but did not do so with the intent to commit fraud. Three Global Crossing executives settled with the SEC, paying fines of $100,000. No fine was imposed on the company, and Winnick was not charged after the SEC commissioners concluded in a 3–2 vote that he should not be held liable because he was the company's chairman, not an executive officer.

Winnick was also a defendant in 70 lawsuits, ultimately resulting in a settlement with various parties, including the company and the company's lawyers and insurance firms, with Winnick paying $55 million. Winnick paid an additional $25 million to settle a lawsuit involving employees holding Global Crossing stock in their 401(k) accounts.

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See Also: Accounting Fraud; Adelphia Communications Corp.; Enron Corp.; Reform and Regulation; Securities and Exchange Commission, U.S.; WorldCom Inc.

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Global Warming

Scientific writings on global warming began in the latter part of the 19th century, notably by Swedish scientist Svante Arrhenius, who suggested that emissions from the Industrial Revolution would cause the planet to warm. Articles relating to climate change have appeared routinely in the popular press in the United States since the 1950s. In the 1980s, there was little controversy or debate as to the realities of global warming. In fact, environmental reporting in popular American newspapers, such as the *New York Times* and the *Washington Post,* peaked in the late 1980s. In 1989, more than 70 articles were written on environmental issues, mostly focused on the problems caused by climate change. By 1994, there were less than 20 articles produced by the major news outlets, according to Robert Hensen. Although fewer environmental articles were published, there was a dramatic increase in the production of articles reflecting climate-change skepticism. This created the appearance that skepticism was a legitimate or widely held belief. In fact, the opposite was true. As more scientific studies were published in peer-reviewed academic papers, reflecting vast and irrefutable evidence of climate change because of the accumulation of greenhouse gases in the atmosphere, the public was consuming mass-media reports of naysayers' claims.

The largest newspapers that engaged in this practice claimed that they were merely promoting a "balanced" view by demonstrating "all views" of the topic. This is not a plausible argument when one considers that Holocaust deniers are not provided an opportunity to equally promote their views, like those who admonish the German government for enacting genocide. Reports critical of the press were published, indicating that major newspapers failed to seriously question the cause and reasons for starting the war in Iraq or creating a bailout for the financial institutions that created the economic troubles confronted by Americans and residents of the European Union. The media do not have an established or consistent history of presenting "balanced" reporting on complicated issues that generate divergent perspectives.

Through historical analysis of the scientific data on global warming, it appears that the controversy on the topic was created by the media. The transformation from consensus to dispute on the impacts of greenhouse gas release was stimulated by the Kyoto Protocol of 1997. As scientists throughout the world had been discovering through studies of glaciers by glaciologists; alteration of climate as noted by climatologists; increases in droughts, wildfires, and hurricanes as observed by ecologists; northward drifts of forests witnessed by biologists; and increases in sea level as discerned by oceanographers, all collectively directed the scientific community to draw the same conclusion. Even Patrick Michaels, a climate warming skeptic who worked as a scientist for the George C. Marshall Institute, which received funding from oil and gas companies, claimed the following:

> Of course there's a warming trend. All you have to do is connect the dots. And I can point you to five truly independent papers in world-class journals—not the crackpot stuff you see in unreferenced Web sites—that must lead you to conclude that slightly less than half of global warming is due to carbon dioxide.

Corporate Influence

By the late 1980s, a collective called the Global Climate Coalition was created. This group comprised representatives from General Motors, Exxon-Mobil, British Petroleum, Dutch Shell, and other persons from the American National Association of Manufacturers. The coalition funded anti-Kyoto Protocol commercials, print ads, and radio advertisements. The commercials depicted Americans as the "global losers" in this "United Nations derived scheme." It promoted the notion that the hard-earned wealthy lifestyle of American citizens would be compromised by foreign and global entities. In total, more than $13 million was spent in the United States to defeat the Kyoto Protocol agreement.

The United States did not sign the Kyoto Protocol. The failings of the Kyoto Protocol since then can largely be attributed to the fact that the United States, as the world's largest polluter, not only failed to do its part but also influenced other nations such as China and Canada to not maintain standards in alignment with the protocol. Because the United States demands resources such as oil from Canada and large-scale manufacturing of low-cost products in China, environmental issues will continue to stretch beyond America's borders. Effects of the coalition and the protocol continued for more than 15 years.

In 2001, Paula Dobriansky, the under-secretary of state under President George W. Bush, sent a memo to a high-level Exxon executive, claiming that the president rebuffed the standards of the Kyoto Protocol "partly based on input from you [the Global Climate Coalition] . . . the industry voice on climate change has served its purpose by contributing to a new national approach to global warming." The fact that the president's family wealth was derived from the oil industry is never thought to be coincidental to the fact that the oil industry continues to flourish, despite a depressed economy.

To ensure that the oil, mining, and automotive industries continue to be influential in the climate-science debate, companies such as Exxon have continue to fund substantial campaigns against evidence presented by academics. Between 2000 and 2003, Exxon gave more than $8 million to more than 40 groups challenging the scientific consensus on global warming. In 2006, the Royal Society of the United Kingdom asked Exxon to stop funding skepticism. Exxon agreed two years later that it would cease to fund these groups, yet it was noted by the *Times* of London in 2009 that Exxon gave another $1.3 million to other groups that promoted rhetoric against climate change.

In the United States, Koch Industries, a large and extraordinary Kansas-based company with substantial oil holdings, gave twice as much to skeptic groups as Exxon. In addition, Koch is the most significant company to oppose clean energy. The Koch founders, two brothers, are two of the top six wealthiest persons in America, meaning that they have considerable opportunity to promote their views on climate change. The companies that promote skepticism and label clean energy policies as inadequate or expensive have also garnered the greatest profit from being the largest contributors to climate change, but the media have consistently failed to present this facet of the rhetoric speaking out against the global warming consensus. The largest media outlets do not highlight the funding sources of the skeptics, nor do they criticize the vast largesse of these companies.

In the first quarter of 2012, Exxon Mobil posted profits of $9.45 billion, which is roughly $1,300 of profit for every second of that quarter, or $104 million per day. From this abundance, Exxon paid chief executive officer (CEO) Rex Tillerson $34.9 million and provided $1,091,000 in political contributions, $992,810 of which was directed to Republicans.

Television producers rarely, if ever, require that meteorologists or weather experts generate stories relating to local weather and climactic conditions to global warming. Those in the industry fear that a meteorologist, the most qualified member of a news team to cover such a topic, might appear as an activist. However, failure to cover such topics means that a position has been taken; coverage of global warming, while well established and agreed upon in scientific circles, may be offensive to the program's sponsors. Media outlets often shirk from coverage of issues that may make their corporate sponsors appear culpable or reduce the demand for the corporate sponsors' products.

Government Complicity

Enron founder Ken Lay and Enron CEO Jeffrey Skilling, convicted of 11 counts of securities fraud, ran an international Houston-based energy company. Enron was responsible for rolling blackouts and energy crises in California between 2000 and 2001. It did so by turning off the power to hundreds of thousands of California residents in order to pretend there was a blackout.

This drove the cost of energy up by more than 10,000 percent each hour that the power was down. The scandal behind this crime is that other power companies were involved in the same scheme: San Diego Gas and Electric, Duke, Dynergy, Entergy, El Paso, and Reliant. When the federal government took the case to criminal court, the California power crisis was not allowed to be discussed in the trial, according to Greg Palast. In the end, only one company and two people were on the hook for a systemic problem of corruption by governmental consent. California Governor Arnold Schwarzenegger met with Dick Cheney; Michael Milken, who had een released from prison for his multi-billion dollar stock fraud; and Ken Lay at the Peninsula Hotel in Beverly Hills, California. This meeting was set up to negotiate the settlement between California and the energy companies. Schwarzenegger agreed to the receipt of a $47 million settlement with Enron, whereas the former governor, Gray Davis, had demanded the full amount of Enron's profit garnered through price gouging and energy delivery manipulation. This would have totaled more than $9 billion.

Lay had been one of the largest financial supporters of George W. Bush, even when Bush was governor of Texas. Their relationship was so close that when Bush became president, he asked Lay to rewrite America's environmental and energy regulations. Lay did, and Bush promoted the new policy, which was strictly voluntary, as a new way of promoting industry in the United States. It had deleterious effects on air quality and the health of American forests. Lay provided to Vice President Dick Cheney a list of three people who he thought should be on the Federal Energy Regulatory

Commission (FERC). All three were appointed. When Governor Davis, Schwarzenegger's predecessor, asked the federal government to intervene in the Enron-derived energy crisis, Cheney, along with the FERC, decided to let the "free market run itself." In the old days, the mobsters had to pay off the police; in Lay's time, he simply had them appointed.

The final overtly complicit act to ensure corruption in the energy markets occurred in 2005, when President Bush repealed the Public Utility Holding Company Act, which was originally enacted by President Franklin D. Roosevelt. This act prohibited the energy companies from price gouging by switching power off and on. Additionally, Senator Phil Gramm of Texas promoted legislation that would permit power companies to contribute to political campaigns while free of political oversight. Gramm did this while his wife, Wendy Gramm, was on the board of Enron. This combination of deregulation enabled Enron and other energy companies to run up tremendous debt, which was concealed by imaginative accounting that was done by Arthur Andersen.

This collusion of government and corporate entities, and the perpetuation of media bias by similarly related companies, allows the impacts of global warming to continue unabated. While the government works to ensure that energy companies' interests are met, and that these companies garner huge profits from the exploitation of natural resources, scientific pursuits are not taken seriously. There is too much money at stake to heed the warnings of experts.

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See Also: Carson, Rachel; Clean Air Act; Clean Water Act; Enron Corp.; Environmental Protection Agency, U.S.; Pollution, Air.

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Globalization

Globalization refers to the extension of trade, investment, migration, knowledge, and culture across national boundaries. It is marked by the expansion of social processes, once confined within nations, throughout the globe. Globalization has led to greater economic, cultural, and political integration of nations, the fragmentation of the state system, and the formation of global institutions such as the International Monetary Fund, United Nations, World Bank, and World Health Organization. These processes intensified during the latter half of the 20th century, largely as a result of technological advancements in the fields of communication and transportation, as well as the breakdown of barriers to trade.

Though globalization has brought innumerable benefits to both developed and developing nations, it also has generated new challenges, the costs of which are difficult to assess accurately. As it relates to crime, globalization has resulted in greater standardization of legal practices and the sharing of security techniques across nations, but it also has lead to the emergence of new forms of crime, especially terrorism, organized crime, and white-collar crime. Such crimes are particularly challenging to global society because they require cooperation between national forces and often involve offenses that fall beyond the purview of traditional legal definitions.

Though instances of white-collar crime, including activity across national boundaries, can be found in the historical record as far back as ancient Greece and Rome, concern over this sort of activity relative to other criminal activity remained low until the early 20th century. This concern has continued to grow with the hastening of globalization in recent years. As business relations have become increasingly complex, the opportunities to commit white-collar crime have greatly increased. The current era of globalization has ushered in new forms of white-collar criminality, unprecedented in previous eras, as well as modified versions of more traditional forms, such as fraud and market manipulation. In many ways, these newly emergent problems are the unforeseen consequences of rapid technological advancement. Communication and transportation technologies designed to facilitate the production process and enhance trade have placed greater demands on regulatory agencies responsible for monitoring and enforcing securities and exchange laws around the globe. Despite these challenges, technological advancements have also brought the promise of greater control over illegal activity within the market, as regulatory agencies find new and innovative ways of using these technologies to disseminate security techniques and coordinate efforts. Nonetheless, new challenges continue to arise that require security responses at all levels, from the local to the global.

A Brief History

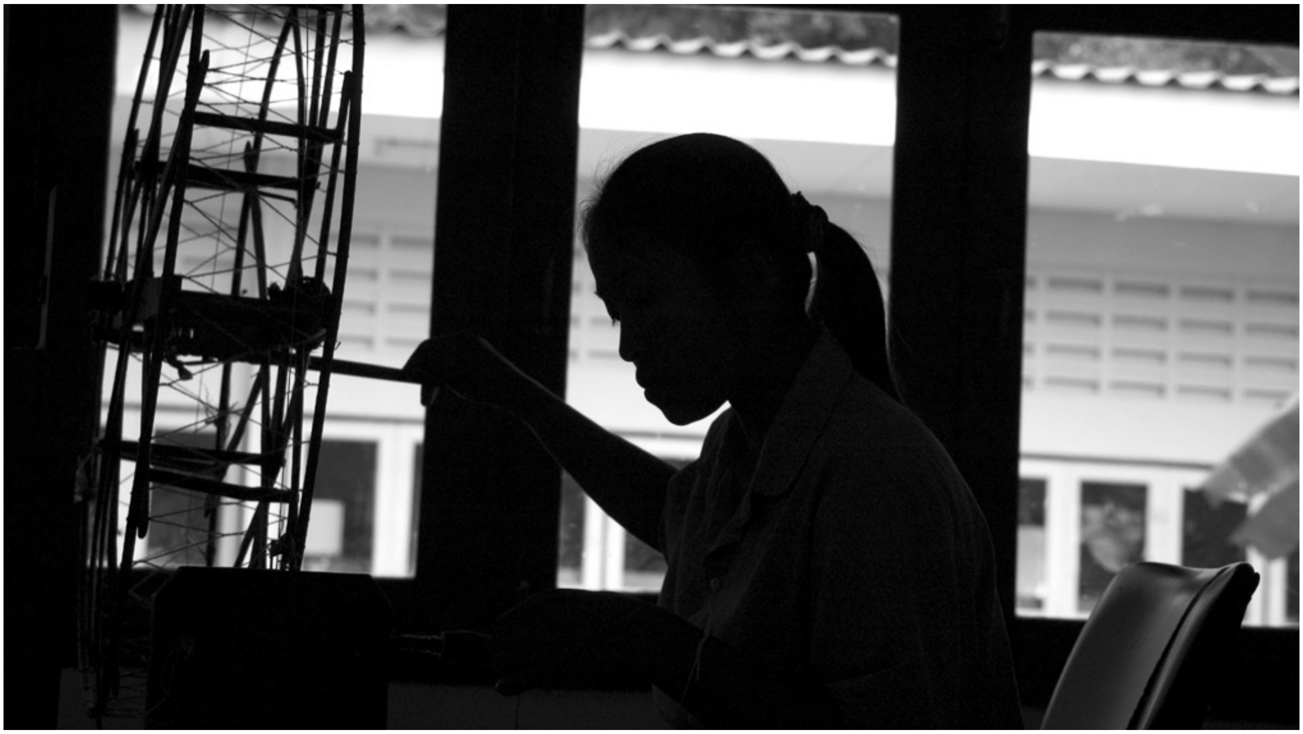
International relations intensified throughout the 19th century as the number and scope of transnational corporations expanded rapidly. Around this time, economists and other social scientists began exploring the underlying causes of the related phenomena and the impact they might have on national development, however, the term *globalization* was not coined until the early 20th century, and most discussions remained outside the mainstream of academic literature until the 1960s, when technologies began accelerating the rate at which these processes occurred. Since globalization has become a primary focus because of its impacts on nearly all aspects of life. In particular, globalization has had profound effects on human ecology, the transmission of culture, and economic conditions within and between nations. Although many of the changes brought about by globalization have led to greater economic freedom, they have also increased opportunities for crime, specifically white-collar crime.

The term *white-collar crime* was introduced in 1939 by Edwin Sutherland. He noticed how rapid expansion of business relations around this time created perverse incentives for professionals to avoid the law. Sutherland argued that this sort of crime had a greater impact on society than traditional forms of street crime and urged criminologists to shift their attention from crimes of homicide and robbery to emerging forms of white-collar crime, such as embezzlement and market manipulation.

Since then, research into the causes of white-collar crime has increased dramatically. Public and scholarly interest in white-collar crime has spiked in recent years as a result of numerous corporate scandals involving large multinational corporations, such as Enron and WorldCom. The magnitude of such offenses has led many to question issues of corporate responsibility. This can be seen in reactions to the 2010 BP oil spill in the Gulf of Mexico, a disaster with far-reaching environmental and economic impacts that many see as the result of corporate negligence. Scholars have begun to assess the relationship between these and other similar scandals to the ongoing decline in the global economy. Additionally, research continues to expose links between white-collar criminality and other forms of crime influenced by globalization, including state-sponsored violence, terrorism, human trafficking, transnational gang activity, and the international drug trade.

Forms of Global White-Collar Crime

Crime tends to follow opportunity, and white-collar crime is no different. The era of globalization has ushered in new forms of white-collar crime, such as environmental crimes, questionable business practices, and stock market manipulation, and it has expanded opportunities to commit traditional forms of white-collar crime, including fraud, tax evasion, and money laundering. In many cases, the actors, both individual and corporate, who commit these sorts of crimes are aware that their actions violate the law, and they rely on disparities in national legal codes to evade detection. However, white-collar crimes are often complex and involve unwitting victims, many of whom are members of vulnerable social groups. Through the use of advanced communication and transportation technologies, white-collar criminals are able to manipulate victims across great distances while enjoying protection of lax legal systems in other parts of the world. White-collar



This woman in her early 20s was trafficked into a denim sweatshop in Thailand, where she and other young women were locked in and made to work 20 hours a day, had to sleep on the floor, were given little to eat, and were not paid. She managed to escape to a Bangkok shelter; when the police were informed,the sweatshop was raided. Improvements in transportation have allowed developed countries to move their production to less-developed countries with lower labor costs, but many of the workers involved receive substandard pay.

crime can take the form of fraud-related crimes, corrupt business practices, environmental crimes, market manipulation, and trade in illegal goods.

Fraud-Related Crimes

Fraudulent practices, from embezzlement to Ponzi schemes, have long been a concern of those interested in preventing white-collar crime. However, in the current era of globalization, these practices have intensified and have become widespread, as white-collar criminals continue to find ingenious ways to transfer monies between national accounts and use communication technologies to reach a greater number of potential victims throughout the globe. Crimes that previously required advanced knowledge of the banking industry or insiders within networks of high-profile investors, can now be conducted by individuals with access to a personal computer and the Internet. Currencies are exchanged instantaneously, and victims are targeted via mass e-mail. Variations in legal codes also allow individuals and corporations to evade taxes more easily than ever. Coupled with this is the increased liquidation of fiscal capital resulting from the rise of the finance industry, which has provided greater opportunity for money laundering.

A notable case involved Bernard Lawrence (Bernie) Madoff. Madoff used his wealth management business to attract a portfolio of high-end investors from around the globe. He defrauded these investors out of billions of dollars by fabricating investment gains and issuing returns that were paid out of the initial capital. In 2009, Madoff admitted to running a Ponzi scheme and later pleaded guilty to 11 federal felonies. This case, one of the largest instances of financial fraud in U.S. history, demonstrates the ease with which such crimes can be committed.

Corrupt Business Practices

Though laws emerged in most advanced capitalist nations during the early 20th century to protect workers' rights and curb corporate negligence, technological improvements to transportation in recent years have created opportunities for companies to relocate production operations to less-developed countries with less-regulated labor markets. This has increased average wages in many of these countries and lowered the costs of production for many firms; however, in many instances, workers remain underpaid and are forced to work long hours, with little recourse under the local law. Scholars, journalists, and activists have uncovered numerous cases of human rights violations in which laborers have been subjected to unsafe working conditions. Such exploitation has even led to the death of some workers. Often, these cases are the result of corporate negligence, as companies avoid implementing better business practices because they are not required to, according to local law.

The clothing apparel firm Nike Inc. has been a primary target of labor rights activists because of its use of sweatshops in developing countries. Advances in transportation during the 1990s allowed Nike to move production operations overseas and thereby reduce labor costs. Lax laws in these areas led to unsafe working conditions for laborers, who were primarily women. Long hours, low wages, and cases of employee abuse in several of these factories caught the attention of activists in more-developed countries, which led to several protests and the formation of transnational advocacy groups. Such groups work to protect human rights and ensure that labor practices are held to reasonable standards. Though formal charges have never been leveled against Nike for these business practices, the company has taken several steps, including the formation of the Global Alliance for Workers and Communities, to monitor and improve working conditions in overseas factories.

Environmental Crime

An emerging form of crime, often categorized as white-collar crime, is environmental crime. Corporations have a long history of dumping wastes that result from production processes. However, throughout much of this history, the costs of externalizing this waste, often hazardous waste, were not recognized, and regulations did not exist to control waste disposal. In recent years, this has begun to change in many parts of the globe, and corporations are now held accountable. In April 2010, Deepwater Horizon, a BP oil platform located in the Gulf of Mexico, exploded, killing 11 people and injuring numerous others. This incident marks the largest offshore oil spill in U.S. history. Criminal charges involving the cover-up of relevant information began surfacing in early 2012, with further charges related to corporate negligence likely to come. Because the Deepwater Horizon platform was produced in South Korea, owned by the United Kingdom–based BP, operated off the coast of the United States, spilled into the Caribbean, and affected energy markets worldwide, this case epitomizes the relationship between globalization and white-collar crime.

Because of disparities in legal codes between nations, corporations are also able to export, and in some instances sell waste, to other, often less-developed countries. While this is true for most types of waste, it is a major issue for hazardous and electronic waste. Often, the countries receiving these wastes do not have the facilities to dispose of them safely. As a result, numerous cases have been documented forms of harmful chemicals have been introduced into the atmosphere or have leached into water systems, exposing large portions of the population to health risks. In some cases, the waste spills into neighboring countries. Additionally, less-developed nations pay high prices to buy some electronic waste that is valued for their precious metal components. Extracting precious metals from electronic waste involves the use of harsh acids that pose a direct health risk to those involved and indirect risks to others exposed to the by-products.

Market Manipulation

Advances in communication technologies have also created opportunities for investment bankers, brokers, accountants, and others involved with the sale of corporate interests and currency exchanges to inflate or deflate stock values, falsify financial statements, and engage in speculation in unprecedented ways. In some cases, these activities do not technically violate the law but instead represent risky business practices. However, in many cases, the actors involved in these sorts of dealings intend to purposefully misrepresent information in order to manipulate markets. The emergence of investor chat rooms online and the ease of constructing personal Web sites have provided new outlets for corrupt businesspeople to overstate stock values, highlight misleading data regarding volumes of trade, and generally deliver misinformation to potential investors. Individuals who utilize these tactics are able to increase their share in growing markets through devaluation, and liquidate investments in faltering markets through overvaluation, either of which can lead to enormous personal gains. Corporate practices, such as insider trading and price fixing, are also considered forms of market manipulation.

These practices enable companies and their employees to use nonpublic information to guide business decisions and adjust commodity prices in ways that harm other investors and consumers. The U.S.–based energy company Enron was a market leader during the 1990s, with businesses operations throughout the Americas and Europe. By 2001, Enron had filed for bankruptcy, and a series of questionable accounting practices were revealed shortly afterward. This led to the conviction of several of the company's top executives, including Kenneth Lay and Jeffrey Skilling. This case was influential in the development of the Sarbanes-Oxley Act, which increased the accountability of corporate executives in federal investigations.

Trade in Illegal Goods

A final category of white-collar crime involves trade in illegal goods. Though much of the illegal trade in arms, drugs, and other contraband falls under organized crime and terrorism, seemingly legitimate businesses can play key roles in these sorts of transactions. Corporations involved in the legal production of these and other commodities may allow unauthorized sales, may knowingly transport illegal goods along with their other products, or may even fund illegal operations in order to receive a share of the profit. Corporations and other producers also participate in the trade of illegal goods through the intentional sale of faulty products. Agricultural producers take advantage of disparities in the law by selling tainted products to consumers in markets with lax regulation over foodstuffs. Another example is the illegal organ trade. This involves doctors and other medical practitioners removing organs from patients to sell on the black market.

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See Also: Enron Corp.; Human Trafficking; Madoff Ponzi Scheme; Organized Crime; Pollution, Air; Pollution, Water; Terrorism.

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Goldman Sachs Group Inc.

Goldman Sachs Group Inc.—headquartered in New York's financial district but with several international locations—holds a reputation as a leading global investment banking, securities, and investment management firm. Founded in 1869 by Marcus Goldman and Samuel Sachs, the firm has influence throughout the world, as indicated by having had two secretaries to the U.S. Treasury in the last two decades and the prime minister of Italy among its former employees. After both the Securities and Exchange Commission (SEC) and the U.S. Department of Justice (DOJ) dropped recent cases against Goldman Sachs, the firm was able to keep this worldwide reputation, albeit tarnished.

Senate Investigation

After the U.S. Congress passed the American Recovery and Reinvestment Act of 2009 and the financial crisis ostensibly ended, the troubles did not end for Goldman Sachs. The U.S. Senate's Permanent Subcommittee on Investigations, chaired by Senator Carl Levin (D-Michigan), identified wrongdoings and failure on the part of Goldman Sachs. The committee accused the firm of breeding a "greedy culture," but that is not a criminal act. What the committee specifically charged Goldman Sachs with doing was creating complex securities that included "junk" from its inventories. According to the committee, the company then misled investors by making them believe that Goldman Sachs's interests were aligned with its investors' interests, while betting heavily against those same securities and its customers, at a considerable profit.

Further, Levin charged the chief executive officer of Goldman Sachs, Lloyd Blankfein, with lying to Congress about the firm betting against the housing market. This added a possible perjury charge. On April 13, 2011, all of these accusations were included in a 635-page report released by Senator Levin and Senator Tom Coburn (R-Oklahoma), the ranking Republican on the bipartisan committee. These accusations compelled the DOJ to investigate the matter.

At the same time, Goldman Sachs was fending off another investigation—the SEC accused Goldman Sachs of fraud related to a mortgage-bond deal called ABACUS 2007-AC1. The SEC alleged that Goldman Sachs and one of its vice presidents, Fabrice Tourre, failed to inform investors that a hedge fund firm, Paulson & Company, had helped choose underlying securities in this deal and was betting against it. The claim against Tourre states that he was principally responsible by structuring the transaction, preparing the marketing materials, and communicating directly with investors. Investors in the liabilities of ABACUS lost over $1 billion.

The SEC sought injunctive relief, disgorgement of profits, prejudgment interest, and financial penalties. Goldman Sachs agreed to pay $550 million to end the SEC's fraud suit, contending that marketing materials for the ABACUS deal contained "incomplete information." The settlement included the largest penalty ever assessed by the SEC.

Dropping the Case

On August 9, 2012, the DOJ announced that it would not pursue prosecution of Goldman Sachs or any of its employees for any nefarious activities during the global financial crisis. Although the subcommittee's report strongly suggested that there may have been criminal wrongdoing, after a year's investigation, the "burden of proof" could not be met by the DOJ. Senator Levin reacted strongly to the DOJ's news, commenting that the results stemmed from either weak laws or weak enforcement. The DOJ also announced the right to reopen the case if new evidence is uncovered.

On the same day, Goldman Sachs was informed by the SEC that it had resolved its case against the bank, and would not be seeking any "enforcement action," although it pursued a civil case against Tourre. Tourre, who was a 31-year-old vice president when the investigation began, previously nicknamed himself "The Fabulous Fab." While awaiting his civil trial, Tourre had plans to work for a nonprofit organization in Rwanda and to begin a Ph.D. program in economics at the University of Chicago.

Bayou Blues

Goldman Sachs was cleared in the last round of investigations, but another somewhat muddy situation lay ahead, involving a hedge fund called the Bayou Group. The fund was founded by Samuel Israel III and was considered to be run by a "trading whiz." When it was discovered that Israel was a con man who tried to fake his own death, it was also discovered that Israel had been running a Ponzi scheme. He was sentenced to more than 20 years in prison, leaving it up to bankruptcy courts to decide the fates of the Bayou Group's investors. Goldman Sachs had both executed and cleared trades for the Bayou Group, so on July 30, 2012, the firm paid $20.7 million to approximately 200 Bayou investors. A securities arbitration panel awarded that amount, and it appeared to be a "win" for the Bayou Group's investors, but Goldman turned around and filed a creditor's claim for the same amount. The bank contended that by paying the award, it then became a Bayou Group creditor. The group's investors planned to fight Goldman's claim, but if Goldman Sachs wins the case, the investors who won their arbitration case will be out of luck. A spokesperson for Goldman Sachs told the *New York Times* that the bank's claim was consistent with bankruptcy law.

Dragon Slayers

Yet another legal battle await Goldman Sachs. A husband-and-wife team with Ph.D.s, Janet and James Baker, are credited with being pioneers in speech technology. They began their business—Dragon Systems—in the 1980s and grew it without incurring any start-up debt. In 1999, offers for their then–multimillion dollar business came pouring in, and the Bakers turned to Goldman Sachs for financial advice. Four employees of Goldman Sachs, now known as the Goldman Four, were assigned to the Dragon account and issued a memo that all due diligence would be executed regarding Dragon's deal with L&H, a Belgian company.

At some point in the negotiation period, L&H offered to change the original offer to the Bakers from half cash/half stock to all stock. The Goldman Four did not dissuade the Bakers from accepting this offer. After the deal went through, it was learned that L&H was fraudulent and that none of their alleged Asian investors actually existed. The Bakers had already paid Goldman Sachs $5 million for its advice, and instead of receiving $580 million, they received nothing. They sought redress of over $1 billion.

Even with legal action coming at Goldman Sachs from every direction, Martin Sosnoff, chairman of Atalanta Sosnoff Capital, says that underneath it all, Goldman Sachs boasts a team of overachievers. The bank has been able to outperform or defeat most of its opponents. Whether or not it can continue to overachieve and polish its tarnished reputation will be revealed over time, but so far, the more damaging taint of criminal wrongdoing has been successfully avoided.

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See Also: Bank Fraud; Investment Trust Fraud; Ponzi Schemes; Stock and Securities Fraud.

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Government Contract Fraud

Government contract fraud is often in the news; the phenomenon is a source of skepticism for citizens and regards government activities at all levels, from local jurisdictions to national and international agencies. Some contract fraud stems from the diverse activities of government; Medicare and Medicaid, national defense, education, transportation, and public safety serve so many different contexts that the resultant government contracts are by nature wide ranging and complex. Part of the contract problem comes from the sheer magnitude of annual spending by government. For example, U.S. federal spending was $3.7 trillion in 2011. It involves many players and requires processes that invite some percentage of fraudulent activities. Recent pressures on the growing national debt have reinforced the unacceptable nature of fraud involving taxpayer dollars, and federal legislation aimed at transparency heightens initiatives to curtail contract fraud in attempts to restore public confidence in uses of taxpayer money.

Government contracting involves extensive procedures to ensure appropriate treatment at various stages: prior to awarding the contracts, during contract negotiations and award determination, and during performance of contracted activities. Detailed procedures and controls in the administration of contracts throughout these stages are necessary to ensure that fair and legitimate behavior ensues. For the federal government, the Federal Acquisition Regulation (FAR) was established to codify uniform policies for acquisition of supplies and services by executive agencies.

Four guiding principles of the FAR system are stated in Subpart 1.102: the first relates to issues of cost, quality, and timeliness of delivery of a product or service; the second is to minimize administrative costs; the third relates to fairness, integrity, and openness of activities; and the fourth relates to fulfilling the public policy objective. A part of the guiding principles is the specification of all individuals acting in part of the procurement process as part of an "acquisition team." Thus, the principles that stipulate exercising "initiative and sound business judgment" regarding the best product to meet needs extend not only to employees of the federal government but also to customers and contractors.

The guiding principles are lofty, given the vast spending that serves as a magnet to potential fraudsters; thus, programs and guidelines are put in place appropriate to the varied circumstances. For example, the Department of Defense (DOD) in a time of war may require flexibility and responsiveness. Consequently, Directive 5000.01 was passed in 2003, and amended in 2007; this directive tailored the principles of FAR to the Defense Acquisition Systems. Matters addressed included levels of authority related to milestones, policies pertaining to information security, use of small businesses, and interoperability of systems.

Types of Generic Government Contract Fraud

In the stage of presolicitation of contracts, the primary issue revolves around need, or what a governmental entity is in the market to buy. A common element of fraud entails collusion related to potential kickback schemes; for kickbacks to occur, an amount of collusion is typical between the buying agency and the contractor. Because much government work is subject to bidding, in this initial phase of contracting, the collusion might work to allow developing specifications for purposely vague language or language that favors one contractor over another. This was one of the elements that originally alerted whistleblower Bunny Greenhouse of potential issues when Kellogg Brown and Root (KBR), a subsidiary of Halliburton, was allowed to remain present during a Pentagon meeting where oil field contracts were discussed just prior to the Iraq War; the presence of the contractor representatives during these discussions gave the company unfair advantage.

Other kinds of collusion at this stage involve hidden or vague agreements that allow the contractor to increase prices, once awarded. An example invovled Darleen Druyon, an Air Force procurement official, who was found guilty of corruption and served prison time. Druyon admitted exercising favoritism with Boeing contracts, partly because of clouded judgment related to the fact that Boeing had hired her daughter and future son-in-law. After Druyon's admission of guilt, there was substantial review of hundreds of contracts that had been awarded to multiple vendors during her nine-year tenure. This fraud perpetration was possible in part because of Druyon's personality; she was very strong and was allowed to operate with virtually unchecked supervision. For example, the *Washington Post* reported that "Air Force officials coined the term 'DSS: Darleen Says So' as a short response to dismiss questions about Druyon's decisions." This situation caused the department to reconsider aspects of its acquisition policies.

Some changes to contracts are a normal part of industry operations. Change orders to construction contracts are a common example, but all contract modification should take place with scrutiny. An annual audit of change orders is a customary practice to ensure that both contractors and agency personnel maintain accuracy and integrity in the stage that is subsequent to a contract award. A change order audit might allow an agency to recover funds from inadvertent errors on the part of agency employees in accounting, the project manager, or the contractor. Change orders may be overstated in the contractor's favor, may not be calculated correctly, or may not use correct or allowable percentages. Some change orders merit close inspection because of materials involving health or safety hazards or to ensure continued compliance of contractors in accordance with prequalification guidelines.

For example, subsequent work may not allowed beyond the scope of authorized duties; plumbers might be doing electrical work in the form of change orders. Knowing that auditors will subsequently verify random samples of change orders serves to keep employees on both sides (buyers and suppliers) more diligent in their paperwork and documentation. In the negotiation and contract award phase, fraud schemes involving collusion may ensue that are related to bid submission. For example, schemes making use of insiders from the buyer's sides involving opening bids prematurely, altering bids, extending the bid opening date, or falsifying bid logs or documentation. An important internal control is opening construction bids in a public area, with recorded audio and written documentation in the form of minutes or transcripting of the bid opening meeting maintained for ongoing public view. Many cities, counties, and state agencies utilize this kind of transparent forum; attendees include interested parties who want to find out immediately who bid on the contract and the terms of the bids.

Other bidding schemes in the contract award phase include bid rotation, in which qualified prospective vendors take turns at submitting the low bid. Another scheme is bid suppression, in which competitors agree to refrain from bidding, or to withdraw a previously submitted bid. In complementary bidding schemes, contractors submit bids known to be too high to be accepted, or to include special terms that would not be considered. Complementary bidding schemes give an appearance of genuine bidding; such schemes are referred to as protective, courtesy, or shadow bidding. A final bidding fraud scheme, called phantom bidding, involves creating fake or dummy companies. This scheme is common in auctions, for example, in real estate or items listed on eBay, to drive up prices for the sellers (the contractors). Phantom bidding, when utilized in government, allows the appearance of competitive forces, since governments often require that a minimum number of bids be received. In reality, where phantom bidding is under way, the fake companies are really just driving up the bid for a sole company. A deterrent to this is prequalification of companies or contractors; something as simple as requiring that the companies submit audited financial statements for recent years does much to preclude phantom bidding.

Another type of contract award scheme entails defective pricing, with inaccurate cost data included in the proposal to increase the price. This may include inflated labor or material costs and might be perpetrated through not disclosing vendor discounts or using vendors other than those the bid had documented using. Pricing schemes may be detected if vendors refuse to provide historical records or are slow to update data after price reductions have occurred.

After a contract is awarded, opportunities for fraud continue. Product substitution involves the use of inferior or reworked material. Related to this is falsifying reports on testing of materials. Detecting this kind of fraudulent activity might involve the purchasing agent doing unannounced inspections or tests for the company, or reviewing files or inspection reports carefully. Mischarges are another way to defraud during contract fulfillment, involving charges for accounting, materials, or labor services. One case example involved this type of scheme for a vendor who held a freight contract with a state liquor control commission. In this case, the perpetrator developed a relationship with the commission's accounts payable supervisor, who unwittingly helped contribute to the fraud after she left that unit. When helping someone in her prior unit, she accidentally discovered that delivery weights were consistently overstated. She confronted the perpetrator but she did not report him for six months. Their relationship deteriorated, and the perpetrator became increasingly unstable, causing her to fear for her safety at the time that she came forward.

Improving Transparency

One recommended control is to have watch lists and debarment policies, which serve notice to managers that potential contractors are not trustworthy. Since 1981, the Project on Government Oversight (POGO) has been tracking federal waste; it was originally initiated because of excessive defense industry spending. Presently, an online database reporting U.S. contractors associated with fraud, contractormisconduct.org, is maintained by POGO. The World Bank maintains a list of individuals and contractors who are not eligible to obtain a World Bank–financed loan for a specified period. The entities on the list are sanctioned according to corruption policies set forth in the bank's procurement policies. The federal government has a System for Award Management at sam.gov. In addition, many states presently have debarment lists related to different functions where contracts should be avoided with entities for a specified period of time. Examples include construction companies, medical practices, or professionals such as dentists or certified public accountants (CPAs).

The Federal Funding Accountability and Transparency Act of 2006 mandated that the Office of Management and Budget (OMB) provide, at no charge to the public, a single, searchable database with extensive detailed information pertaining to federal awards. The Web site, USAspending.gov, was launched in December 2007.

In 2009, President Barack Obama issued Executive Order 13520, Reducing Improper Payments and Eliminating Waste in Federal Programs. This was to expand and improve on earlier endeavors such as the Improper Payments Information Act of 2002 by providing guidelines for improved transparency. The OMB was charged with identifying the federal programs with the highest amounts of improper payments, as well as with prioritizing and setting targets for reducing this waste. The secretary of the Treasury, attorney general, and OMB were to jointly publish information about improper payments. These data are tracked from multiple databases and includes payments that may not be required on the www.USAspending.gov Web site. For example, payments are tracked for spending on Medicare, Medicaid, school lunches, Pell Grants, unemployment insurance, improper tax payments, or earned income credits at the Web site www.paymentaccuracy.gov.

The Improper Payments Elimination and Recovery Act of 2010 (IPERA) amended the Improper Payments Information Act of 2002. IPERA charged agency heads with reviewing programs susceptible to improper payments, performing risk assessments at specific intervals, and estimating improper payment amounts according to a statistically valid estimation tool using approved methodology. Risk factors were identified (new agencies, complexity, and volume of payments) by IPERA. Recovery plan efforts for improper payments were prescribed, including setting targets. Eventual agency reduction targets, by program and agency, are to be approved by the OMB. The OMB was charged with developing pilot accountability mechanisms to ensure that improper payment situations improved. Pursuant to an April 2012 memorandum from the OMB, agencies were charged with finalizing plans with the OMB to implement centralized solutions (e.g., a Do Not Pay List). This will assist in curtailing the high amounts of improper payments; estimates indicated that fiscal year 2010 had nearly $125 billion of such payments.

Government Contract Fraud Efforts

The U.S. Department of Justice (DOJ) continues to vigorously prosecute cases that come to its attention related to government contract fraud. These cases often take years and often involve multiple contractors. For example, in 2007, IBM and PricewaterhouseCoopers (PwC) settled for a combined $5.3 million for allegations of improper payments on technology contracts with federal agencies; the suits originally were filed in 2004, involving other computer vendors that claimed kickbacks or other activities. Both IBM and PwC settled and claimed no wrongdoing; payments from other technology vendors yielded high amounts to the DOJ in subsequent years. Fiscal year 2009 was a record year for DOJ recoveries of false claims, the second-largest amount for a single year in its history; recoveries that year came primarily from businesses in the health care and defense industries.

Since 2009, recoveries have not been publicized as much by the DOJ. A recent DOJ report discussed the fact that improper payments were less than in the past; the report attributed this to recent initiatives made by all departments to prevent such payments in the first place. A useful perspective on internal controls is to look at controls from the preventive, detective, and corrective vantage points. Perhaps in the United States, the situation of government contract fraud reached a level that, combined with the burgeoning public debt, made for awareness of issues, so that all vantage points of internal controls are now covered. A combination of factors may yield changes to eventually reverse the trend: increased education in combating fraud schemes, preventive mechanisms of increased disclosure of perpetrators through publicized watch lists, incremental attempts at improved legislation to demand department accountability, and expectations of punishment in the form of continued and consistent prosecution. Time will tell if these factors will lead to less government contract fraud.

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See Also: Accounting Fraud; Contractor Fraud; Defense Industry Fraud; Government Procurement Fraud; Kickbacks; Whistleblowers.

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Government Procurement Fraud

Government procurement fraud is a vast and costly problem worldwide. Procurement policy, sometimes called public contracting, involves multiple steps in a cycle. The cycle begins with an assessment of needs; includes documentation to ensure adherence to regulations pertaining to the solicitation, award, and monitoring phases of contracts; and concludes with final accounting mechanisms. Both competitive and noncompetitive processes exist in public procurement. Opportunities exist in processes throughout the cycle for corruption and collusion to result. A call for transparency of procurement processes has ensued recently. Secrecy is in the very nature of collusion; thus, procurement fraud can be hard to detect. Because of increased economic pressures, along with public outcry as whistleblowers continue to emerge with tales of taxpayer waste, many initiatives have been put in place to heighten awareness of ethical expectations and to serve as preventive, detective, and corrective controls regarding to the varied issues.

Public procurement processes typically use three acquisition methods, any of which can be handled in a fraudulent manner. Competitive bidding allows for competitive and fair forces, as long as there is no collusion between players; collusion and secrecy often abound in the bidding process. The competitive proposal or negotiation method allows more flexible bidding arrangements. This method is used when government knows what it wants but does not have the knowledge of costs or expertise to develop specifications. In this case, the vendors are more involved in the development of the proposals, and this enables them to lure the government into paying higher prices. The third method, sole source, is justified in situations of select personal services or the importance of a particular brand, compatibility concerns, proprietary purchases, matters of compelling urgency, or national security issues. Sole sourcing tends to shift power to the contractors, with the contracting officers charged with responsibilities under the oversight of Congress or other authorities. In sole sourcing, the contracting officers report accordingly to the higher authorities.

According to the Organisation for Economic Co-operation and Development (OECD), within OECD countries, public procurement amounts to 15 percent of gross domestic product (GDP); in most developing countries, the proportion is substantially higher. Transparency International has estimated average damage amounts between 10 and 25 percent of a contract's value (in some cases as much as 50 percent) because of corruption; its 2010 report further highlights costs in lost lives, citing how flawed construction contracts have been associated with high death tolls in devastating earthquakes in multiple countries. Government procurement fraud is pervasive because of the incentives for collusion and corruption. One may take the perspective of an economic approach of self-interest or a more pervasive organizational behavior approach, which finds that corrupt actions can become institutionalized in role identities.

Four aspects of the public procurement process were noted in the Executive Summary of the 2010 OECD Global Roundtable that cause public procurement processes to be especially vulnerable to corruption. First, projects with large budgets invite opportunity. Second, the resultant volume of goods and services make monitoring difficult, which increases the likelihood of malfeasance. Third, the industry sectors of construction and medical-related goods and services are prone to anticompetitive or corrupt practices, and bulk procurement relates to these sectors. Finally, regulatory requirements for procedures result in predictability, which affords opportunity for collusion.

In the fiscal year ending September 30, 2009, the United States secured the second-largest recovery of civil fraud claims in history: $2.4 billion in settlements and judgments in cases involving fraud against the government. Procurement fraud constituted one-fourth of that total at $608.4 million in settlements and judgments, including $422 million attributable to Department of Defense (DOD) contracts.

Efforts to Make a Difference

Attempting to make a difference at the global level is the OECD, which continues research into public procurement fraud in many locations. One tool is the OECD Guidelines for Fighting Bid Rigging in Public Procurement. Proactive efforts taken as part of the ongoing campaign begun a year earlier are illustrated in the second Myth Busting Memo, sent by the Office of Federal Procurement on May 7, 2012. The memo aims at eliminating eight misconceptions of vendors and federal procurement employees. One initiative, launched in December 2007, is the Web site www.USAspending.gov. Another initiative is the Vendor Collaboration Central Event Listing at www.fbo.gov, the FedBizOpps (Federal Business Opportunities) homepage.

There are many recommended controls, such as employee background checks of individuals with authority levels to hire or authorize other contractors. Mandatory vacations and job rotation serves to help potentially catch employees who are violating procurement policies, as well as serving as a deterrent to those in positions; thus, both of these are preventive and detective controls. In addition to the internal employment policies in governments, extending caution to the external environment as a form of preventive control is advised.

Examples of improvements in the U.S. government relate to the National Fraud Procurement Tax Force; this group issued a white paper in 2008 that looked at, and proposed legislative efforts and other suggestions to provide clarity in, addressing procurement fraud. For example, a national fraud database (including data from states pertaining to contractor, fraudulent actions) was one preventive control recommendation presented, as was increased use of background investigations. Both of these actions have come to fruition in the interim as debarment lists, with preapproved and consistently maintained and updated watch lists and debarment policies put in place.

A debarment list is a prohibition against using a particular contractor or vendor, and this list serves notice to managers that potential contractors are not trustworthy. One database reporting on U.S. contractors associated with fraud, contractormisconduct.org, is maintained by a private watchdog group, Project on Government Oversight. In addition, the government maintains the Excluded Party List. Also in the interim, under President Barack Obama, the Office of Management and Budget was charged with pilot accountability mechanisms to ensure that improper payment situations improved. The paymentaccuracy.gov Web site is operating with public access, and a Do Not Pay list was under development as of 2012.

Ethics policies and clear messages about expectations pertaining to whistleblowing (on the part of contractors) were included in the National Fraud Procurement Tax Force white paper. However, it takes time for a change in organizational culture to move in this direction, and it is likely that not all recommendations of the tax force were implemented. Typically, whistleblowers at the federal level have faced retaliation.

A Whistleblower’s Poor Treatment

An example of retaliation for speaking up about government procurement fraud is the story of Bunnatine “Bunny” Greenhouse, who was a civilian procurement executive with the Army Corps of Engineers. Greenhouse reported to Congress that this was “the most blatant and improper contract abuse I have witnessed during the course of my professional career.” After her reports, she was demoted from her position.

The facts of the Greenhouse case began with her initial realization of impropriety when Kellogg Brown and Root (KBR), a subsidiary of Halliburton, was allowed to remain in a Pentagon meeting three weeks prior to the Iraq invasion. This meant that KBR was privy to knowledge that other contractors were not. The Restore Oil Contract (RIO) was drafted, and stated that required knowledge of the KBR plan be a condition for follow-on contracts; this meant that KBR would be the only one that would be able to engage in follow-on contracts. Normally, companies involved with contingency plans are excluded from follow-on work.

In addition, the fact that this sole source no-bid plan was going to be for a period of five years was disturbing to her. With war eminent and her options limited at the time, Greenhouse inserted a handwritten note on the Justification and Approval form that stated that the time beyond a one-year contract was detrimental. Later, the document surfaced when the Defense Contract Audit Agency indicated that KBR overcharged $61 million for fuel. Pursuant to a Freedom of Information Act request, *Time* magazine requested permission to interview Greenhouse, which created more tension, and brought the matter to greater public awareness. The outcome of this case resulted in a settlement of $970,000 with Greenhouse in 2011.

Lessons Learned and Proactive Actions

A lesson was learned from Darleen Druyon, who was known as the Dragon Lady because she had a reputation as one of the toughest managers working for the Pentagon; she was prosecuted because of the favoritism she awarded to select contractors in the defense industry. When red flags arise from someone with an especially strong personality, monitors and investigators should be paying attention. In this case, the acronym DSS, which stood for "Darleen Says So," should have been a cue, if anyone had been monitoring the processes under her tight fist of control.

Another red flag has to do with one of the legs of the fraud triangle; specifically, the risk factor known as pressure or incentives. In the Druyon case, the incentives or pressure stemmed from the employment by the contractor of both her daughter and her son-in-law with Boeing. Quality-control practices within certified public accounting (CPA) firms should ensure that audit staff are independent, realizing that sometimes the relationship may go beyond the immediate employee to family members. Many CPA firms maintain some kind of record of where immediately family members are employed, as well as the companies in which their employees own stock, so that audit engagements can be accepted where employees will not be accused of crossing the line of independence or objectivity. The "appearance of independence" is emphasized in the Code of Conduct of the American Institute of Certified Public Accountants, not just "independence in fact." Nepotism and potential family member conflicts of interest should be closely monitored, as well as any other circumstances that may impair objectivity or result in bias in decision making. These come under the category of preventive controls.

Anonymous hotlines to report suspicious activities are highly recommended, as the ACFE 2012 report of occupational fraud indicates that fully 43 percent of occupational fraud is initially detected because of tips. A total of 51 percent of the companies where fraud was detected had some form of hotline, while only 35 percent of the companies without a hotline received tips. Companies without a fraud hotline reported discovering fraud "by accident" (greater than 11 percent), more often than did companies with a hotline (less than 3 percent). Often, many individuals are aware of schemes; some of them may not be employees but may hear about the schemes through friends or family. Tip hotlines and increased emphasis on ethical behavior serve as preventive, detective, and corrective internal controls.

The Sarbanes-Oxley Act of 2002 (SOX) increased attention to the importance of internal controls for public companies, with provision of mandatory disclosures that were certified by chief executive officers and chief financial officers. SOX also installed penalties for those who certified disclosures if fraudulent activities were uncovered. Section 406 of SOX required that publicly held companies report as to the existence of codes of conduct; although SOX did not mandate that ethics codes be put in place, if corporations did not do so, they had to indicate the reason. Certifications and ethics codes promote awareness, which in turn should serve as preventive controls in the procurement process.

In 2010, the Dodd-Frank Act greatly expanded whistleblower remedies for those who provide to the Securities and Exchange Commission (SEC) information of sufficient quality that results in ordering sanctions greater than $1 million. Whistleblowers can obtain 10 to 30 percent of the remedies, and the act also prohibits retaliation against whistleblowers. The United States is putting "teeth" into the law to send a message about fraud. With the incentive of rewards, perhaps this action may serve to deter public procurement fraud domestically; whether it actually will make a difference remains to be seen, because enacting legislation and implementing it are not the same thing.

The continued research by global players (ACFE, big-four CPA firms, OECD, Transparency International) serves to build knowledge in the area of public procurement fraud, in terms of both its pervasiveness and the best practices to combat it. A silver lining from the economic downturn in 2008 is public outrage, which has meant that more people are interested in the subject. Supplement the increased interest with the existence of quality resources and statistics via the Internet, and the result may be a slowdown in the trend of increased government procurement fraud.

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See Also: Accounting Fraud; Dodd-Frank Wall Street Reform and Consumer Protection Act; Government Contract Fraud; Kickbacks; Whistleblowers.

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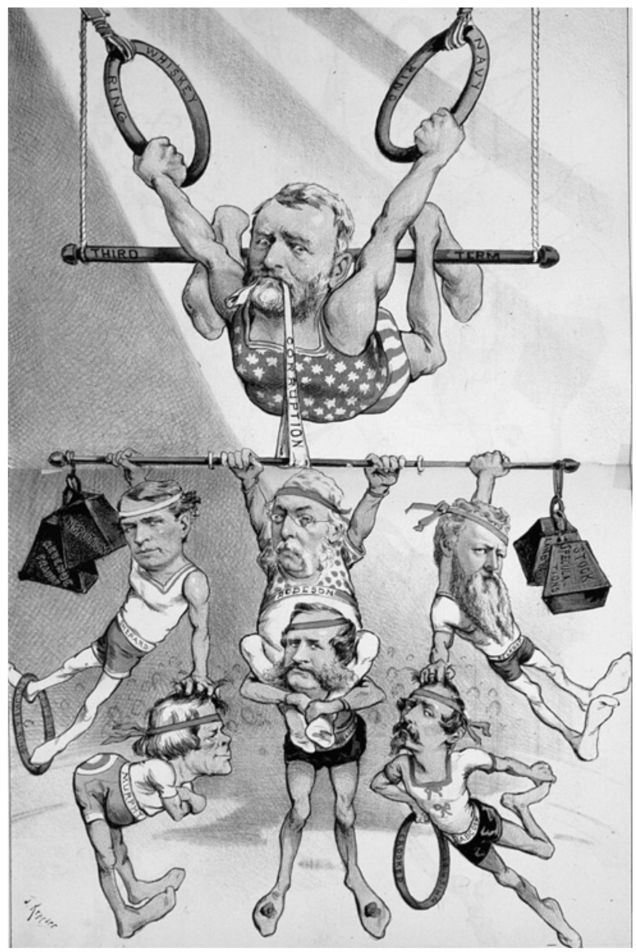
Grant, Ulysses S.

Hiram Ulysses (later changed to Ulysses Simpson) Grant was born in Point Pleasant, Ohio, in 1822. He attended West Point, and after service in the Mexican War, he tried his hand at farming and in several unsuccessful businesses, eventually working for his father. While serving in the army earlier on the frontier, perhaps lonely for his wife and family, he lapsed into problem drinking, for which he was labeled an alcoholic for the rest of his life.

When the Civil War broke out, he was given command of an Illinois state unit of troops and was later given a commission in the regular army. Achieving early successes along the Mississippi River in the western theater of operations, Grant arrived in the nick of time to save the Union army from destruction at the battle of Shiloh in 1862. From that pivotal battle, he returned to the Mississippi to complete the siege of Vicksburg in July 1863. When still in Tennessee, he issued General Order 11, which expelled all Jews from his area of operation. This was aimed at profiteers but also banished resident Jewish families. President Abraham Lincoln quickly ordered him to countermand this edict, and finally made Grant responsible for reducing the Confederate army of northern Virginia. In a series of brutal battles fought in 1864 and 1865, ranging through eastern and central Virginia, Grant's force wore down the Confederate army while the Union army sustained massive casualties. On April 9, 1865, the army of northern Virginia surrendered at Appomattox, Virginia.



The various fraud and bribery scandals of Ulysses S. Grant are represented in this February 4, 1880, issue of Puck *by the "whiskey ring" and "Navy ring" he grips and the "corruption" strap in his teeth, which holds up the other "acrobats" involved.*

Grant showed great magnanimity and statesmanship in granting certain liberal conditions to officers of the defeated army. Chaos was to follow.

Lincoln was assassinated within days, and a period of conflict ensued. President Andrew Johnson, a "war Democrat," tried to restore the south to conditions that it enjoyed before the war, excepting slavery. A fracas with Radical Republicans in Congress followed. Johnson was impeached but not convicted by Congress, and he did not prevail when he ran against Grant for president in 1868. Many hoped that when Grant became president in 1869, he would work to heal the wounds of the country and end the turmoil that dogged Reconstruction. However, rampant political corruption and nepotism, labeled "Grantism," dogged his administration. Some historians have argued that Grant was incorruptible and that he was untouched by the corruption that surrounded him. He was commander in chief, and as president, he quipped, "the buck stops here" (at the president's office). Liberal Republicans were aghast at the pervasive corruption in his administration and at his poor control of Reconstruction policies; as president, Grant essentially arrogated unto Congress all Reconstruction policy. The harshness and inconsistency of the resulting policy proved disastrous for the nation.

Scandals of "Grantism"

Grant's administration was unfairly saddled with the consequences of the Credit Mobilier scandal. Republican politicians received $20 million of public money funneled through Credit Mobilier for the benefit of the Union Pacific Railroad. When the enormity of this came to light, Grant's vice president, Schuyler Colfax, was implicated, as was the vice president in Grant's second term, Henry Wilson.

Grant was more closely touched by the Whiskey Ring scandal, in which his personal secretary, Orville Babcock, was implicated. This scheme also involved Grant's brother, Orvil, and his son, Frederick Dent Grant. Grant had been persuaded to sign several orders facilitating the scam—unwittingly, he claimed. The fraud consisted of various distillers of spirituous liquors defrauding the federal government of tax revenue. Bribes were paid to federal revenue officials in lieu of much higher taxes. Much of this illegal revenue went to support Republican candidates, and some was used to encourage editors to take positions favoring the Grant administration's policies. As the scheme matured, more money ended up in the pockets of revenue agents than went to the party.

Though the operation was centered in St. Louis, scams also were noted in many other major cities in which Republicans dominated federal elective and appointed offices. As an investigation by Secretary of the Treasury Benjamin Bristow uncovered the involvement of 86 Republican officials, Grant became obstructive, insisting, for example, that his secretary should be tried by a military court. Grant, while presenting a façade of cooperation with the investigation, eventually fired the special prosecutor and tried to block the prosecution of the case in various other ways. During the trial, it was discovered that Grant had accepted expensive gifts from major players in the Whiskey Ring.

Other scandals involved Secretary of War William Belknap, who took kickbacks from dishonest vendors. The secretaries of the navy and interior also took bribes, as did the secretary of state. Not to be outdone, the secretary of the Treasury, the attorney general, and the ministers to Great Britain and Brazil were also involved in inappropriate financial dealings.

Rampant Corruption

Even if Grant was burdened with corrupt family and friends, but was essentially blameless, his actions with respect to the endemic corruption that characterized his administration remain troubling. He continued appointing and reappointing to various federal offices people known to be corrupt or unqualified, obstructed investigations, refused to answer questions in depositions, and fired prosecutors who pursued evidence too enthusiastically for his taste. Moreover, the organization outlined in Whiskey Ring player John McDonald's self-serving and sensationalistic account painstakingly describes an organized criminal political enterprise—headed by the president. That no direct legal culpability adhered to Grant in court reflects the fact that subordinates, as in any criminal hierarchy, took the rap for the boss, several even spending terms in prison. Some were eventually pardoned by Grant, a circumstance that raises questions about his possible level of involvement. Even more ominous was the involvement of his son, brother, and brothers-in-law in a series of inappropriate investment schemes. Grant was not immune to bad investments, and after retirement he lost everything in yet another get-rich-quick scam in which he served as an unwitting dupe. However, Mark Twain encouraged him to write his celebrated *Memoirs,* and their posthumous publication saved his family from penury after his death in 1885. At best, Grant was a very poor judge of personnel and was a poor leader in civilian life; at worst, he was at least peripherally involved in a criminal enterprise. His administration is recognized as the most corrupt in American history.

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See Also: Bribery; Corruption; Kickbacks; Public Corruption; War Crimes.

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Grassy Narrows First Nations Reserve

Grassy Narrows is a First Nations (Native American) reserve in Ontario, Canada. It is the home of the indigenous Ojiba tribe, Asubpeeschoseewagong. Between 1962 and 1970, Dryden Chemicals Inc., operating a paper mill, dumped more than 20,000 pounds of mercury into the Wabigoon River, Ontario, Canada. On April 6, 1970, the Canadian government shut down the fishery located on the Wabigoon and banned any future commercial fishing from the waters that ran through Grassy Narrows land. Commercial fishing was the primary source of income for the local population. The closure of the fisheries increased the unemployment rate from 5 to 95 percent. Additionally, wildlife in the area started to shows signs of distress. Eagles in the region began flying atypically. Otters and minks were no longer observed in the area, and ducks and their offspring were noted to have high levels of mercury in their systems. Furthermore, cats that fed or drank from the river had symptoms of Minamata disease. Minamata disease is a neurological disease characterized by ataxia (inability to coordinate muscular movement), narrowing of vision, diminished hearing, and generalized muscular weakness. The cause of Minamata disease is mercury poisoning.

Health Impact Study

Less than one-fiftieth of a teaspoon of mercury per 20 acres of lake is enough to make fish unfit for human consumption. When people eat fish contaminated with mercury, the mercury is absorbed into the bloodstream and then negatively impacts the central nervous system. In 1975, Dr. Masazumi Harada, a mercury and Minamata disease expert, conducted a health impact study in Grassy Narrows and the neighboring native community of White Dog. The study indicated that mercury levels of Grassy Narrows residents were three times the Health Canada (Canada's national health department) limit, and those in White Dog had levels of mercury that were seven times the national limit. Despite this, the Canadian government issued a report in 1979 stating that Minamata disease "has not been found in Canada, milder forms of mercury poisoning, although difficult to prove conclusively, possibly have occurred." Health Canada repeated this statement in 1999.

Harada and his fellow scientists issued reports that there were many cases of Minamata disease that were not recognized. The Canadian government did not acknowledge that the disease could be contracted from long-term consumption of contaminated fish. Government standards and regulations set allowable levels too high to protect the local population and the environment from the harms caused by mercury. A problem faced by the White Dog and Grassy Narrows residents was that if they could not afford to purchase food, they continued to fish from the river. This included pregnant women, whose children, born later, had higher-than-average incidence of cerebral palsy, seizures, and delayed development. In 1985, the Canadian government agreed to pay Grassy Narrows and White Dog residents $8,000 per person if their mercury level was at or higher than Canada Health standards. Although mercury dumping had ceased, commercial logging began on native land, without the consent or participation of Grassy Narrows tribal members. In 2000, native trappers sued the Ontario government. In 2002, tribal members began blockading logging trucks, as industrial companies had continued to receive permits for clear-cutting by the Ontario provincial government. The locals claimed that commercial logging on traditional lands was compromising their economic opportunities and further damaged their waterways.

In 2006, the tribal nations sent letters to the Weyerhaeuser and AbitibiBowater logging companies to stop all clear-cut logging practices. The cease and desist letter stated the following:

> For many years our people have suffered from a forced industrial invasion of our forest homeland . . . we are not consenting to the clear-cutting of our traditional lands, which is an assault on our culture, our way of life, and indeed our very existence.

The Ontario government issued the logging permits without discussion with the tribes' members. The nations then sued the provincial government for violation of an Indian treaty. The treaty, signed in 1873, gave Grassy Narrows the right to hunt and trap. The Indian nation questioned if this treaty permitted the province to deforest the land. This legal battle had been ongoing for 11 years and had moved into an appeal stage, with the Supreme Court of Canada. The clear-cut logging practice is one more environmental insult to a tribe still facing a 40-year struggle with high levels of mercury in its waterways. The tribal case ended in August 2011, when Justice Mary-Anne Sanderson of Ontario Superior Court ruled that the province of Ontario did not have the right to interfere with the tribe's treaty. The case established the precedent that the Canadian government has an obligation to seek accommodation for and agreement with the First Nations' members before taking action on native traditional lands.

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See Also: Canadian Mining Scandals; Clean Water Act; Pollution, Water.

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Great Electrical Equipment Conspiracy

The Great Electrical Equipment Conspiracy of the 1950s involved 47 electrical manufacturers that colluded to price fix as many as 20 product lines, exceeding total annual sales of $2 billion each year. The conspiracy involved some of America's largest corporations, including General Electric, Westinghouse, Allis-Chalmers, and others. Over 40 representatives from the manufacturers took part in the price-fixing meetings. The conspiracy was widespread throughout the industry and was organized along product lines. Conspirators came to see collusion as a way of life.

The conspiracy was exposed when the Tennessee Valley Authority (TVA) notified the U.S. Department of Justice of nearly identical bids across a range of products. Court fines imposed on both companies and industry managers approached $2 million. Many executives, some from America's most revered companies, were sentenced to jail. The 1950s electrical manufacturing market featured periods of severe price competition because of industry overcapacity, which was aggravated by the entry of foreign suppliers. Rather than compete, managers colluded to price fix. The conspiracy was organized along product lines, producing a set of organizationally distinct price-fixing conspiracies within the industry. Three product lines—switchgears, transformers, and steam turbine generators—accounted for the largest annual sales, and their conspiracies were the most serious.

Price Fixing

In the late 1950s, switchgear sales totaled $75 million per year. Switchgears are sets of disconnect switches, fuses, and circuit breakers designed to control and protect electrical equipment. Switchgears are standardized products with stable sales. The social organization of the switchgear conspiracy was decentralized. Division managers across the industry met and then set general price-fixing policies and goals, then delegated the organization of the conspiracy to a working-level group of subordinates within their companies. The switchgear conspirators developed a turn-taking schedule known as the "phases of the moon" that law enforcement officials never deciphered. The phases of the moon used a schedule of numbers to rotate, every two weeks, which company would be the low bidder on contracts. A second schedule of numbers instructed the low bidder how much to deduct from book price. As the company scheduled to be the low bidder bid below book prices, the rest of the companies honored their turn to bid above book price.

The transformer market totaled $500 million in sales per year during the late 1950s. Transformers are used to change electricity to a higher voltage to make long-distance transmission economical. Like switchgears, transformers are standardized products with stable sales. The transformer conspiracy was organized in a decentralized fashion, similar to the switchgear conspiracy. A higher-level group of vice presidents and division managers met several times a year to set prices and establish price-fixing rules, and to agree upon the percentage of the market allocated to each company. A working-level group of assistant general managers, marketing managers, and sales managers regularly met to devise and execute the price-fixing routines and procedures necessary to carry out the pricing policies agreed upon by the higher-level group.

Steam turbine generators totaled sales of $400 million each year during that time. Steam turbine generators use steam to produce rotary motion of a turbine that turns a generator and produces electricity. Unlike switchgears and transformers, steam turbine generators are not standardized products and must be custom built according to the specifications of the buyer. Unlike transformers and switchgears, steam turbine generators are enormous products costing millions of dollars each, taking 18 months to three years to manufacture. Moreover, market demand for turbines is sporadic, making sales difficult to predict. Economists hypothesize that the unstable demand pattern for steam turbines made it more likely that the steam turbine generator conspirators would cheat on agreements—meaning that they would make an agreement to let another company be the low bidder, but then later dishonor that agreement when the bids were submitted. However, empirical analysis shows that the conspirators mostly honored their price-fixing agreements and that the steam turbine generator conspiracy effectively raised cartel prices above market prices.

The steam turbine conspirators were effective price fixers because of the social relations constituting their price-fixing actions. From 1953 until 1959, there were 144 price-fixing meetings in the steam-turbine conspiracy. Analysis of the steam-turbine conspiracy has shown that the steam-turbine generator cartel used the following social relations to run an effective price-fixing conspiracy: (1) frequent, well-attended price-fixing meetings; (2) the attendance of division managers at meetings where the "corporate brass" would remind the "working-level" cheaters that price-fixing rules were both industry and company policy; and (3) conflictual social interactions at price-fixing meetings about accusations of cheating that functioned to continually redefine, maintain, and remind the conspirators of the normative price-fixing rules that they had agreed upon. Finally, market power played an enormous role in maintaining cartel discipline to honor price-fixing agreements.

General Electric had the largest market share and had more resources than the other companies. General Electric would remind the other conspirators of historical periods of all-out price wars that had been damaging to the financial standing of all of the companies but were devastating to the smaller companies. The conspirators horrifically referred to one such period as the "white sale." When conspirators began to cheat and recognized that they were in need of cartel discipline, they asked William S. Ginn—vice president and general manager of the transformer and steam-turbine generator divisions at General Electric—to attend price-fixing meetings. Ginn was forceful and threatened another white sale if companies did not play by cartel rules. Market power and social structure ensured that the price-fixing cartel extracted a deviant rent from the market, in spite of competitive, market pressures to cheat on pricing agreements.

The criminal proceedings of the price-fixing conspiracy concluded in a Philadelphia courtroom on February 6, 1961, with Judge J. Cullen Ganey sending seven executives to jail and giving 23 others suspended jail sentences. Judge Ganey fined many of the conspirators. The companies were fined close to $2 million. Afterward, many suits were brought against the equipment manufacturers by public utilities and private businesses.

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See Also: Antitrust, U.S. Department of Justice; Bid Rigging; Conspiracy; General Electric Co.; Market Manipulation; Price Fixing.

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Green, Mark

Mark Green is a New York–based public-interest lawyer, consumer advocate, and author. Early in his career, he worked with Ralph Nader's organization, Public Citizen. He fought political corruption and the growth of political action committees (PACs) that he felt were a threat to democracy. Throughout his career, Green helped formulate public policy. He investigated and revealed corporate malfeasance and corruption, and he served as an important spokesman for the public good in print and electronic media.

Green was born on March 15, 1945, in Brooklyn, New York. His father was a lawyer, and his mother was a schoolteacher. He received a bachelor's degree with honors from Cornell University in 1967 and a law degree in 1970 from Harvard, where he was editor-in-chief of the *Harvard Civil Rights–Civil Liberties Law Review.* He is a member of the Washington, D.C., bar association, and the New York State bar association. In 1977, he married Deni Frand, a director of People for the American Way. They have two children.

Activism Work

From 1971 to 1980, Green worked for Ralph Nader's Public Citizen organization, and he served as director of Public Citizen's Congress Watch from 1977 to 1980. He fought the emergence and growth of PACs, emphasizing that these special interests were directing millions of dollars into political campaigns. Through PACs, wealthy corporations were able to buy votes and political protection for their corrupt practices and criminal activities. In his book *Selling Out*, Green interviewed dozens of corporate executives and managers in his search for how money given to elected officials leads to actions detrimental to the public good. He found that money given to elected officials was related to deregulation, the nonenforcement of laws regulating pollution and health and safety, tax breaks for the wealthy, legislative and tax loopholes, and corporate subsidies (corporate welfare).

In 1981, Green organized the New Democracy Project, an organization dedicated to developing enlightened public policy. He served as its director for 10 years. From 1990 to 1993, Green served as the consumer affairs commissioner of New York

City. In 1993, he was elected to the position of New York City public advocate, and he was re-elected to a second term in 1997. As public advocate, Green investigated the city's health delivery system, including health maintenance organizations (HMOs), hospitals, and nursing homes, which led to laws and regulations that protected consumers. He brought legal action against the tobacco industry's advertising that was directed toward children. Joe Camel ads and other youth-directed ads were discontinued as a result. As a public advocate, Green sued New York City Mayor Rudolph Giuliani twice for the use of racial profiling by the New York City Police Department. He was one of the first defenders of the public interest to focus on racial profiling. In 2002, Green was appointed distinguished visiting lecturer at New York University Law School. There, he taught public-interest and consumer law to future lawyers.

In addition to his official activities, Green has been a prolific writer, has hosted radio talk shows, and has regularly appeared on radio and television, advocating for the public interest. He has published 22 books and countless articles in prominent publications. He is the host of the syndicated radio program *Both Sides Now With Huffington and Matalin*. He served as co-host with Ariana Huffington on the radio talk show *7 Days in America*. On television, he has been a frequent guest on CNN's *Crossfire,* duking it out with Pat Buchanan and Bob Novak; on William Buckley's *Firing Line*; and on *Hardball* with Chris Matthews.

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See Also: Advertising Fraud; Corporate Capture; Corruption; Giuliani, Rudy; Nader, Ralph; Public Corruption; Revolving Door.

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Greenmail

Greenmail occurs when a publicly traded company is targeted by corporate raider(s) for a hostile takeover; however, the takeover is blocked by the purchase of the shares of the corporate raider(s) at a price premium. The takeover is thwarted by buying off the corporate raider.

The term *greenmail* is a neologism derived from its similarity to the practice of blackmailing. In blackmail cases, money is extorted from the victim as the price of silence. In greenmailing cases, money is extorted from the victim as a purchase of peace. Blackmail is illegal, but greenmail is legal. Green refers to the color of the currency of the U.S. government. Greenmail is a very effective, but very dirty, business tactic.

Greenmailing is very similar to blackmail because the victim in both cases is the victim of threats that can be removed by a payoff. In the case of blackmail, information could be revealed that would do serious damage to the reputation, finances, physical well-being, freedom, or something else that concerns the victim. In the case of greenmail, serious damage could occur if the corporate raider were successful in the takeover bid. Consequences could include firing the management, dissolution of the company, the loss of jobs for employees, or possibly diverting the company's cash and assets into other endeavors.

Corporate mergers and acquisitions have a long history. In the case of a single entrepreneurial company, the founder of the company may have reached retirement age and have no reason to continue in business, so he or she may consider it prudent to sell the company. A corporation may wish to sell off a portion of its business in order to focus on a core business or move into other businesses.

Corporate mergers and acquisitions by purchase occur on a regular basis. Some mergers or acquisitions are attempts at the takeover of a company that does not want to be acquired. These hostile takeovers may or may not be successful. Greenmail is a tactic used in some hostile merger or acquisition takeovers. Wealthy individuals or companies who engage in hostile takeovers in order to "loot" a company by acquiring its assets, to the detriment of the interests of other stockholders, are called corporate raiders.

Corporate Raiders

Corporate raiders target companies that are weak and inefficient for greenmailing. In this case, the corporate raider is a kind of predator. To raiders, the company is a desirable target for some reason. The intention of raiders in a great many mergers or acquisitions is not to operate the company but to dismantle it in order to sell its assets. Target companies may have low prices of their shares of stock because they are undervalued by the market. The target company's lower price may be because of its low return on investment compared to its large cash position, intellectual properties, or other valuable assets such as real estate. Consequently, the target company looks tempting to corporate raiders because it may be worth less on the open market as an entire enterprise than its various pieces would be worth if sold separately.

A company does not need to be undervalued for it to become the target of corporate raiders bent on greenmail; it just has to have enough shares on the open market to allow a serious hostile takeover attempt. When the corporate raider has acquired a large block of shares, the threat of a hostile takeover is made. The threatened takeover may be real or just a bluff. The threatened takeover is treated as real by the management of the target corporation. Fighting the takeover might be expensive, so the path of least resistance may be to agree to the terms of greenmail by purchasing back the company's shares at a premium above the current fair market price.

In the terminology that businesspeople use in the world of mergers and acquisitions, an expensive buyback of the target corporation's shares is called a bon voyage bonus, or it may be called a good-bye kiss. The payment is really a ransom of the company from a kidnapping attempt.

If a good-bye kiss deal is reached, the target company's management and the greenmailer may sign a confidential agreement to purchase the corporate raider's shares at a premium. In return, the corporate raider will agree to abandon the hostile takeover and to disappear for some period of time.

When greenmailing is successful, the target company is the loser. The shareholders' stock shares lose value because the overall value of their stock is reduced by at least the premium paid to thwart the predatory raid. The stockholders are also losers because the management and employees who allowed to the company to become vulnerable to a hostile takeover attempt are left in place. This means that the weaknesses of the company may not be addressed, which does not help share values.

Corporate raiding flourished in the 1980s. Raiders would seek to acquire corporate voting rights in order to achieve goals such as replacing top management, reducing company operations, liquidation of the company, or some other goal. However, the management of large, publicly held corporations developed countermeasures to defend against hostile takeovers. The defensive measures included golden parachutes (expensive retirement packages for the top management), seeking a "white knight" (a friendly purchaser), and increasing the company's debts in order to make it less attractive.

Examples of Greenmail

In the 1980s, Martin Lipton, a lawyer specializing in mergers and acquisitions, invented the "poison pill" tactic for thwarting hostile takeovers. It is an agreement that the board of directors of a company uses when facing a takeover to make the company's stock too expensive to acquire. There are several variations of this tactic. In the "flip-over" poison pill tactic, current shareholders are given the option of purchasing the bidder's shares at a discount after the takeover, which devalues the raider's stock and dilutes its stake in the company. The management dilutes the values of shares by offering shares to investors at a discount, making it too expensive for the raider to gain control. Many shareholders may oppose the management's fight against the corporate raider because it is in their interest to sell their shares at a premium.

One well-known corporate raider of the 1980s was T. Boone Pickens. He gained notoriety when he led his company, Mesa Petroleum, in a number of takeover plays. He claimed that corporate oil had adopted a "no-risk mentality" that needed to change; so, he sought undervalued companies for restructuring. He was accused of radicalism, of ignorant meddling, and of other "offenses." However, he was able to use restructuring, which had until then been used mainly in bankruptcy in order to shake out money for all stockholders, including himself. In 1984, he attempted to gain control of Gulf Oil; however, that company found a white knight in Chevron. Pickens's Mesa Petroleum still made $404 million from the play.

During the struggle, Gulf offered Pickens greenmail, but he held out for all stockholders.

Other corporate raiders include Sir James Goldsmith, Carl Icahn, David Murdoch, and Rupert Murdoch. Goldsmith was paid $90 million in greenmail by Goodyear Tire and Rubber Company. Occidental Petroleum Company paid greenmail to David Murdock in 1984. His shares (5 percent of the company) were purchased at $40.10 per share; the market price was $28.75.

St. Regis Paper Company was twice the target of hostile acquisition attempts. Sir James Goldsmith led a group that acquired 8.6 percent of the company at an average of $35.50 per share. St. Regis Paper agreed to pay this group a premium price of $52 per share, for a profit of $51 million. As soon as St. Regis's management paid greenmail to Goldsmith, the company was hit by a second hostile takeover attempt, led by Rupert Murdoch. It found a white knight in Champion International, which acquired the company in a friendly takeover. Murdoch still made a profit when he sold his shares to Champion.

Changes in federal and state laws in the 1990s reduced the ability of corporate raiders to exact greenmail. The federal tax code imposes a 50 percent tax on greenmail profits. In recent years, greenmailers have been called *activist shareholders*.

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See Also: Bribery; Corporate Raiding; Gulf Oil Corp.; Industrial Espionage.

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Greenpeace

Greenpeace is one of the major international environmental nongovernmental organizations (NGOs), with 2.8 million members worldwide and national and regional offices in 41 countries. Its missions are to change the attitudes and behavior of governments, multinational corporations, and the general public; to protect and conserve the environment; and to promote peace.

Greenpeace International (formally called Stichting Greenpeace Council), the governing body of Greenpeace in Amsterdam, the Netherlands, mostly coordinates global Greenpeace policies and strategies formulated at an annual meeting. Seven members of the board of directors of Greenpeace International reflect the global nature and diverse regions that Greenpeace activism covers. Greenpeace is an independent organization. It does not solicit contributions from governments or corporations. Its income is from voluntary donations from individuals and foundation grants.

In 1969, an ad hoc citizen's group in British Columbia, Canada, formed the Don't Make a Wave Committee (DMWC), the predecessor of Greenpeace, to launch a campaign against nuclear testing. DMWC set sail on a boat, the *Phyllis Cormack*, to Amchitka to "bear witness" (a Quaker tradition of silent protest) to U.S. underground nuclear testing. In 1971, DMWC was renamed Greenpeace, which unites antiwar movements (peace) and ecology movements (green). The tradition of bearing witness in a nonviolent manner remains the foundation for Greenpeace activism to this day.

Since its initial campaign, Greenpeace's activism has been global. Over time, it has diversified to include all threats to the planetary ecosystem, such as climate change, overfishing, the destruction of forests, the extinction of endangered species, toxic dumping, chlorofluorocarbons, and genetically modified organisms (GMOs). While mainstream environmental organizations primarily use an institutionalized mechanism, such as lobbying, Greenpeace is more action oriented but also engages in science-based lobbying. Greenpeace confronts governments and corporations that engage in environmental wrongdoing with direct and nonviolent actions to expose wrongdoing and to sensitize citizens. It collects and disseminates data on nuclear weapons, ocean dumping, electronic waste, and genetically modified organisms (GMOs). For example, Greenpeace tracks ships loaded with nuclear weapons and alerts host countries of the presence of the nuclear weapons when the ships dock in their jurisdictions.

The activities of Greenpeace are eye-catching in order to attract wider media coverage and to publicize issues. Greenpeace hung its first campaign banner on 12 billboards throughout Vancouver with the message, "Ecology? Look it up! You're involved." Its antiwhaling campaign has become the staple of Greenpeace activism. Greenpeace activists steer small rubber inflatable boats between the harpoon guns of whaling vessels and their prey. Greenpeace's confrontational tactics have invited retaliation. In 1980, Spain seized the *Rainbow Warrior,* a Greenpeace ship, because of the ogranization's frequent interference with its whaling. In 1985, French intelligence sunk the *Rainbow Warrior*, which had been used to obstruct French nuclear testing in the South Pacific since the 1970s, while the ship was berthed in Auckland, New Zealand. The sinking resulted in the death of a Greenpeace photographer.

Greenpeace has contributed to the establishment of some international treaties, including a comprehensive atmospheric nuclear test ban treaty. Since the early 1980s, Greenpeace has been active in the Conference of the Parties to the London Convention, the international treaty governing ocean dumping. Greenpeace lobbies at international negotiation conferences. It is part of the Climate Action Network, the Pesticide Action Network, and the International Persistent Organic Pollutants Elimination Network. Greenpeace has been a force behind the creation of international environmental agreements governing global chemical policy, including the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal, the 1998 Rotterdam Convention on the Prior Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, and the 2001 Stockholm Convention on Persistent Organic Pollutants. During the negotiation of the Basel Convention, Greenpeace provided a coalition of countries—many African and other developing countries—with information on north–south hazardous waste trade, and it advocated a complete ban.

Greenpeace has been involved in numerous global campaigns against corporate crimes such as industrial disasters. It launched the International Campaign for Justice Against Dow Chemical in Bhopal with survivors of the 1984 Bhopal disaster in India, one of the world's worst industrial disasters. Greenpeace is also an active participant in the campaigns against Exxon and British Petroleum for their oil spill disasters (e.g., the *Exxon Valdez* and Gulf of Mexico oil spills). In terms of hazardous waste, Greenpeace has been pressuring electronics manufacturers and apparel companies to eliminate hazardous substances (e.g., toxic dyes) from their products or their production processes. Greenpeace has also targeted food giants. It led the anti-GMO campaign against Gerber Baby Food in the late 1990s. The anti–Kit Kat campaign against Nestlé in 2010 aimed to protect rain forests in Indonesia by eliminating the use of palm oil.

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See Also: BP PLC; Dow Chemical Co.; *Exxon Valdez* Oil Spill; Gulf of Mexico Oil Spill; Hazardous Waste.

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Gulf of Mexico Oil Spill

On April 20, 2010, an explosion on the Deepwater Horizon drilling rig in the Gulf of Mexico was the start of one of the largest economic and environmental disasters in U.S. history. The rig, operated by BP (formerly British Petroleum), was drilling for oil in the exploratory Macondo well

U.S. Coast Guard platform supply vessels battle the blazing remnants of the offshore oil rig Deepwater Horizon, April 20, 2010. In the aftermath, BP pledged a $20 billion trust to compensate individuals and businesses that had suffered directly.

in 5,000 feet of seawater and below, to a depth of some 13,000 feet. The explosion killed 11 crew members and injured 17 others. It took until September 19 for the well to finally be capped, and in the interim, an estimated 200 million barrels of oil flowed into the gulf; some 320 miles of Louisiana coastline had been contaminated, and a slick of over 80 square miles was visible on satellite images from space. The disaster can usefully be divided into three main components: first, the events and equipment that led to the physical blowout; second, the protracted efforts to stem the flow of oil and seal up the well; and third, the cleanup and compensation efforts.

The Deepwater Horizon rig was owned by a company called Transocean and leased by BP and two other companies (Anadarko Petroleum and MOEX Offshore); BP had overall operation control, with a 65 percent share of the Macondo Prospect. The National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling drew upon the inquiry to the *Columbia* space shuttle disaster, claiming that "complex systems almost always fail in complex ways" to describe the chain of events that led to the Deepwater Horizon explosion. Open water oil exploration is a hazardous enterprise. However, preliminary conclusions from the commission suggested that a "culture of complacency" existed within BP (and its main contractors). In addition, this extended to the oil exploration industry and even as far as the regulators and government bodies responsible for permitting and overseeing these operations. These concerns ranged from the physical drilling through disaster-relief responses.

Cause and Aftermath

The main cause of the blowout was still under investigation more than two years after the initial explosion. As the main operator of the Deepwater Horizon rig, BP is primarily accountable, although Transocean (the rig's owners) and Halliburton (responsible for cementing the well), as well as two other companies, are also implicated. Much of the debate surrounds the failure of one specific component: the Blow-Out Preventer (BOP), made by Cameron International. The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) and the Coast Guard published a report on March 23, 2011, which suggested that overall loss of control of the well had caused the failure of the BOP.

In its investigation, BP accepted that there were some issues that preceded the failure of the BOP, and that these began when the incorrect cement was injected into the well by Halliburton, a charge it denies. The commission, while unable to report on the ultimate significance of the BOP at that point, made some broader claims against BP, its contractors (principally Transocean and Halliburton), and the industry as a whole. It reiterated that their inquiry revealed "systematic failures in risk management [which] place in doubt the safety culture of the entire industry." It also claimed there was a "business culture [that had] succumbed to a false sense of security" with the Deepwater Horizon blowout the result of "recurring themes of missed warning signals, failure to share information, and a general lack of appreciation of the risks involved."

In the aftermath of the disaster, BP pledged $20 billion (in the Deepwater Horizon Spill Trust) to provide compensation to individuals and businesses that had directly suffered as a result of the spill. Despite claims of complacency on behalf of BP, on March 3 (less than three weeks after the initial explosion), the company reached a settlement with the Plaintiff's Steering Committee (PSC) acting on behalf of individuals and businesses in the Multi-District Litigation proceedings (MDL 2179). This constituted an initial $2.3 billion to settle economic loss claims, and it is estimated that it could run as high as $7.8 billion. By the end of 2011, BP estimated that it had spent a total of $14 billion in compensation, cleanup, and associated response activities. This does not include civil penalties brought by the U.S. government under the Clean Water Act and Oil Pollution Act, which amounted to $4.5 billion, the largest criminal fine in U.S. history.

In 2012, the U.S. Department of Justice filed the first criminal charges against a BP engineer, Kurt Mix, who was charged with two counts of obstruction of justice after allegedly trying to delete text messages between himself and his supervisor. According to the Federal Bureau of Investigation, these texts related to the fact the "top kill" efforts were not succeeding as was played out in the media by BP Chief Executive Tony Hayward, who was replaced by Bob Dudley in late 2010.

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See Also: BP PLC; Clean Water Act; Halliburton Co.; Hayward, Tony; Negligence.

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Gulf Oil Corp.

Around the turn of the 20th century, oil was discovered in Spindletop, Texas. The Gulf Oil Corp. was established in 1901 to exploit that oil, with William Larimer Mellon, Sr., at the company's helm. By 1979, Gulf Oil had become the ninth-largest oil company in the United States. In 1985, Gulf Oil was merged into Standard Oil, ultimately becoming Chevron within the United States. In the 1970s, in the midst of the Watergate investigation that made the entire nation more aware of political scandals and illegal campaign contributions by large corporations, Gulf Oil became the focus of a federal investigation concerning a secret slush fund that was used to influence politicians in the United States and abroad. Gulf Oil's activities played a major role in subsequent campaign finance law reforms and in the passage of the Foreign Corrupt Practices Act of 1977.

Political Persuasion

In 1971, Congress passed the Federal Election Campaign Practices Act (FECA) in an attempt to limit illegal campaign contributions and mandate reporting of contributions to individual politicians and national parties. With FECA set to go into effect in 1972, Richard Nixon's Committee to Re-Elect the President (CREEP) began scrambling to cover up illegal contribution activities. When the Watergate scandal broke, federal investigators began paying close attention to political contributions from large multinational corporations, particularly those from oil companies. Public attention was also focused on the issue in response to columnist Jack Anderson's announcement that International Telephone and Telegraph was sponsoring the Republican National Convention. By 1973, investigators were looking into an alleged $10 million slush fund operated by Gulf Oil. Four separate investigations into Gulf Oil's activities were opened over the next two years as the investigation gained steam.

Investigators learned that Gulf Oil had a long history of political contributions, including an alleged donation to Vice President Lyndon B. Johnson in 1961. Gulf Oil contributed $150,000 to support various politicians in the 1972 elections. At least $100,000 was given to the Nixon campaign. Some $15,000 went to the campaign of Congressman Wilbur Mills (D-Arkansas) and another $10,000 to Senator Henry M. (Scoop) Jackson (D-Washington). Other politicians receiving money from Gulf Oil included Senator Fred Harris (D-Oklahoma), Senator Hugh Scott (R-Pennsylvania), and Congressman Richard Roudebush (R-Indiana). The guiding force behind those contributions was Claude C. Wild, Jr. Based in Washington, Wild was Gulf Oil's chief lobbyist. Convinced that Gulf Oil needed more political leverage, in 1959, W. K. Whitehead, then chief executive officer of Gulf Oil, had created the Bahamas Exploration Company in Nassau. It was a dummy company created for the purpose of using the slush fund to hide Gulf Oil's political activities and launder money that flowed into the fund. The existence of the fund was never known by the Mellon family.

Gulf Oil also involved itself in foreign elections. Bob Dorsey, the head of Gulf Oil, acknowledged during the investigations that he had contributed millions of dollars to political parties in other countries. *Time* magazine reported that Gulf Oil paid $1 million to the ruling Democratic Republican Party of South Korea in 1966 and another $3 million in 1971 to meet political demands for funding. Some $460,000 was channeled to Bolivian politicians, and Gulf Oil donated a helicopter to dictator General René Barrientos. Another $50,000 was donated to politicians in Beirut. Parties in developed nations also benefited from Gulf Oil's largess, with some $4 million earmarked for politicians in Italy, Sweden, Canada, and Turkey. By the time the slush fund was eradicated, it had channeled some $13 million to various politicians.

The investigation also demonstrated Gulf Oil's susceptibility to political persuasion. The company unwillingly sponsored a rebroadcast of the wedding of Tricia Nixon to Edward Cox at the urging of Nixon aide Charles Colson. Gulf Oil contributed $10,000 to the campaign of Republican Senator Mark Hatfield of Colorado when asked to do so by the government of Kuwait. During the Watergate investigation, which brought down the presidency of Richard Nixon, Gulf Oil was accused of having contributed to the campaigns of all members of the Watergate Commission except for Chairman Sam Ervin (D-North Carolina).

Once Gulf Oil's illegal activities came to light, politicians returned illegal campaign money. Critics complained that Gulf Oil got by with only a few slaps on the wrist. Wild was forced to pay a fine of $1,000, and Gulf Oil was fined $5,000. Bob Dorsey was ousted. Even as Gulf Oil began to rebuild its damaged reputation, new scandals arose over the company's involvement in a uranium price-fixing cartel between 1972 and 1975 and the bribing of an Internal Revenue Service agent. In the latter case, Fred W. Standefer, vice president for tax administration, and Joseph F. Fitzgerald, tax compliance manager, were charged with paying Cyril J. Niederberger, who was conducting an ongoing IRS audit, $3,300 to send him and his family on five vacation trips, in return for ignoring Gulf Oil's tax liabilities during the slush-fund era (1959–74). All three men were subsequently indicted, and Gulf Oil pleaded guilty to tax fraud and paid a fine of $36,000.

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See Also: Bribery; Campaign Finance; Corporate Capture; Foreign Corrupt Practices Act; Johnson, Lyndon B.; Public Corruption; Watergate.

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Halliburton Co.

Halliburton Co. is a Houston-based oil and gas company that began in 1920 when Erle Palmer Halliburton of Tennessee popularized an oil extraction method known as oil well cementing. Since then, the company has diversified to include technical products and services for petroleum and natural gas exploration and development as well as the engineering and construction of refineries, pipelines, and chemical plants. Halliburton has operated in over 70 countries, with hundreds of divisions and more than 60,000 employees worldwide.

Halliburton and one of its former subsidiaries, Kellogg Brown-Root (KBR), has continually come under government and public scrutiny for incidents involving special treatment in government-issued contracts, unfair political influence, cronyism, bribery, security and tax issues, and environmental incidents. It has been said that Halliburton illustrates the sometimes murky and questionable connection between private corporations, military interests, and government.

Controversies and Questionable Connections

The Halliburton Company diversified its products, rode the ups and downs of the oil industry, and expanded globally over the years, even in countries considered adversaries of the United States. The early 1990s found Halliburton facing violations of federal trade barriers in both Iraq and Libya and being penalized with over $2 million in fines and penalties.

In 1995, Dick Cheney (former U.S. secretary of defense under George H. W. Bush) served as Halliburton's chief executive officer (CEO) and president. Several years later, Halliburton underwent a multibillion-dollar merger with Dresser Industries, which included KBR, and almost automatically became one of the world's largest service providers for the oil industry. Its two primary business interests were its energy services group and its engineering and construction interests. Cheney retired from Halliburton in 2000, reportedly with a $36 million severance package, to become the presidential running mate to Republican and Texan George W. Bush. It is reported that under Cheney's tenure as CEO, the number of Halliburton subsidiaries housed in offshore tax havens increased from nine to 44 between 1995 and 1999.

After Cheney's departure from Halliburton, David Lesar became the company's new CEO and had to face the mounting asbestos claims that had been plaguing it—as well as a newly implemented investigation by the U.S. Securities and Exchange Commission (SEC). The total of 474,000 asbestos claims against Halliburton dated back to the 1970s. In the early 2000s, Halliburton agreed to

A cementer with Halliburton Co. discusses what transpired aboard Deepwater Horizon during a joint investigation hearing held by the U.S. Coast Guard and the U.S. Minerals Management Service in Kenner, Louisiana, May 28, 2010.

pay over $4 billion to settle all claims in exchange for protection against any future asbestos litigation. In 2002, the SEC investigated Halliburton because of changes in its accounting practices that were not reported to shareholders or the SEC for more than a year's time and involved possible inflated cost overrun claims. In the following year, Halliburton noted in SEC filings that one of its major subsidiaries, KBR, was involved in bribing a Nigerian official with over $2 million so that Halliburton could receive preferential tax treatment.

Halliburton also faced scrutiny after accusations of special treatment in government defense contracts began to surface. Civilian chief contracting officer Bunnatine Greenhouse complained publicly on several occasions that Halliburton and its subsidiaries, managed by Cheney before he became vice president, were illegally receiving special treatment for work that the company conducted in Iraq, Kuwait, and the Balkans. KBR was reportedly awarded more than $16 billion in government contracts for work in the Middle East between 2004 and 2006, including the largest contract ever given during the Iraq War: the Logistics Civil Augmentation Program. Critics say that some of these defense-related contracts not only cost far less to complete than estimated but also may have included no-bid contracts. The U.S. Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), and the inspector general opened a criminal investigation into the accusations. In 2009, Halliburton resolved the DOJ investigation through a nonprosecution agreement in which Halliburton and KBR agreed to cooperate with the investigation and pay over $400 million in criminal fines. Halliburton also agreed to pay the SEC $177 million and allow for an independent entity to conduct a 60-day (and after one year, 30-day) evaluation of Halliburton's recordkeeping and bribery/foreign agent controls.

More recently, a former Halliburton employee, Jamie Leigh Jones, testified in a 2005 congressional hearing that she had been gang-raped by numerous KBR co-workers and falsely imprisoned for 24 hours in a shipping container while working for KBR in Iraq. While the 5th Circuit Court of Appeals ruled in favor of Halliburton in 2009, the incident added to the increasingly negative public perception of Halliburton in the eyes of American watchdog groups and the public. Critics have also implicated Halliburton as a partly responsible subcontractor involved in the Deepwater Horizon (or BP) oil spill of 2010.

Since 1995, there have been at least 10 incidents involving some type of Halliburton corporate misconduct that have resulted in settlements of more than $790 million, not including Halliburton's subsidiaries (particularly KBR), which account for another 22 incidents. In 2007, Halliburton sold all of its shares in KBR. Halliburton continues to be watched by critics for any involvement in the hazy connection between private companies, military interests, and governments.

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See Also: Asbestos; Bid Rigging; Bribery; Bush, George W.; Corporate Criminal Liability; Government Contract Fraud; Government Procurement Fraud; Gulf of Mexico Oil Spill; Illegal Competition; Iraq War; Justice, U.S. Department of; Securities and Exchange Commission, U.S.; Whistleblowers.

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Hart-Scott-Rodino Act

Half a century before Edwin Sutherland coined the term *white-collar crime,* the U.S. government formally recognized the fact that corporations can, and do, engage in abusive acts. The Sherman Antitrust Act of 1890 was one of the first pieces of legislation in the United States to deal with the problem of monopolistic practices by corporations. Since that time, the various statutes that constitute antitrust legislation in the country have proliferated into one of the most widely recognized bodies of legislation aimed at illegal corporate behavior. The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR) was developed to revise existing antitrust statutes in order to improve the government's ability to regulate corporate mergers, in an attempt to prevent anticompetitive practices. HSR mandates that the federal government be given advance warning (typically 30 days) of a corporation's intent to merge with another corporation. However, not every corporate merger falls under these requirements because the act only applies to publicly traded firms proposing a merger that exceeds a specified economic size. Currently, this size is approximately $65 million in transaction value.

The ultimate purpose of HSR is to prevent anticompetitive mergers that would have a significant and detrimental impact on consumers and the market. Prior to the enactment of HSR, the federal government had long recognized the serious negative consequences of anticompetitive mergers. However, its enforcement efforts were restricted to evaluating the impact of the merger post-transaction. This approach had the potential to create serious issues for consumers, the market, and the corporations involved in the merger. It is rather difficult to break up a completed merger and return the original corporations, stockholders, and other stakeholders to their "whole," pre-merger positions. Rather than taking a retroactive approach, HSR moves merger oversight into a forward-looking position. This means that regulatory agencies can prevent mergers that would create anticompetitive market conditions. As such, consumers, stockholders, stakeholders, and the market are spared from having to deal with the chaos of breaking up an anticompetitive merger, and the federal government can proactively deal with anticompetitive corporate practices.

After the passage of HSR, the Federal Trade Commission (FTC) and the U.S. Department of Justice (DOJ) established standards by which to judge the fairness of any proposed merger. Upon receiving notification of intent to merge, the FTC examines the proposed merger as outlined by the involved companies to determine what the impact of the merger might be within the market. The ultimate factor that the FTC uses in determining whether the merger may lead to an anticompetitive situation, and should therefore be challenged, is the postmerger change in the Herfindahl-Hirschman Index (HHI). The HHI takes the market share for every corporation within an industry, squares each respective firm's value, and then adds these values to get the total industry HHI score. This concentration ratio is used because it reflects how market share is distributed within a particular industry. Squaring the value of each firm's market share places greater weight on market leaders, companies that have more power and control within the industry. In determining the impact of the potential merger, the FTC will compare the postmerger HHI to the premerger HHI.

Depending upon the premerger HHI, an increase of 50 or 100 points or more would signal a significant change in the concentration of power in that industry. Should a merger meet or exceed these thresholds, the FTC would attempt to block the merger. Typically, when the FTC challenges a proposed merger, it works through negotiations and consent decrees to enforce its ruling. Taking a more cooperative approach with corporations leads to situations where the FTC can avoid extensive legal procedures. However, there are times when proposed mergers reach and exceed the stated threshold of industry concentration, yet the merger is still allowed to progress. Once the FTC makes a determination that a merger should be blocked, the involved companies have the ability to argue that the merger should continue. There are many legitimate reasons why the FTC would allow a merger under these circumstances to be completed, the chief of which may be that such a concentration within the industry would actually present benefits to consumers.

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See Also: Antitrust, Federal Trade Commission; Antitrust, U.S. Department of Justice; Interstate Commerce Commission Act; Sherman Antitrust Act.

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Hartung-Burgess Debate

Criminologist Edwin Sutherland made it clear that white-collar crime would always be difficult to study. Whereas the study of violent and common crimes is aided by the existence of accepted, official databases full of valuable information, no similar collections of facts are available for those studying white-collar crimes. Since it is largely impossible to compile such data individually, many researchers began utilizing case-study methods. The case study is different from traditional social sciences. There is not a large sample of criminals and crimes from which researchers can test predisposed theories. Instead, case studies use a detailed examination of a single case to explain it as thoroughly as possible.

Regulatory Violations as White-Collar Crime?

In the fledgling field of criminology, case studies figured greatly in the work of criminologist Frank Hartung and the subsequent critiques by sociologist Ernest Burgess. Hartung focused his white-collar crime research on the meatpacking industry in Detroit during World War II, examining both the offenses and the offenders in an effort to truly understand what was occurring within the plants. The main question for Hartung was whether violations of wartime regulations could be considered as white-collar crime. He argued that they could, largely believing that individuals who committed such violations were also white-collar criminals. The evidence within his case studies only validated his beliefs. Yet the idea that someone could be labeled a white-collar criminal for merely opting to not follow special government regulations did not sit well with many.

Whereas some found value in Hartung's contribution to this newly developing field of study, Burgess—a prominent sociologist at the time—levied considerable criticism at the findings of Hartung's research. Working from the perspective of the Chicago School, Burgess felt that wartime regulatory violations did not qualify as white-collar crimes. More important, he strongly disagreed with referring to such perpetrators as criminals. When discussing Hartung's examination of the Detroit meat industry, Burgess claims that while violations did occur, they were code violations. Administrative actions were misguided and health ordinances were ignored, but to Burgess, these were not serious enough offenses to be labeled as crimes—or at the least, the offenders do not merit being labeled as criminals. The primary explanation offered by Burges is that the offenders do not see themselves as being criminals since new administrative laws turned previously status-quo operating procedures into violations of the law. Further, Burgess argues that society at large is not in a hurry to condemn the violators for committing criminal acts and, if those who violate regulations (whether traffic, administrative, or health) are labeled as criminals, then the criminal population will vastly outnumber the noncriminal population in the country.

Simply put, Burgess urged that because these "violators" did not perceive themselves as criminals, society should not either. More poignantly, Burgess attacked the overall validity of Hartung's assertions. With over half of the country (per Burgess's estimates) violating wartime regulations, it becomes impossible to view such a large number of Americans as white-collar criminals.

Hartung was led into a rather pointless debate over whether half of the U.S. adult population participated in the black market, whether wartime regulations had public support, and whether sentencing procedures favored the white-collar offender. These are important questions, but they ignore the larger element of the dispute: whether white-collar criminals who do not consider themselves criminals and are not regarded as such by society should be considered criminals within this newly emerging field. In this sense, the central findings of this debate in retrospect are clear: Whereas Hartung used a strictly legal lens in determining illegality, Burgess went further and considered only those actions that arouse a strong negative sentiment from members of the general public as criminal. In the case of wartime regulation violations, Burgess simply did not see people angry with the offenders.

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See Also: Differential Association Theory; Investigation Techniques; Short, James F., Jr.; Sutherland, Edwin H.; Sutherland-Tappan Debate; Techniques of Neutralization; World War II.

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Hayward, Tony

Anthony (Tony) Bryan Hayward (1957–) was the chief executive officer (CEO) of British Petroleum (BP) at the time of the Deepwater Horizon explosion. A lifelong BP employee, Hayward was intensively mentored by his predecessor, Lord John Browne, who was forced to relinquish his position as CEO after a series of fatal accidents at BP facilities. While many of the problems at the company predated Hayward's tenure as CEO, he nevertheless instituted company policies that encouraged the reckless pursuit of profit at the expense of safety, ultimately contributing to the blowout of the Macondo well. Hayward resigned from his position at the company following a series of embarrassing public remarks and was replaced by Robert (Bob) Dudley.

After earning a Ph.D. in geology from Edinburgh University, Hayward began his career at BP in 1982 as a rig geologist in Aberdeen. He quickly rose up the company ranks and, by 1992, he had become the head of exploration in Colombia, later relocating to Venezuela in 1995. During his time in Latin America, his main role was to improve BP's image and generate support for the company's prospects in the region. Hayward also spent time working in other countries, including England, China, Canada, and Papua New Guinea. In 2003, he became head of BP's exploration and production sector, responsible for drilling offshore wells such as Macondo. Closely mentored by his predecessor, John Browne, Hayward was part of a small group of rising executives that included John Manzoni (head of BP's refinery division) and Bob Dudley (head of BP's joint Russian venture). Often inaccurately attributed to the Teenage Mutant Ninja Turtles, Browne referred to the trio as his "turtles" because they traveled everywhere with him, which required them to live with their homes on their backs. This intensive training ensured that Browne's policies of decentralization, outsourcing, and cost cutting would continue beyond his reign, through Hayward's term as CEO.

In the years leading up to the Deepwater Horizon disaster, the company experienced numerous accidents at its facilities, including a fatal explosion at the Texas City refinery in 2005 and multiple oil spills at the Prudhoe Bay production facility in 2006. Investigations into the incidents identified budgetary pressure from executive management and aggressive cost cutting as contributing factors in deteriorating safety conditions. With his record tarnished by these accidents as well as a scandalous tabloid story, Browne was forced to resign and was replaced by Hayward on May 1, 2007.

While many of the problems at the company existed before Hayward became CEO, he nevertheless helped perpetuate a corporate structure that put short-term financial goals ahead of the health and safety of employees. Upon his appointment, Hayward promised to reform BP's safety culture, but it was difficult for the new CEO to institute change. As stock prices stagnated, Hayward was pressured to institute budget cuts across the company. Following in Browne's footsteps, he reduced layers of management and oversight in an effort to make the company more efficient. Furthermore, he instituted a system of bonuses linked to drilling timetables that motivated managers to complete projects below cost and ahead of schedule, often at the expense of safety.

In contrast to Browne, who relished his celebrity status in the United Kingdom, Hayward did not perform well in public and struggled to convey the right message, even in prepared statements. As the spill continued to wreak havoc on the Gulf of Mexico, Hayward repeatedly made inappropriate remarks to the media, which conveyed the image that BP was not treating the incident seriously. For example, he was photographed sailing his private yacht off the Isle of Wight, which elicited public criticism. Moreover, dismissing the size of the spill, Hayward remarked that the oil spill was "relatively tiny" in comparison to the "very big ocean."

When attempting to publicly apologize to the residents of the gulf for the damage and disruption caused by the spill, he remarked, "I would like my life back." Following these statements and BP's inability to bring the Macondo well under control, members of the U.S. Congress and President Barack Obama suggested that Hayward should be fired because of his poor handling of the disaster. In late June, the company announced that Bob Dudley would become the next CEO, yet it was not until October 1, 2010, that Hayward officially stepped down.

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See Also: BP PLC; Corruption; Gulf of Mexico Oil Spill; Negligence; Unsafe Working Conditions.

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Hazardous Waste

Hazardous waste, or discarded material harmful to human or environmental health when improperly managed, was not regulated in the United States until the 1970s. During that decade, Congress passed a number of statutes to oversee the generation, transportation, and disposal of hazardous material. The need for such legislation was underscored by high-profile incidents illustrating the devastating health and environmental effects of improper management and dumping of hazardous waste. Though regulations governing hazardous waste might be most effective if derived from scientific investigation, the processes of establishing oversight remain highly politicized.

According to the Solid Waste Disposal Act of 1965, solid waste includes garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility. It can also include discarded solid, liquid, semisolid, or contained gaseous material that derives from industrial, commercial, mining, and agricultural operations, or from community activities. Hazardous waste refers to any solid waste (not necessarily in a solid state form) that has the potential to cause fatalities or threaten human or environment health when not properly managed.

The Environmental Protection Agency (EPA) identifies four primary categories of hazardous waste: listed, characteristic, universal, and mixed wastes. Listed wastes are substances known to be hazardous by the EPA and are delineated on three lists: the F-list, which includes wastes from common manufacturing and industrial processes; the K-list, which outlines wastes from specific industries, for example petroleum refining; and the P- and U-lists, which itemize wastes from commercial chemical products.

Some wastes may not be included on one of the lists but exhibit ignitability, corrosivity, reactivity, or toxicity. Ignitable wastes, such as oils and solvents, under certain conditions create fires, are spontaneously combustible, or have a flash point of less than 140 degrees F. Corrosive wastes, like battery acid, can destroy metal containers such as storage barrels, drums, and tanks. Unstable under standard conditions, when heated, compressed, or mixed with water, reactive wastes can cause explosions, toxic fumes, and gases. If toxic wastes are ingested, they can be harmful or fatal; if dumped, toxic waste can pollute the supply of groundwater. Batteries, bulbs, pesticides, and mercury-containing equipment are classified as universal waste, while mixed waste includes both radioactive and hazardous features.

Hazardous waste may be generated by commercial or industrial activities, but households can also generate hazardous waste such as batteries, paint, and pesticides. Among industries regulated by the EPA, chemical, petroleum, and coal products manufacturing account for approximately 85 percent of recorded hazardous waste. The federal government, primarily the Department of Defense, Department of the Interior, and Department of Energy, create millions of tons of hazardous waste each year. Entities emitting hazardous waste are assigned a category based on how much hazardous waste they generate each month. Large-quantity generators, among them pharmaceutical companies and chemical manufacturers, produce more than 1,000 kilograms a month. Small-quantity generators, such as a small print shop, a dry cleaner, or a diagnostic lab, create 100 to 1,000 kilograms a month and are allowed to accumulate 6,000 kilograms of hazardous waste, and conditionally exempt small-quantity generators (e.g., a dental office) create less than 100 kilograms of hazardous waste a month, and are subject to only minimal requirements.

Hazardous Material Legislation

To protect health, property, and the environment that might be endangered because of the risks of shipping hazardous material, Congress passed the Hazardous Material Transportation Act in 1975, which was amended by the Hazardous Materials Transportation Uniform Safety Act of 1990. The federal hazmat law, which applies to movement of cargo by land, sea, or air, gives the secretary of transportation authority to designate certain substances as hazardous and to specify the designated packaging and labeling required for each category of hazardous material. The act also addresses emergency preparedness and response to accidents involving hazardous material. Several agencies within the federal government share enforcement authority and are authorized to levy civil or criminal penalties for violations.

Enacted in 1976, then amended in 1980 and 1984, the Resource, Conservation, and Recovery Act (RCRA) authorized the EPA to regulate hazardous material at each point in the waste cycle, including generation, recycling, transportation, treatment, storage, and disposal. RCRA established a tracking system that generators must use to track material from generation to final disposal. Additionally, the EPA or the relevant state agency must issue a permit to any facility before it can treat, store, or discard hazardous waste. To ensure compliance with RCRA regulations, transfer-storage-disposal facilities are inspected at least once every two years, and state and federal facilities are inspected annually. Inspectors audit company records, evaluate the operating methods, take waste samples, and verify that the facility is using established groundwater monitoring techniques and proper handling and labeling of waste material. If a facility is found noncompliant, the EPA or state agency can enforce the regulations through civil or criminal penalties, orders to correct any violations, fines, and possibly imprisonment. The corrective action program enables the EPA to require companies to clean up any hazardous waste contamination.

Passed in 1980, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the Superfund, imposed a tax, which expired in 1995, on the chemical and petroleum industries and empowered the federal government to respond directly to releases or threatened releases of hazardous substances. The $1.6 billion collected in taxes was placed in a trust fund used to clean abandoned or uncontrolled hazardous waste sites when no responsible party could be identified. When parties responsible for the discharge are known, CERCLA establishes liability. In 1986, the Superfund Amendments and Reauthorization Act (SARA) incorporated new enforcement authorities and settlement tools, increased state involvement in the program, encouraged more citizen participation, and increased the size of the trust fund.

Love Canal, in Niagara Falls, New York, was one of the earliest Superfund sites. Between 1947 and 1952, Hooker Chemical Company buried approximately 22,000 tons of 80 different chemicals. After Hooker stopped using the site, it sold the property for $1 to the Niagara Falls School Board. In 1955, an elementary school opened on the site, and the surrounding area became home to hundreds of families. After heavy snow and rainfall in 1975 and 1976, corroding waste drums broke through the surface of the landfill, contaminating surface water and oozing into basements. Children and pets experienced burns after being outside. Residents around the canal were evacuated, and it took 21 years and $400 million to declare the site clean. Women exposed to the contaminants had a high rate of miscarriages, and children of former Love Canal residents experienced elevated incidents of birth defects.

The Clean Air Act of 1963 was the first federal legislation to address the need to regulate air pollution. In 1970, amendments to the Clean Air Act created emission standards. Additional amendments in 1977 and 1990 strengthened the provisions in the act, with the 1990 amendment increasing enforcement authority and establishing a program to eliminate chemicals that damaged the Earth's atmospheric ozone layer.

With growing public concern over water pollution, Congress passed the Clean Water Act in 1972. The act protects the nation's waterways, including coastal areas, lakes, and rivers. Using comprehensive standards and financial assistance, the Clean Water Act addresses causes of pollution and poor water quality, namely municipal and industrial wastewater discharges, polluted runoff, and habitat destruction. The act outlines

Divers from the Environmental Protection Agency retrieve microextraction devices, which absorb contaminants over a period of time, for measuring toxins at a former creosote manufacturer Superfund site at Puget Sound, Washington, October 2, 2010.

performance standards that municipalities and companies must meet to reduce pollutants, provides funding to states and communities to improve water infrastructure, and issues permits to ensure environmentally sound development that has minimal negative effects on wetlands and aquatic habitats.

In 1974, Congress passed the Safe Drinking Water Act (SDWA) to safeguard public health by regulating the public drinking water supply. The original act focused on treatment of the water supply, but amendments to the act in 1986 and 1996 emphasized protection of drinking water, along with its myriad sources: groundwater wells, lakes, reservoirs, rivers, and springs. The nation's water supply can be contaminated by chemicals, animal waste, human sabotage, pesticides, and waste products injected underground. The SDWA attempts to minimize these risks by setting standards for drinking water, emphasizing source water protection, enhancing operator training, funding improvements to the system's infrastructure, and disseminating public information. When water systems fail to meet established standards, the EPA has regulatory power to issue administrative orders, take legal action, or levy fines.

Titles I and II of the Marine Protection, Research, and Sanctuaries Act (MPRSA), also known as the Ocean Dumping Act, prohibits the transportation of sewage sludge or industrial waste from the United States with the purpose of dumping it in the ocean, proscribes U.S-flagged vessels or U.S. agencies to initiate from any location the transportation of waste with the purpose of dumping it in the ocean, and forbids dumping of material in U.S. territorial waters from any vessel originating outside the United States. Any deviation from these injunctions requires a permit issued by the U.S. Army Corps of Engineers, the standard for issuance that the dumping not unreasonably adulterate human health or the marine environment.

The Toxic Substances Control Act (TSCA) of 1979 empowers the EPA to collect information on both existing and new chemical substances and to regulate substances that might cause damage to human health or the environment at the production, use, and disposal stages through recordkeeping, reporting, and testing. Special provisions address asbestos, radon, and lead-based paint.

The Nuclear Waste Policy Act of 1982, as amended, requires the federal government to provide a permanent location to dispose of high-level radioactive waste and used nuclear fuel, overseen by the Nuclear Regulatory Commission (NRC), and for generators of the waste to pay the disposal costs. The Low-Level Radioactive Waste Policy Amendments Act of 1985 gives states the responsibility to dispose of low-level radioactive waste, with the option of collaborating with other states to create common facilities regulated by the NRC. The act also gives the NRC authority to establish guidelines for the amount of radionuclides in waste streams that are in concentrations or quantities low enough to be outside regulatory concern.

Hazardous Waste Minimization

The most effective way to manage hazardous waste is to reduce the amount that is generated. One of the most effective approaches is to substitute raw materials that create hazardous waste with those that create little to no waste. The cradle-to-cradle design philosophy advocated by William McDonough and Michael Braungart rests on this paradigm of using safe materials at the initial stages of the design process. Products receiving their Cradle-to-Cradle Certification achieve minimum standards on the toxicity level of the chemicals used in the manufacturing process. Waste minimization can also occur by changing or eliminating processes that produce hazardous wastes. For example, companies can utilize electronic, rather than mercury-based, thermometers or replace toxic cleaning products with nonhazardous options. Generators can reduce hazardous waste by recycling reusable elements such as solvents, acids, and metals. An inexpensive and easy method for reducing waste is practicing source segregation, so that hazardous waste and nonhazardous waste are kept separate by management practices that prevent the substances from coming into contact with one another. This simple tactic reduces disposal, handling, and transportation costs.

Any hazardous waste not recycled must be treated to reduce its toxicity. A common treatment and disposal method, incineration, requires permits and strict emission controls. Other treatments include neutralization, solvent extraction, and oxidation. Once treated, the waste must be discarded. Land disposal might be in a landfill, a surface impoundment, a double-lined depression, or an underground injection well. Waste piles, noncontained accumulations of hazardous waste, can be used if the material is solid and nonflowing. A final alternative is land treatment, a process in which hazardous waste is incorporated into the soil surface as microbes break down hazardous components. Despite the regulations governing treatment and disposal, waste sites are vulnerable to land and water contamination. Determining locations for hazardous waste sites is a difficult and controversial process.

Environmental Justice

Environmental justice requires that all citizens, regardless of race, color, national origin, or income, receive the same level of protection from environmental and health hazards, in addition to enjoying equal access to decision-making processes. During the Bill Clinton administration, an executive order required federal agencies to attempt to achieve environmental justice by identifying and modifying programs and policies that might disproportionately and negatively affect minority and low-income populations. These populations, however, often live in neighborhoods that house hazardous waste treatment, storage, and disposal facilities. Individuals in these communities tend to experience high rates of cancer, asthma, and reproductive issues.

While the constellation of federal and state laws governing hazardous waste, combined with improved access to information on the part of community members, has reduced some of the egregious incidents of improper waste management, a number of issues remain unaddressed. Political pressure and congressional votes friendly to business concerns curtail the ability of the EPA to effectively manage hazardous waste that impairs human, animal, and environmental health. The "Halliburton loophole" of the Energy Policy Act of 2005 exempts oil and gas drilling from requirements in the underground injection control (UIC) program of the Safe Drinking Water Act.

When coal is burned to produce electricity, coal ash, about 140 million tons each year, is left behind. This ash contains high levels of the radioactive elements uranium and thorium. It often also contains heavy metals including arsenic, lead, mercury, cadmium, chromium, and selenium. The toxins observed in coal ash have been linked to cancer and nervous system impacts such as cognitive deficits, developmental delays, behavioral problems, heart damage, lung disease, respiratory distress, kidney disease, reproductive problems, gastrointestinal illness, and birth defects. Although the EPA has attempted to categorize coal ash as a hazardous substance to be regulated by the Clean Air Act, dissenting voices in Washington have thwarted their efforts.

Studies demonstrate that companies that implement effective hazardous waste management systems can reduce their direct and indirect costs. With proper hazardous waste management, generators experience fewer accidents and spills; therefore, they have lower expenses related to cleanup. When less waste is generated, companies pay less for recycling, transporting, or disposing of the material, and pollution liability insurance premiums decrease.

Although the assorted statutes regulating hazardous waste have reduced the destruction caused by ignorance or negligence, some harmful materials remain unregulated. Additionally, either knowingly or unknowingly, businesses frequently fail to meet the standards for proper waste management. Continued cooperation between industry and government entities, technological advances, and a commitment to environmental justice are critical to protecting human and environmental health.

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See Also: Asbestos; Environmental Protection Agency, U.S.; Love Canal Disaster; Toxic Substances Control Act; Waste Management Inc.

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Health Care Fraud

Health care fraud consists of intentional acts that cost the country an estimated $80 billion a year. This white-collar crime is punishable by prison time, deportation (if the criminal is not a U.S. citizen), fines, and restitution. The U.S. Department of Justice (DOJ) and the U.S. Department of Health and Human Services (DHHS) jointly operate the Health Care Fraud and Abuse Control Program (HCFAC).

Investigative agencies of the Federal Bureau of Investigation (FBI), the DHHS, the Defense Criminal Investigative Service, the Center for Medicare and Medicaid Services (CMS), and a variety of state Medicaid fraud control units are devoted to waste and abuse in health care programs.

Under the Health Information Portability and Accountability Act (HIPAA) of 1996, fraud is knowingly and willfully executing or attempting to execute a scheme to defraud any health care benefit program, or to obtain any of the money or property owned by any health care benefit program, by means of false or fraudulent pretenses, representations, or promises. Later in 2003, the Federal Bureau of Investigation (FBI) recognized health care fraud as knowingly executing or attempting to execute a scheme to defraud a health benefits or insurance program or the willful execution of a scheme to defraud a care recipient. Similarly, the National Health Care Anti-Fraud Association (2003) described health care fraud to specifically include the deliberate submittal of false claims to private health insurer plans and/or tax-funded health insurance programs, such as Medicare or Medicaid.

Distinguishing fraud from negligence is imperative in discerning health care fraud. Fraud generally occurs when individuals knowingly disregard the truth by submitting intentionally false claims or other acts as described. An oversight or an inadvertent error does not indicate this same level of fraud. However, a pattern of oversights or errors and consistent activities may increase the likelihood of fraud liability. For example, intentionally submitting claims before learning the truth about a health claim can be prosecuted. Fraud and abuse are similar, except that in abuse, the investigator cannot establish that the act was committed knowingly, willfully, and intentionally. Abuse is most often defined in terms of acts that are inconsistent with sound medical or business practices, and the abuse could be an unintentional practice that directly or indirectly results in an overpayment to the health care provider.

In addition to health benefits and insurance programs, the U.S. Food and Drug Administration (FDA) describes health care fraud as the deceptive promotion, advertising, distribution, or sale of a product that has not been scientifically proven to be safe and effective. In addition, the product may be represented as effective to prevent, diagnose, treat, cure, or lessen an illness or condition, or provide another false beneficial effect on health. Further, recognition of health care fraud includes the articles of unproven effectiveness that are promoted to improve health, well-being, or appearance, to include drugs, devices, foods, or cosmetics for human or animal consumption.

The FDA shares federal oversight of health fraud in products with the Federal Trade Commission (FTC). The FDA regulates safety, manufacturing, and product labeling, including claims in labeling, such as package inserts and accompanying literature. The FTC regulates advertising of these products. The agency's regulation of health fraud products is based on a priority system that depends on whether a fraudulent product poses a direct or indirect risk to the consumer. A direct risk is identified when the use of a fraudulent product results in injuries or adverse reactions. The risk may be considered indirect when the product does not cause harm but its use may keep someone away from proven, sometimes essential medical treatment. In a collaborative partnership, the FDA, with the DHHS and the Office of Regulatory Affairs, Office of Enforcement, offers a consumer resource of how to avoid health fraud scams and how to report a problem of health care fraud.

Types of Fraud

A variety of activities can count as health care fraud, including billing for services not rendered, upcoding of services or items, unbundling services, excessive services, and unnecessary services. Soft fraud, where providers code for more than they are entitled, is estimated to be 80 percent of fraud. Targets of fraud include government programs, which are the hardest hit by fraud, including Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). While providers and hospitals make up a sizable portion of fraud perpetrators, organized crime groups are also participants in fraud. These organized crime groups bring their criminal abilities and skills to the fraud scheme, and, if caught, face prison terms as white-collar criminals. Health care fraud allows these organizations to launder money, making more money for the organizations than their usual illegal businesses.

Several examples of fraud identified in the fee-for-service or managed-care environment include overutilization or excessive/unnecessary services, billing for services not provided, upcoding, failure to provide needed services, unbundling, and filing false cost reports.

Overutilization refers to providing unnecessary services to the health care consumer. Unfortunately, "fee-for-service" medicine presents economic incentives for overutilization of health care services. Fraud may occur when more services are provided than are medically necessary and are billed for reimbursement.

Billing for services not provided (phantom billing), or misrepresenting the types of services that were provided, is a form of health care fraud. This may include billing for supplies not provided, misrepresenting the supply provided, or double billing, when a provider bills more than one agency for the same services. Frequently, the only issue to be resolved is whether the billing submitted was intentional or simple oversight. If intentional conduct can be proved, then fraud can be determined.

Upcoding assigns a current procedure terminology (CPT) code that reflects a higher level of service than was actually provided. Medicare payment under Part B is generally based upon values assigned to specific CPT codes. These codes theoretically reflect a variety of health procedures performed by physicians and other health care professionals. Inadvertent miscoding may occur because of both the complexity and the volume of the CPT codes. Moreover, Medicare regulations governing coding for evaluation and management services may be viewed as unclear, complicated, and ambiguous. Determining medical necessity is the designated health care professional's responsibility. Practice modalities differ based upon specialization, location, practice standard, and a variety of other factors, complicating the identification of health care fraud. Proving health care fraud in upcoding is often more difficult than detecting other fraudulent activities.

Failing to provide needed services in managed care is most often a result of professionals who are paid on a capitation basis. Typically, the health care professional is paid a fixed fee for furnishing all of the required services needed by a specific individual or group of individuals. Essentially, the managed-care environment penalizes the health care professional for overutilization; thus, providers may be monetarily encouraged to administer a reduced level of services. The economic incentives in managed care are exactly the reverse of those occurring in the "fee-for-service" environment identified in overutilization. Failing to provide necessary services may not only result in the poor health consequences of the Medicare enrollee but also viewed as a misuse of taxpayer dollars. Recently, this premise has been used to prosecute long-term care providers receiving Medicaid funds who deliberately neglect patient health and welfare.

Unbundling of services intentionally contributes to health care fraud. Unbundling occurs when health care services that are intended to be covered as a package are billed separately to increase the financial return of the provider. Bills for a particular service may be submitted in a fashion that appears staggered out over time. These services would normally cost less when bundled together, but by manipulating the claim, a higher charge is billed to Medicare, resulting in a higher financial reimbursement to the party committing the fraud.

Filing false cost reports is a fraudulent health care activity. The filed cost reports are submitted by providers who are paid under Medicare Part A, including hospitals, skilled nursing facilities, and home health agencies. These cost reports must be filed in accordance with the Health Care Financing Administration regulations that are designed to ensure that only allowable costs are charged to the government. Many cases can be cited involving cost report fraud, such as simply disguising an unallowable cost as an allowable cost. Falsification of information in medical record documents can also include information that is not accurate to reflect the required coding. All health care professionals are responsible for accurate, honest documentation in providing information in a medical record.

Incidence

Health care fraud costs the country an estimated $80 billion a year, with national health care spending at more than $2.7 trillion. The General Accountability Office (GAO) has estimated that 10 to 15 percent of all expenditures can be traced to loss, although recent efforts have resulted in a reduction of health care fraud. Health care fraud detection has been a significant priority of the Barack Obama administration, which has seen a record-breaking $10.7 billion in recoveries during the past three years, according to the DHHS.

The DHHS and the DOJ have partnered with several health insurers to help prevent fraud and abuse in health care billing. In 2012, the DOJ and DHHS released the annual HCFAC report, noting that the government's health care fraud prevention and enforcement efforts recovered a record-breaking $4.1 billion in taxpayer dollars during fiscal year 2011. Efforts recognized were the Health Care Fraud Prevention and Enforcement Action Team (HEAT), charged with the prevention of fraud, waste, and abuse in the Medicare and Medicaid programs. In fiscal year 2011, strike force operations charged a record number of 343 defendants, who allegedly collectively billed the Medicare program more than $1 billion. Strike force teams secured 172 guilty pleas, convicted 26 defendants at trial, and sentenced 175 defendants to prison. The average prison sentence in strike force cases was more than 47 months.

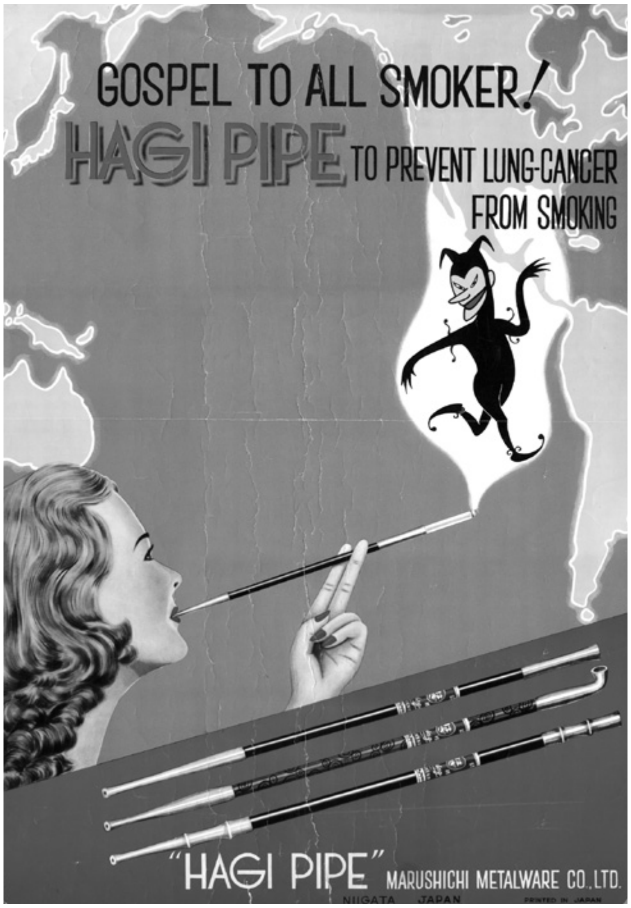
It is estimated that between $60 and $230 billion is stolen from the health care system every year through fraud. According to FBI statistics for 2011, of the 1,676 indictments of fraud and 736 fraud convictions for crimes related to health care fraud, the FBI was able to recover $1.2 billion in restitution, $1 billion in fines, $96 million in seizures, $320 million in civil restitution, and $1 billion in civil settlements. This was the largest number of health care fraud defendants charged in a single year in the history of the department. The problem is expected to get worse as more Americans enter Medicaid and Medicare programs, which have become targets for fraud.

In criminal fraud involving the pharmaceutical and device manufacturing industry, the department obtained 21 criminal convictions and $1.3 billion in criminal fines, forfeitures, restitution, and disgorgement under the Federal Food, Drug, and Cosmetic Act. This included the illegal marketing of medical devices and pharmaceutical products for uses not approved by the FDA and the distribution of products that failed to conform to the strength or quality required.

In civil health care fraud, $2.4 billion was recovered through cases brought under the False Claims Act (FCA). These cases included unlawful pricing by pharmaceutical manufacturers, illegal marketing of medical devices and pharmaceutical products for uses not approved by the FDA, Medicare fraud by hospitals and other institutional providers, and violations of laws against self-referrals and kickbacks. More than $2 billion was recovered in FCA health care matters in 2011. Since 2009, more than $6.6 billion in federal health care dollars was recovered because of the FCA.

Enforcement and Whistleblowing

In 1993, the attorney general announced that tracking fraud and abuse would be a top priority for the DOJ. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) established HCFAC. In 2007, DHHS and the attorney general allocated $248,459 to HCFAC to fight health care fraud and abuse. The Office of the Inspector General (OIG) was mandated by Public Law 95-452 to protect the integrity of DHHS programs. This included Medicare and Medicaid programs, as well as the health and welfare of the beneficiaries of those programs. As the Office of Investigations for the DHHS, OIG works collaboratively with the FBI to combat Medicare fraud. Defendants convicted of Medicare fraud face stiff penalties according to the Federal Sentencing Guidelines, as well as



During a 1960 congressional appropriation hearing, U.S. Food and Drug Administration Commissioner George Larrick referred to the Hagi Pipe as an example of why the agency needed funds to continue its accelerated oversight of health care fraud.

disbarment from DHHS programs. The sentence depends on the amount of the fraud. A defendants can expect substantial prison time, deportation (if not a U.S. citizen), fines, and restitution.

To combat fraud and abuse, the federal government's False Claims Act (FCA) of 1986, also called the Lincoln Law, specifically targeted health care fraud and abuse. Under the FCA, the United States may sue violators for treble damages, plus $5,500 to $11,000 per false claim. The federal law imposes liability on persons and companies who defraud governmental programs. The law includes a provision that allows people (whistleblowers) who are not affiliated with the government to file actions on behalf of the government. Persons filing under the act stand to receive a portion (usually about 15 to 25 percent) of recovered damages.

Because of multiple whistleblowers stepping forward to provide detailed information on an alleged fraud, Forest Pharmaceuticals Inc. was found to be selling a drug, Levothroid, which had never been approved by the FDA. The allegations settled for $42.5 million. The collective reward to the relators was over $14.6 million.

In common law, a writ of *qui tam* allows a private individual who assists prosecution to receive all or part of any penalty imposed. The qui tam whistleblower statute allows private individuals to sue on behalf of the U.S. government when they become aware of fraudulent activities. The whistleblower is a person who tells the public or someone in authority about the alleged dishonest or illegal activities occurring in a government department, private company, or organization. Half of all qui tam lawsuits involve accusations of health care fraud. Rewards for a concerned citizen can result in 15 to 30 percent of any amount collected by the government, with millions paid to whistleblowers. Consequences include individuals or entities involved in health care fraud being excluded from participating in any federal health program, including Medicare and Medicaid.

It is illegal to provide any remuneration to any individual or entity in exchange for a referral to be paid by the Medicare or Medicaid program. This law prevents overutilization of Medicare reimbursed services. Knowingly providing such remuneration in exchange for services paid for by Medicare or Medicaid is a federal crime punishable by imprisonment. An analogous civil statute is the Stark Law, which prohibits physician self-referral for laboratory or other designated health services. The law prevents physicians from referring a patient to laboratories in which they or a member of their immediate family have a financial interest. An example of the Anti-Kickback Act is when physicians have been prosecuted for accepting payments from hospitals in exchange for referring Medicare patients to those hospitals. Also, kickbacks may be identified when illegal payments are made by durable medical equipment suppliers to nursing homes and home health agencies for promoting business. Kickback rewards may be identified as cash, jewelry, free vacations, corporate sponsored retreats, or other gifts to entice medical professionals into using specific medical services.

St. Jude Medical Inc. agreed to pay $16 million to quiet allegations of paying kickbacks to physicians. The whistleblower was able to provide detailed insider information about the kickbacks to physicians, ranging from entertainment to sporting event tickets and other gifts, resulting in an award of $2.64 million.

Additional recent exemplar cases of health fraud include a Baton Rouge, Louisiana, fraud bust that discovered $225 million paid out to seven people for mental health services falsified since 2005; a Brighton Beach, New York, fraud scheme that cost $250 million and involved nine clinics; and a fake medical device company in southern California that took in $11 billion by submitting claims for high-priced durable equipment. Medicare has been defrauded in a larger medical scam involving a criminal ring's attempt to steal $163 million from various health care organizations. Of the 73 individuals indicted for this scheme, more than 50 people were arrested in 2010 in New York, California, New Mexico, Ohio, and Georgia. In a $163 million case involving fraudulent services to senior citizens and the elderly, including Medicare and Medicaid payments, Armenian Americans living in the United States were arrested in 2010 in a case involving FBI agents, the Internal Revenue Service (IRS), and local enforcement agencies in California, Georgia, New Mexico, New York, and Ohio.

Future of Health Care Fraud

The Affordable Care Act provides additional resources to help fight fraud to boost the HCFAC activities, including enhanced screenings and enrollment requirements, increased data sharing across government, expanded overpayment recovery efforts, and greater oversight of private insurance abuses. This initiative will use advanced technology and data analysis to identify when and where health care fraud is occurring. The Medicare Fraud Strike Force with HEAT expanded local partnerships and educated Medicare beneficiaries about how to protect themselves against fraud. In addition to regional fraud prevention summits, it has provided free compliance training for providers and other stakeholders.

Investigative agencies of the FBI, the DHHS, the Defense Criminal Investigative Service, as well as a variety of state Medicaid fraud control units are devoted to the waste and abuse of health care programs. The Centers for Medicare and Medicaid Services (CMS), the federal agency that administers the insurance program for the elderly and the public health program for people with low incomes, is beginning to use predictive modeling technologies to detect patterns of health care fraud. The system uses algorithms and an analytical process to examine Medicare claims as they are made, assigns risk scores, and issues alerts to CMS before claims are paid. The system is an analytic program that roots out fraud in the same way that companies identify stolen credit cards. This information will assist in identifying potentially fraudulent claims and analyze them further. Payers for health care, including government programs and commercial insurers, can protect themselves by doing background checks on new providers, by suspending payments to providers when there is suspicion of fraud, and by sharing information about new schemes.

America's Health Insurance Plans is participating in a partnership with the Blue Cross and Blue Shield Association as well as other health plans, including Humana, United Health Group, and WellPoint. A total of 21 groups, representing federal, state, and private payers, have been included. Sharing data, information, and best practices across all payers, the partnership will ensure that the public and private sectors are even better equipped to fight fraud and will provide a powerful deterrent to potential perpetrators. An Automated Provider Screening (APS) validates every new provider and hospital, and it runs routine checks on all validated providers in the system.

CMS officials and law enforcement agencies are putting more agents into areas where fraud is prevalent. These areas are throughout the country, in larger cities such as Miami, Los Angeles, Detroit, Houston, Brooklyn, Baton Rouge, Tampa, and Chicago. In addition to more human resources, agencies are using a dual-technology approach to fraud. The first approach is CMS's Fraud Prevention System, and the second is the Automatic Provider Screening. Additional solutions to fraud and abuse include training and education, implementation of computer-assisted coding (CAC), increased federal enforcement of fraud and abuse monitoring, and use of data modeling and data mining.

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See Also: Medical Malpractice; Medicare and Medicaid Fraud; Pharmaceutical Industry; Pure Food and Drug Act; Whistleblowers.

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Health Corporation of America

The Health Corporation of America began in 1987 with Richard Lynn Scott, an attorney; and Richard Rainwater, a Fort Worth financier, member of the board of the Hospital Corporation of America, and the Bass family financial advisor. Seeking to create a national health care provider network, they formed the Columbia Healthcare Corporation in order to purchase two hospitals in El Paso, Texas.

The innovations adopted by Columbia Health Care significantly improved patient care. The innovations attracted the attention of a number of local physicians, who joined with the company to create the El Paso Health Care System Ltd. (EPHS). EPHS purchased the Columbia Health Care System hospitals and other health operations. As the EPHS operations grew, Scott moved into other markets with purchase of hospitals in Miami, Florida; Corpus Christi, Texas; and other cities.

In 1990, Columbia merged with Smith Laboratories, Sitter Corporation, and Medical Care American of Dallas. It also went public with a stock sale. It continued its growth program with acquisitions in Indianapolis, Indiana; Ft. Lauderdale, Florida, and other cities. By the end of 1992, Columbia held over 24 hospitals and $1 billion in assets.

In 1993, Columbia merged with Galen Health Care. Its revenues were now over $5 billion, and its hospitals numbered around 100. The company was renamed Columbia Healthcare Corporation. A few months later, in 1994, the company merged with the Hospital Corporation of America (HCA), which was started in 1968 by Dr. Thomas F. Frist, Sr., a Nashville, Tennessee, physician, and Jack Massey, a founder of Kentucky Fried Chicken. Massey, a businessman with hospital management-experience, became the first chairman of the board. Both men believed that services delivered by hospitals could be greatly increased in efficiency through sound management practices. With improved efficiencies, profits would attract investors, which would attract top medical personnel and increase the quality of health care provided to a community. HCA had grown partly through building standard community hospitals with a small group of skilled contractors. This model aided the company's replacement of aging hospitals in smaller communities in a time of rising health care costs.

The merger of HCA and Columbia Healthcare Corporation produced a $10 billion company, operating in 26 states. It was named the Columbia/HCA Healthcare Corporation (Columbia/HCA), and Richard Scott was made the first chief executive officer. Frist was named the chairman. Scott continued the program of new acquisitions. By 1996, Columbia/HCA had 340 hospitals in 36 states and many other operations and facilities.

Its revenues were over $17 billion, with assets of over $18 billion, and more mergers and acquisitions were on the horizon.

Medicare and Home-Health Investigation

On March 19, 1997, federal investigators from the Federal Bureau of Investigation, the Internal Revenue Service, and the U.S. Department of Health and Human Services raided Columbia/HCA facilities in El Paso, Texas, with search warrants in hand to examine the billing records. Soon, the investigation spread to other company locations, with over 500 federal agents raiding facilities in seven states. The focus of the investigation was on Medicare billing practices and the company's home health care operations.

The investigations frightened the company's board of directors. In July 1997, Richard Scott resigned, as did company president David Vandewater. Dr. Thomas Frist, Jr., replaced Scott, and then led the company away from trying to establish a national brand as Scott was building a more community-focused identity. The company's name was soon changed to Hospital Corporation of America.

Columbia/HCA reached two settlements with the Civil Division of the U.S. Department of Justice. The first settlement, in 2000, met the government's claims regarding the company's coding and billing practices for outpatient services, home health care, and laboratory billing. The company agreed to pay a fine of $745 million.

HCA also admitted to filing false cost reports, inflating diagnoses in order to fraudulently bill Medicare and other health programs, and fraudulently billing Medicare for home health care workers. It also admitted to using a kickback scheme to reward doctors with partnerships in company hospitals or in the sale of home health care agencies if they would refer patients to HCA. In other cases, doctors were given office space, office furniture, and drugs from hospital pharmacies without charge, and "loans" that were never repaid.

In late 2002, the second settlement resulted in a fine to the U.S. government of $631 million plus interest, payments to state Medicaid agencies of $17.5 million, and a payment of $250 million that was used to settle previously unresolved Medicare expense claims. The total cost to the company was over $2 billion to settle what, at the time, was the largest fraud case in American history.

Company felony convictions were accepted for systematically overcharging the government when it claimed market costs as reimbursable; making illegal deals with home health care agencies, and with falsifying data about the use of hospital space. The company pleaded guilty to 14 felonies.

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See Also: Bribery; Health Care Fraud; Kickbacks; Medicare and Medicaid Fraud.

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Hedge Fund Fraud

Hedge funds are multimillion-dollar investment funds, developed in the late 1940s to hedge against possible poor performance of traditional investments. Investors would put a small portion of their assets into the fund. Hedge funds made slightly riskier investments for higher returns. Subsequently, funds made riskier investments, seeking even higher returns, and investors placed more of their wealth into them. Every hedge fund contains millions of dollars, and some hold billions. Such wealth tempts dishonest managers to steal great sums of money or cheat investors in a number of ways. When fraud occurs, investor losses can reach into the billions of dollars, as in the Bernie Madoff case.

Hedge funds are formed to invest in arbitrage, bonds, commodities, currencies, derivatives, equities, and stocks, using various strategies. Most funds last two or three years because the investment opportunities that they are formed to take advantage of come and go quickly. Funds are dissolved for investors to take a profit or cut losses. Fund failure and asset value losses occur for many reasons, not usually because of fraud. The case of Long Term Capital Management in the 1990s is a good example. Market factors and unwise investments account for most fund terminations.

Fund Managers and Regulation

Hedge fund managers receive substantial fees, typically 1 or 2 percent of fund asset value as a management fee, and a performance fee of 20 percent of profits. Managers are to build and protect net asset value and conserve investor wealth. Managers earn little or nothing if net asset value declines. They are paid for their financial expertise and to act on it for the benefit of investors. Top hedge fund managers can earn sums of around $1 billion per year.

Hedge funds are subject to less regulatory oversight than are other investments. Most investments, and those who administer them, must strictly comply with the Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisor's Act of 1940, and Investment Company Act of 1940. Some provisions of these regulations apply to hedge funds, but hedge funds are structured to avoid many of them and often are incorporated offshore. Investors trade the risk of less regulatory oversight for the opportunity to quickly respond to new investment opportunities and avoid compliance paperwork. This gives managers freedom to rapidly shift investments to promising new ventures on behalf of investors.

Hedge Fund Fraud Mechanisms

High management fees, less regulation, and control of vast sums of money can tempt fraud by a dishonest manager. Most frauds either outright steal investor assets or maintain appearances of high performance and net asset value so that the manager can receive inflated management fees. Investors are warned about potential Ponzi schemes, and some hedge funds have been created as Ponzi schemes. The classic example is Bernie Madoff. However, most hedge fund frauds are not Ponzi schemes. A wide range of fraud mechanisms are used by dishonest managers to steal assets or attain unearned fees. Misrepresenting fund size and performance inflates management fees. New investments can be entered on the books as performance gains instead of as asset value increases, inflating the manager's performance fee. Trading losses may not be reported. Investment strategy is violated when fund assets are placed in other investment markets, like mutual funds, and are used for illegal trading in areas like market-timed trading, which yield substantial fund gains. Dishonest managers have put assets in other Ponzi scheme hedge funds.

Many hedge fund frauds are accounting frauds. Accounting fraud usually occurs when any fraud is committed. Reporting false growth, the manager claims inflated fees. Some managers set up fictitious accounting firms, using their personal phone number and fake Web sites. Suspicious investors are then assured that figures are correct and investments are safe. Falsified financial statements constitute misreporting, and if mailed to investors, involve mail fraud. "Cherry picking" takes selective advantage of profitable trades. Investors are to share profits and losses. Instead of pooling assets, the manager puts good investments in a personal trading account, leaving less profitable trades for investors. With a large amount of capital, a manager can commit insider trading by acting on a tip, earning millions for the hedge fund and increasing performance and asset value fees.

Market manipulation, or "portfolio pumping," occurs when a manager uses the multimillion-dollar fund to manipulate small company stock prices. Buying up shares causes the price to rise, and when it reaches a predetermined price, the manager sells all fund shares at the artificially high price. Another way to claim high management fees is to overvalue assets, giving the appearance of high fund value. Stocks are hard to improperly value because quotes are readily available. Other assets can be assigned high values by the manager, rather than disinterested third parties. Diversion and conversion of funds occurs in all hedge fund frauds. The easiest way is for managers to put investor money in their personal bank account.

Hedge Fund Fraud Warnings

A common sign of fraud is promised high returns on investment. Madoff's lessons are informative. He claimed significant returns, little affected by market trends. Harry Markopolos became suspicious in 1999 because Madoff never reported declines. Deconstructing Madoff's strategy, he discovered that no combination of investments that Madoff claimed to have made could produce such returns, and he warned the Securities and Exchange Commission that Madoff's fund had to be a Ponzi scheme.

If a manager claims a "no risk" investment strategy, investors will lose, because no such strategy exists. Managers wanting to attract investors can overstate their qualifications and past performance records. Investors should check manager's backgrounds and litigation against them with the Securities and Exchange Commission. While incentives are high and managers are subject to less regulation when exercising control of other people's major assets, the vast majority of hedge fund managers are honest administrators and conservators of investor wealth.

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See Also: Madoff, Bernard L.; Madoff Ponzi Scheme; Ponzi Schemes; Stock and Securities Fraud.

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Hoarding

Hoarding is not a new concept, although in recent times, hoarding has been investigated from a psychological perspective, seeking to distinguish individuals who have an uncontrollable desire to accumulate items. From a socioeconomic perspective, hoarding has an even longer history, dating back to the 3rd century C.E. Given the nature of white-collar crime, its dependence on specific occupational positions and existing wealth, and its adverse effects on society, especially economically disadvantaged individuals, some hoarding can be considered to be serious types of white-collar crime. A simple definition of hoarding in the context of white-collar crime is the excessive accumulation of goods and/or currency, with the main aim of creating artificial scarcity for profit maximization. Hoarding is capable of undermining demand and supply dynamics.

Hoarding can harm the economy and lead to social unrest. As is typical of white-collar crimes, hoarding is characterized by deceit and concealment, which is a violation of many white-collar statutes and the public's trust. The essence of hoarding is found in the motivation or reason for the acquisition, not solely on the quantity amassed. Therefore, one who purchases a large amount of an item is not hoarding if the item is used for a specific and immediate purpose, instead of creating artificial scarcity with the intent to engage in price gouging. Hoarding in most cases has led to price gouging, which is illegal in 33 states. Among top U.S. corporations, there is considerable hoarding, with data indicating that up to $2 trillion is lying dormant in their coffers, hampering the country's economic recovery.

Since the identification of hoarding as a harmful economic activity, many countries and states have created antihoarding laws to curb the act. An early example of the legal and moral effects of hoarding was seen in the Babylonian Talmud of the 3rd and 5th centuries C.E., where specific information was given regarding the prohibition of hoarding of essential commodities such as oil, grain, wine, and weapons. In Britain, antihoarding laws were introduced during the world wars, whereas in America, it was not until 1994, under the Bill Clinton administration, that federal antihoarding laws were created. However, many states in America introduced antihoarding laws during World War II and at other times to protect the economy from the exploitation of deceitful businesspeople. One challenge with the definition of hoarding is the plethora of items hoarded. Though not exhaustive, the list includes cash, food, medication, gold and other metals, ammunition and weapons, and oil.

There are numerous social conditions that facilitate hoarding, some of which include natural disasters, impending economic changes, political changes, and war. Throughout history, many businesses and individuals have engaged in hoarding for profit. Hoarding can be seen as a financial crime, at both corporate and individual levels. At the corporate level, companies restrict spending by freezing salaries and hiring, withholding paying dividends, and holding off on reinvestment and other financial investment. Approximately $2 trillion was held in hoarding by U.S. firms at the end of 2012. With trillions of dollars sitting idle, corporations are refusing to inject money into the economy and fill vacant positions and, as such, are undermining economic growth and recovery. While hoarding in this case may not fit the definition of a white-collar crime, it may be viewed as economic sabotage.

At the individual level, particularly with money laundering regulations and attempts to evade taxes, individuals who have hoarded cash engage in numerous black-market transactions, including transnational financial crimes. People engage in hoarding for business advantage. The effects of hoarding are varied and can largely be seen as the root cause of numerous maladies within communities and the economy. One such crime is the adulteration of commodities, in cases where there is a shortage of goods or essential items such as food, where retailers have resorted to selling adulterated goods. The creation of regulations against hoarding is costly in terms of both legislation and enforcement. The money used to ensure enforcement and education of the public could instead be channeled to other social services in society.

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See Also: Antitrust, Federal Trade Commission; Antitrust, U.S. Department of Justice; Market Manipulation; Price Discrimination; Roosevelt, Franklin D.; Sherman Antitrust Act.

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Hobbs Act

The Hobbs Act is a federal law that is commonly associated with the Anti-Racketeering Act of 1934. The Anti-Racketeering Act of 1934 was intended to protect trade by prohibiting individuals from using illicit means to gain profit from interstate commerce. The Anti-Racketeering Act provided protections for commerce from acts of extortion, but there were exceptions that provided opportunities to circumvent the law. One of the most significant exceptions of this nature pertained to organized labor. The Anti-Racketeering Act included a provision that proscribed the application of the law's prohibitions in instances when they would undermine the legitimate rights of an organized labor group to carry out its official duties. In practice, the exclusion made it difficult to apply the provisions of the Anti-Racketeering Act to organized labor groups, even in instances when they relied on threats of violence to obtain financial gain by forcing businesses to accept unsolicited and unwanted labor or services. As a result of this organized labor exception, efforts were undertaken to revise the Anti-Racketeering Act. In 1946, the Hobbs Act was passed as an amendment to the Anti-Racketeering Act in an attempt to amend what were viewed as deficiencies in the existing legislation.

The Hobbs Act amended the Anti-Racketeering Act so that organized labor groups would no longer be able to circumvent the protections provided to interstate commerce by using violence or threats of violence to force business organizations to accept unsolicited labor. Advocates of the Hobbs Act feared that a lack of oversight and legislation could seriously damage interstate commerce and provide too much power to organized labor. At the same time, the legislation specifically prohibited undermining the efforts of organized labor groups to pursue permissible objectives through legitimate means. For example, the Hobbs Act does not limit the ability of organized labor groups to actively engage in rigorous and demanding negotiations with employers in an attempt to improve working conditions or pay. This was an important concession because critics of the legislation feared that it amounted to poorly concealed attempts to undermine the strength and influence of organized labor. Once passed, courts used the amended provisions of the Hobbs Act to prohibit organized labor from using force or the threat of force to gain financial benefit by forcing businesses to accept superfluous and unsolicited labor.

The original purpose of the revisions contained within the Hobbs Act was to curtail what were widely perceived as the protected abuses of illicit organized labor activities. However, the legislation has been further amended since its inception, and its scope and applicability have grown as a result. This wider utilization of the Hobbs Act has been made possible by the legislation's revised language, which provides for a wider and more robust application of its provisions. The more generalized provisions of the Hobbs Act, which prohibit individuals from using robbery, extortion, or threats to obstruct or delay commerce, have been used to prosecute individuals outside traditional organized labor and organized crime groups. This is especially true of the extortion provision of the Hobbs Act, which has been broadly interpreted and applied.

The Hobbs Act has been used by American law enforcement agencies to target criminals who have robbed commercial organizations and to prosecute public officials in a variety of different contexts. The provisions of the Hobbs Act, which prohibit using mail or telephone systems to facilitate criminal endeavors, along with the provisions that prohibit using an individual's public office for illicit personal gain, have been used to target the actions of corrupt public officials. Given its historical importance and growing contemporary applicability, the Hobbs Act remains one of the more important pieces of federal legislation in regard to controlling the abuses of organized labor groups and corrupt public officials.

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See Also: Bribery; Corruption; Ethics; Extortion; Labor Crimes; Organized Crime; Public Corruption; Racketeering.

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Holley, Louis Malcolm

Louis Malcolm Holley was born in 1949. He was a U.S. Army veteran and a resident of Tempe, Arizona. He was 52 years old in June 2001, when he stole $3.2 million in remittances in the form of money orders, cash, and checks from a Phoenix, Arizona, postal facility. He had been a postal employee for 28 years with no previous criminal record. Holley was arrested in an Extended Stay America motel room without incident in the Lynnwood, Washington, area just outside Seattle on August 17, 2001. Approximately $1.7 million was recovered ($1,500 in checks and $1.35 million in cash) from his car, and $417,000 in cash from his motel room. Investigators concluded that the rest, largely in money orders and checks, had been destroyed. Holley's conviction that November resulted in a three years and five months sentence passed in March 2002. This was a reduced sentence, given Holley's cooperation and guilty plea; prosecutors had wanted a 10-year sentence.

A federal investigation by the General Accounting Office (GAO) after the incident revealed that a key had been left in the lock of a cage for storing valuables, and all employees at the facility could access it. Available cameras were not in use, and there were other human security lapses, such as failing to properly record the deposits. It took the Postal Service 10 days to acknowledge the theft. A national examination of U.S. Postal Service locations also revealed that their $65 million in annual remittances was at some risk of loss because of employees failing to follow security procedures. In the Holley case, the manager of the postal facility had been warned by the Postal Inspector the year before to improve security.

In addition to human lapses, Holley's theft was also attributed to the Postal Service's efforts to save costs in handling daily deposits. Until 1997, postal deposits were made daily at 5,500 local banks. To save costs, the Postal Service used armed couriers to take the deposits to a central location for later bank deposit. Holley worked at a central location, the Postal Service's Processing and Distribution Center at Van Buren and 48th streets in Phoenix.

Holley worked a night shift in a secure area of the facility called a registry room. He had the responsibility of processing remittances from various locations twice a week. Court documents indicate that on June 1, 2001, Holley had signed for six large bags of cash at different postal sites in Tucson and Phoenix. He left work early the next day. Two days after the theft, a Bank of America employee scheduled to pick up the bags noticed that three deposit sacks had empty mailbags, instead of funds. A postal employee also noticed that three other bags had missing deposits, and the bags' serial numbers had been altered. Holley's fiancée was then contacted, who revealed that Holley was missing and had left her the title to his vehicle, with instructions to sell it, and a list of his bank account numbers. Holley admitted in court that he had time to plan his theft, even though his actions seemed spontaneous and poorly executed. At the time of the heist, he had developed an interest in gambling. He had two cars, one of which was recovered in a casino parking lot. When he was captured, casino tickets were found in his car. Holley had rented at least one of the cars on June 1, but the rental company eventually reported that vehicle stolen. After the Holley incident, the U.S. Postal Service implemented a plan emphasizing strict adherence to security measures and employee accountability.

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See Also: Embezzlement; Employee Crimes; Investigation Techniques; Negligence.

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Home-Stake Swindle

Robert S. Trippet started the Home-Stake Production Company of Tulsa, Oklahoma, in April 1955, as an oil tax-shelter investment. Beginning in 1964, Home-Stake began creating subsidiary corporations each year, which were available for investment as oil drilling "programs." Trippet's promise of tax deductions and profits of 400 percent spread by word of mouth through the Hollywood movie industry, the social circles of big business, and the professional community of law. From 1955 to 1972, Home-Stake took in $140 million from investors, but only spent an estimated $30 million actually drilling for oil. The U.S. Securities and Exchange Commission (SEC) began investigating Home-Stake in 1970, and in 1973, the SEC formally sued the company for running a Ponzi scheme. Investor-filed lawsuits followed. Four officers of Home-Stake were convicted on criminal charges. Home-Stake was declared officially insolvent on September 20, 1973.

Massive Ponzi Scheme

When the Home-Stake swindle collapsed in 1973, it was the largest, most elaborate, and most enduring Ponzi scheme in history. A Ponzi scheme operates by promising investors profits from a legitimate business. The swindler uses some of the original investment to pay a higher-than-anticipated dividend to attract more investors. As new investors pay into the swindle, their money is used to pay off earlier investors. The swindler uses some of the money to maintain a core business, but investments in the core business are insufficient because of the deviant mismanagement of funds, and the swindle inevitably collapses.

Trippet organized the fraud by informing investors that their money would be used to develop oil fields. He was careful to impress upon investors that the commitment to develop a field was long-lived—typically 12 years—with low returns in the early years of the drilling program. Investors were told that profits from the oil fields would rise in the middle years, then gradually taper off as the oil became more difficult to extract, and then the fields would eventually be depleted.

Trippet sent quarterly reports to investors, informing them of the progress of oil drilling and profits. In the early years of the investment program, Trippet made sure that profits exceeded Home-Stake's originally conservative estimates. It was in the middle of the typical 12-year investment program when Trippet would begin to inform investors that profits would be lower than expected. When investors complained about the disappointing profits, Trippet had two methods to keep stringing them along. Trippet's first method was to remind Home-Stakes' wealthy investors that although profits were lower than expected, they still had sheltered their money from taxation. The second technique was to suggest that if they were so disappointed in the performance of Home-Stake, then they could donate their stock to charity.

The point about Home-Stake functioning as a tax shelter worked to settle down swindled investors because at that time, U.S. tax law allowed investments in domestic oil production to be deducted from taxable income. Trippet bet that when wealthy investors were told about disappointing profits, they would rationalize that they had still been prudent investors because they had sheltered their money from taxes. The concept of donating Home-Stake stock to charity also worked to calm down swindled investors, for several reasons. First, in spite of the fact of having failed in the investment choice of Home-Stake, by donating their stock to charity, the swindled investor could maintain a positive self-image as a charitable person. Second, charitable organizations are less likely to complain about the disappointing performance of the stock because the stock was gifted, and social custom disapproves of complaining about a gift. Finally, the charitable donation could also be used as a tax deduction.

Home-Stake went to great lengths to create the illusion of a legitimate oil business, even painting the irrigation pipes of a farm orange so that they would look like an oil field pipeline as investors flew overhead. By deliberately using word of mouth to spread the news of Home-Stake within a social community, Home-Stake was following the techniques of an affinity fraud, which exploits trust among the network of investors. Trippet was thus able to swindle sophisticated businesspeople, including the former chairman of General Electric ($440,920) and the presidents of American Express ($57,000) and Time Inc. ($68,500), among many others.

The Home-Stake criminal case concluded on February 7, 1977. Robert S. Trippet, Frank E. Sims, Harry L. Fitzgerald, and John T. Lenoir were convicted on various criminal charges. Trippet, Sims, and Fitzgerald were sentenced to one day in jail plus probation. Lenoir was sentenced to three years of probation. Trippet was fined $19,000, with an additional order to pay $100,000 to a fund for civil claimants. Sims was ordered to pay $5,000 to a fund for civil claimants.

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See Also: Charity Fraud; Ponzi Schemes; Securities and Exchange Commission, U.S.; Tax Evasion.

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Hoover, Herbert

A trained engineer, Herbert Hoover is one of the few Americans elected president without prior experience in elective office or the military. Hoover enjoyed a stellar reputation as the U.S. secretary of commerce in the administrations of Warren G. Harding and Calvin Coolidge. Despite this success, Hoover struggled to deal with the many economic problems facing the nation during the Great Depression, which began months after he took office. As head of the Commerce Department, Hoover promoted the standardization of many products, which he felt would lower costs and reduce consumer fraud. As president, Hoover authorized the U.S. Department of Justice (DOJ) and the Internal Revenue Service (IRS) to prosecute gangsters such as Alfonse (Al) Capone for tax evasion, created an antitrust division within the DOJ, and instituted broad-reaching prison reform, which included establishing the Federal Bureau of Prisons. Although often overlooked by his contemporaries, Hoover made significant and important contributions to the fight against white-collar crime in the United States.

Hoover was the first president born west of the Mississippi River, in 1874, in West Branch, Iowa. The son of Quaker parents, Hoover's father was a blacksmith who owned a farm implement store. By 1884, both of Hoover's parents had died, leaving him an orphan at the age of 9. Hoover was sent to live with his uncle John Minthorn, a physician and real estate investor who lived in Newberg, Oregon. While Hoover did not go to high school, he attended a night school that allowed him to take classes in bookkeeping, typing, and accounting. In 1891, Hoover became a member of Stanford University's inaugural class. While at Stanford, Hoover took many engineering classes, earning a degree in geology in 1895. Hoover moved to Australia soon after graduation, working to locate gold deposits for a London-based mining company. After he was appointed manager of a mine near Gwalia, western Australia, Hoover combated the militancy of the Australian mine unions by bringing in Italian immigrants, allowing him to cut labor costs considerably.

Hoover's work led him to a partnership in Beswick, Moreing & Co., and he acquired a personal worth of $4 million by 1914, a substantial sum in that day. Hoover retired from day-to-day business affairs, acting as a consultant to struggling mines and lecturing at schools such as Columbia University and Stanford University. The transcriptions of several of Hoover's lectures were combined into a textbook, *Principles of Mining*, which perennially enjoyed good sales.

At the end of World War I, Hoover helped manage 500 volunteers who organized the return of the over 120,000 Americans in Europe. Hoover's

President Herbert and Mrs. Hoover at the final game of the World Series, Philadelphia, Pennsylvania, October 14,1929. That year, In the first months of his presidency, Hoover moved rapidly to change the federal response to white-collar crime.

success led to his appointment as chair of the Commission for Relief in Belgium (CFB), an organization that sought to alleviate hunger in war-torn Belgium. Hoover was named by President Woodrow Wilson as secretary of the U.S. Food Administration and the American Relief Administration, and he was seen by many Democrats as a successor to Wilson. Hoover instead remained a Republican and was appointed the secretary of commerce in 1920 by Harding. Hoover greatly increased the profile of the Commerce Department, seeking to diminish the sometimes adversarial relations that existed between business and government. Hoover worked to get business and government leaders to forge voluntary partnerships, sometimes termed *associationalism*, and as a result turned the Department of Commerce into an important arm of government that reduced labor losses from trade disputes, minimized accidents and injuries of workers, and increased standardization. After serving as commerce secretary under both Harding and Coolidge, Hoover was elected president on the Republican ticket in 1928 with 58 percent of the popular vote.

While Hoover is most commonly associated with the Great Depression, which began seven months into his term, he played a significant role in changing many federal agencies' responses to crime. In 1929, for example, in the aftermath of the St. Valentine's Day Massacre in which seven individuals were killed by Capone's underlings, Hoover urged agents from the Bureau of Prohibition and other government agencies to vigorously pursue convictions. Bureau of Prohibition agent Eliot Ness began an investigation of Capone's business operations. Multiple attempts to find Capone culpable for various crimes such as extortion, murder, prostitution, and other offenses had proven unsuccessful, so Ness concentrated on Capone's compliance with income tax laws, finding that Capone had been guilty of multiple counts of income tax evasion as well as numerous violations of the Volstead Act, which implemented Prohibition. Capone was convicted of these crimes, was sentenced to 11 years in a federal prison, and was subject to heavy fines and multiple garnishments of his property.

In 1930, Hoover also established the Federal Bureau of Prisons (BOP), an agency of the DOJ. The BOP administers all federal penitentiaries and was established in part because of Hoover's desire to professionalize the service provided in prisons, to provide more humane and progressive care for inmates, and to ensure consistent, competent, and centralized administration of the then-11 operating federal prisons, which served approximately 13,000 prisoners. The BOP replaced a group of three different offices that had been inconsistent in their application of policy, and it made available to to various employees formal training opportunities in applicable laws, correctional techniques, firearms safety, report writing, self defense, and other topics. These innovations greatly improved the operation of the federal prisons and increased the competency of its employees.

Stephen T. Schroth
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See Also: Antitrust, Federal Trade Commission; Antitrust, U.S. Department of Justice; Federal Deposit Insurance Corp.; Justice, U.S. Department of; Racketeering; Sherman Antitrust Act.

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Hopkins, Mark

Mark Hopkins was born in Henderson, New York, to a family descended from Puritans. He was a vegetarian and a Congregational Church member. He was quiet and slender, and he had a minor lisp. Hopkins married his cousin, Mary Sherwood, in 1854, and they adopted a son, Timothy. Hopkins's family moved to Michigan when he was 12 years old. His father died, and at age 16, Hopkins became a clerk in a mercantile establishment in Niagara County. He then became lead partner in Hopkins & Hughes in Lockport. He also studied law.

He was working as a bookkeeper in New York City when he got word of a gold strike in California. Almost immediately, he headed west for Sacramento. Rather than becoming a miner, however, he sold supplies to the miners, and before long he opened a store in Placerville in 1849, hauling merchandise from Sacramento. In 1850, he became a wholesaler in partnership with E. H. Miller, Jr., and in 1955, he partnered with Collis Huntington in a Sacramento hardware store.

The Big Four

Hopkins was a political ally of Charles Huntington, Edwin Crocker, and Leland Stanford; the group would become known as the Big Four. Hopkins eventually joined the Republican Party, which in California was chartered at the Huntington & Hopkins hardware store in 1856. Abolitionists with discretion in a Democratic milieu, they emphasized instead their commitment to the Republican candidate and the Pacific Railroad. They were also involved in larger enterprises than hardware stores. Hopkins was quiet, whereas Huntington was the boaster. Hopkins handled the books, while Huntington made the deals. He was earnest and frugal, he wore a gray beard, and his nickname was "Uncle Mark." The other three trusted him absolutely. No paper left the concern until Hopkins blessed it. He could be stubborn.

The Central Pacific Railroad formed in 1861, with Hopkins as treasurer, a position he retained until his death. He had final approval over all Big Four projects. Huntington and Hopkins would control the railroad, the Central Pacific, and make massive profits. Hopkins and the others each put in $15,000 to finance the Central Pacific, after passage of the Pacific Railroad Act of 1862, which gave the Central Pacific the western starting point, and the Union Pacific the start at Omaha, Nebraska, for the transcontinental railroad. In 1863, the Central Pacific broke ground, but after 20 miles it was broken. The Big Four bought votes, created a toll road, moved a mountain range, and did whatever it could to garner state and federal funds. Wartime inflation shot prices through the roof for rails, locomotives, and powder, and greenbacks were worth less than 60 cents to the dollar. In 1864, Huntington bought congressional votes and got a land entitlement for the railroad. The Big Four also formed the Contract and Finance Company, a scam construction company that skimmed $63 million, while holding most of the Central Pacific stock, valued at $100 million, and nine million acres of federal land.

Hopkins ran the finances of the railroad during the construction years, basically operating the same as he had at the store, just with larger numbers for higher stakes. He stayed in the background as the others dealt with the press, the public, government, and labor. He kept the books, kept an eye on the financial implications, and kept the complex financial arrangements on target. He kept his partners from diverging from the main path, even for potentially lucrative opportunities. When Huntington wanted to buy coalfields in Utah, Hopkins blocked the move. When Crocker wanted to buy the Western Pacific Line, he found no financial justification for diverting resources from the Central Pacific Railroad. Eventually, he came around, and Central bought Western in 1867. For Hopkins, the bottom line was fiscal rationality, and he didn't particularly care if a deal was legal or not, but he didn't like the tendencies of the others to make irrational promises in their exuberance. In 1872, when the Union Pacific/Crédit Mobilier scandal raised questions about similar bribery and corruption by the Central Pacific, Hopkins burned the books.

After the Central Pacific, the Big Four built the Southern Pacific, a second transcontinental railroad. Hopkins died in Yuma, Arizona, on an inspection trip of the Southern Pacific lines that also provided sunshine and warmth for his severe rheumatism. He left an estate of $40 million to $50 million. Even after he became extremely rich, he continued to rent a small cottage. His wife finally coerced him into building a large house on Nob Hill, but he died before it was finished.

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See Also: Bribery; Capitalism; Corruption; Crocker, Charles; Huntington, Collis P.; Robber Barons; Stanford, Leland, Sr.

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House Stealing

The economic crisis, globalization, and technological advancement have resulted in new types of offenses, such as identity theft and cybercrime. The Federal Bureau of Investigation (FBI) also describes house stealing as a new type of crime. House stealing is a combination of identity theft and mortgage fraud. Stealing a house has five steps: finding a property, finding information about the owner, producing fake documents, transferring the deed, and taking possession of the property.

In the first stage of house stealing, criminals look for a vacant house, rental property, or house where someone is living, to steal. Then, criminals obtain personal information about the landlord of the facility from easily accessible public records. When they find the necessary information for the initial transaction, they use the Internet to find more personal clues that would help them during the transaction process. Once criminals have all the information they need for the initial transfer of the property, they produce different fake forms of identification, such as a driver's license or social security card of the owner, which can be used to forge legal documents. Then, they find necessary forms, either online or from an office supply store, for transferring the property. After filling out the required forms, criminals have them notarized by a local notary. Then, they file these papers in the county where the property is located for transferring the deed of the property into their names. After transferring the deed to their names, they take possession of the house. In some cases, criminals move into the house. In other cases, criminals sell the house immediately, then apply for a mortgage loan for the property and have the bank make the purchase amount to them.

Since house stealing is a new type of crime, and it is hard to detect it easily, there are some precautions to protect from becoming a victim of house stealing. Some precautionary measures include: scanning mortgage company mail, periodically checking the public record, monitoring protection, and raising public awareness. When mail from a mortgage company about payments or for information arrives, open and read it carefully. Make sure that on the envelope, the contact information is correct. If there is suspicious activity on a mortgage payment, immediately contact the mortgage company. Additionally, checking mortgage account activity online may help detect problems early. Sometimes, it is better to check deed information from a local county office, especially for nonoccupied properties or a vacation home. By doing this, irregularities about a property can be recognized earlier. There are some online services for property owners by which, after registering on the site, the owner will be notified when there are public record filings on his or her property, such as a deed of trust or deed to convey ownership. Raising public awareness of crimes is also one of the most effective solutions to fighting them.

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See Also: Identity Fraud or Theft; Mortgage Fraud; Mortgage Modification Fraud.

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Housing and Urban Development, U.S. Department of

The U.S. Department of Housing and Urban Development (HUD) has its roots in the National Housing Act of 1934 and the creation of the Federal Housing Administration (FHA). The primary mission of HUD has been to help families buy homes. HUD has faced both internal and external problems for decades. Incidents have ranged from cronyism and corruption; to politically based preferences and price rigging; to bribery, fraud, and theft. In one form or another, residents, tenants, homeowners, contractors, vendors, and taxpayers have been victims of HUD-related scandals. The rise and fall of HUD and its wrongdoings along the way can best be viewed through the eras in which it has operated and through some of the leaders that have been at its helm over the years.

Problems Over the Years

The first HUD scandal reportedly occurred in the 1950s, when the FHA Section 608 program financed private housing for World War II veterans and became embroiled with deceitful builders. The 1970s found HUD coming under scrutiny again for what critics believed was wasteful and costly spending involving FHA mortgage insurance and Section 235 subsidiary programs.

The most notable scandals involving HUD first surfaced in the 1980s, after President Ronald Reagan's HUD secretary, Samuel Pierce, Jr., left office and his successor, Jack Kemp, completed an audit of HUD. Kemp found substantial evidence of internal corruption, fraud, and theft. Pierce and his affiliates were reportedly responsible for manipulating low-income housing bids, overmortgaging ventures that generated high fees and profits, providing federal dollars to people with political business ties, and mismanaging HUD budgets. The results were staggering, involving losses in the billions of dollars. Ultimately, 16 convictions were handed down to seven HUD associates. Pierce escaped prosecution after publicly and formally acknowledging his responsibility for the scandal.

David Burns, a former senior staff member of HUD's New York office, recalled how he had been pressured by one of HUD's top administrators who had close ties to New York Senator Alfonse D'Amato, a Republican. Burns told of the senator's support for criminal activity as well as a senior housing project that was planned for an area of Manhattan already filled with subsidized housing. The construction company that was selected for the senior housing project employed the senator's brother as an attorney and had contributed to the senator's political aspirations. A group of residents tried to block the venture through federal court, which compelled Burns to testify against his employer. District Judge William C. Conner concluded that HUD's justification for the project contained misrepresentations of data and misuse of its own regulations.

The early 1990s found President Bill Clinton, a Democrat, advocating HUD as an avenue for providing home-ownership opportunities to millions of Americans. Fannie Mae and Freddie Mac, two large government agencies that financed mortgages, began venturing into subprime lending, by which buyers who were credit risks could obtain home mortgages at higher interest rates (and precarious terms). Congressional friction between Democrats and Republicans at the time became even more politicized when HUD secretary Henry Cisneros, a Democrat, used his position and office as a platform for politically motivated rallies, propaganda, and pressures.

The 1995 revisions to the Community Reinvestment Act (CRA) gave Cisneros and regulators the ability to deny mergers to banks that did not make enough loans available to moderate- to low-income borrowers. Consequently, banks began to feel pressured to maintain their CRA ratings and increased their loans to risky borrowers. In the process, they also diluted the mortgage underwriting standards. This practice ultimately trickled down to the prime and subprime lending markets and contributed to the housing bubble and devastating housing market collapse in the 2000s.

Cisneros was replaced as HUD secretary by Andrew Cuomo, a Democrat, in 1997 after Cuomo spent several years as the organization's assistant secretary. Like his predecessor, Cuomo promoted efforts to have Fannie Mae and Freddie Mac maintain the business of supplying riskier loans to already credit-risky borrowers. As well, Cuomo advocated for less stringent regulations governing FHA mortgages, which some believe may have contributed to the defaults on FHA mortgages that occurred down the road. An unwelcomed audit by Inspector General Susan Gaffney revealed political and deceitful management of billions of dollars in HUD contracts.

In 2004, Alphonso Jackson, a Republican, became the HUD secretary under President George W. Bush. Rumors of cronyism continued to plague HUD under Jackson's tenure, highlighted in a *Washington Post* investigation that found a disproportionate number of HUD contracts being awarded to Republican, minority-owned businesses. Similarly, accusations began to surface that some government officials were being given preferential mortgage loans through Countrywide Financial, one of the largest housing lenders at the time. Countrywide was also involved in privileged agreements to sell Fannie Mae mortgages with substantially lower fees to originators. Countrywide, Fannie Mae, and Freddie Mac are often blamed for the demise of the subprime lending markets.

Today, HUD continues to play a vital role in the U.S. housing market and economic landscape as it attempts to reposition itself as an innovator and creator of housing opportunities for the American people.

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See Also: Bribery; Bush, George W.; Clinton, William J.; Corruption; Countrywide Financial Corp.; False Foreclosures; Foreclosure Fraud and Rescue Schemes; Government Contract Fraud; Loan Origination Schemes; Mortgage Fraud; Mortgage Modification Fraud; Predatory Lending; Price Fixing; Reagan, Ronald; Regulatory Enforcement; Subprime Loans.

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Human Trafficking

Human trafficking refers to the trading of human beings for the purpose of forced labor and/or sexual exploitation. It involves acts of transporting, transferring, harboring, or receiving a person through a use of force or coercion, and it is recognized by the United Nations (UN) as a crime against humanity. Every year, tens of thousands of men, women, and children fall into the hands of traffickers, in their countries and abroad. Every country in the world is affected by trafficking, whether as a country of origin, transit, or destination for victims.

Human trafficking is a global industry. It is estimated by the UN that over 2.5 million people are in the forced labor or forced sex trade worldwide, with just over half under the age of 18. People are often trafficked into the agricultural industry, to work as prostitutes in brothels or in the pornography industry, to undertake construction work, to carry out food processing and packaging, to be domestic servants, to aid in drug production and transportation, and for organ harvesting purposes. The U.S. State Department estimates that over 600,000 men, women, and children are trafficked internationally each year as part of the forced labor and sex trade, while perhaps double that number never cross an international boarder. A huge demand exists for human beings for the global sex industry and the exploitable labor industry. Organized criminal networks, black market gangs, and corrupt government officials find it an extremely profitable enterprise. It is the third-largest global business, after the arms and drugs trades, with an estimated annual turnover of over $30 billion.

Causes of Human Trafficking

The causes of human trafficking are complex. Although traffickers can use coercion, deception, and violence, half of the world's population lives in poverty, on less than $2 a day, while a further one billion live in extreme poverty on less than half that amount. Such circumstances provide the socioeconomic structural conditions in which people can easily fall prey to the false hope given by criminals involved in trafficking. Families living in extreme poverty in developing nations in Africa, Asia, and South America often possess few means to resist approaches from the seemingly friendly and helpful traffickers, who are offering them or their children an escape route from a desperate daily struggle to survive. Intimidation and violence may also be used against the victims, or against their families, their friends, and even their neighbors.

Although in more developed countries, such as Russia, and the United States, as well as in Europe, although poverty may be less immediately apparent, it still exists and is a cause of trafficking. However, promises of a life with better educational and/or employment prospects are the more commonly used recruitment methods in these contexts. In addition to the poor and those seeking a better life and new opportunities, runaways, refugees, and other displaced people are common victims of trafficking. The struggle against human trafficking is closely related to the ongoing international struggle against poverty, deprivation, debt, social exclusion, famine, gender-based violence, and war.

To ensure complete control of a trafficked person, traffickers typically arrange every aspect of the movement process, including travel documents and tickets, meals, and housing. This allows traffickers to control people through keeping their passports and also enables them to demand labor in return for alleged debts such as travel costs, false registration fees, or administrative costs. This reinforces how traffickers operate as part of large, well-organized criminal networks that include forgers, bogus employment agents, drivers, pimps, brothel owners, and even government and other public officials. Where corruption is endemic in local and national government, or where embassy and immigration officials are incompetent, it is often easy for traffickers to obtain documents and to transport their victims across national frontiers, without being properly checked by border controls.

Responses to Human Trafficking

In response to a growing recognition on behalf of the international community of the important roles played by organized criminal networks operating internationally in the trafficking industry, in 2000, the UN adopted the Convention against Transnational Organized Crime. This is also called the Palermo Convention. It contains two key protocols. The first is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Woman and Children. The second is the Protocol Against the Smuggling of Migrants by Land, Sea and Air. These two protocols represent a concerted effort on behalf of the countries that make up the United Nations to establish an international legislative framework that can tackle the problem of human trafficking, within and across national borders. A 2006 United Nations report, "Trafficking in Persons: Global Patterns," identified 127 countries of origin, 98 transit countries, and 137 destination countries for human trafficking. It also highlighted the urgent need to address the trafficking of women and children into the sex trade, with South America, Asia, and eastern European countries as sex trafficking hot spots.

The poor, the homeless, adults and children without families, displaced homemakers, runaway

Like slaves on an auction block waiting to be selected, prostitutes are on display in front of a go-go bar in Pattaya, Thailand, in 2005. Victims of human trafficking have to perform as they are told, or risk being beaten. Sex buyers often claim they had no idea that most women and girls abused in prostitution are desperate to escape, or are there as a result of force, fraud, or coercion.

teens, refugees, drug addicts, and kidnapping victims make up the majority of trafficking victims. The protocols that make up the Palermo Convention have led to an increase in the development of cross-national work between governments, criminal justice officials, and charitable organizations, such as Stop the Traffik and Amnesty International, with the aim of promoting public service announcements and educational initiatives, alongside coordinating information pertinent to the detection and punishment of individuals who are part of the criminal networks that both engage in, and profit from, human trafficking. For example, in 2008, Ukrainian and United Arab Emirates officials undertook a detailed joint investigation that uncovered a criminal group in the city of Dnipropetrovsk, which trafficked Ukrainian girls and women to the United Arab Emirates. They made at least $2,000 on each girl forced into prostitution. It is estimated that the gang managed to traffic more than 50 Ukrainian young women aged between 16 and 30 to the United Arab Emirates before they were stopped.

The Palermo Convention formed the basis for the development of the UN Global Initiative to Fight Human Trafficking (GIFT), which was launched in 2007. The development of GIFT into a coordinated trafficking strategy worldwide has revealed that, of the estimated 2.5 million people in forced labor (including sexual exploitation), 56 percent (1.4 million) are in Asia and the Pacific, 10 percent (250,0000) in Latin America and the Caribbean, 9.2 percent (230,000) in the Middle East and northern Africa, 5.2 percent (130,000) in sub-Saharan countries, 10.8 percent (270,000) in industrialized countries such as the United States and in Europe, and 8 percent (200,000) in countries in transition. The information collected also revealed that 52 percent of those who recruit victims are men; 42 percent are women, and in 6 percent of cases, both men and women worked together to recruit victims. The statistics also reveal that in just under half of cases (46 percent), the person who recruited a trafficking victim knew the victim.

Typically, such individuals act as local, community-based contacts for trafficking gangs, and so are a point of entry into a broader criminal network, which may well be funded by organized crime syndicates involved in other illegal activity, such as the Mafia, sometimes operating alongside corrupt regional and national government officials. Knowing the relative distribution of the trafficking problem worldwide, alongside identifying how traffickers typically operate, allows for the targeting of resources and information sharing between agencies and countries.

An Anti-Trafficking Policy Index (ATPI) was established by the UN as a result of the Palermo Convention to track and evaluate the success or failure of countries in tackling the problem of trafficking. A five-point scale is used to indicate good policy practices and success in catching and stopping traffickers, with a score of five the highest score and one the lowest. The ATPI has three dimensions relating to prosecuting traffickers, protecting trafficking victims, and preventing trafficking in the first place. The ATPI collects annual statistics for 177 countries worldwide, and year-on-year data reveals that antitrafficking policy has improved over the last decade. High-scoring nations include Germany, Norway, Australia, Sweden, the Netherlands, Belgium, and the United States. France, South Korea, Norway, Croatia, Canada, and Austria also score well. The two worst-scoring nations are North Korea and Somalia.

Statistical Trends

The statistical trends that underpin the political and policy making discourse surrounding the problem of human trafficking have been criticized for being misleading. The human trafficking industry forms part of the shadowy black market of illegal activity, and it is therefore impossible to know the true nature and extent of the problem. Most governments and agencies must rely on reasoned guesswork and estimates. This has led to some critics arguing that the number of people trafficked is far less than the estimated 2.5 million, while others argue that it is far more. Similarly, some critics argue that the estimated profit of $30 billion annually that criminal networks allegedly make out of trafficking is grossly overestimated, while others say that the figure is likely higher. Other commentators stress that it is far more important to focus on reducing both the number of individuals who fall victim to traffickers and the profits that traffickers make.

Most charitable groups, such as Amnesty International, argue that worldwide government measures to tackle human trafficking remain woefully inadequate. Although positive steps have been taken over the last decade, there remains a lack of properly funded support for victims of trafficking in many developed nations, let alone in developing countries, with the result that many suffer from discrimination in housing, employment, and social-service provision. Research also shows that victims of trafficking suffer lasting physical, psychological, and emotional damage; can find themselves facing criminal sanctions as a result of their involvement in the drug and sex trades; and in many countries are stigmatized and socially excluded by their local communities once they return to them, particularly if they are female victims of the sex trade. Although some progress has been made over the last decade, much work remains to be done at both the grassroots and international levels to tackle the problem of human trafficking.

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See Also: Labor Crimes; Organized Crime; Pornography; Prostitution.

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Hunter, Rielle

Born on March 20, 1964, in Fort Lauderdale, Florida, Rielle Hunter is an American actress and filmmaker whose birth name is Lisa Jo Druck. After a moderately successful film and television career as an actress, Hunter began a career in film production that included a series of short films for the 2008 presidential campaign of North Carolina Senator John Edwards. While she served as Edwards's campaign videographer, Hunter and Edwards engaged in an extramarital affair that produced a daughter. Hunter's affair with Edwards led to the termination of Edwards's presidential campaign. Prior to her involvement with Edwards, Hunter's father, James Druck, was involved in a scandal involving the killing of show horses for the purpose of claiming insurance money, a crime with which he was never ultimately charged.

In her early teenage years, Rielle Hunter, then known as Lisa Jo Druck, rode show horses. In 1982, her father, James Druck, was accused of hiring a man named Tommy Burns to electrocute and kill Lisa's show horse for the purpose of collecting $150,000 in insurance money. He was never charged with the crime. James Druck's involvement in the murdering of horses for insurance money was perhaps Rielle Hunter's first exposure to the world of white-collar crime. Fraudulent behavior on the part of Hunter and deceiving authorities were major elements of the act that brought Hunter national notoriety and brought down the career and life of a prominent American politician.

Rielle Hunter first met John Edwards in 2006, at a bar in New York, and started working with him shortly thereafter, when she and her production company were hired by Edwards's 2008 presidential campaign to produce a series of behind-the-scenes videos focusing on his presidential campaign. In 2007, an anonymous source told the *National Enquirer* that Edwards and Hunter had engaged in an extramarital affair during the course of the campaign and that Hunter was pregnant with Edwards's child. For the purpose of covering up the affair and saving Edwards's campaign, Hunter announced that the father of the child was Andrew Young, a staffer on the Edwards campaign. Hunter and Young's family, who were living in North Carolina at the time, moved to California to escape the media.

On February 27, 2008, Hunter gave birth to a daughter named Quinn in Santa Barbara, California. Hunter gave her daughter her last name on the birth certificate and did not identify the child's father. In July 2008, the *National Enquirer* once again publicly claimed that John Edwards was the father of Hunter's daughter. In August of the same year, Edwards publicly disputed that he was the father of Hunter's child and volunteered to take a paternity test.

It was later determined that Edwards had lied about his affair with Hunter. In January 2010, Edwards finally admitted publicly that he was the father of Hunter's daughter, Quinn. In December of the same year, Edwards's wife, Elizabeth, succumbed to breast cancer. In 2012, Edwards and Hunter ended their relationship, but they were jointly raising their daughter Quinn, then 4 years old. Edwards's use of campaign supporters' funds to support Quinn during and after his presidential campaign led to later federal charges. Rielle Hunter is a prime example of the intersection of privilege, power, fame, and white-collar criminal behavior.

Jason Dobrow
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See Also: Campaign Finance; Edwards, John; Perjury.

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Huntington, Collis P.

Collis Potter Huntington (1821–1900) achieved lasting notoriety as one of the leading railroad tycoons of his time. Huntington was one of the founders of, and major investors in, the Central Pacific Railroad, which constituted the western link of America's first transcontinental railroad. In Washington, D.C., Huntington was one of the most effective advocates for the Central and Southern Pacific, using favors and bribes to influence Congress on his railways' behalf.

Huntington was born on October 22, 1821, to a family of farmers in Poverty Hollow, a poor area of Harwinton, Connecticut. Huntington did not stay in Poverty Hollow for long; as a teenager, he found work as a peddler and travelling salesman. He eventually moved to Sacramento and, working with future railroad magnate Mark Hopkins, set up shop selling mining equipment and other supplies to men caught up in the California gold rush. His business venture with Hopkins proved successful, and in the 1860s, the two partnered with Charles Crocker and Leland Stanford, Sr., to form the Central Pacific Railroad Company. Stanford won the presidency of the company; Huntington had to settle for a secondary position. Contemporaries labeled the men the "Big Four," though in private they referred to themselves as "the associates." The four men were the major shareholders in the company, soon also acquiring the Southern Pacific Company. The Central Pacific linked with the Union Pacific to provide the first transcontinental railway of the United States, while the Southern Pacific monopolized rail travel in California.

Among the Big Four, Stanford lobbied, and to a large degree controlled, the political situation in California, while Huntington worked with the U.S. Congress on behalf of the Central and Southern Pacific lines. Huntington secured millions of dollars in governmental loans and undervalued land for his railroads, largely through providing bribes, political favors, and campaign contributions to sympathetic congressmen. Allegedly, Huntington also paid off newspaper editors. Subsequent investigators found that the company spent over $2 million to influence legislation at the federal, state, and local levels. Huntington was able to avoid the fate of his counterpart within the rival Union Pacific Railroad company, Congressman Oakes Ames. Ames was caught performing similar misdeeds in the Crédit Mobilier affair of 1872, one of the biggest scandals of the Gilded Age. Huntington, on the other hand, managed to prevent congressional investigators from definitively examining the Central Pacific's financial books.

Huntington maintained a long rivalry with his company president and fellow partner, Stanford. Hopkins and Crocker died in 1878 and 1888, respectively, and in 1890, Huntington succeeded in forcing Stanford out as president of the company. Huntington served as president for the next decade and had the pleasure of being the last surviving member of the four associates. He died on August 13, 1900, at his camp in the Adirondack Mountains.

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See Also: Bribery; Crocker, Charles; Hopkins, Mark; Public Corruption; Stanford, Leland, Sr.

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I

ICN Pharmaceuticals Inc.

ICN Pharmaceuticals Inc. was founded by Milan Panic, a Serbian American multimillionaire, in the late 1950s. He became the company's chairman, chief executive officer, and president. Milan Panic was born in 1929 in Belgrade, Yugoslavia, and his father died when he was 2 or 3 years old. He was a young teenager during the German occupation, starting to work for the partisans when he was 14 years old. A keen cyclist, he was an alternate for his country's cycling team at the 1952 Stockholm Olympics. He completed a B.Sc. degree at the University of Belgrade in 1955. When he was participating in a state-sponsored cycling event in the Netherlands in 1956, he defected to West Germany, and later that year he moved to the United States. He was naturalized as a U.S. citizen on June 14, 1963, in Los Angeles. His wife, Jelica, who had defected with him, died in 1972; they had three children. He remarried in 1978.

International Chemical and Nuclear Corporation, located in the City of Industry, California, was established with $200 in capital in 1960, with a washing machine used as a centrifuge. Initially involved in making chemicals for the pharmaceutical industry, Panic visited many laboratories and decided to produce pharmaceutical products. The company was renamed ICN Pharmaceuticals in 1973. As with all pharmaceutical companies, there was the hope of finding a cure for a particular ailment, and in 1970, the drug L-dopa was released, which was hoped to cure Parkinson's disease. The stock of the company rose dramatically but then fell after severe side effects were noticed from treatment with the drug. However, with other products, and occasionally over-optimistic financial forecasts, the company's stock rose to $34 in 1986; in 1991, its peak was $19, and it fell to as low as $2.50.

ICN Pharmaceuticals sold its West German operations to Revlon for $25.37 million in May 1976. In mid-March 1980, it sold its Brazilian operations to Revlon for an undisclosed sum. It decided to focus much of its research on human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), and on January 9, 1987, it announced that its viral agent Ribavirin was effective in preventing people exposed to the HIV virus from developing AIDS. *Lancet* published the results of a test-tube trial in which Ribavirin was able inhibit the HIV virus from replicating. There were then two-year clinical trials, but the U.S. Food and Drug Administration queried the statistical significance of the findings. It was released for a wider trial, although the U.S. Securities and Exchange Commission and a congressional committee were critical of the role played by Panic in promoting the drug, although with so many people dying from HIV, some people felt that even if the treatment was successful only with a small number of people, it might be worth the risk. In fact, journalist Jonathan Kwitny claimed in his book *Acceptable Risks* (1992) that the National Institutes of Health and some other federal agencies were not keen on Ribavirin, with AZT promoted after having been developed by the better-known company Burroughs Wellcome.

With the collapse of communism in eastern Europe, Milan Panic returned to Yugoslavia—then involved in a civil war, with several states having declared their independence. He was the prime minister of the Federal Republic of Yugoslavia from July 14, 1992, until February 9, 1993, and also contested the 1992 presidential elections, losing to Slobodan Milosevic. There was a query about his U.S. citizenship because of the U.S. constitutional prohibition on any U.S. citizen accepting office on behalf of a foreign nation. Therefore, President George W. Bush granted special permission for Panic to hold office in Yugoslavia. After Panic lost the election, Milosevic's supporters in the Parliament ousted him, and he then returned to the United States to remain the chief executive officer of ICN Pharmaceuticals in March 1993.

There were many clashes between ICN Pharmaceuticals and the Securities and Exchange Commission, and Panic decided to consolidate the company. During the 1990s, ICN Pharmaceuticals was merged with ICN Biomedicals, SPI Pharmaceuticals, and Viratek; a new entity, also called ICN Pharmaceuticals, emerged. In 1997, it had annual sales exceeding $672 million, and subsequently it changed its name to Valeant Pharmaceuticals International Inc., under which it still trades. Valeant Pharmaceuticals merged with Biovail Corporation in 2010, moving to Canada. It was then involved in a clash with the Securities and Exchange Commission again with Eugene Melnyk, the chief executive officer of Biovail, being fined and banned for five years from senior roles in public companies in Canada. Valeant Pharmaceuticals currently has revenue of $3.5 billion and has its headquarters at Laval, Quebec, Canada.

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See Also: Antitrust, U.S. Department of Justice; Pharmaceutical Industry; Securities and Exchange Commission, U.S.

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Identity Fraud or Theft

Identity theft can be generally defined as the illegal taking of a person's or business's identifying information to commit fraud or theft, or to escape financial and or criminal liability. Identity theft involves a full range of crimes such as counterfeiting, forgery, theft, driver's license fraud, check fraud, postal fraud, immigration fraud, credit/debit card fraud, identity document fraud, social security number fraud, insurance fraud, health care fraud, and tax fraud.

Given the complexity of identity theft as a concept, its meaning varies depending on the type of crime that a particular organization is interested in combating. For example, agencies interested in financial crimes, like the U.S. Secret Service or the Internal Revenue Service, define identity theft as the misuse of a person's identifying information to gain access to a person's financial accounts. Agencies interested in identity document fraud, like the Department of Motor Vehicles or the Social Security Administration, may define identity theft as the misuse of a person's identifying information to obtain a driver's license, passport, or social security card to gain employment or access to various social services.

Identity theft is an old crime with a modern name. Identity theft most likely began as a simple form of criminal impersonation; imposters would imitate another person with the intent to defraud him or her for personal gain. Over time, this form of identity theft evolved in order to accommodate society's new ways to identify individuals.

A U.S. Marine corporal displays her military identification, which is increasingly becoming a target for identity thieves, as evidenced by a number of serious thefts. In 2006 and 2007, several hard drives belonging to Veterans Affairs were stolen; they contained data on a total of about 28 million retired, active, and reserve military personnel. Service members deployed overseas can also become victims. Con artists can set up credit card accounts, start businesses, and even buy houses using their data.

The advent of identity documents, such as identity cards, made the traditional form of criminal impersonation less effective because of their widespread use as proof of identity. However, these early forms of identity documents lacked reliable security features and were easily forged and counterfeited by individuals wanting to steal the identity of someone else. A novel development in identity management came in the 1930s with the introduction of the social security number. Although it was originally issued to track Americans' earnings and provide a safety net for retirees, the social security number eventually became an all-purpose personal identity number that holds the key to almost all of an individual's personal and financial information. As a result, a new form of identity theft emerged.

The social security number was established around the same time that credit cards came into existence. However, credit cards were not widely used at the beginning because they were business specific, which required cardholders to carry more than one card with them. As credit-card technology advanced, a system was established to make it possible for one card to be used to pay almost any creditor across the United States. Consequently, the use of credit cards became widespread, and identity thieves adjusted to take advantage of the new opportunity. Credit-card fraud and identity theft then became synonyms; credit-card fraud was the most common form of identity theft. In its latest stage of evolution, identity theft has extended its reach to computer technology and online banking. Now, identity thieves steal personal information through online scams and hack into personal and business Web sites with relative ease.

After the U.S. Congress passed the Identity Theft and Assumption Deterrence Act (ITADA) in 1998, the Federal Trade Commission (FTC) launched the Identity Theft Data Clearinghouse (ITDC) in November 1999. The ITDC was established to collect identity theft complaints from victims and produce annual statistical reports based on the data collected; it became the most comprehensive database on consumer fraud and identity theft. Moreover, various groups have conducted further statistical research on identity theft, thus contributing to the accumulation of information on identity theft over the last 10 years. Estimates reported on the identity theft problem have been inconsistent from study to study, most likely because different survey methodologies are used. However, the studies concur that roughly eight million Americans are victimized each year, with annual identity theft losses reaching in excess of $50 billion. Although these figures have several government agencies, such as the Social Security Administration, claiming that identity theft is one of the fastest-growing crimes in the United States, the true scope and scale of identity theft are largely unknown because the studies that have been completed on this crime tend to focus primarily on financial identity theft, and they exclude the emotional toll of victimization. Furthermore, the estimates do not include other forms of identity theft or data on other countries, where identity theft is purportedly growing at enormous rates.

Types of Identity Theft

Even though identity theft is often associated with financial crimes, and many identity thieves are likely motivated by personal financial gain, there are other kinds of identity theft. In general, identity theft can be classified into five categories: financial, medical, identity document, social security number, and criminal.

Financial identity theft is the most common form of identity theft, and it occurs when an individual uses someone else's identifying information to obtain loans, goods, or services, or to commit some other kind of fraud for economic gain. Financial identity theft can be as simple as someone using a credit card without the owner's authorization, or as complex as an identity thief using stolen identity information to open new credit card accounts, obtain loans, or even buy a house in someone else's name.

Medical identity theft happens when someone's identity information is stolen and then used to commit health care fraud. Medical identity thieves use other people's personal information to receive treatment or surgery, or to cheat insurers by making fake claims. Additionally, identity thieves resort to stealing doctors' identifying information to defraud state and local medical service programs. According to the FTC, 3 percent of all identity theft victims have their personal information stolen and used to receive medical treatment and services. The FTC claims that people who are 50 years of age or older are at a higher risk of medical identity theft because they tend to have government-supported insurance such as Medicare or Medicaid.

Identity document theft is the stealing of another person's identity document, or the submission of a counterfeit identity document, to obtain other forms of identification such as a state-issued driver's license, a government-issued passport, or a social security card. Once identity thieves have acquired one or more of these forms of personal identification, they can access just about every aspect of American society. Although identity document theft is most commonly associated with the use of another person's driver's license, other identity documents that are also targets of identity thieves are birth certificates, visas, alien registration cards, passports, voter registration cards, government IDs, and privately issued identifications.

Social security number identity theft is the theft and fraudulent use of another person's social security number. The social security number is a high-value identifier for identity thieves because it gives them access to almost everything with which the person's number is associated. It also enables them to use numbers issued to children and dead people, without being easily detected. Identity thieves use the social security number as a key to access the financial benefits available to their victims and to obtain identity documents such as a driver's license, identification card, or passport. Furthermore, imposters can gain employment in another person's name by using a stolen social security number.

Criminal identity theft occurs when an imposter gives another person's name and personal information, such as date of birth or social security number, to law enforcement during an investigation or upon arrest. It is common for criminals to use fake identity documents and provide false information when committing a crime so that the crime goes under another person's name in the event that they are caught. Consequently, criminal identity theft may be the most devastating kind of identity theft. When an imposter commits a crime in someone else's name, a warrant may be issued in the name of the victim, who will probably be arrested and sent to jail. In this regard, victims of criminal identity theft are more likely than victims of other forms of identity theft to spend a considerable amount of time and effort trying to restore their good name. In some situations, the victim's name may never be cleared because it will forever be linked to the criminal's true identity in the form of a known alias.

How Identity Theft Occurs

The identity of a person is a social reflection of who she or he is; it establishes a person's reputation and status in various social settings. Identities allow people to identify others to determine who they are, who they are related to, what they do, what they have accomplished, where they have been, and how much property they own. A person's identity is based on different kinds of identifiers, which distinguish one person from another.

Although the identifiers that make up an identity are too numerous to list and can vary greatly from one person to another, they are typically grouped into four categories: something you are, something you are assigned, something you have, and something you know. "Something you are" identifiers include biometric characteristics such as DNA, fingerprints, and handwriting. "Something you are assigned" identifiers include a person's address, name, title, and social security number. "Something you have" identifiers include items such as identification cards and passports. Finally, "something you know" identifiers are pieces of knowledge that a few others may know, like the password to a bank account. Identifiers, such as fingerprints or DNA, are permanent, highly individualistic, and difficult to obtain, whereas names and birth dates may be less distinct and relatively easy to acquire. Consequently, identity thieves target the latter identifiers and use them to commit crimes.

Identity thieves steal the identity of individuals to fulfill their economic or social needs. The manner and ease with which an identity theft is accomplished is dictated by the offender's motivation and the existing opportunities. For any crime to occur, three elements are necessary: a motivated offender, a suitable target, and the absence of a capable guardian against the crime. Therefore, for an identity theft to occur, a motivated offender must converge in space and time with suitable targets, in the absence of capable guardians.

The perpetrators of identity theft, or motivated offenders, are individuals who want or need to use someone else's identity information. They might use this information themselves or give it to others to use. The motivation of identity thieves may be money, anonymity, obtaining goods, services, employment, revenge, or some combination of each. Although a comprehensive profile of a typical identity thief is unavailable because of the limited amount of research that has been conducted in this area, the existing research suggests that the characteristics of an identity theft offender are different from those of other kinds of criminals. For example, although identity thieves are more likely to be male, which is consistent with other crime categories, female involvement is higher for identity theft than for other crimes attributed to women. Additionally, the aging-out process that tends to occur among all other crime groups of offenders does not apply to identity theft. In fact, compared to other types of crime, identity thieves begin committing identity theft at an older age and continue later in life. Even though identity theft is a crime often committed independently, law enforcement agencies across the United States are reporting increases in organized identity thefts that are carried out by street gangs, criminal organizations, and terrorist groups.

Identity thieves target certain kinds of identity information, depending on their goals and skill levels. Moreover, the form and accessibility of the identity information are also factors considered by these offenders. For example, biometric identity information, which includes DNA and fingerprints, is not a suitable target compared to other forms of identity information because it is difficult to steal and then utilize in a way that is useful to the identity thief. In this regard, the most suitable targets are those that contain unique pieces of identity information, such as social security numbers and birth dates. Suitable targets take one of three forms: paper (e.g., junk mail, bank statements, credit reports, receipts, checks, and applications), plastic (e.g., credit cards, identity cards, and licenses), and digital (e.g., computer, compact disks, compact drives, cell phones, and smart cards). To obtain this information, identity thieves may search through trash; steal people's mail, wallets, or purses; or even undertake more complex strategies, such as stealing identifying information from an employer, hacking into a Web site, or carrying out online scams.

Available research studies contend that identity theft victims are people from all ages, races, genders, and income levels. Although everyone is at risk of victimization, some people are more at risk than others. For example, credit card fraud is the most prevalent kind of identity theft; therefore, people with higher rates of credit card use are at an increased risk of victimization.

Other factors that have been found to increase the risk of victimization include geographic location and age. The FTC has reported that people living in Arizona, California, Florida, Texas, Nevada, New York, Georgia, Illinois, New Mexico, and Colorado are at a greater risk of having their identity stolen than those in other states. This may be because of population density, the number of undocumented immigrants working and living in these states, or the comprehensiveness of state identity theft legislation. With regard to age, people aged 18 to 39 are at the highest risk for victimization. The increased vulnerability of this age group may be because of their high risk-taking lifestyles, which include frequent and open use of personal information. This is evident by their regular use of social networking sites and their high engagement in online banking and shopping activities.

The guardians against identity theft, or the people charged with protecting identity information, include the owner of the identity information and other people or entities who are charged with safekeeping the identity information of others. Examples of such entities include banks and government agencies like the Internal Revenue Service and the Department of Veterans Affairs. Often, members of society have no choice but to provide personal information to government and private businesses when asked to do so, or they risk being denied access to goods and services. As a result, government and privately operated businesses have an enormous responsibility when it comes to protecting people's personal information. However, since the level of guardianship of people's personal information varies from one agency to another, those places where guardians are absent or careless become targets of identity thieves. This reality is evidenced by the number of preventable data breaches that have taken place. According to the Identity Theft Resource Center (ITRC), there were at least 3,159 disclosed incidents of data breaches from January 2005 to December 2011 that potentially exposed more than 510 million people to identity theft.

Response

Identity theft is a component of several other well-known crimes that are perpetrated with stolen identity information. Modern-day identity theft became well known in the mid-1990s, when large numbers of identity theft victims came forward and reported their losses. As a result, identity theft became a federal crime in 1998, when Congress passed the Identity Theft Assumption Deterrence Act (ITADA). Following the passing of the ITADA, the federal government enacted a series of additional identity theft statutes, and many states now have identity-theft laws that are similar to those passed by the federal government.

In addition to the federal government's legislative response to identity theft, there has been an increase in law enforcement efforts to combat this crime, which is demonstrated by the increased number of identity-theft prosecutions. However, the overall impact of identity theft is significant, and the growing number of international identity thieves, aided by computer technology, is making enforcement efforts more difficult.

As a result, the best way to combat this crime is through prevention. The more difficult people make it for identity thieves to steal their personal information, the more unattractive they become as targets. Although this practice does not guarantee that individuals will not become victimized, it increases the chances that the identity thief will search for an easier target.

As society continues to rely on computer technology and the Internet to complete financial transactions and to store and send personal information, identity theft will be a war increasingly waged in the online world. Moreover, society is more connected now than ever before, making it easier for identity thieves to prosper from this persistent and growing crime from anywhere in the world.

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See Also: Bad Checks; Counterfeiting; Credit Card Fraud; Federal Trade Commission; Forgery; Health Care Fraud; Insurance Fraud; Internet Fraud; Medicare and Medicaid Fraud; Tax Evasion.

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Iguchi, Toshihide

Toshihide Iguchi is a former American executive for Japan's Daiwa Bank Ltd., New York branch, where he engaged in illegal trading. In 1997, he was sentenced to four years in prison in New York for the losses incurred, and he was ordered to pay a fine of $2.6 million. Daiwa Bank was expelled in late 1995 from the United States for failing to disclose Iguchi's fraudulent activities after he revealed them to its senior executives, and for their subsequent attempts to cover up; the bank agreed to pay a fine of $340 million. The focus on Iguchi is of critical importance because it represents the challenges of white-collar crimes.

Iguchi was born in Kobe, Japan. He moved to the United States shortly after high school to pursue higher education. He earned a bachelor's degree in psychology in 1975 from Southwest Missouri State University, which is now known as Missouri State University. He was regarded as a very personable individual by one professor. Despite having a degree in psychology, his first job after graduation was as a car dealer. He later became a citizen of the United States.

In 1976, Iguchi was employed by Daiwa as the result of the assistance and influence of his father, who had connections to people in the banking industry. Although he had no previous experience or apparent knowledge of banking, he was given a position in the securities custody division, which involves the safekeeping of securities such as bonds, commodities, and stocks for investors, and where he could organize, sell, and deliver securities or even monitor the bank's actions on securities. Daiwa's management did not consider the risks involved, despite being regarded as one of Japan's largest commercial banks and one of the world's top banks.

A "Shrewd" Trader

After eight years in the securities custody division, Iguchi was promoted in 1984 to bond trading in U.S. Treasury bonds because he was regarded as a well-respected local and shrewd trader, despite his lack of experience in trading. His high position in the bank allowed him to conceal his illegal activities. Shortly after his promotion, he lost $200,000 through trading. In an attempt to recover that loss, he began trading more aggressively by illegally selling bonds from the bank's portfolio and from investors' accounts. In addition, he forged bank statements for the stolen bonds, thereby giving the appearance that the bonds were still in place. He continued with the rigorous trading activities to cover each loss and protect his image as a "shrewd" trader. He was able to avoid detection by regulators.

Fearing he would be caught by regulators, he confessed in 1995 in a 30-page letter to the president of Daiwa Bank in Japan, in which he also revealed that two other unnamed traders had incurred massive losses. By this time, Daiwa had lost more than $1 billion between 1984 and 1995—a period of 11 years—without any suspicion from senior executives or regulators in Japan or the United States before his confession. Iguchi made about 30,000 illegal trades and embezzled thousands of dollars from Daiwa Bank. He was arrested in 1995 and held without bail for falsifying bank records and attempting to conceal the losses. He was formally sentenced to prison in 1997. He wrote about the Daiwa experience while in prison, and since his release in 2000, he has continued to write.

The role of regulators in the banking industry remains problematic because of the notion that such oversight interferes unfairly with operations and has negative impacts on the markets. With regard to Iguchi, it appears the regulations that had been put in place forced him to confess his fraudulent activities. However, they have not deterred several other rogue traders. Many companies not only fail to disclose fraudulent activities but also tend to lobby legislators to loosen regulations on banks. It is evident that closer scrutiny of Iguchi's activities by regulators in both the United States and Japan could have prevented the fraud from ballooning so large.

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See Also: Accounting Fraud; Bank Fraud; Bond Fraud; Daiwa Bank Ltd.; Hedge Fund Fraud.

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Illegal Competition

Competition law (also known as antitrust law) protects healthy market competition and regulates against anticompetitive behavior demonstrated by companies. Competition regulation is mainly known through the European Union (EU) Competition Law and the U.S. antitrust law, even though national competition authorities across the globe often maintain discretion regarding the exact implementation of such rules. National competition law usually does not cover activity beyond territorial borders unless it has significant effects at the nation-state level.

Particularly in the case of cartels, competition law mainly focuses on prohibiting agreements or practices that jeopardize and restrict free trading and competition among businesses. It also bans abusive behavior of a firm that dominates a market, as well as anticompetitive practices that tend to lead to such a dominant position (e.g., predatory pricing or tying). Finally, it supervises the mergers and acquisitions of large corporations, safeguarding that they abide by all the necessary rules.

Competition law gained recognition in Europe when Germany enacted the first anticartel law in 1923, and Sweden and Norway adopted similar laws in 1925 and 1926. Currently, the Treaty of Lisbon prohibits anticompetitive agreements in Article 101(1), which includes price fixing. Therefore, agreements are almost always illegal if participants engage in actions of price fixing, limiting production, sharing markets or customers, or abusing their market dominance. These agreements between businesses distort competition and ultimately harm the business sector, the market, and individual consumers.

Regulation

From the early utility theories advanced by Jeremy Bentham and Francis Edgeworth, economics has developed a powerful framework for understanding human decision making as a calculus of pleasures and pains. Cesare Becarria formulated a theory that installing sufficiently large expected pains to breaking the law deters even the toughest criminal; therefore, high penalties and low policing efforts may be the solution. What is more, the transnational criminality of illegal competition renders it even more difficult to be regulated outside the context of an international body of law, such as the EU. A great part of competition law violations includes price fixing and cartel establishment.

The EU framework that regulates competition law enforcement is expressed through Regulation No. 1/2003, through antitrust enforcement in EU member states. It allows members to implement criminal sanctions in their national legal framework regarding Articles 81 and 82 EC. It further regulates that the states must enforce their national competition laws in accordance with these articles, rather than allowing full independence.

In particular, Regulation No. 1/2003 (Article 5) states the following:

> . . . the competition authorities of the Member States shall have the power to apply Articles 81 and 82 of the Treaty in individual cases. For this purpose, acting on their own initiative or on complaint, they may take . . . decisions . . . imposing fines, periodic penalty payments or any other penalty provided for in their national law.

Member states can therefore impose both administrative or civil fines on companies violating Articles 81 or 82 EC, as well as criminal fines. These provisions demonstrate the wide range of penalties that can be imposed in a case of competition law violation, facilitating the effort of the respective national competition authorities for efficient prevention. The legal interpretation of these principles widens the field of penalties that can be enforced even more. Finally, Article 12(3) of Regulation No. 1/2003 covers any other penalty on individuals, including imprisonment. On the other hand, Article 12(1) of Regulation No. 1/2003 also confirms that the European Commission and the national competition authorities can cooperate in terms of exchanging and using information and evidence.

This is contradictory to the view expressed by some scholars that Articles 81 and 82 EC are inherently noncriminal, and therefore that the EC Treaty would exclude criminal enforcement in implementation of these articles at both the levels of EU institutions and of member states. The unanimous adoption of Regulation 1/2003 in practice rejected this opinion by allowing member states to implement criminal sanctions in their respective authorities. What is more, it is evident from Article 83EC that the council will define potential prohibitions of agreements and abuse of dominant position.

Decentralization as an Enforcement Method

Initially, Articles 81 and 82 were vague in the treaty, regarding the jurisdiction of the community courts. This was resolved in 1962, with the adoption of Regulation 17, introducing the centralized route. The model of administration chosen to enforce these articles for the commission resembled the German model of central administration, with judicial authorization and authority for exemption. The 1999 White Paper (White Paper on Modernization of the Rules Implementing Articles 85 and 86 of the EC Treaty, OJ 1999 C132/1) justified the existence of the monopoly in terms of a harmonized interpretation of the legal rules found in Article 81(3).

Even though centralization was considered a wise choice in the beginning, eventually it was apparent that the commission did not have the resources needed for this; therefore, Article 81(3) introduced the decentralized system, resembling the French system of *exception legale*. A great achievement was therefore reached with Regulation 1/2003, as the commission for the first time left its monopoly of enforcement.

Overall, national competition authorities are expected to bring to justice more cases compared to the commission, in particular addressing local competition law infringements, where they have a comparative advantage because they are familiar with the local markets and they are better placed to regulate national markets. This leads to another concern about the tools that a state might use in order to achieve these goals.

Table 1 Sanctions of European countries regarding competition law violations

Member state	Provision for criminal sanctions	Details
Austria	Yes	Sec. 168b of Austrian Penal Code
Belgium	Yes	Limited sanctions provided by the competition
Bulgaria	No	
Cyprus	No	Exceptions apply in limited cases
Czech Republic	Yes	Article 127 of the Act No. 140/1961 Coll., on the Criminal Code (only natural persons)
Denmark	Yes	All fines are criminal sanctions except daily and weekly payments
Estonia	Yes	Articles 399-402 of Penal Code (karistusseadustik)
Finland	No	
France	Yes	Provisions pursuant to Article L. 4620-6 Commercial Code
Germany	Yes	The only criminal sanctions available are those under § 298 of the Criminal Code (StGB) (bid rigging) and under § 263 of the Criminal Code (StGB) for fraud
Greece	Yes	Article 29 of Law 703/1977 provides for criminal sanctions
Hungary	Yes	Hungarian Criminal Code (Act IV of 1978) Art. 296/B
Ireland	Yes	Provisions under the Competition Act 2002 or of Articles 81 and 82 of the treaty is discovered, the Competition Authority
Italy	No	
Latvia	Yes	According to the Latvian criminal law, only natural persons and not legal entities may be liable for such crimes
Lithuania	No	
Luxembourg	No	
Malta	Yes	An infringement of Article 5 or Article 9 of the act is a criminal offense that may result in a fine
Netherlands	No	
Poland	No	
Portugal	No	
Romania	Yes	
Slovakia	Yes	Article 250 of the Slovak criminal code No. 300/2005 Coll as amended
Slovenia	Yes	Provisions under article 231 of the penal code of the Republic of Slovenia
Spain	No	
Sweden	No	
United Kingdom	Yes	Provisions under Enterprise Act 2002 at Section 190

Implementation in Practice

In the EU guideline on fines, provisions include the 1/09/2006, declaring that a fine will multiply for each year that a company participated in a cartel, with the Danone case affirming this (*Groupe Danone v. The Commission*, Case C-3/06 P [8/02/2007]. In 2007, EU fines topped $1.8 billion, whereas a cartel in the automotive glass market resulted in a fine of 1.4 billion euros. This is the highest fine ever imposed, including a fine of 869 million euros for Saint-Gobain.

The commission has also followed the example set by the U.S. Department of Justice (DOJ); it designed and published a document regarding the nonimposition or potential reduction of fines in cartel cases (known as the Leniency Notice), with several member states developing and implementing a national legal leniency system. In order to enforce Article 82, the commission can initiate an investigation, collect and examine facts, make determinations, and impose fines or other remedies.

The decisions set out by the commission are afterwards subject to judicial review by community courts. They are responsible for ensuring that the commission has followed appropriate procedures, observed the law, and kept within the powers of its administrative discretion. Furthermore, the Court of First Instance (CFI) is the principal body responsible for hearing actions of competition law cases in the first instance, except where a state member is involved, where the European Court of Justice may perform the judicial revise.

A key feature of European cooperation is the European Competition Network, which provides for member states to share even confidential information about their enforcement activities and to assist in investigations. A total of 23 member states are signatories to this model. The possibility of settlement is also provided in these cases, with Neelie Kroes, a past European commissioner for competition, introducing a possible settlement process in cartel cases.

Member States Examples

After the advocacy of the DOJ affecting the Organisation for Economic Co-operation and Development recommendations on individual sanctions, many jurisdictions have reinitiated introducing criminal sanctions, including Australia, Canada, South Africa, and Brazil. At the EU level, the process of detection and punishment is hardened, affecting the interaction between the business world and competition authorities. A number of member states have therefore implemented criminal sanctions in their national competition laws, and others are fiercely debating whether they should do so.

However, the European Commission grants immunity to revealing firms under the leniency notice, which complicates even further the prosecution on a national level, as technically it does not include respective employees. Transformation of these provisions of EU competition law may eventually lead to a higher deterrence rate, rather than the criminalization that brings a tough penalty. Neither the EC treaty nor Regulation 1/2003 is likely to provide a legal basis for the greenfield introduction of criminal sanctions in the enforcement of EC competition law at the community level. Despite the effective work of watchdogs across the EU, practice shows that the fight against cartels requires more. The United Kingdom (UK) is one of the most prominent European examples of criminalizing cartel activity in 2002, authorizing prison sentences of a period of up to five years. According to the Enterprise Act of 2002 (s. 188 and s. 190), an individual must dishonestly agree to cartel conduct, such as price fixing and bid-rigging. The penalty for such action can include imprisonment and/or an unlimited fine. This regulation signifies an extensive criminalization of cartel offenses in the UK, which was not previously given much emphasis, especially before the Competition Act of 1998.

On the other hand, a great advantage of the criminalization process that may encourage further criminal sanctions in other states has been that, according to UK evaluation exercises and the Office for Fair Trading (OFT), from 2004 to 2007, there was an estimated consumer savings deriving from the UK merger regime of 92 million pounds sterling per year. These studies analyzed the direct effect of enforcement, whereas there is also a deterrent effect of the violations that did not occur, given the fear of investigation, which cannot be accurately measured.

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See Also: Antitrust, U.S. Department of Justice; Clayton Antitrust Act; Economic Espionage; Oligopoly; Price Fixing; Sherman Antitrust Act.

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Imperial Food Products Inc.

On September 3, 1991, 25 workers at the Imperial Food Products chicken processing plant in Hamlet, North Carolina, were killed in an explosion that resulted in a fire. A rupture of a hydraulic line near a deep fryer caused the explosion. It was determined that the major contributing factor in the employee deaths was the locked fire doors, from which they were unable to escape. The fire doors had been locked to prevent employees from stealing chicken parts. All but one of the deaths were caused by smoke inhalation, which would have been prevented if the employees had been able to escape. Many of the employees escaped the smoke by retreating to a large freezer, but they were unable to fully close it to keep out the toxic smoke, and they subsequently died. Since the employees had time to reach the freezer, they would have had time to escape if the fire doors had not been locked and other means of escape were known. This evidence led to criminal charges levied against the plant owner and manager.

Regulatory Failure

This unfortunate disaster has been labeled a state-corporate crime because of the failure of not only the plant owner and manager, but also a long history of failure to inspect the plant by various state and federal agencies. The Occupational Safety and Health Administration (OSHA) is the main federal regulatory agency charged with the health and safety of workplaces for employees in the United States. OSHA was created in 1970 from the Occupational Safety Health Act. The acts' stated goal is to insure that every working person in the United States has safe and healthy working conditions. The law has given employees a wide range of rights in regard to workplace safety. One of these rights requires companies to reduce risks in the workplace, and if there are risks, then employees have the right to fight for improvements.

OSHA currently has approximately 2,200 inspectors who are responsible for the health and safety of more than 130 million workers, employed at more than 8 million workplaces across the country. This translates to about one compliance officer for every 59,000 workers. According to a report by the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO), it would take OSHA 129 years to inspect all workplaces under its jurisdiction. Inspections are the main tool used to make sure that companies comply with safety standards that are set for each industry. Because OSHA is so strapped for inspectors, it allows many of the states to take over responsibility for inspections. Section 18 of the Occupational Safety and Health Act of 1970 encourages states to develop and operate proprietary job safety and health programs. OSHA approves and monitors state plans.

North Carolina, where Imperial Food Products was located, is one of the states that has a state-run OSHA program. Many of these states may have only conditional approval because they may not fully comply with federal OSHA regulations. North Carolina was not in compliance and was on probation at the time of the Imperial Foods explosion. State-run programs are permitted to set penalties and priorities. North Carolina has historically minimized the penalties for health and safety violations. For example, many of the maximum fines in North Carolina are only a fraction of the federal fine standards. The Imperial Foods plant never had a safety inspection during its 11 years of operation, which shows the complete failure of the North Carolina OSHA inspectors.

OSHA requires that all work sites post OSHA's phone number or the state-equivalent phone number so that employees know whom to contact to report safety violations. At the Imperial Food Products plant, the poster listed a number that was disconnected. Dozens of other safety violations were also evident at the plant, including a lack of fire alarms and a sprinkler system, in addition to the blocked and locked doors. By law, in the case of a fire, exits should be clearly marked and known to employees. Federal OSHA law is even stronger in language. Every exit must be well lit, door passages and stairways need to be clearly marked, and all doors must be unobstructed. This was not the case at the Imperial Food Products plant.

In September 1992, the owner of Imperial Food Products, Emmett Roe, age 65, pleaded guilty via a plea bargain to involuntary manslaughter. His son Brad was let off scot-free as part of the plea bargain. Imperial Foods was fined $808,150. The amount was smaller than potential federal penalties because North Carolina administers its safety program. The fine was still the highest in the history of North Carolina. Emmett Roe was sentenced to 20 years in prison for his responsibility in the deaths of 25 workers. This was one of the strongest punishments for a worker-safety violation at the time. Roe became eligible for parole in March 1994 and was released just less than four years into his sentence.

The Hamlet factory was close and lobbyists working for the insurance companies succeeded in having legislation passed that capped the compensation paid for the injuries and deaths caused by the fire. New job safety and whistleblower laws were passed only under the threat of federal agencies imposing their own regulations if the state legislatures proved unable to do so. The factory fire left a lasting legacy, memorialized in film, song, and poetry, and when a memorial was held in 2000, less than 10 years later, there were few survivors left to attend.

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See Also: Creative Compliance; Employee Safety; Labor Crimes; Negligence; Occupational Safety and Health Act; Reform and Regulation; Regulatory Enforcement; Unions; Unsafe Working Conditions; Workplace Deaths.

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Industrial Espionage

Industrial espionage is industrial spying, the secret gathering of proprietary information such as trade secrets to advance a business purpose. The collecting of information or intelligence is not unique to the past century, but the methods used are as unique as the information sought. With the end of the Cold War, what had been the trade of national security spies became the craft of industrial spies working for corporations. Industrial secrets make Coke and Pepsi, for example, unique products within the business world. Government research into space exploration has produced technology that is worth millions on the open market.

The Federal Bureau of Investigation (FBI) is responsible for investigating violations of federal laws, and it distinguishes industrial espionage from economic espionage by who is doing the spying. The FBI reports that the theft of trade secrets occurs when someone knowingly performs targeting or acquisition of trade secrets or intends to convert a trade secret to knowingly benefit anyone other than the owner. Economic espionage occurs when someone knowingly performs targeting or acquisition of trade secrets to knowingly benefit any foreign government, foreign instrumentality, or foreign agent. With some countries, it is difficult to separate the corporation and its many entities from the government.

The U.S. Department of Commerce, National Institute of Standards and Technology's Computer Systems Laboratory (CSL), in its March 1994 bulletin, described the two terms a little differently. According to the CSL, industrial espionage involves the collection of proprietary data from private corporations or government agencies for the benefit of another company or organization, perpetrated either by companies seeking to improve their competitive advantage or by governments seeking to aid their domestic industries. The bulletin then described economic espionage as foreign industrial espionage carried out by a government. Businesses and governmental organizations will not always agree on the precise meaning of the two terms. However, when a foreign government is involved, it is economic espionage.

Business Intelligence

To understand industrial espionage, it is important to understand the term *business intelligence*, also known as competitive intelligence. The gathering of business intelligence or information about another company in an open-source environment is a legal part of strong business acumen. Certain industries within the United States have always seen strong competition among the key companies. The photocopier, fast-food, computer, auto, music, cell phone, and defense-related industries have all had their share of legal intelligence gathering and competition. Each of the companies would gather information (intelligence) on marketing strategy, the direction of new products, and what features a new product will have. It is important for each company to be on the correct track with its product lines. Gathering intelligence on the sales, costs, profits, and respective marketing strategies provides the answer. Most of this intelligence is available in open sources and is found in business reports, newspapers, Securities and Exchange Commission filings, corporate annual reports, Department of Commerce reports, congressional committee reports, and Internet postings.

Industrial Espionage Law and Enforcement

Industrial espionage is the typical white-collar crime because it involves the theft and/or fraudulent conversion of trade secrets and other similar secret proprietary data entrusted to someone who breaches a position of trust. Prior to the passage of the Economic Espionage Act of 1996, there were few laws that directly focused on criminal conduct involving the theft of trade secrets by one corporation from another.

The U.S. Criminal Code, Chapter 90, is for the protection of trade secrets. The code defines a trade secret as the following:

> . . . all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing. . . .

Title 18 of the Criminal Code has several sections that are on point. Section 1832 focuses primarily on individual actors/corporations that steal trade secrets for corporate advantage. Section 1831 is primarily directed at foreign governments or agents.

In addition to these criminal violations, Section 1836 provides for civil injunctive relief against any individual or organization that violates trade secret laws. "Protection of trade secrets" laws also apply to conduct occurring outside the United States (Section 1837). Criminal penalties for violations can include a prison term of up to 15 years and fines up to $10 million per offense.

There are more sections of the U.S. Criminal Code that can be applied to industrial espionage violations, as well as various sections of U.S. export-control laws. Three other related laws involve counterfeiting: the Trademark Counterfeiting Act of 1984, Anti-Counterfeiting Consumer Protection Act of 1996, and Stop Counterfeiting in Manufactured Goods Act (2006).

The FBI has noted that U.S. companies lost more than $13 billion to trade secret theft in just six months in 2012, and one American corporation lost $1 billion of intellectual property in just a few days. Over a six-year period, Dow Chemical lost $100 million of insecticide research, DuPont lost $400 million of chemical formulas, Motorola lost $600 million of proprietary data, and Valspar lost $20 million of paint formulas. McAfee, a software data company, estimated that there were worldwide losses of $1 trillion in 2008 because of data leaks. In one of over 50 lawsuits filed by Apple against Samsung Electronics Corp. Ltd. in 10 countries, Apple won a recovery of over $1 billion in August 2012 for the theft of trade secrets and intellectual property regarding technical design information of its iPhone and tablets.

Insider Theft Case Examples

The FBI estimates that $100 billion is lost each year to industrial espionage as a result of competitors who target the technology successes of other companies. Companies find it cheaper to steal ideas than to produce them. The following are a few recent insider theft cases involving industrial espionage highlighted by the FBI.

An engineer became disgruntled and was fired from his job based on poor performance. He signed statements affirming he had returned all proprietary information to his employer and was reminded of nondisclosure policies. He kept numerous computer files and trade secrets before entering into a consulting agreement with a rival company.

After accepting a job in February 2009, an employee downloaded trade secrets from his employer's secured computer system for several months prior to his resignation. The stolen trade secrets were worth between $7 and $20 million.

An engineer employed by Turbine Engines Components Technologies Corporation (TECT) in Georgia took approximately 100 computer discs containing multiple pieces of information considered trade secrets from TECT. He was later employed by Precision Components International (PCI) in Georgia, a competitor of TECT. He admitted that providing the information could be considered industrial espionage. TECT suffered losses not exceeding $14 million. U.S. Attorney Michael Moore said, "This type of industrial espionage is a serious matter, especially when it involves the production of parts for our military aircraft."

A former employee of Goldman Sachs was convicted for theft of trade secrets in 2010. Media reports have indicated that Goldman Sachs made in excess of $300 million in one year through its use of high-frequency program trading and would not license the software for anything less than $1 billion.

Two brothers agreed to sell information about Pittsburgh Plate Glass (PPG) for $1,000 to a Pittsburgh agent posing as a representative of Owens-Corning, in Toledo, Ohio. They were charged under Title 18, United States Code, Section 1832 (18 U.S.C. 1832; Theft of Trade Secrets).

A 30-year employee of the Eastman Kodak Corporation established a consulting firm and hired many former Kodak employees. He stole a considerable amount of Kodak trade secret and proprietary information for use at his firm. The market share at risk could have been in the billions of dollars.

In 2011, there were numerous trade-secret cases resulting in civil action to preserve information. Three of those cases were *Design Insights Inc. v. Sentia Group Inc.*, *Tewari De-Ox Systems Inc. v. Mountain States/Rosen LLC*, and *Avid Air Helicopter Supply Inc. v. Rolls-Royce Corp*. In a trade-secret theft claim by MGA Entertainment in U.S. district court, Mattel Inc. was ordered to pay $310 million in damages regarding the Bratz line of dolls. Mattel is alleged to have had an intelligence unit in which members traveled with fake identities, gaining entrance to rivals' confidential product briefings and using spy cameras to film secret demonstrations of computer models of toys.

In December 2011, *Bloomberg News* reported that the computer networks of at least 760 companies were compromised over the last decade by cyber spies. The companies ranged from some of the largest corporations to niche innovators in sectors like aerospace, semiconductors, pharmaceuticals, and biotechnology. An estimate of the value of the blueprints, chemical formulas, and other material stolen from U.S. corporate computers in the last year reached almost $500 billion.

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See Also: Copyright Infringement; Counterfeiting; Economic Espionage; Employee Crimes; Trademark Infringement; Unfair Trade Practices.

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Industrial Revolution

The Industrial Revolution of the late 18th and early 19th centuries marked the most profound transformation of human culture since the agricultural revolution, which changed human society from nomadic hunting and gathering to settled agricultural communities. All aspects of human life changed during the Industrial Revolution. It transformed the economic system of production from hand tools and handmade items to machine-manufactured and mass-produced goods, moving Europe from an agricultural and rural economy to a capitalist and urban economy, and from a household, family-based economy to an industrial economy. It changed human labor, consumption, family and social structure, and even the emotional and intellectual functioning of individuals. The abandonment of the family economy was the most dramatic change that Europe had ever seen, and the world is still struggling with these changes in the 21st century. The Industrial Revolution also marks the introduction of white-collar crime, as class delineations of professionals/managers (white collars) and workers (blue collars) became more distinct as economies industrialized.

Rise of Technology

Technological revolutions have punctuated history. In Europe during the 12th and 13th centuries, technological knowledge exploded, bringing about changes in production and labor. Methods of making glass, clocks, and chemicals advanced significantly during the 16th and 17th centuries, and by the mid-18th century, the state and guild resistance to industrialization had weakened significantly in England and France. Popular interest in industrialization resembled the wave of enthusiasm that had welcomed experimental agriculture a century earlier.

Originally, the 18th-century Industrial Revolution referred to the technological developments between 1750 and 1830 that transformed Great Britain from a largely rural, agricultural population to an urban manufacturing society. This Industrial Revolution started in England because England had led the way in developing social and technological innovations. This wave of industrialization spread to other European countries and America during the 19th century, and other countries, like Russia and Japan, experienced their Industrial Revolutions during the first half of the 20th century.

The English Parliament inspired much of the 18th-century Industrial Revolution by permitting lands that had been held in common by tenant farmers to be enclosed into private farms. These enclosure laws increased agricultural production and increased the urban population in England by forcing many landless farmers to move into cities. The English merchant and capitalist interests firmly controlled Parliament, which passed much legislation favoring mercantile and capitalist interests.

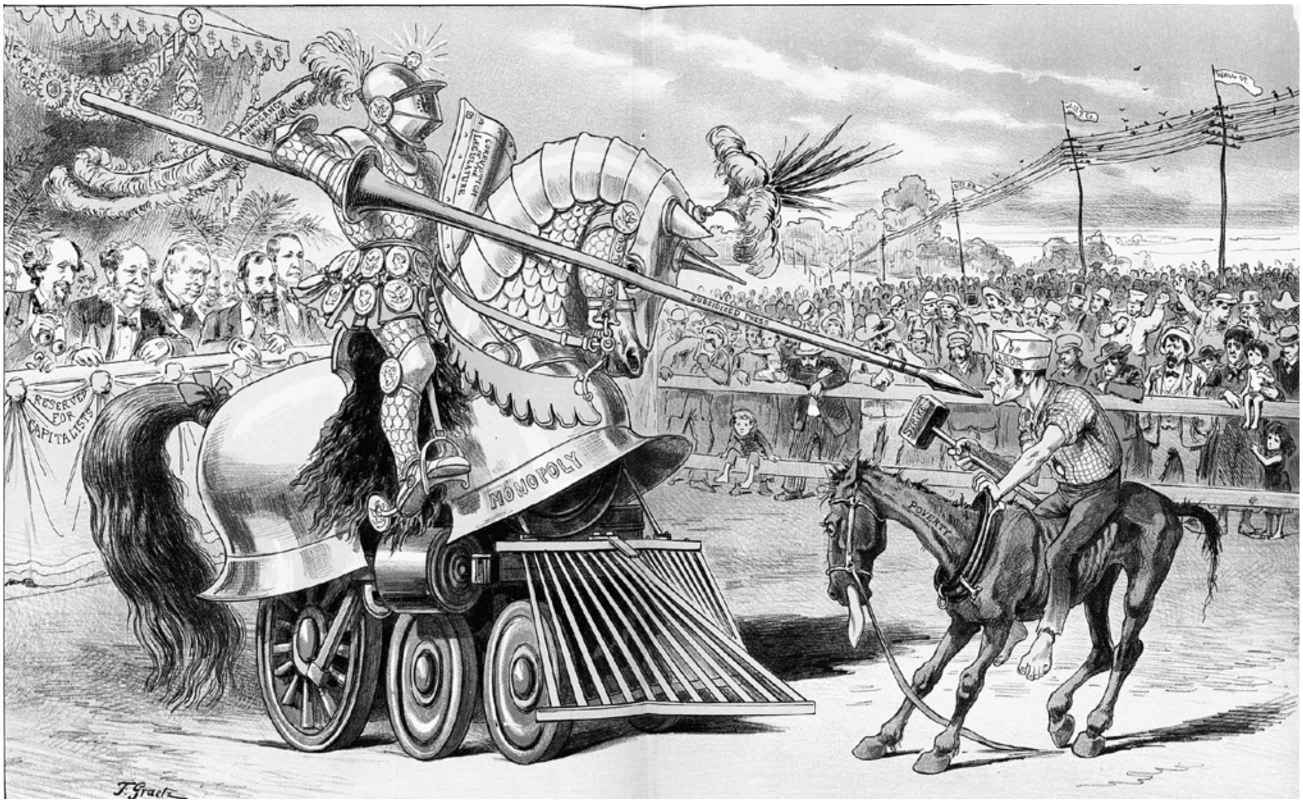
England acquired new overseas territory in every 18th century war that it fought, and during this time, mercantilism thrived in England. Also, England had come to monopolize overseas trade, including trade with its North American colonies. In the 1740s, one-half of all British exports went to America, but England also began to control the South American and the Indian trade. All this trade produced the largest merchant marine in the world, along with a navy to protect this merchant marine fleet. England was able to dominate the new capitalist economy through its navy.

Inventors also contributed to the English Industrial Revolution. The first factories appeared in 1740, and they concentrated on textile production. James Watt and Thomas Newcomen developed the steam engine, James Hargreaves the spinning jenny, Richard Arkwright the water frame, and John Kay the flying shuttle and carding machine. From the 1790s to the 1830s, more than 100,000 power looms with 9,330,000 spindles were put into service in England and Scotland. British success with steam locomotion encouraged the building of railroads in most European countries, often with British capital, equipment, and technicians. Britain exported its railroad expertise, and after 1842, France began constructing its railroad system. Russia, Canada, and the United States built railroads to link communities and move freight and passengers. In Germany, railroads helped bring about political and economic integration.

In 1840, the British government established a penny post on all letters after someone figured out that handling, and not the distance the letters traveled, determined the cost of mail delivery. All letters weighing a half-ounce or less could be carried for an English penny. By 1875, the Universal Postal Union had been brought about to send mail between foreign countries. In 1871, telegraph cables reached from London to Australia, and messages could be flashed halfway around the world in a matter of a few minutes.

American Industry

The United States simultaneously fought its political revolution with Britain and the first skirmishes in the Industrial Revolution. America had the closest ties with Great Britain and its expanding industrial capacity. The factory system that had taken root in England revolutionized the manufacture of



In the August 1, 1883 issue of Puck*, an illustration of a jousting tournament pits an oversized knight on a locomotive-like horse—a ferocious monopoly—against a meek, barefoot man and horse representing labor and poverty. His ineffectual sledgehammer is labeled "strike." Capitalists such as Cyrus W. Field, William H. Vanderbilt, and Jay Gould watch from the stands. During the Industrial Revolution, many industrial giants spurred great economic growth, but monopolies grew out of extreme approaches to capitalism.*

cotton, thread, and cloth. Improvements in weaving and spinning created a demand for new carding devices in America and England. The most important innovation, steam power, developed after the appearance of James Watt's advanced steam engine, patented in 1769. Despite the efforts of the British government to prevent the export of English industrial technology, knowledge of the new engines spread quickly to other countries, usually when people emigrated with knowledge of the technology used in British factories.

America received most of the benefits of English technology because more immigrants came to American from Great Britain than from any other country. Samuel Slater used the knowledge that he had gained in England to build a spinning mill for the Quaker merchant Moses Brown in Pawtucket, Rhode Island, in 1790, and it was the first modern factory in America. From 1770 on, various men had experimented with engines on boats in England, Scotland, and the United States. The development of the steamboat brought a new era in river transportation. Englishman James Watt and his steam engine helped hasten the advent of steamboat transportation, as well as locomotives and mill machinery. Inventor Robert Fulton and promoter Robert R. Livingston were responsible for perfecting the steamboat and bringing it to the attention of their fellow Americans.

The *Clermont*, equipped with paddle wheels and an English-built engine, chugged up the Hudson River during the summer of 1807, demonstrating that steam navigation was the wave of the future. Legend had it that people on the bank, seeing the sparks from the *Clermont*'s smokestack, thought that the devil had sailed by on a raft.

By the 1840s, steamships regularly crossed the North Atlantic. Steamship traffic increased tremendously during the last half of the 19th century, and improvements in hull design, engines, and fuel further increased traffic. By 1839, the propeller replaced the paddle wheel, steel replaced iron in the hull, and multicylinder engines appeared. After 1920, the smaller and lighter diesel engine marked another major change.

Like England, America produced inventors. Oliver Evans of Delaware devised several ingenious new machines, including an automated flour mill, a machine to make card teeth for carding wool, and improvements in the steam engine. Eli Whitney transformed both cotton production and weapons manufacturing. The invention of the cotton gin changed the economy of the south and helped New England entrepreneurs develop an American textile industry in the 1820s and 1830s. It also helped drive a wedge between the nation's two most populous regions, with the north became increasingly industrial and the south more firmly agricultural. This industrial division contributed to the Civil War and the eventual Union victory. Whitney also developed a machine to make each part of a gun according to an exact pattern. This made it possible to divide tasks among several workers, and one person could assemble a weapon out of parts made by several others. Before long, manufacturers of sewing machines, clocks, and other complicated products were using the same system.

Unlike England, the United States had no established transportation system to transport raw materials to factories and finished goods to markets, so the country set out to create one and increase its shipping business. Between 1789 and 1810, the total tonnage of American vessels engaged in overseas traffic rose from less than 125,000 to nearly 1 million. American ships had carried only 30 percent of the country's exports in 1789, but by 1810, they were carrying over 90 percent. American entrepreneurs also developed new markets at home by improving transportation between the states and into the interior of the continent.

Meanwhile, the turnpike era began. In 1792, a company built a toll road of crushed rock that ran 60 miles from Philadelphia to Lancaster, Pennsylvania. The road was so popular that several other companies built turnpikes. The turnpikes had to turn a profit, and construction costs had to be low enough, and traffic heavy enough, to ensure a profit. As a result of these economic restrictions, turnpikes radiated from eastern cities and ran short distances through thickly settled areas. It took another century before state governments and the federal government would finance highways over the mountains and into the less-populated areas. After the invention of the steam engine, America began to build railroads, and by the time of the Civil War, the American economy relied in part on railroads and urban construction.

American industry had built a solid foundation before the Civil War, but during the three decades after the Civil War, the national economy raced far ahead of the steel rails of the first transcontinental railroad, completed in 1869. The remarkable growth increased the wealth and improved the lives of many Americans. Industrial titans, some of the first and most notorious white-collar criminals, and a growing middle class enjoyed prosperity without precedent in American history, but workers, farmers, and others experienced poverty and social chaos.

One of the most important factors leading to the post–Civil War transformation was the transformation of iron and steel production in the late 19th century. It took capitalists and monopolists like Andrew Carnegie, John D. Rockefeller, and J. Pierpont Morgan to furnish the capital and knowledge to build companies like U.S. Steel and the Standard Oil Company, to build the banking industry, and to ensure substantial American economic growth. By the end of the 19th century, as a result of corporate consolidation, 1 percent of the corporations in America controlled more than 33 percent of the manufacturing production. A system of economic organization was emerging that lodged enormous power in the hands of very few men: the great bankers of New York, such as Morgan, and industrial titans, such as Rockefeller, all of whom, if alive today, would be brought up on major corporate criminal charges.

Henry Ford and his mass production of the automobile in the early 20th century sparked more economic and social changes in American society. Whether or not this relentless concentration of economic power was the only way, or the best way, to promote industrial expansion became a major source of debate in America in the late 19th century and into the present.

Effects of the Industrial Revolution

The Industrial Revolution turned out to be a mixed technological and social blessing. It created an increase in population and urbanization and produced new social classes. England and Germany enjoyed a population growth rate of more than 1 percent annually, a rate that doubled the population about every 70 years. In the United States, the increase averaged to more than 3 percent, a rate that could have produced disastrous results if the continent had not been practically empty of people at the start of the process and overflowing with natural resources. Only the population of France, among the major power, remained fairly static after the 18th century. The growth of medical science and public health measures during the Industrial Revolution helped decrease the death rate and added to the population base.

The Industrial Revolution transformed the population from a rural to an urban base. By the mid-19th century, half of English people lived in cities, and by the end of the century, this was also true of other European countries. Between 1800 and 1950, most large Europeans cities enjoyed spectacular growth. At the beginning of the 19th century, there were scarcely two dozen cities in Europe with a population of 100,000, but by 1900, more than 150 cities in Europe had reached that size.

"We cannot all live in cities, yet nearly all seem determined to do so," Horace Greeley wrote shortly after the Civil War. America's urban population increased sevenfold in the 50 years after the Civil War, and the 1920 census revealed that for the first time, a majority of the American people lived in urban areas.

Around the industrial world, middle classes expanded, and to varying degrees came to dominate the economies of their nations. Urban living intensified conditions like poverty, lack of good housing, and class divisions. Factory towns in England and America tended to spawn tenements, and the mining towns produced rows of company cottages providing little but minimal shelter. Unlike rural landlords and local aristocrats, factory owners and managers were usually remote and inaccessible, and they tended to regard laborers as commodities, not as human beings. They dealt with their workers impersonally, and there was a growing schism between the two classes. Working men and women all over the world grew to think of themselves as a distinct class with common goals and interests. Clashes with management created social turbulence.

The Industrial Revolution created a new working class that included all the men, women, and children laboring in the textile mills, pottery works, and mines. Often, skilled artisans were demoted to laborers as machines began to mass produce the products formerly made by hand. As a rule, wages were low, hours were long, and working conditions were unpleasant and dangerous. The nature of labor changed. It was fixed, disciplined, routinized work with a fixed and rigid schedule, a sharp contrast to the varied seasonal working pattern of the rural economy.

The industrial giants of the late 19th century in America and Europe created economic systems that spurred great economic growth. They integrated operations, cut costs, built a great industrial infrastructure, stimulated new markets, created jobs for a vast new pool of unskilled workers, and opened the way to large-scale mass production. They also laid the foundation for some of the greatest public controversies of their era. Modern industrial cities produced great increases in pollution, crime, and infectious disease, as well as culture and economic opportunity. The problems of poverty, the degradation of the environment, the specter of monopoly, the question of wages and working conditions, the struggle to unionize, strikes—all of these creations of the Industrial Revolution are still being addressed in the 21st century.

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Independent Scholar

See Also: Capitalism; Labor Crimes; Morgan, John P.; Standard Oil Co.; Unions; United States Steel Corp.

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Infant Formula

Violations of World Health Assembly Codes for marketing infant formula have occurred for decades by most of the prominent companies that make infant formula, despite known negative health impacts to babies who are bottle fed. Companies continue to establish the rules in marketing infant formula, rather than abiding by standards that have been agreed to by 118 countries.

Extensive infant formula marketing targeted mothers from the 1950s through the 1970s, primarily in developing countries, in an attempt to increase sales of the product. Advertisements bombarded messages about the benefits that infant formula offered, leading many mothers to incorrectly believe that formula was healthier for their newborns, a message that is false and misleading. Breast feeding babies exclusively from birth to 6 months of age dramatically increases their likelihood for survival and promotes healthy cognitive and physical development. Babies who are bottle fed are more vulnerable to disease and death because of challenges for some families in attaining safe, clean drinking water to mix with the formula. Women who cease breast-feeding quickly have decreased or no milk supply.

Nestlé is the most famous company associated with unethical practices related to infant formula, primarily for its aggressive marketing implemented in developing countries to recruit new mothers to use formula rather than breast-feeding. Because of the known harm that could be caused to children, Nestlé was met with well-organized boycotts in the 1970s to protest the corporate decisions to promote the use of infant formula rather than breast-feeding. Nestlé's priorities and business tactics are often a prominent point of discussion in business ethics classes.

The World Health Assembly's International Code of Marketing Breast Milk Substitutes was authored in 1981 and was intended to serve as a minimum requirement for the marketing of infant formula. The code states that breast milk should be promoted as the healthiest and safest choice to feed babies, no advertised information should contradict these facts, and nothing should undermine the prioritization of breast-feeding. The primary goal of the code was that commercial baby milk would be used only by those who truly needed it. A total of 118 countries originally signed on with the code; the United States was the sole country that did not. Although countries demonstrated support for the code, infant formula companies have repeatedly violated the code in countries around the world.

Baby Food Action Network

The International Baby Food Action Network (IBFAN), based in the United Kingdom, was created in the late 1970s as a watchdog and advocacy group to monitor companies' adherence to the code. Save the Children has also been highly active in monitoring companies that produce and market infant formula. Recent assessments have identified thousands of code violations in almost 70 different countries. Nestlé continues to be identified as the company with the worst record of violations, followed by Numico. Numico reports that in the countries where there is national legislation that dictates behavior, it will follow that policy; and in countries where there is no such legislation, it will follow the policies set by the company. Numico has created guiding principles to which the company will adhere. One of the common differences between the code and corporate policies is the age at which infant formula can be marketed to babies.

For example, much research recommends exclusive breast-feeding until a baby is 6 months old. The guiding principles say that infant formula will not be marketed in the first months of life, avoiding a set timeline and purposefully avoiding the 6-month mark. A second common violation is manipulating language. The code addresses all breast milk substitutes and sets clear expectations on how these products should and should not be marketed, but Nestlé extracted select articles from the code to imply that it only needed to adhere to the standards of the code in marketing its infant formula, and not other products that are milk substitutes. Wyeth was convicted for illegal advertising of its products in the United Kingdom in 2003, and the judge accused the company of committing this crime deliberately and cynically. These are three examples of unethical business practices that violate policy and the code from three companies. Many companies that produce and market infant formula have violated the code in multiple ways.

Over the past several decades, advocacy groups and international organizations such as the World Health Organization and Save the Children have continued to fight against infant formula companies. Most of the advocacy groups attempt to establish legislation that will integrate the code as law. Aside from a brief stall in the mid 1980s, there have been and continue to be active boycotts of Nestlé in more than 20 countries around the world to protest behaviors that violate the code and in many cases the law. Infant formula companies continue to work to decrease the restrictions on how they can sell and market products. For example, in an effort to avoid restrictions set for marketing infant formula, some companies have created "follow on formula," which is marketed as a supplement to a baby's diet. The companies have presented legal challenges to labeling requirements, stating that these products should have different marketing standards, even though there are not clear differences between the two products, nor has "follow on formula" been proven necessary for a baby's diet.

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See Also: Adulteration, Economically Motivated; Beech-Nut Nutrition Corp.; Food and Drug Administration, U.S.; Food Fraud.

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Insider Trading

Insider trading can be either legal or illegal. Legal insider trading takes place when corporate insiders buy and sell stock in their companies. When corporate insiders trade in their securities, they must report their trades to the securities regulator. Illegal insider trading refers to situations where a person deals on the basis of price-sensitive information that is not in the public domain, and at the time of the dealing, the information is likely to materially affect the price of the securities traded. Two main types of illegal insider trading exist: the use of insider information by an insider for self-enrichment, and the leaking of information by an insider to a third person (tipping), causing the third person to engage in illegal trade practices.

Illegal insider trading exists worldwide and affects all financial markets. Millions of dollars have been involved in big insider trading cases. Although the phenomenon of insider trading is not new and arguments against it existed in the early years of the past century, it did not become a major interest of the media and the public until recently.

Regulation Statutes

The legal attitude toward insider trading has reflected a laissez-faire philosophy historically, instead of a government control approach. The illegality of insider trading on nonpublic information was not established until the early 20th century. In the United States before 1909, for instance, there was no legal obligation for an inside trader to disclose nonpublic information. The only exception was the case of fraud, which was not easy to prove. The adoption of "blue sky laws" in the early 1900s, however, required the full disclosure of material, nonpublic information. In the leading case of *Strong v. Repide* in 1909, the U.S. Supreme Court established that a company official is obliged to disclose his or her identity and nonpublic information when he or she trades stock in the company. The Securities Exchange Act of 1934, the landmark U.S. Supreme Court case of *SEC v. Texas Gulf Sulphur* in 1968, and later cases created further legislative and judicial confirmation of the illegality of insider trading on privileged information. Similarly, in other nations like Canada, Britain, and Australia, legislation was eventually introduced that made trading on insider information a crime, although those countries have regulated insider trading in different ways.

Section 4(a) of the Securities Exchange Act of 1934 created the U.S. Securities and Exchange Commission (SEC) to enforce U.S. securities regulation. The regulation of insider trading in the United States rests primarily on Section 16(b) and Section 10(b) of the Securities Exchange Act of 1934. Section 16(b) prohibits short-swing insider trading profits (profits realized in any period less than six months) by those most likely to be privy to material nonpublic information. It applies only to directors or officers of the corporation and those holding greater than 10 percent of the stock. Section 10(b) makes it unlawful for any person "to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [SEC] may prescribe."

Section 10(b) is a broad antifraud provision that generally prohibits fraud or misrepresentation in connection with the purchase or sale of a security. Rule 10b-5, promulgated under Section 10(b) in 1942 by the SEC, is a more comprehensive antifraud provision, used as the major weapon to curb insider trading in the United States. It prohibits any person from engaging in any fraud in connection with any securities trading. Congress did not specify the definition of insider trading as a fraudulent act. Instead, Congress left this for the courts to interpret. The lack of a clear legislative definition allows the SEC to construct its interpretations, subject to judicial scrutiny. It is on the basis of those provisions that the courts and the SEC have exercised their authority to make the most important developments in insider trading law in the United States.

The civil and criminal penalties for insider trading are also included in the Securities Exchange Act of 1934. First, there are private civil remedies, as found in Section 20(a) of the 1934 act. Persons who are harmed by insider trading can bring actions in most circumstances to recover the illegal profits (or avoided losses) enjoyed by wrongful traders in contemporaneous trading. Furthermore, the SEC has the authority to impose criminal penalties, civil penalties, and punitive civil awards against wrongful traders.

The lack of successful enforcement efforts by the SEC from the enactment of Rule 10b-5 to the late 1970s led the SEC to formally request that Congress increase the civil penalty for insider trading. The Insider Trading Sanctions Act of 1984 gives the SEC the power to seek additional remedies in insider trading cases. The 1984 act also increased the maximum amount of the fine from $10,000 to $100,000.

The Insider Trading and Securities Enforcement Act of 1988 broadened the scope of illegality by imputing civil liability to "controlling persons" for the violations of their employees, or "controlled persons." The maximum penalty for criminal violation was increased from five to 10 years for imprisonment, while the maximum fines for individuals increased from $100,000 to $1 million, and rose against non-natural persons (e.g., corporations and exchanges) from $500,000 to $2.5 million. The SEC was empowered to award bounties of up to 10 percent of penalties recovered, through litigation or settlement, to informants who provide information leading to successful enforcement actions against insider traders.

Continuous legal efforts can be seen since 2000. On July 30, 2002, as a reaction to a number of major corporate and accounting scandals including those involving Enron and WorldCom, the Sarbanes-Oxley Act of 2002 was signed into law. This insider trading law mandated a number of reforms to enhance financial disclosures and combat corporate and accounting fraud. It also increased the maximum punishment of criminal insider trading to 20 years in prison and/or a fine of up to $5 million for each "willful" violation of the act. Only fines, not imprisonment, apply if the defendant can demonstrate “no knowledge” of the rule or regulation that is violated. Corporations face fines of up to $25 million. In April 2012, President Barack Obama signed the Stop Trading On Congressional Knowledge Act, or the STOCK Act, barring members of Congress, the president, and thousands of federal workers from insider trading and profiting from nonpublic information learned on the job.

The SEC is considered the most powerful securities regulator in the world. Since the depths of the Great Depression, the SEC has tried to pursue insider trading in U.S. securities markets as one of its enforcement priorities. About 45 insider trading cases are pursued every year. Prison terms for insider-trading convictions have lengthened in recent years. According to the *Wall Street Journal,* from 2009 to 2011, the median jail sentence was 30 months, up from a median term of 18 months during the 2000s. From 1993 through 1999, the median length of prison terms was only just under a year. In 2011, hedge fund billionaire Raj Rajaratnam was handed an 11-year jail term, the longest for insider trading in the United States. However, most of the offenders caught today are employees pocketing a quick $5,000 after buying shares of a company’s stock before a merger.

International Regulation

The American style of insider trading regulation has set a major global trend and has been adopted especially by Japan, Taiwan, South Korea, the Philippines, and some countries that have recently developed their securities markets, such as China. Insider trading prevails in these countries, with politicians among the main beneficiaries. These countries mostly copied securities regulations from the United States. Some provisions are even stricter than the U.S. regulations on paper. Although these countries have made efforts to tighten insider trading regulations, there have been only a few cases pursued under these regulations. The borrowed insider trading regulations still do not work well in their jurisdictions, partly because there is no effective independent regulator in these countries.

There are two other major styles of insider trading regulations, both originating in Europe. The United Kingdom’s style can be found in the United Kingdom, Ireland, Australia, Hong Kong, and other Commonwealth jurisdictions. The continental European countries’ style is adopted by most civil law jurisdictions in continental Europe. The European countries have tried to harmonize their insider trading regulations, an intent formalized in the European Community Directive Coordinating Regulations on Insider Trading, adopted on November 13, 1989 (the EC Directive). The EC Directive arose out of the 1957 Treaty of Rome, establishing the European Economic Community, which mandated creating a single internal European financial market. At the time the directive was passed, however, four of the 12 members of the EC (West Germany, Belgium, Italy, and Ireland) had no insider trading legislation on the books, and the remaining eight members (France, England, Luxembourg, the Netherlands, Denmark, Greece, Portugal, and Spain) had widely varying statutes. The directive sets up a minimum standard of insider trading regulations and requires all member states to follow it. The statutes are not self-enforcing in practice. Germany and Italy, for example, have traditionally viewed insider trading as an acceptable market practice. There have been no significant insider trading cases brought by the regulators in Germany or Italy.

The United Kingdom (UK) was one of the first European countries to enact laws against insider trading. The Company Securities (Insider Dealing) Act of 1985 (IDA1985), making insider trading a criminal offense, is designed primarily to prevent corporate insiders, quasi-insiders (anyone who has a professional or business relationship with the issuer, and public servants or former public servants), and tippees from insider trading. Under IDA1985, a person convicted of insider trading may be sentenced for up to six months in jail or receive a fine not exceeding the statutory maximum, or both. If the person is convicted of insider trading upon indictment in the Crown Court, he or she can be sentenced up to seven years, or to an unlimited fine, or both. The conviction rate under the law has been rather low, at only about 50 percent. Many commentators attribute the low conviction rate of insider trading to the fact that insider trading is a criminal offense only in the UK, not a civil offense, making successful prosecutions very difficult. They argue for the U.S. style, which has used a combination of the criminal and civil approaches in dealing with insider trading cases, because the burden of proving a purely circumstantial case is less onerous in the civil context. Furthermore, it has been criticized that enforcement and regulation powers were spread among separate frontline regulators responsible for particular sectors of the market, which may affect effective enforcement.

Legal reform is requested to enforce laws against insider trading offenses. In May 1997, the Chancellor of the Exchequer announced the reform of financial services regulation in the UK and centralized enforcement powers in the UK's Financial Services Administration (FSA), which has far-reaching new powers to crack down on insider trading, including the power to impose unlimited civil fines for insider trading. The FSA was given statutory powers by the Financial Services and Markets Act of 2000. The FSA, modeling itself on the SEC, has subpoena power and the power to punish noncooperation and to order wrongdoers to make restitution. To date, the FSA has successfully prosecuted only a few insider trading cases since its first prosecution in 2009, and thus has a long way to go against wayward insider traders.

Today, most countries have a consensus on the need to reinforce insider trading regulations because insider trading will damage investors' confidence in the securities market. Although the globalization of the securities markets has enabled insider trading to become a very natural international practice, it is even more difficult for securities regulators to pursue transnational insider trading cases. Some countries have bank secrecy legislation or blocking statutes to prevent foreign regulators from acquiring necessary information for an insider trading case. Current international agreements and treaties serve little use for investigating transnational insider trading cases.

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See Also: Arbitrage; Drexel Burnham Lambert Inc.; Enron Corp.; Hedge Fund Fraud; Insider Trading Sanctions Act; Market Manipulation; Obama, Barack; Securities and Exchange Commission, U.S.; Stewart, Martha; Stock and Securities Fraud; WorldCom Inc.

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Insider Trading Sanctions Act

In an effort to curb insider trading, the Insider Trading Sanctions Act (ITSA) was signed into law in 1984. ITSA amends the Securities Exchange Act of 1934, which reflects a long-standing concern with orderly markets. According to the U.S. Securities and Exchange Commission's (SEC) Division of Enforcement, insider trading is the most difficult and most serious challenge it faces. Neither the Securities Act of 1933 nor the Securities Exchange Act of 1934 defines insider trading, forcing the SEC to construct various legal theories on the basis of the general antifraud provisions of these acts.

Reflecting this long-standing perspective on flexibility in defining insider trading, Congress took no action in defining the term but favored continuing to give the SEC the widest possible flexibility in dealing with potential new versions of insider trading schemes. Both ITSA and its 1988 counterpart, the Insider Trading and Securities Fraud Enforcement Act (ITSFEA), are designed to curb trading on "inside information"—the use of confidential information entrusted to insiders and not available to the investing public.

ITSA increased the sanctions under the Securities Exchange Act for these violations with a civil penalty equal to three times the profit gained or loss avoided against persons who unlawfully traded in securities while in possession of material nonpublic information, or who unlawfully communicated such information to others who then traded (i.e., on the basis of that information or tip). ITSA also increased from $10,000 to $100,000 the maximum criminal fine for any violation of the Securities Exchange Act (which was later increased to $250,000 by the Criminal Fine Improvements Act).

The General Accounting Office (GAO) specifically points to ITSA's "punitive thrust" in that, prior to 1984, the civil monetary sanction was only remedial and required that the insider give back any profits realized or losses avoided. SEC officials also cite the combined impact of ITSA with ITSFEA, with the latter extending the scope of civil penalties (controlling persons who fail to take measures to prevent insider trading by their employees). However, these officials also cite the high threshold of proof for the commission to establish, given the complexity of these dealings and the many routes of access to inside information (e.g., lawyers and accountants).

To understand ITSA's impact, an assessment of past SEC enforcement activities can aid in evaluating its ability to use available sanctions and remedies. SEC officials cited the continuing impact of the act well into the 1990s in celebrated insider-trading cases surrounding large corporations. Reflecting the broadened SEC authority, there was a dramatic increase between 1978 and 1985 in insider-trading cases, and the GAO found that the number of insider-trading cases increased dramatically in the wake of the act—from 12 to 45—while the amount of profits surrendered by perpetrators jumped from $2 million in 1985 to $30 million in 1986. The immediate impact of ITSA (identified by GAO) can be observed in the jump in ITSA-specific penalties, from $158,492 (1985) to $3,889,269 (1986). Yearly trends (1987–2011) indicate an average of almost 46 insider trading cases brought by the SEC.

A potential downside to the act anticipated by the SEC was increased resistance from defendants and respondents (to SEC investigations) because the SEC had been seeking stiffer penalties. Also, enforcement officials cite the challenge mounted by some that insider trading is ambiguously defined, and therefore shouldn't be prosecuted, even though insider trading has fallen under the general antifraud provisions of the securities laws and comes under the authority specifically granted the SEC (under the Securities Exchange Act) that the commission will promulgate rules to determine the scope of antifraud liability. These types of cases do not appear overcriminalized.

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See Also: Insider Trading; Securities and Exchange Commission, U.S.; Securitization Fraud.

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Insurance Fraud

Insurance fraud is a multibillion-dollar per year illicit industry in the United States. Insurers, the insured, and intermediaries are victimized by fraudulent schemes. This type of fraud occurs in the context of creating and exploiting insuring agreements. From the making of legally enforceable contracts of indemnity, to receiving cash payments intended for meeting premium obligations, to preparing claims intended to recover for loss or damages under insurance policies, the opportunities to practice fraud are broad.

Anyone is capable of insurance fraud. From lessees of automobiles down on their luck and low in integrity to broker agents who are desperate and corrupt, the insurance fraudster cannot be readily stereotyped. Rationalizing improper and unlawful taking from impersonal insurers, which are often multistate or part of global organizations, may be too convenient for fraudsters, especially where financial or other pressures are great.

The process of making and settling claims is a factor contributing to the opportunity to commit insurance fraud. Information asymmetry, where the insured possesses information relevant to the claim that cannot be economically obtained by the insurer, often characterizes the relationship between these parties. As in any trust-based system, potential for abuse may lead to fraudulent conduct.

Ontology of Fraud

Fraud may be difficult to discover and prove. The economics of fraud detection are expensive on a case-by-case basis, requiring significant inputs of human and information technology resources for development of a fraud case. Because the primary objective of fraud, the intent to gain an improper advantage or benefit, cannot be readily and obviously distinguished from socially acceptable objectives, such as gaining legitimate competitive advantages and benefits, the character of the fraudster's conduct may remain concealed.

The distinguishing characteristic of fraud is the use of deception. Representing that a statement is truthful in all material respects, when it is actually false or misleading in any material respect, is the foundation of fraud, the guilty act. Liability for fraud will not attach to such a statement when the maker of the statement did not have the requisite guilty state of mind. To be held liable for fraud, the person must have possessed a guilty state of mind. This includes *scienter*, the intent to mislead, or knowledge of the falsity and materiality of the statement at issue. Fraud is not accidental conduct, distinguishable from negligent misrepresentation.

Knowledge is interpreted to have two aspects: actual or subjective awareness, and constructive knowledge (i.e., what the person could and should have known). Moreover, a person may not avoid liability for fraud by willfully ignoring indications that the statement at issue is false and misleading. A person may have a duty to inquire whether statements are materially false or misleading.

Fraud occurs in the context of issuing out-of-court statements, distinguishable from perjury or similar instances of issuing intentionally false statements before a court or tribunal, where the fraudster has a legal duty to provide accurate and complete representations about the matter at hand. The fraud act is intentionally misleading hearsay. It is wrongful and unfair exploitation of the victim's reliance.

Hard fraud is committed where there is no actual covered loss, but the insured knowingly submits a false claim for indemnification by the insurer (e.g., an insured commits arson against insured property, then submits a claim for property loss reimbursement to the insurer). Soft fraud is committed where there is an actual covered loss, but the insured knowingly submits an exaggerated claim to the insurer (e.g., the insured suffers a loss caused by employee theft covered under the insuring agreement, but the insured intentionally overstates the value of the loss in a claim submitted to the insurer). In both instances, a material fact was omitted from the insured's claim (i.e., causation and valuation).

Because the insured's claim is supported by a detailed proof of loss made under a written affirmation of truthful and complete disclosure by the insured, the insurer is defrauded by relying on these materially incomplete disclosures. Where the insurer conducts an independent examination of the claim, discovering the fraud and refusing to pay against the claim, the insured has committed an act of attempted fraud: Attempts and successes are criminal acts.

Ontology of Insurance

Insurance is based on trust. The insurer provides a promise to cover or reimburse the insured for property losses and other events (e.g., liability to third parties for unintentional torts) covered under the insuring agreement. As the insurer may not possess as much information about the insured's business and specific risks, relying to a significant extent on contractually demanded disclosure by the insured, the insurer may be deceived. Conversely, the insured often does not possess sufficient information about the cost of risk, other than the premium quoted by the market of insurers. The actuarial and other corroborating data, assumptions, and models are largely within the province of the insurer.

The insurance policy is a contract of indemnity. It contains a declarations page of key information, coverage forms with conditions and exclusions, and endorsements modifying the coverage forms. The insured pays a periodic premium in advance to the insurer in exchange for the promise of indemnity effective over the term of the policy. In adjustment and settlement of claims, the insurer is required to adhere to standards of honesty (fair dealing) and reasonableness (avoidance of unconscionable conduct).

The subject matter of the contract of indemnity is the risk of loss. To insure against the risk of loss, an insured is required to have an insurable interest in the risks addressed (i.e., a property or contractual interest in the object of the insuring agreement). The insured's property is protected against loss or damage under property and casualty insurance policies (i.e., first-party damages and losses), and the insured's legal liability is covered against claims owed to third parties under commercial general liability insurance policies (i.e., third-party damages and losses).

Risks covered under insuring agreements are contingencies (i.e., covered events). These contingencies are characterized by causation and fortuity. How the damage or loss occurred is a key issue. For example, property and casualty policies do not cover intentional crimes such as an insured committing arson and damaging the insured property. The risk covered must be fortuitous; known or expected losses are not the subject matter of insurance. An insured cannot cover past damages or losses known to it through the purchase of a subsequent insuring agreement.

The objectives of the insured and insurer may conflict and diverge. The claimant's commercial interest in invoking the coverage under the policy works against the insurer's commercial interest: A reimbursement for the insured is a loss for the insurer. The transfer of risk contributes to insurer profitability, whereas the actual indemnification does not.

To mediate the goal divergence between insured and insurer, the product of insurance is regulated in the United States by the states (McCarran-Ferguson Act, 15 U.S.C., Ch. 20). Federal securities regulations do not directly affect the business of creating insurance products and their marketing and distribution because federally-based liability for securities fraud is independent of state-based liability for insurer fraud in the development and marketing of unauthorized insurance products. The facts may overlap (e.g., failure to disclose fraudulent marketing of policies).

Categories of Insurance Fraud

There are three basic categories of insurance fraud: policyholder fraud, intermediary fraud, and internal (insurer) fraud. These categories are distinguishable by both the position of the fraudster and the specific means and methods used to commit the schemes. However, they share the common material element of deception.

Policyholder fraud may be broken down into applications and claims frauds. Applications fraud is characterized by the submission by the insured of intentionally misrepresented material for the assessment of risk of the insurer in the insured's application for insurance. It induces the insurer to enter into a binding insuring agreement under terms and conditions that would otherwise not be obtainable by the insured (e.g., in an application for life insurance, the insured may omit that he is a smoker to pay lower insurance premiums). Claims fraud occurs after the creation of a binding insuring agreement (e.g., where the insured intentionally misrepresents the nature or amount of the loss in a claim under the insuring agreement).

Independent agents or brokers commit intermediary fraud; these parties are used to assist both the insured and insurer in negotiating an insuring agreement that properly addresses the risk appetite of the insured and the capacity to provide coverage by the insurer (e.g., intermediary fraud occurs where premiums are collected by the broker for remittance to the insurer, but the broker intentionally fails to deliver the premiums, using the funds for an unauthorized purpose).

Insurer employees perpetrate internal fraud, which may be broken down into three subclasses: deception in the insurer's representation to the general public about the insurer's authority to conduct business in the given jurisdiction, deception in the insurer's representations about its financial condition, and deception in the insurer's solicitation for sale of insurance policies to insured parties. For example, the insurer's employees may not be authorized to underwrite certain types of policies in the regulating state, the insurer's employees may submit intentionally false

California Insurance Commissioner Steve Poizner announces the creation of an electronic fusion center to help detect false insurance claims, May 29, 2008. Insurance fraud is a multibillion-dollar per year illicit industry in the United States.

statements about the level and types of reserves (i.e., financial resources) against loss held by the insurer, or the insurer's employees may intentionally mislead the insured about the perils covered under the insuring agreement during negotiations with the insured.

There are three types of victims of insurance fraud: the insured (i.e., first parties), insurers (i.e., second parties), and outside persons (i.e., third parties). Though the details of each instance of insurance fraud may differ, these victims are defrauded under the same general methodology: misplaced reliance on an intentionally bogus promise or fact. Insurer conduct may also create a civil action for the tort of bad faith refusal to settle a claim, though this tort alone may not indicate insurer fraud but instead signal only insurer unreasonableness.

First parties may purchase an insurance product that the insurer has neither actual intention, nor legal/financial capacity, to fulfill, and second parties may suffer from deceptive applications and claims from first parties. Third parties may also suffer economic loss where there is insured or insurer fraud. A lack of coverage may expose the third party to economic loss (e.g., a first-party employee's theft of a third-party customer's inventory covered under a valid insuring agreement may be voided or ineffective where there was fraud in the inducement of the agreement).

Public policy considerations demand that the marketplace for insurance be operated to allow private ordering. Specifically, private parties should be able to transfer via contract the risk of loss, whether arising from the obligation to indemnify a third party or arising from loss of property of a first party, and create legally enforceable, rational expectations. This legal ability is supported by the states through laws, regulations, and administrative regimes, affording fraud victims avenues of redress.

Fraud is explained through three factors: the opportunity to commit fraud, the pressure to commit fraud, and the ability to rationalize the fraud. Academic pioneers in the field included Edwin H. Sutherland and Donald R. Cressey. However, the use and acceptability of fraud as a strategic tool is ancient and legendary (e.g., the Trojan Horse).

Opportunity is situational. A fraudster needs both victim and object (i.e., ripe external conditions). There is no fraud without taking another's property or advantage through wrongfully deceptive means. Puffery—socially acceptable, inflated opinion—is distinguishable from fraud.

Pressure is that which compels and impels the fraudster. Endogenously imposed stresses, such as sales budgets, may constitute a contributing factor in an insurer's employee marketing and selling unauthorized, fraudulent insurance policies that promise what they cannot deliver. Exogenously imposed stresses, such as rising costs of living, that cannot be met under current compensation may constitute a contributing factor in an insurance broker's fraudulent failure to remit an insured's premium payment to the insurer.

Rationalization is a reasoning process that enables the fraudster to overcome the negative feelings associated with the commission of fraud. An insured party that fraudulently misrepresents the cause of an inventory loss in a claim submitted to its insurer (knowingly and wrongfully describing the cause as a covered event) in the effort to obtain a cash settlement from the insurer may reason away the wrongfulness of the act by interpreting the act as a deserved return of investment from an impersonal corporate entity that passes the cost of such frauds on to its pool of policyholders, as if no one is really financially damaged.

Treatment of Insurance Fraud

Insurance fraud is a crime, subjecting fraudsters to imprisonment and criminal fines. Claims fraud is theft by deception, punishable in all 50 states; civil penalties may apply. Insurers are subject to civil liability for failure to settle an insured's claim in good faith, although bad faith is a legal concept broader than fraud, also applying to unreasonable conduct. Moreover, state insurance regulators may impose administrative sanctions (e.g., monetary penalties) against insurers, where insurer solicitation of insurance policies comprises a fraud against the insured or the public in general, such as in the case of offering unauthorized insurance forms, which often must be preapproved by the applicable state regulator before marketing and distribution in the state.

Civil remedies available to victims of insurance fraud are based in tort and contract laws. Damages recoverable in tort include compensatory and punitive awards. Compensatory relief is intended to reimburse the victim for actual damages, such as a claim wrongfully paid because of the insured's claims fraud; punitive relief may be granted for egregious conduct where the fact-finder seeks to deter others, in addition to the defendant, from committing the same type of misconduct. Civil remedies are based on theories of expectation, reliance, and restitution. The parties to the contract have a legally enforceable right to expect to receive the benefits of their bargain; they rely on each other's promises. Restitution is intended to position the parties where they would and should have been, were the insuring agreement properly entered into and performed. For example, an insurer has the right to rescind the contract where the insured makes a materially fraudulent misrepresentation in the application for insurance.

Abundant control activities are available and in place to reduce the risk of insurance fraud. These include information technology. Insurers use specific controls, such as examination of the authenticity of documents submitted in claims applications, obtaining assurance that the claim originates from a bona fide organization, and analysis of the loss histories of prospective insured parties so as to obtain an understanding of whether the prospect has a history of experiencing an unjustifiably abnormal volume of claims.

General controls are also used. Data mining and information sharing among insurers, law enforcement, and third parties such as medical service providers (where allowable under applicable law) are useful tools. For example, health care provider claims for payment arising from the sale of unauthorized prescription drugs and devices without bona fide pedigree (i.e., black market products) require coordination (voluntary or involuntary) among the distributor, provider, and law enforcement agency to detect.

Awareness and education are essential components in addressing the prevalence of insurance fraud, like any serious social issue. Laws and regulations have created and empowered state-sponsored insurance fraud bureaus formally tasked with combating insurance fraud through initiation of legal proceedings and mass publication of insurance fraud risk white papers for public distribution. Insurers' policies and procedures include specifically designated fraud risk and loss prevention officers. These tools contribute to shaping public attitudes, including first-party and third-party expectations and decision making. Norms and ethics are malleable. Risk sharing that is characterized by rational, good-faith pooling of risk excludes the opportunistic exploitation of information asymmetry, without which insurance fraud would fail.

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See Also: Fiduciary Fraud; Frankel, Martin; Health Care Fraud; Insurance Policy Churning.

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Insurance Policy Churning

Life insurance policies are usually purchased from companies with the trust and guidance of an insurance agent. Insurance policy churning refers to the unethical practice of an agent who misrepresents him- or herself in an effort to convince the insured, the person who owns the policy, to needlessly purchase a replacement insurance policy. The insured is misleadingly led to believe that the second policy will have no out-of-pocket cost and will be of financial benefit to the insured. The practice fraudulently generates commissions for the offending agent, while exposing the insured to unnecessary expenses. The cash value of the originating policy is drawn down to pay for the second, unnecessary, policy.

Life insurance policies are not frequently replaced during an insured's lifetime but are instead increased as a person's need for coverage grows. Circumstances where a policy may need to be replaced are rare and usually hinge on large interest rate swings or financial instability of the original issuing company. If, at the time of purchase, a policy had a comparatively low interest rate, then replacing the policy with a higher-yielding one would make sense. These unusual conditions would be a reflection of the general health of the larger financial market. Aside from market improvements, if an insurance agent claims that replacing a life insurance policy will benefit the insured at no cost, then the insured should be apprehensive. A situation such as this may be a warning that fraud is taking place, wherein the agent secures a financial gain at a cost to the insured.

The motivation for an agent to commit this form of fraud is found in the commission that they stand to earn on the sale of the replacement policy. Insurance agents who have large customer bases can churn out additional income for themselves by convincing their customers to buy a product that they do not need. The fraud takes place when the agent inadequately informs the insured of the inherent costs of policy replacement. Once the replacement policy is sold to the insured, the accumulated cash value in the original policy begins to pay for the agent's commission, the replacement policy's initial cost, and any associated increases in policy premiums. There are no immediate upturns in cost, such as monthly premium increases, to the insured that are noticeable.

It is relatively easy for an experienced insurance agent to hide the costs of the replacement policy from the consumer. Since there are no initial increases in monthly premiums, the true costs to the insured are seemingly imperceptible. The reality is that the increased monthly premiums are subsidized, or financially supported, by the cash value that had been built up over time in the originating policy. As long as there is enough cash value to support the increased premiums and the agent's commission, there will be no increases in monthly cost to the insured. An insurance agent who is fraudulently drawing down his or her customer's insurance policy value for a financial gain is not only acting unethically but also committing a serious white-collar crime. The victim may suffer for many years before becoming aware of the crime. Once the cash value in the insured's originating policy is wiped out, the victim will be hit with increases in policy premiums that are unexpected. The victim not only has lost large sums of savings but also stands to lose life insurance coverage if he or she cannot honor the increased premiums and the policy subsequently lapses.

Preventing Insurance Policy Churning

While insurance policy churning is illegal and punishable under numerous state statutes, the best protections for a consumer are knowledge and awareness. Being offered something that is too good to be true is a huge red flag that holds true for the purchase of life insurance policies. If an agent is offering to sell a replacement policy with increased cash value and death benefits with no cost to the consumer, it is likely false. As a person ages, his or her life insurance premiums will increase over time, so there should be some expectation of a cost in increased premiums. Insurance agents earn their living by selling policies to consumers and are unlikely to begin selling policies for free, so there is a reasonable expectation for a cost to be associated with the agent's interest in the transaction. Being solicited to purchase a replacement life insurance policy should be concerning to begin with, but consumers should also be aware of any unusual practices by the insurance agent. Unexpectedly being asked to sign loan documents or bank statements could be indications that fraudulent transactions are taking place. Noticing any statements or loan documents in the consumer's name that also have the agent's address listed could indicate fraud and should arouse sufficient alarm in the consumer to further investigate the practices of the agent. Knowing that the replacement of a life insurance policy is not likely in the insured's favor, and being keenly aware of suspicious activity, can help prevent victimization as a result of insurance policy churning.

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See Also: Federal Trade Commission; Federal Trade Commission Act; Insurance Fraud.

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Interlocking Directorates

Many corporations are linked together through a series of network ties in their directorates, that is, their board memberships. When an individual who is affiliated with one firm serves on the board of directors of another, he or she forms a direct interlock between the two. Similarly, when two individuals who are affiliated with two different firms serve on the board of a third, they form an indirect interlock between their respective companies. Such webs of direct and indirect connections can bring two firms in closer proximity to each other, with notable business implications. However, in aggregate and extended out, they can also link together numerous companies and help create new networks to develop class or field cohesion, or to transfer information, innovation, and other valuable resources.

Corporate boards usually include directors from a variety of backgrounds. Some of these individuals may be top executives or significant investors with that corporation. However, most are executives from other companies, and some come from the government, professional service, or academic fields. By including such an array of individuals in its board, a corporation can be linked, directly and indirectly, to a variety of other enterprises. These links are often mere happenstance. A board might include an outside director, who is primarily valued for his reputation, expertise, or perspective, but who also serves concurrently in several other corporate boards.

Evidence suggests that some corporations may strategically include certain outside directors for the primary purpose of linking to another firm. Because interlocks have valuable signaling effects, a corporation might pursue links to prominent firms in order to boost, by association, its legitimacy or prestige. A corporation might also undertake such a strategy for more direct business benefits. In an environment in which a corporation is dependent on another firm for particular valuable resources, it may seek to build additional, meaningful ties to that firm in the boardroom to improve its access to those resources. This can help explain why many corporations include representatives of the financial institutions that grant them credit and capital on their boards. Similarly, if a corporation's business is closely tied to that of a supplier or is highly dependent on the needs of one customer, it might include as a director an executive from that firm to bolster that valuable business relationship.

In either case, a board interlock might co-opt the resource provider, pacifying it by joining it in a formal way to a common cause. Or, it might simply improve relations between the firms' respective representatives, such that the dependent firm is better positioned for important future negotiations. Likewise, the reverse may hold in some instances, as a corporation might seek to strategically place its executives or directors on the boards of other specific firms. In this way, the first firm can exert additional power over the other. With a well-placed representative, it can collect useful information, influence the firm's leadership, and perhaps control aspects of its agenda. The first corporation, then, may be better able to anticipate and accommodate the other business' needs, or it may find it easier to impress the subordinate firm into service on its business or political agenda.

Corporate Conspiracy and Collusion

Today's interlocking directorates, strategic and otherwise, follow from a long, and at times nefarious, history of such activity in U.S. business. By the advent of the 20th century, there was a robust national network of interlocking corporate directorates. However, this concerned progressive reformers of the time—including prominent attorney and future U.S. Supreme Court Justice Louis Brandeis—who decried the practice as a mechanism for corporate conspiracy and collusion. They suggested that many industries were controlled by a few prominent financial institutions that operated at the core of interfirm networks. These politicians, activists, and journalists were also concerned about the unbridled rise of anticompetitive corporate trusts, and they feared—by some evidence, correctly—that allowing competing corporations' executives to serve on each others' boards could lead to price fixing or other harmful restraints of trade. Congress allayed some of these concerns by including a provision in the Clayton Antitrust Act of 1914 that prohibited any individual from serving as the director for two competing firms. Although this had its intended purpose, the general interlocking directorate persisted, as did some of its unsavory effects.

Today, interlocking directorates cannot advance direct collusion, but they do occasionally inhibit good corporate governance. To start, the inter-corporate links may exacerbate back scratching in the system. For example, an executive may meet and recruit a new director to his or her board while serving on another firm's board. In this way, he or she can add a loyal, but technically "independent," disinterested director to his company. If he or she has not fully secured the new recruit's allegiance, he or she might do so by trading favors across boardrooms, supporting the new director in an issue at the other firm, with the expectation that he will later be repaid in kind. Also, studies suggest that many corporate practices and innovations may spread along these interfirm networks. This can produce favorable developments, but it can also have more problematic implications, as devices for entrenching and aggressively compensating management have spread with little resistance in recent decades. Additionally, the interlocking directorates of corporations, especially when connected to those of nonprofits, think tanks, and social and cultural institutions, can facilitate the social integration of an economic and political elite. Some scholars and commentators suggest that as this already powerful group becomes more cohesive, it can exert more undue influence over society and its institutions.

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See Also: Board of Directors; Clayton Antitrust Act; Conspiracy; Domhoff, G. William; Outside Directors.

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International Business Machines Corp.

With a continuous history that dates back to the late 19th century, International Business Machines (IBM) is a multinational computer technology and information technology consulting corporation.

Known today as one of the world's largest computer companies, IBM holds more patents than any other U.S.-based company and has research laboratories and employees in over 160 countries. The company's activities and size have caused legal trouble throughout most of its existence. In addition to its controversial connection to Germany's National Socialist (Nazi) regime, IBM and its employees have come under investigation for various criminal activities, most notably anticompetitive business practices and insider trading.

Although now known as a computer company, IBM's predecessor, the Computer Tabulating Recording Company (CTR), predates the development of electronic computers. Financier Charles Flint created CTR in 1911 by merging three smaller companies. In 1915, Thomas J. Watson, Sr., a former executive at the National Cash Register Company, took over the leadership of CTR. Nine years later, Watson adopted the name International Business Machines and launched a series of initiatives establishing the organization and culture responsible for propelling the company to its dominant position in the computer industry in the second half of the 20th century.

World War II Through the 1990s

During World War II (1939–45), IBM facilitated efforts to deport and imprison millions of people. The U.S. government used the company's punch-card technology to maintain data on interned Japanese American citizens. Additionally, recent scholarship has brought to light the complicity of American corporations in the Holocaust. Although there is no credible evidence to suggest a direct connection between IBM and the Holocaust, IBM's German subsidiary, Deutsche Hollerith Maschinen Gesellschaft, provided the punch-card technology and technical support that facilitated the Nazis' work in identifying and deporting millions of victims to death camps. IBM's purported contribution to the Holocaust was the focus of a 2001 Alien Tort Claims Act suit filed in U.S. federal court. The case was dropped after the company's German division denied liability and paid $3 million into a special German Holocaust fund created to compensate forced laborers.

IBM's involvement in antitrust litigation dates back to the early 1930s. In 1932, the U.S. Department of Justice (DOJ) filed suit against IBM and Remington-Rand, which collectively controlled nearly the entire market for punch-card machines. The DOJ alleged that the two companies illegally required business customers to buy punch cards as well as the machines. In 1936, the U.S. Supreme Court ruled in favor of the DOJ. The company's growth and success after World War II resulted in renewed government scrutiny, culminating in another federal antitrust lawsuit in 1952. At issue in the 1952 case was IBM's practice of only leasing its tabulating machines. Four years later, the company agreed to sell its equipment, thus establishing a competitive used-machine market.

The settlement between IBM and the DOJ proved to be a temporary lull in the latter's antitrust actions. In January 1969, the DOJ again filed suit, this time alleging that IBM violated section two of the Sherman Act by monopolizing the general purpose electronic digital computer system market, specifically business computers. At issue was IBM's practice of bundling hardware, software, and maintenance service and the company's constant redesign of its hardware systems, which the DOJ charged hindered competition. The federal government's antitrust suit proceeded slowly until 1982, when the Ronald Reagan administration dropped it, deeming the legal action to be "without merit."

Although a legal victory for IBM, most scholars agree that the 1969 suit, and the roughly 20 additional antitrust actions filed by IBM's competitors during the 1970s (none of which succeeded), caused the company to lose its way in the 1970s and nearly collapse in the 1990s. Ironically, the need to manage the documents the case generated resulted in IBM developing the document-tracking program that is now considered to be the foundation of today's legal software.

Twenty-First-Century Revival and Legal Issues

IBM's revival in the early 21st century brought with it additional legal problems. In October 2009, the DOJ turned its attention to IBM's position in the mainframe computer market, focusing on the company's refusal to license its software and its purchase and subsequent shutdown of start-up companies like Platform Solutions. That same year, the company suffered a severe public-relations setback when Robert Moffat, a senior executive, was arrested for securities fraud and conspiracy during the DOJ's massive Galleon Group insider trading investigation. Eventually, Moffat pleaded guilty and served a short prison sentence for his role in the affair. Overseas, in July 2010, the European Union's European Commission opened two investigations into whether IBM was abusing its dominant position in the market for mainframe computers. After the company agreed to concessions, in September 2011 the Commission ended its probes.

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See Also: Antitrust, U.S. Department of Justice; Insider Trading; Stock and Securities Fraud; War Crimes; World War II.

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International Telephone & Telegraph Corp.

International Telephone & Telegraph (ITT) was founded in 1920 by Colonel Sosthenes Behn, owner of the Puerto Rico Telephone Company. Behn's company would go on to buy up or build telephone companies in Europe and Latin America in an attempt to create an international version of American Telephone and Telegraph. The company gained worldwide recognition decades later under the leadership of chief executive officer Harold Geneen, who built the company into a conglomerate driven by the growth it received from acquiring hundreds of companies in diverse industries. The economic might of ITT was such that it was able to influence the local and national affairs of countries where it was stationed, using its raw economic power to avoid regulation and engage in white-collar crimes that shape the contours of ITT's legacy today.

ITT decided in the 1970s to acquire more companies in order to sustain an adequate cash flow. Acquisition of the Hartford Life Insurance Company appeared to be the most lucrative option available to achieve this goal. To this end, Chief Executive Officer Geneen exerted pressure on as many federal departments as he could possibly reach. He personally pressed ITT's case to Attorney General John Mitchell, who he met on August 4, 1970, as the ITT-Hartford case was under review by the U.S. Department of Justice (DOJ). He told Mitchell that ITT's economic interests were synonymous with the national interest in a healthy economy. Also, ITT public relations director Edward Gerrity visited Mitchell's antitrust chief, John McLaren, to explain the merits of ITT's case and to argue that ITT should not be harassed by antitrust suits such as the one threatened by the DOJ.

The lobbying of Geneen, Gerrity, and others peaked in July 1971, when the DOJ was close to deciding the fate of the ITT-Hartford merger. At about the same time, the ITT-Sheraton hotel in San Diego contributed $400,000 to the Committee to Re-Elect the President. This contribution was supposedly an attempt by ITT-Sheraton to secure San Diego as the convention site for the 1972 Republican National Convention. Suspicions arose immediately that the pledge was made in order to fix the final outcome of the antitrust settlement. A highly incriminating internal ITT memo, published by columnist Jack Anderson in February 1972, appeared to confirm these suspicions. The memo suggested that the commitment was in fact a bribe to buy a favorable ruling at the DOJ. The department, uncharacteristically, allowed the merger to go through.

International Politics

In the Southern Hemisphere, ITT's efforts to disrupt the electoral politics of sovereign states would draw the attention of federal investigators in the 1970s. The context for ITT's intervention was the rise of nationalism in the global south, where many of the countries that ITT had expanded into resented having their telephone companies owned and operated by a U.S. company, and several proceeded to nationalize ITT's holdings. Of the remaining companies not expropriated, the operation in Chile was the most lucrative. The absence of revolutionary nationalist parties in Chile appeared to ensure that ITTs telephone companies would not be nationalized. The 1966 election looked promising. Moderate Christian Democrat Eduardo Frei, a reformist but not a radical, was not hostile to big business. ITT offered campaign funds for Frei to be channeled through the U.S. Central Intelligence Agency (CIA).

In the 1970 Chilean elections, following Frei's term in office, ITT worked assiduously against popular socialist candidate Salvador Allende Gossens. In consultation with the CIA, ITT planned to offer campaign funds of $1 million to conservative candidate Jorge Allsandri. ITT suggested more plans to increase the chances for Allende's defeat: the bribing of Chileans legislators who would cast electoral votes, sponsoring advertisements in the newspaper *El Mercurio*, and placing propagandists on Chilean TV and radio. Despite such efforts, Allende was elected in October 1970.

In 1971, when it appeared that its property in Chile would soon be expropriated, ITT contributed $350,000 toward an aggressive plan of intervention, with the aid of the U.S. government. A special White House task force put pressure on Chile by breaking off all loans and aid to Chile from the United States and from banks, fomenting discontent in the Chilean military establishment and labor unions, and provoking labor strikes. Allende was assassinated in 1973, paving the way for an administration more amenable to ITT's operations.

In March 1978, the DOJ charged Edward Gerrity and Robert Berrellez with felonies in connection with their testimony about ITT's intervention in the 1970 Chilean election. The men were charged with giving false testimony to the Senate Foreign Relations Committee's Subcommittee on Multinational Corporations and to the American Arbitration Association, both of which were probing ITT cooperation with the CIA to block Salvador Allende's election to the presidency of Chile. Since 1978, ITT has been rocked by corporate crime scandals four more times, most recently in 2007. That year, the company pleaded guilty to charges of illegally exporting night-vision technology to China and other countries, and it agreed to pay a $100 million fine. ITT's actions violated the Arms Export Control Act.

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See Also: Anderson, Jack; Campaign Finance; Watergate.

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Internet Fraud

Since the development of the Internet and the World Wide Web, criminals have found ways to transform cyberspace into a new arena for criminal activity. Virtually any white-collar crime that can be committed via traditional means can now be committed via the Internet. According to the Internet Crime Complaint Center (IC3), since 2000, the number of complaints filed regarding Internet crime has grown significantly. In recent years, the IC3 has received well over 300,000 complaints per year, which account for more than $559 million lost to Internet crime. Of all the various forms of Internet crime, Internet fraud stands out in terms of its proliferation. Although many forms of Internet crime go unreported, Internet fraud is one of the most commonly reported forms of Internet crime.

Some of the pervasiveness of Internet fraud is attributable to the number and variety of forms that Internet fraud can take. Some of these frauds—such as phishing and identity theft—can be described as instrumental acts in which the fraud is but a means to achieve another illegal goal. Other fraud schemes are expressive forms of Internet fraud, in that the rewards are more immediately recognized. Furthermore, Internet fraud schemes range from efforts that are merely annoying to those that are extremely costly or cause problems that are difficult to fix.

Phishing

Phishing is a technique used by Internet fraudsters who pose as legitimate authorities to persuade or deceive their potential victims into revealing sensitive information. Internet fraudsters have used phishing techniques to obtain sensitive information on everything from banking and credit card accounts to e-mail account credentials and even social media accounts.

The practice of phishing closely resembles fishing. Just as the fisherman casts bait into an appealing fishing spot, hoping to hook and land a sizable catch, so does the phishing fraudster. An Internet "phisherman" begins by identifying his potential victims, usually customers of a bank, credit card issuer, or even college campus. Next, the bait is selected, and the line is cast.

For example, an e-mail might be sent to the potential victims, explaining that there is a problem with the user's account and that it is necessary to go to a specified Web site and verify one's account information (including account numbers, routing numbers, user names, and passwords), or his/her account will become inactive. Upon visiting the specified Web site, the potential victim would likely find a very professional and official-looking Web site, where the victim is asked to verify his or her account information. In essence, the victim has been hooked. The very professional and official-looking Web site to which victims are directed is fraudulent, and any account information that the victims enter is captured for later use to gain access to the victims' accounts, or is even sold or traded to other fraudsters for their use. Once the information has been entered and captured, the "phish" has been reeled in and hauled into the virtual boat.

The concept of phishing made its debut in the worldwide media in 2003, when Russian criminals sent e-mails to Halifax Bank customers in the United Kingdom, advising them to visit a specific, fraudulent duplicate of the Halifax online banking Web site. Since then, the number of reported phishing attempts has risen to record highs. According to the Anti-Phishing Working Group (APWG), the number of unique phishing Web sites reached an all-time monthly high, with 56,859 sites in February 2012. The costs associated with such attempts have also risen to record highs. According to a recent report by the RSA FraudAction Research Labs, phishing attempts during the first six months of 2012 were responsible for more than $687 million. However, the costs associated with phishing attempts go well beyond the monetary losses. Phishing attempts, whether successful or not, receive a great deal of media attention and tend to generate a great deal of negative publicity for the institutions or businesses involved. Such negative publicity can exacerbate the financial losses suffered by such institutions by lessening consumer confidence and by contributing to unwillingness to engage in online business and e-commerce.

Identity Theft

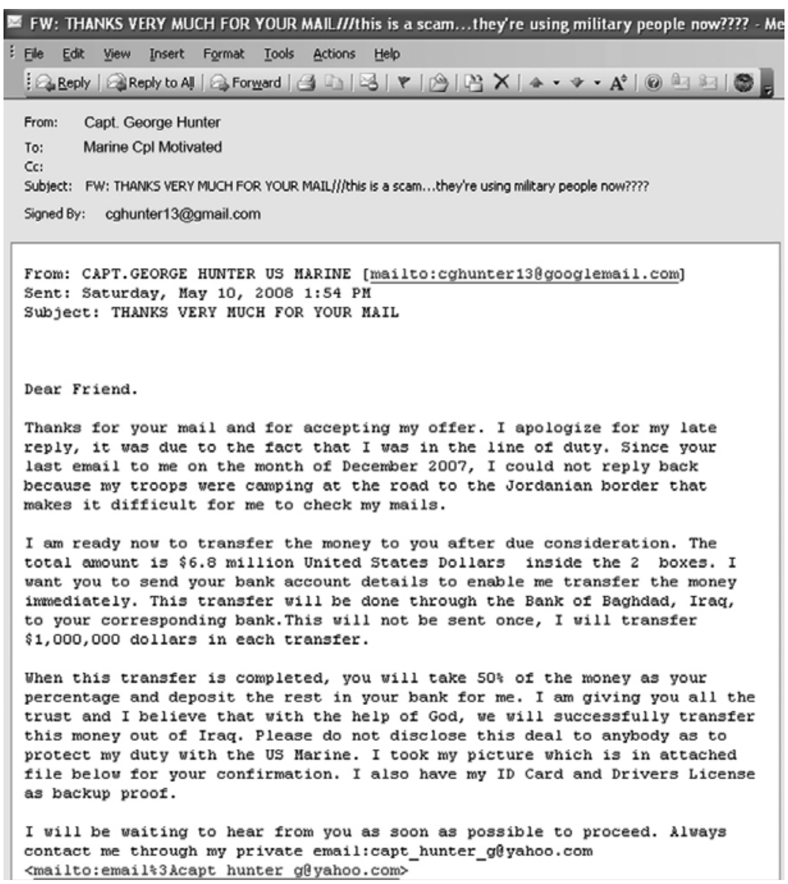
Identity theft can be defined as the unlawful use of someone else's personal identifiers to assume that person's identity and act on his or her behalf. From a single piece of identifying information (e.g., someone's social security number, credit card or banking information, or employment records), identity thieves can create a breeder document that can be used to assume the other person's identity and, unbeknownst to the victim, begin acting on his or her behalf. Other forms of fraud (both traditional and Internet forms) are often erroneously categorized as identity theft. For example, stealing someone else's credit card and using it to purchase items online is not identity theft. On the other hand, stealing someone's credit card and using that credit card as the basis for opening another line of credit in the other person's name is identity theft. Therefore, the essential element in identity theft, which is missing from the first example, is the assumption of someone else's identity to act on his or her behalf, not the mere theft and use of a credit card or the use of a stolen check.

Identity theft is an instrumental form of Internet fraud in the sense that the theft of one's identity is not the ultimate goal. More important to the online identity thief is what can be done with a stolen identity. By assuming the identity of another, it is possible to create an entire duplicate person, who is capable of doing virtually everything that a genuine person could do, including everything from opening credit accounts to buying cars and houses to charging expenses for medical care.

Identity theft is neither a new form of crime nor a form of crime unique to the Internet. Identity thieves have been plying their trade for decades. However, the development of the Internet and the subsequent ability to make online transactions and conduct e-commerce has in many respects made the commission of the crime much easier. First, the Internet brings the online identity thief into contact with a much larger pool of potential victims. In addition, the growth of online commerce and other online financial transactions has opened up new and fertile hunting grounds for identity thieves. Finally, the anonymity offered by the Internet allows online identity thieves to ply their trade with less risk of detection and/or apprehension.

It is difficult to determine the number of identity thefts that occur each year. Victims may be unwilling or reluctant to report being victimized by identity theft or may even be unaware that they have been the victims of identity thieves. However, the Federal Trade Commission (FTC) maintains the Identity Theft Clearinghouse, which collects data related to reported cases of identity theft. This data provide a basis for tracking trends in such crimes. For example, the FTC reports that well over 250,000 complaints were regarding identity theft, which accounts for 15 percent of the total number of complaints made to the FTC. Not all of these complaints are online identity thefts. This number also includes cases of traditional identity theft. For the incidents reported to the FTC in 2011, the most common uses for stolen identities were to fraudulently claim government benefits, to commit credit card fraud, to establish telephone service or utilities in the victim's name, to obtain employment, or to secure a loan.

The costs of identity theft go beyond the sizable monetary losses. Estimates of the amount of time that the average victim spends to repair the damage range from 30 to 40 hours for cases brought under the law, to more than 600 hours for victims unable to obtain a police report.



FW: THANKS VERY MUCH FOR YOUR MAIL///this is a scam...they're using military people now???? - Me

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From: Capt. George Hunter
To: Marine Cpl Motivated
Cc:
Subject: FW: THANKS VERY MUCH FOR YOUR MAIL///this is a scam...they're using military people now????
Signed By: cghunter13@gmail.com

From: CAPT.GEORGE HUNTER US MARINE [mailto:cghunter13@googlemail.com]
Sent: Saturday, May 10, 2008 1:54 PM
Subject: THANKS VERY MUCH FOR YOUR MAIL

Dear Friend.

Thanks for your mail and for accepting my offer. I apologize for my late reply, it was due to the fact that I was in the line of duty. Since your last email to me on the month of December 2007, I could not reply back because my troops were camping at the road to the Jordanian border that makes it difficult for me to check my mails.

I am ready now to transfer the money to you after due consideration. The total amount is $6.8 million United States Dollars inside the 2 boxes. I want you to send your bank account details to enable me transfer the money immediately. This transfer will be done through the Bank of Baghdad, Iraq, to your corresponding bank.This will not be sent once, I will transfer $1,000,000 dollars in each transfer.

When this transfer is completed, you will take 50% of the money as your percentage and deposit the rest in your bank for me. I am giving you all the trust and I believe that with the help of God, we will successfully transfer this money out of Iraq. Please do not disclose this deal to anybody as to protect my duty with the US Marine. I took my picture which is in attached file below for your confirmation. I also have my ID Card and Drivers License as backup proof.

I will be waiting to hear from you as soon as possible to proceed. Always contact me through my private email:capt_hunter_g@yahoo.com
<mailto:email%3Acapt_hunter_g@yahoo.com>

Phishing, the most common Internet scam found in U.S. Marine Corps e-mail inboxes, is an attempt by an Internet user posing as a reputable company to extract personal information by promising money, special offers, or merchandise.

Advance Fee Schemes

Many forms of Internet fraud, including inheritance and Nigerian 419 scams, online auction fraud, and work-at-home scams can be categorized as advance fee scams. Although there is a great deal of variation in this type of Internet fraud, they all operate in a similar fashion. Advance fee scams are frauds in which the victim is promised some unbelievable financial opportunity—either a financial windfall, an easy money-making opportunity, or an incredibly low price on valuable goods and/or services—but must first pay certain fees associated with the transaction. In each of these Internet frauds, a key component is the victim's desire to receive something valuable for a too-good-to-be-true initial payout.

Auction fraud: Auction fraud is a subcategory of advance fee schemes in which the seller offers, via an online auction service, a supposedly high-value/high-quality item for a very low price. Once the victim "wins" the auction, he or she is directed to forward payment prior to the item being shipped. The fraud portion of the transaction is revealed when one of two things occurs: either the buyer never receives the item for which he or she has already rendered payment, or the buyer receives the item that he or she purchased but discovers that the quality, condition, or authenticity of the item does not match the description provided by the seller. Although most transactions conducted via online auctions are done so in a legitimate and ethical fashion, there are a substantial number of complaints concerning online auction fraud. For example, in 2008, over one-fourth of all complaints filed with the Internet Crime Complaint Center were regarding online auction fraud, with a median monetary loss of $610 per complaint. Losses from online auction fraud accounted for over 16 percent of the total loss reported to the IC3 during 2003.

Nigerian 419 fraud: In recent years, there has been a great deal of media attention focused on a particular type of advance fee scam known as the "Nigerian 419 confidence scheme"—a form of Internet fraud named for the section of the Nigerian Criminal Code that addresses such crimes. While such crimes only accounted for a relatively small proportion of the overall monetary loss suffered by Internet fraud victims during 2008, the median loss from Nigerian 419 schemes was over $1,500 per complaint.

As part of the Nigerian 419 scam, potential victims receive an official-looking e-mail, supposedly from a civil servant from the country of Nigeria or, in some variations, a member of the Nigerian royal family. The e-mail states that the sender, acting on behalf of his or her agency, is prepared to transfer large amounts of money to the recipient. In many cases, the Nigerian 419 scam develops into a long-term confidence scam in which a great deal of effort is expended in building trust between the victim and the sender of the message. The sender might provide very official-looking documentation to support his or her authority and sincerity. Such documentation might include "official" seals, stamps, and even signatures. Once an adequate amount of trust has been developed between the victim and the sender, the victim is asked to provide bank account and routing information, as well as advance payment for taxes, attorney fees, and other such expenses to finalize the money transfer. When the money transfer from Nigeria does not occur as planned, despite the victim having provided the sender with the requested banking information and upfront fees, the victim discovers not only that there was no Nigerian money awaiting transfer, but also that the sender was not a Nigerian official, and possibly that money in his or her bank account has been withdrawn. As with other advance fee schemes, the Nigerian 419 scheme focuses on rather unscrupulous victims—one who suspect that they are getting a deal that is too good to be true.

Romance scams: An online romance scam is a form of advance fee fraud that targets lonely singles looking for a long-term relationship. The scheme involves a con artist posing as a potential romantic partner, who then builds a high degree of trust with a potential victim, then uses that trust to exploit them. Often, the victim is asked to send substantial amounts of money so that the fraudster can overcome a financial hardship and finally meet their romantic interest face-to-face—a meeting that never occurs.

According to complaints received by the Internet Crime Complaint Center (IC3), in 2011, there were 5,663 complaints concerning online romance scams. Together, these reports account for over $50 million in losses—with an average loss of $8,900. However, women between the ages of 40 and 59 were the most common victims of this form of scam. Over 45 percent of complaints received by the IC3 were from female victims in the above age group. Online romantic scams perpetrated against women in their 40s and 50s accounted for financial losses of over $27 million—over half of the total losses incurred as a result of online romance schemes.

Mail-order bride scams: An online mail-order bride scheme is a variation of the online romance scheme, but with a few minor differences. Chief among these differences is the focus of these scams. These schemes are conducted on an international scale, with many such frauds targeting men in the United States. In this type of fraud, a man seeking a bride will make contact with a prospective wife from a foreign land. Usually, contact is made through an online mail-order bride service. Theoretically, the prospective bride is so desperate to leave her country that she is willing to marry a man whom she has never met so that she may obtain citizenship in his country. As the contact between the man and his prospective bride continues, she explains that she is very much taken with him and would like to meet him in his country, and she asks that he send her travel funds. It is at this point that the online fraud usually ends—along with all contact from the prospective bride. Often, this scam involves a single potential bride contacting and defrauding many men simultaneously.

Work-at-home scams: There has been recent growth in the number of reported cases of work-at-home schemes. As part of these schemes, a victim will likely be recruited via an advertisement for a business opportunity that would enable the potential victim to make a substantial amount of money through working at home, performing skills such as stuffing envelopes. Individuals responding to such an advertisement are required to pay advance fees for materials, or even just for information regarding opportunities—materials that never arrive. According to the Internet Crime Complaint Center (IC3), in 2011, work-at-home schemes accounted for 17,352 complaints, a significant portion of the complaints concerning Internet fraud reported in 2011. These complaints accounted for over $20 million in financial losses suffered by victims, with an average loss of $1,160 per victim.

Federal Bureau of Investigation (FBI) schemes: One of the more recent trends in Internet fraud draws on the credibility of the federal government to lend an air of legitimacy in the perpetration of an advance fee scheme. These frauds, dubbed FBI schemes, involve a fraudster sending an e-mail that appears to come from the FBI. The e-mail typically congratulates the recipient on behalf of the FBI for having won a large sum of money and explains that in order for the "winner" to collect his or her winnings, he or she needs only to provide banking details and pay the requisite fees associated with collecting the prize. In 2011, the Internet Crime Complaint Center (IC3) received 35,764 complaints regarding a scam of this sort. In about 40 percent of those complaints, the victim lost money—on average, about $245.

There is a seemingly endless list of variations on this theme. For example, a couple pursuing an international adoption through an online adoption agency may finally be offered a child provided that they pay, in advance, the legal fees associated with the adoption—only to find out later that they are the victims of online adoption fraud. Furthermore, they will likely learn that the child has also been "adopted" by numerous other couples.

Credit card fraud: A credit card holder might be contacted, or respond to an advertisement, by companies claiming to be able to lower interest rates on credit card accounts, provided the "customer" is willing to pay fees in advance—fees for which nothing is done to lower the interest rates of the victim's accounts.

Sweepstakes scam: There are also online schemes in which con artists notify the "lucky winners" of sweepstakes, lotteries, and prize drawings. The winners need only pay advance fees and/or taxes, and the money will be forwarded to their bank accounts—a transfer that never happens. One also might be notified of a monetary windfall from a long-lost (and hitherto unknown) relative's estate, and be asked to pay the fees and taxes in advance so that the inheritance can be transferred to the heir—again, a transfer that is never made.

Online Investment Fraud

The Internet and the rise of social media have created opportunities for fraudsters to defraud online investors, or would-be investors, in the stock market. For example, in a pump-and-dump scheme, fraudsters will distribute misleading, misrepresentative, or blatantly false statements about a company to create a demand for the "pumped up" company's stock, and thus drive up the price even more. The fraudsters who were able to purchase the company's stock at very low prices can now sell—or "dump"—the stock at a much higher price. In other such schemes, fraudsters posing as licensed brokers may offer investment programs in which investors are promised unbelievably high returns on their investments—as high as 40 percent or more. In these schemes, the investor soon discovers that the investment program was a fraud and sees neither the promised return nor a return of the initial investment.

In 2008, the world learned of the Madoff investment fraud, in which Bernard Madoff defrauded his clients of an estimated $64 billion. In order to defraud his victims, Madoff created history's largest Ponzi scheme—a type of investment fraud named for Charles Ponzi, a notorious early 20th century fraudster. With little adaptation necessary, Ponzi schemes have made their way into the toolbox of Internet fraudsters.

Online Ponzi schemes function much the same way as traditional Ponzi schemes, but with the added benefits afforded by the Internet. For example, online Ponzi fraudsters benefit from the anonymity of the Internet, which can serve as insulation against apprehension and prosecution not enjoyed by those conducting Ponzi schemes via traditional means. Furthermore, the Internet offers online Ponzi fraudsters an endless supply of potential investors/victims—and a steady stream of investors is something that is essential to a successful and long-running Ponzi scheme.

In the beginning of the Ponzi scheme, an online Ponzi fraudster will recruit investors, either via an e-mail or through social media, by offering investors a low-risk investment opportunity that promises extraordinarily high rates of return. Typically, initial investors in a Ponzi scheme see the promised return rates—but not because of any legitimate investment practice. These initial investors are paid with money paid in by later-stage investors. Testimonial evidence from these initial investors is often used to recruit increasingly more later-stage investors, who are used to pay investors from the earlier stages.

According to the Securities and Exchange Commission (SEC), frauds such as Ponzi schemes are destined to eventually fall apart. When new investors can no longer be recruited, or when there is a rush of investors who opt to cash out, the scheme will fall apart when the lack of available funds becomes apparent and investors stop seeing returns.

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See Also: Advance Fee Scam; Credit Card Fraud; Identity Fraud or Theft; Investment Trust Fraud; Nigerian 419 Scams; Ponzi Schemes.

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Interstate Commerce Commission, U.S.

The U.S. Interstate Commerce Commission (ICC) was established by the Interstate Commerce Act (ICA) of 1887, signed by President Grover Cleveland. The purpose of the commission was to regulate railroads and other common carriers. The agency was dissolved on January 1, 1996, and its duties transferred to the Surface Transportation Board. Prior to the creation of the ICC, interstate commerce regulation was deemed a state power. As the railroads grew in number and mergers led to monopolies in certain areas of the nation, it became apparent that state regulation was a failure. Railroad magnates like Cornelius Vanderbilt, Henry Flagler, Leland Stanford, Sr., and others had control over regions where their railroads dominated. This impacted local economies, shipping, and rates, especially following the Civil War. The Grange movement in the west made it a priority to see what could be done for farmers who could not afford to ship their crops by rail because shipping rates benefited those with large shipments. Congress was helpless in the face of this regulatory crisis because of the separation of powers between the federal and state governments. The Supreme Court sided with the states in the *Munn v. Illinois* decision in 1877, which stated that only states had control over commerce conducted within state lines. The Supreme Court revised its approach in 1886 with the *Wabash v. Illinois* decision, which determined that Congress had the right to regulate interstate commerce.

Organization of the Commission

Congress moved swiftly to pass the Interstate Commerce Act (ICA); the court decision came in October 1886, and President Cleveland signed the law on February 4, 1887. Public support for the act came from all sections of the country, and the bill had been introduced in every Congress since 1878 by Representative John H. Reagan of Texas. The bill that finally became law was a compromise between the Reagan House bill and the Senate bill, authored by Senator Shelby M. Cullom of Illinois. The final law was the end of an effort that began 20 years earlier, and spanned over 150 congressional bills.

The act created the Interstate Commerce Commission, the first independent federal agency in U.S. history. Originally, the purpose for its formation was to regulate the railroads in the United States and to protect consumers from price fixing and the railroads' influence over local government officials through the use of bribes. The commission also regulated shipping rates that traditionally benefited those who shipped large amounts and cut out small farmers, who could not afford to ship goods via rail. The organization of the commission included five commissioners, appointed by the president to six-year terms after approval by the Senate. Members of the commission could not be affiliated with any common carrier, either by profession or by investment. The initial six commissioners served one- to six-year terms to allow for the rotation called for by law. Commissioners had the right to investigate any businesses that were the subject of complaints. Federal district courts would help the ICC carry out its investigations when persons involved refused to cooperate. Persons who sued for violations had the choice of filing their case with the commission or the district court but could not sue in both venues. Under the commission's rules, companies had to file merger and acquisition plans and annual reports for commission review.

Expansion of Powers

The commission's power grew as Congress expanded its authority with new legislation. In 1893, the Railroad Safety Appliance Act removed the regulation of railroad safety from the states and turned it over to the commission for enforcement and further amendments, passed in 1903 and 1910. ICC regulation expanded further under the Hepburn Act of 1906, which added regulation of areas related to the railroads such as bridges, ferries, sleeping cars, and express companies—in effect, all items related to the railroads and common carriers. The act contained some language that seemed contradictory, and it caused some controversy between the agency and the railroads. It became necessary to set long- and short-haul fares because the discrimination continued, despite laws to the contrary. In the Mann-Elkins Act of 1910, Congress amended the ICA to include rate setting for the railroads. The 1910 act also expanded coverage from just railroads to include telephone, telegraph, and wireless companies, where it remained until 1934 when the Federal Communications Commission was created. In 1935, Congress added regulation of interstate bus lines and trucking to the agency under the Motor Carrier Act.

Railroad Consolidation

The commission was directed in 1920 to draft a plan to consolidate the railroads into a manageable number of systems. The Ripley plan was published in 1929 and called for the creation of 21 regional railroads and 100 terminal railroads. Hearings were held during the 1930s, but the plan never went into effect because Congress passed the Transportation Act of 1940, which abandoned the plan. Commissioners also had to address consumer complaints related to discrimination in the motor carrier industry. Most often, these involved violations of the ICA, when passengers were forced to move into other train cars while on an interstate journey. This was a key issue when trains and buses would travel across state lines and where state law forced colored passengers to sit in the back of the bus or in designated areas or cars. Often, the ICC and the courts had to overturn decisions made at the state level because federal law superseded state law in matters of interstate travel.

Congress began the process of deregulation during the 1970s with the Railroad Revitalization and Regulatory Reform Act of 1976, the Motor Carrier Act of 1980, and the Staggers Rail Act of 1980. The use of railroads for shipping declined with the rise of the use of trucks, and passenger rail service declined with the advent of the automobile and the interstate highway system. By 1995, the agency's role as a regulator was minimal, and Congress agreed with President Bill Clinton to abolish the agency. Oklahoma Senator Fred R. Harris proposed abolishing the agency in the Interstate Commerce Commission Termination Act, which was signed by President Clinton on December 29, 1995. The agency ceased existence on January 1, 1996, and its remaining powers transferred to the Surface Transportation Board.

The ICC was the first federal regulatory agency, and it established the precedent for others to follow. During its century-long existence, the commission regulated the railroads, common carriers, telecommunications, and other industries. It worked as an advocate for consumers and served as a venue for the resolution of complaints, thus fulfilling its intended role in regulating common carriers in the United States.

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See Also: Interstate Commerce Commission Act; Reform and Regulation; Stanford, Leland, Sr.

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Interstate Commerce Commission Act

The Interstate Commerce Commission Act, also known as An Act to Regulate Commerce, was passed by Congress on December 6, 1886, and signed into law by President Grover Cleveland on February 4, 1887. The main purpose of this act was to create the Interstate Commerce Commission to regulate commerce between the states, in particular the railroads.

The origin of the act was a long-standing problem between the railroads and the Grange movement after the Civil War. Railroads were privately owned by magnates such as Cornelius Vanderbilt, Edward Harriman, Henry Morison Flagler, and Leland Stanford, Sr., after the Civil War. Standard practice for the railroads was to set shipping prices on the railroads in an area, creating a monopoly that prevented any competition. Laws at the time did not address monopolies, and there was some question about whether federal law regarding interstate trade applied to railroads. The *Munn* decision in 1877 maintained that states had the right to control trade within state lines and had the power to regulate the railroads. After another decade of ineffective state regulation, the Supreme Court's *Wabash* (1886) decision established the right of Congress to regulate interstate commerce, and Congress was free to act.

Public support for a federal law regulating the railroads came from every section of the country. The Interstate Commerce Act became law on February 4, 1887, and created the Interstate Commerce Commission. The regulatory powers of the commission made the railroads into America's first industry regulated by the government. A five-person commission appointed by the president and approved by Congress oversaw the new commission. Members served six-year terms and could have no working or investment relationships with the entities that were regulated. Commissioners could not exceed three members from the same political party, in order to keep political balance. In addition to creating the commission, the law established regulations that governed the railroads and pricing practices. Preferential pricing that gave certain railroads a monopoly on shipping goods in a certain region were prohibited, and price increases and rate changes were subject to review by the commission. Railroads could not restrict to short-haul versus long-haul shipping, offer preferential rates, or pool markets. Among the most successful aspects of the act was the requirement to submit annual reports to the commission for review.

Pros and Cons

The act was unique for its time and set the standard for legislation creating other regulatory agencies, but it was not perfect. In some ways, the act stimulated the economy, but sometimes it limited economic growth because it limited capitalism. The act was relevant only to railroads and related services, like ferries and roads, that were used to connect railroads. The law also required railroads to publicly post passenger rates and shipping rates, and they could not charge more or less than the amount posted on the rate schedules, under penalty of law. Rate schedules, contracts, and other agreements had to be filed with the commission, or the company would be indicted in the circuit courts. Persons who claimed injuries or damages could file against the railroad with the commission or the district courts, but not both.

The Interstate Commerce Act remained in effect for over 100 years, until many of the agency's powers were shifted to other agencies or were no longer needed. Over the years, the ICC oversaw other common carrier companies like telephone companies and the interstate busing companies like Greyhound. Over time, oversight of these companies transferred to agencies like the Federal Communication Commission, the Department of Transportation, and others where the oversight was more specific. With most of the ICC's regulatory powers repealed or transferred during the 1970s and 1980s, the Interstate Commerce Commission Act was repealed by the Interstate Commerce Commission Termination Act of 1995, which closed the agency on January 1, 1996, and moved the remaining responsibilities to the newly created Surface Transportation Board under the Department of Transportation.

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See Also: Antitrust, Federal Trade Commission; Interstate Commerce Commission, U.S.; Stanford, Leland, Sr.

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Investigation Techniques

A variety of offenses fall under the category of white-collar crime, and white-collar crime investigations include both corporate crime and employee crime. Many civil and regulatory offenses are also categorized as corporate crime, making the word *crime* a poor guide to these complex phenomena. Because of this definitional imprecision and the breadth of the phenomena, it is difficult to encompass investigation techniques for all possible offenses. State or local law enforcement, federal law enforcement, regulators, and civilian investigators each or jointly investigate these matters. The method of discovery of the possible offense dictates the process of the investigation during the early stages and broadly indicates how the investigation will proceed. Many investigations occur over years and have a highly structured relationship between the investigating agencies and the subject, mediated by one or more courts. Thus, the character and mandate of the investigating agency will have a substantial impact on the techniques used and the ultimate prosecution of the offense.

Corporate crimes are most often financial crimes. Financial crimes are most likely to be discovered through investor lawsuits or regulatory actions by agencies, such as the Federal Trade Commission (FTC) or the Securities and Exchange Commission (SEC). For example, the Federal Deposit Insurance Corporation (FDIC) lists 455 banks that closed between 2000 and 2011. At the time of the closing process, investigators often do not know if or to what degree malfeasance played a role in a bank's failure. There is no direct evidence of a crime; banks sometimes fail. Initial investigations in such matters necessarily take on a different character from investigations of criminal enterprises, like the FTC's investigation of fraud complaints. Examining the bank's records for evidence of fraud is simply part of a broader audit. Crime may be discovered or not. In the case of an FTC complaint, investigators can target a specific person or incident.

In the case of failed banks, FDIC regulators have advanced warning through the required reporting done by banks, so regulators often identify bank closures well before the assets of the bank are depleted, but when it is clear that the bank cannot continue in its current state. At this point, the assets of the bank are conserved by an FDIC receiver, who is empowered by the Federal Deposit Insurance Act of 1950 to reorganize the bank's assets as necessary to either sell the whole institution or individual assets of the bank to protect the value retained by the business and protect depositors. Without a receivership, the bank could fail catastrophically, causing the insurance fund to have to pay out much more. While the receiver controls the bank, he or she can authorize any amount of information to be turned over to investigators. Beyond the FDIC example, a forensic auditor may discover fraud in the course of an audit. Investigations of this type start with broad information and use discrepancies or departures from accepted practices to identify possible malfeasance.

A different process occurs when FTC regulators rely on public complaints about abusive businesses to alert them to possible illegal acts. In a complaint filed against the BurnLounge.com, the FTC compiled information from consumer complaints and openly available sources to document the BurnLounge.com business model. The FTC also employed an expert to assess its business strategy and create models of its possible profits. The expert determined that BurnLounge.com could not sustain its business model without drawing profit from new investors, rather than the sale of products or services, providing the evidence the FTC needed to seek a temporary restraining order to stop BurnLounge.com and its owners from continuing its illegal pyramid scheme. With an open enforcement action in the courts, one of the BurnLounge.com owners capitulated to the demands of the FTC, and the others soon followed.

Criminal enforcement of corporate crime can involve the U.S. Department of Justice (DOJ) Criminal Division, local U.S. attorneys, and federal enforcement agencies. In the case of BizJet, an aviation services provider, an internal audit disclosed possible violations of the Foreign Corrupt Practices Act (FCPA). Because the FCPA encourages violators to self-disclose violations and amend their practices, BizJet was commended for its cooperation and correction efforts in a deferred prosecution agreement reached with the Fraud Section of the DOJ.

Criminal complaints can also be brought against employees of corporations. In 2010, the Federal Bureau of Investigation (FBI) indicted an employee of General Motors and her husband, who was hired by another company based on his knowledge of hybrid technology, for the theft of an estimated $40 million of GM's hybrid technology trade secrets. The husband's employer found the source files containing GM intellectual property on his hard drive and reported him.

Initiating Investigations

Civil investigations are most commonly internal matters. Internal audits verify compliance with corporate policies, regulatory requirements, contract terms, and accepted industry standards.

Internal audit (IA) departments and accounting firms are increasingly adding corporate investigations (CI) services. CI extends audit practices to proactively interview and investigate suspected incidents, using computer forensics and reviewing documents. CI practices also investigate internal human resources (HR) matters. Other CI investigations include due diligence investigations and audits of business partners and acquisitions. For instance, the FCPA holds a company responsible for the actions of its foreign agents and partners. Other liabilities may also apply, unless a company can show due diligence in vetting its partners and transactions. CI and IA may be directed by corporate counsel, external auditors, or the board of directors to investigate the actions of corporate officers. In cases with a possible conflict of interest, outside civil investigators and auditors may be requested.

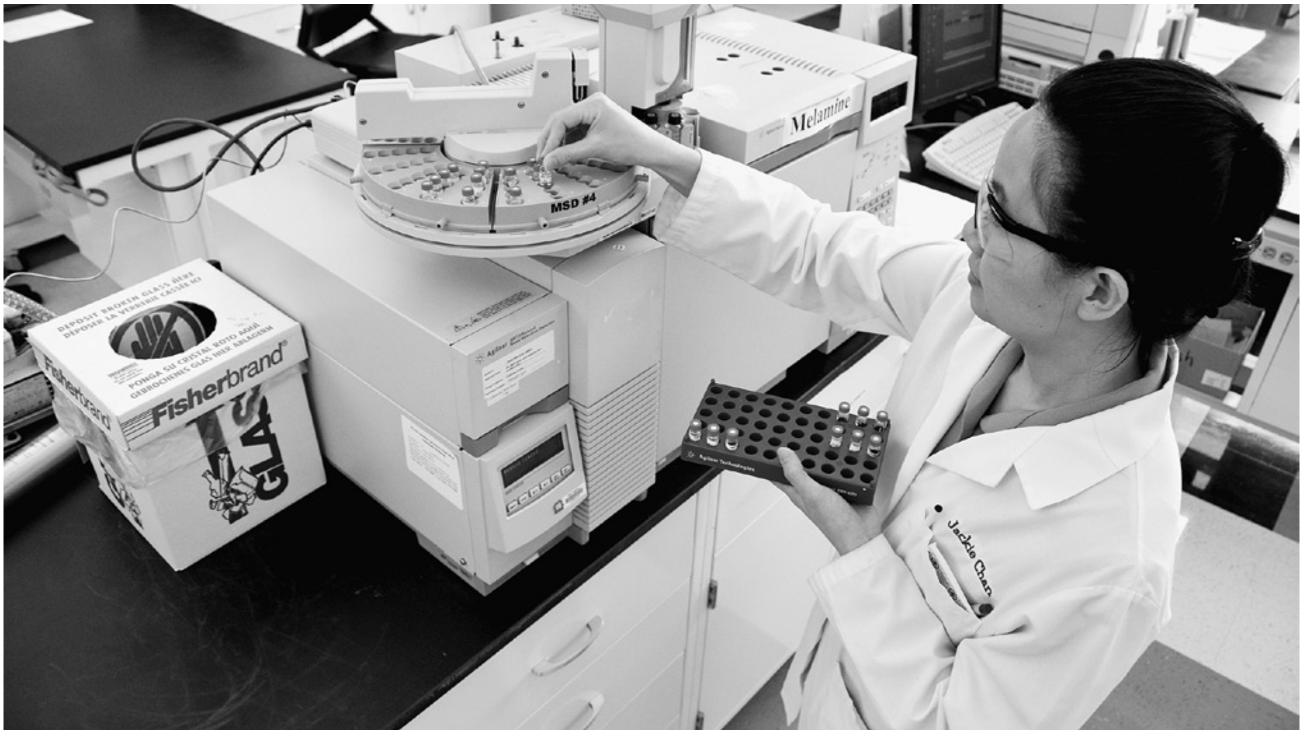
In both civil and criminal matters, investigations can be initiated from reporting requirements placed on the company by regulators or auditors. Anomalous activities found in raw data or summary reports can indicate hidden funds used for FCPA violations, embezzlement, asset misappropriation, internal controls circumvention, or any other form of violation. Legal reporting requirements give regulators and investigators a starting place to conduct their investigations.

Investigations can also be initiated by company employees, who approach regulatory or law enforcement agencies with credible allegations of violations. Such whistleblowers, acting in good faith, receive protection under the law. They cannot be retaliated against or punished for their actions. In some cases, whistleblowers may receive a portion of the money collected by the federal government. In return, whistleblowers may have detailed knowledge of internal practices, or basic knowledge of the field, that investigators may lack. Whistleblower allegations must be supported with evidence, often in the form of documents or electronically stored information (ESI) accessible to the whistleblower. However, other sources can corroborate the whistleblower.

In some cases, public events initiate investigations. BP's Deepwater Horizon and Exxon's *Exxon Valdez* oil spills are examples of spectacular events that draw investigators' attention before specific complaints are filed. Congressional scrutiny of an issue or investigative journalism may also initiate or raise the priority of investigations. For example, both the FDA and the Drug Enforcement Administration (DEA) have recently investigated steroids, in part because of increased attention from the Major League Baseball Association. Investigations require a specific incident or set of facts that do not always come forward in congressional hearings or news stories, but a news story may highlight facts that justify the involvement of agencies or their investigative resources. A public outcry cannot create facts, but it can involve resources for investigations where none had been allocated before. Once a company is involved in a civil legal action, either as plaintiff or as defendant, it becomes subject to the process of discovery, which provides further access to the company's private documents, communications, and ESI. Although the courts may control discovery, often opposing counsel will negotiate its terms. Whether the relevant documents are part of a narrowly tailored discovery request or uncovered through a mistaken disclosure of more information than intended, internal documents revealed during discovery may form the basis of prosecution, if turned over to law enforcement, or may form the basis for filing additional civil suits. Similarly, evidence of an employee's involvement may also spawn an internal investigation.

Conducting an Investigation

The initial complaint and available facts dictate the methods used in an investigation. Search authority in criminal cases derives from the evidentiary showing made by an investigator; that is, evidence amounting to probable cause can be used to obtain a search warrant. A lesser showing by the investigator may be used to support subpoenas or court orders. Investigators can also contact key individuals, although they may be forced to do so in the presence of counsel. Civil investigators in internal matters may be able to make participation in the interview compulsory for continued employment. Although an employee cannot be compelled to cooperate, he or she may be terminated or suspended spontaneously for refusing to cooperate. This leaves only documents and information technology (IT) resources for investigators. Similarly, most large corporations now make IT resources available to investigators by policy. This even includes encryption keys maintained



A U.S. Food and Drug Administration (FDA) chemist uses gas chromatography to measure levels of melamine in food samples, an example of direct inspection, February 5, 2009. In March 2007, the FDA learned that some pet foods were causing illness and death in cats and dogs. An FDA investigation discovered that vegetable proteins imported from China and used in U.S. pet food ingredients were contaminated with melamine, a synthetic chemical with a variety of industrial uses. The chemical does not occur naturally in food.

by corporate IT departments. External investigators may seek access to a target corporation's staff and information through the courts. Civil actions allow a court to compel disclosure of encryption passphrases.

The general purpose of investigations is to establish correct practices and identify departures from them. Accordingly, the investigative process is greatly facilitated by the implementation of best practices, such as the generally accepted accounting principles (GAAP), which are the rules that public accountants follow to record and report financial activity. Experienced investigators can quickly spot departures from GAAP in business data. Other fraud prevention controls help prevent fraud or facilitate its identification after the fact. For instance, many companies require their employees to submit receipts for expense reimbursement. Additionally, many companies extend this safeguard by requiring employees to charge their expenses to a corporate card. Receipts can be reconciled with an external source to prevent record modification, and investigators and auditors can examine these data, looking for patterns, such as frequent refunds after the company has paid the expense. In many cases, audits seek to identify failure to adhere to GAAP, without any further implication for crime or negligence.

Methodology: Direct Interview

Direct interview is one of the most common and productive methods used in both civil and criminal investigations. In direct interviews, the investigator uses available information to structure a set of questions for one or more subjects. The subjects are not necessarily under suspicion, but the investigator can use information from a variety of sources to establish points of weakness in the internal process that may have been created to hide improper activities. Broad interviews can also help familiarize the investigator with local processes and procedures in preparation for a second round of targeted interviews, and can help target processes for document or ESI searches. Similarly, second-round interviews can be targeted to persons involved in questioned processes or implicated in objective sources like documents. Lying in interviews becomes obvious when investigators compare statements among multiple sources or verify information in records. In law enforcement interviews or sworn depositions, the person being interviewed may be subject to obstruction of justice or perjury charges for lying in interviews. Such adversarial interviews are final-stage interviews and often occur in the presence of counsel.

Methodology: Document Review

In an investigation, document review is the process of examining written communications and business records to identify inappropriate actions, such as records of business activities that have become subverted. Other documents typically reviewed include internal policies and the business communications associated with the policies. Conspiracy to subvert internal controls, such as two-party payment approvals, leaves either a trail of communication or an inexplicable gap in the records related to the payment. Mischaracterization of a transaction leaves an apparently normal record in internal records but cannot conceal the absence of collateral information, such as shipping and receiving records, warehouse records, contracts for services, and the normal communication associated with these activities. Traditionally, a document-review investigative team prepares a binder, a three-ring notebook, for each topic or person of interest. These binders are summarized and are made available to a lead investigator or team for further use.

Electronically stored information (ESI) constitutes a relatively volatile form of documentation. Whereas paper documents can often simply be read by paralegals, junior accountants, or investigative associates, ESI can be voluminous and organized in idiosyncratic ways. Computer forensic specialists collect and preserve ESI and use software tools to access the complete set of stored data, examined to exclude irrelevant information or target specific items of interest. Computer forensics can also be directly involved in the investigation to confirm or dispute reported activities based on computer metadata and operation of the systems.

Electronic discovery (ED) professionals also process ESI for legal practitioners to review. ED services are increasingly used by investigators and internal auditors to produce searchable documents from ESI. ED-review platforms allow investigators to view readable presentations of ESI and search them for keywords or specific date ranges. Summaries of detail extracted from ESI in its various forms can be added to the document review binders.

In some cases, massive amounts of ESI with many different structures, such as data in multiple databases, may contain relevant information. Data analytics (DA) professionals structure and query this data to extract the desired information by using statistical models to find anomalies in existing datasets, or by discovering trends. Large datasets from corporate operations often show patterns of normal usage that provide a dramatic contrast to fraudulent activities. Forensic accountants can often recognize indicators of fraud from summary data or from a few targeted searches into suspicious transactions. However, typical corporate users, internal auditors, and even forensic accountants may not be able discern these differences from the standard reports used by the corporation. DA, on the other hand, allows investigations to highlight subtle differences spread across enormous datasets, without solely relying on normal data processes and queries run by the corporate owner. Proprietary data models can be compared with existing data to place questionable transactions into sharp relief. Corporate e-mail systems and single-instance storage devices are also sometimes analyzed with DA techniques.

DA can also be applied to investigations that analyze the business from a broader or unique perspective. A simplistic example would be an analysis that divides a company's total income into categories not presented in an existing report. Such an analysis could indicate proportions of revenue derived from different business activities. For example, the FTC investigation of BurnLounge.com could show that income was derived from multilevel marketing recruiting activities that may have been disguised as minimum purchases in summary reports. DA can be applied to loans issued by a bank to search for a trend of risky practices. Large corporate mergers and acquisitions can use DA techniques to conduct due diligence investigations of contractors and divisions within the acquisition. A detailed analysis can change an acquisition by providing a more detailed business valuation. An audit is usually sufficient to provide these details, but detailed statistical models can be used with DA to diagnose problems not yet apparent or to confirm the true health of an acquisition. Such models can also be used to identify critical business units to be detailed in the acquisition process.

Methodology: Direct Inspection

Conversely, direct inspection is the process of sending an expert or an investigator directly to the place in question. The Environmental Protection Agency (EPA) uses this technique with environmental quality samples. Direct inspection can also be performed with financial investigations. The FDIC sends investigators to banks to monitor compliance with various regulations and standards required for member institutions. Information security, privacy, record keeping, and business practice compliance are all assessed a part of routine investigations.

Direct inspection encompasses numerous fields of specialty. For example, commercial vehicle crash investigators retrieve information from the onboard computers of large trucks. Biologists can sample pollution levels downstream from suspected polluters. Computer security specialists can conduct penetration tests of a business's information systems. Engineers investigate structural integrity of buildings, bridges, and other structures. Because the expert's knowledge depends on an analysis, rather than review of documents or interviews, the expert needs direct access to the item or place to be studied. This direct analysis can form the basis of powerful testimony or a definitive statement as a neutral third party.

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See Also: Employee Crimes; Federal Deposit Insurance Corp.; Federal Trade Commission; Forensic Auditing; Regulatory Enforcement.

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Investment Trust Fraud

Investment trust is a somewhat term misleading because it is the name for a type of company, and not the same as assets held for some particular use or administered for some special purpose. Investment trusts are not trusts formed by contracts in a written form as either *inter vivos* or "living trusts" created while the maker is still alive. Trusts are a special kind of contract designed to regulate the disposition of property in terms carried out by the administrator of the trust. The trusts are usually subject to the jurisdiction of a probate court. Investment trusts are designed to engage in making investments. Most trusts created in the United States are regulated by state laws. Since August 2004, an attempt at adoption of a uniform trust law through the National Conference of Commissioners on Uniform State Laws was offered to the 50 states. About half of the states had adopted the Uniform Trust Code (UTC) by November 2009. Trusts have grown in popularity as a substitute for a "last will and testament" in estate planning to avoid taxes. What matters in distinguishing a "trust" from an "investment trust" is that trustees in a trust have fiduciary duties owed by the trustees and the equitable ownership of the fund's assets.

In 1940, Congress passed the Investment Company Act (Pub. L. 76-786, 15 U.S.C. 80a-1-80a-64). The Trust Company Act and the Investment Advisers Act of 1940, along with the Securities Exchange Act of 193r, are the basis of financial regulations is the United States. These laws were updated by the Dodd-Frank Act of 2010.

Mutual funds, invented in 1924, had resulted in monetary losses for many small investors in the crash of 1929, so the Trust Company Act and the Investment Advisers Act were passed in order to instill confidence in the stock market. Along with the Securities Act, serious regulation of the financial system was instituted. With investment companies a relatively new invention, the Investment Company Act defined and regulated them.

Because investment companies operated in interstate commerce and were not easily regulated by the states, the federal government assigned itself the task of regulation. The act put investment companies into three types: face-amount certificate companies, unit investment trusts, and management companies.

Face-amount certificate companies are investment companies that issue face-amount certificates (FACs) that are of an installment type. The FAC is a contract between the investor and the issuer that guarantees payment of the face amount to the investor at a set date in the future. The investor pays the investor either a lump sum (fully paid certificate) or in periodic installments. Only a few of these companies, such as Ameriprise Financial and SABM Financial Group, are in business today because of significant changes in the tax code.

Unit investment trust companies are organized under trust indenture, contract of custodianship or agency, or some other kind of agency. They do not have a board of directors. They issue redeemable securities that are an undivided unit. This means that the investor has an interest in a specific unit. Unlike stock in a joint-stock company, there are no voting rights. In contrast, a voting trust allows an investor or a trustee to legally vote the shares of stock.

Management company trusts are investment companies that provide investments other than face-amount certificates or unit investment trusts. The most common type of management company trust is mutual funds. To be sold, a mutual fund must first be registered with the U.S. Securities and Exchange Commission, and it must be supervised by a board of directors or a board of trustees. It also has to be managed by a registered investment advisor.

American mutual funds are of three types: open-ended, closed-ended, and unit investment trusts. Mutual funds have the advantage in the case of a fund keyed to the Standard & Poor's (S&P) Index or some other index, that they rise and fall with the market so that if one stock drops or rises rapidly it will have only an averaging impact.

Open-ended funds are collective investment plans. The fund can issue shares, but it must be willing to redeem its shares at the end of any day. The investor usually purchases the shares directly from the fund, rather than from other investors. An open-ended fund will repurchase its shares from investors. Mutual fund shares that are traded on exchanges are open-ended shares. In contrast, a close-ended fund issues all of its shares at one time, and thereafter does not issue more. The shares are tradable between investors thereafter. Exchange-traded mutual funds are open-ended or are unit investment trusts. The most common are open-ended funds.

Mutual funds invest in four broad categories: money market funds, bond or fixed income funds, stock or equity funds, and hybrid funds. A fund such as an S&P fund is indexed, while other funds are actively managed. Investors pay the fund's expenses. The level of expense continues to generate controversy. Between 1 and 2 percent of the investment principal is the expected price of investment, which is tax deductible.

Real Estate Investment Trusts

Another type of management company trust is the real estate investment trust (REIT). REITs invest in real estate in order to gain from the mortgage payments, rents, and appreciation of the real estate they purchase. Commercial REITs invest in shopping malls, office buildings, hotels, and other similar real estate where commercial activities take place. The usual selling point to REIT investors is that they can provide a steady stream of income with a higher rate of return than many publicly traded stocks.

REITs in many cases are illiquid. Assets in the form of stocks and bonds are liquid, meaning that they can be sold easily. Some REITs, however, cannot be easily sold because the REIT is privately held or it has not yet been brought to the market. These are nontraded REITs or unlisted REITs. Another reason for illiquidity is the difficulty in pricing REIT shares. They represent properties that have to be assessed, which requires hiring real estate assessors. The real value of a piece of property is what a buyer will pay a seller on any given day. All other pricing is estimating. REITs, as a consequence, are esoteric. They are often sold to retirees who want preservation of their capital and a steady income from it.

All investments involve risks. The risks in REITs are from demographic shifts that change the value of properties or fluctuations in the general economy, which can affect the value of an REIT's shares. Most retirees or others who are receiving income from an REIT will not be greatly concerned if there minor fluctuations in its pricing. However, major economic swings like that following the subprime crisis of 2008 can affect real estate values for years to come. The price of REITs share will drop if publicly traded, or the shares will become even more illiquid if still privately held.

Most people buy REITs through brokerage firms. They have a fiduciary duty to their clients that involves exercising due diligence before offering a REIT to a client. If a brokerage firm fails to perform enough due diligence because it wants the sales commission, then the sale was not in the best interest of the client.

Splits

A costly investment trust that developed in the late 1990s is the split-capital investment trust. Commonly called "splits," they boomed in sales until the financial crisis of 2008. Since then, over 20 splits have gone bankrupt, causing a major investigation to begin. In 2003, a mutual fund scandal came to light that a New Jersey hedge fund company, Canary Capital Partners LLC, was engaged in "late trading" in collusion with Bank of America's Nations Funds. Bank of America was charged with permitting Canary to buy mutual fund shares after the market had closed. The purchased shares were bought at the closing price, to the advantage of Canary Capital. The complaint was settled after Bank of America agreed to compensate its mutual fund shareholders for losses incurred in the illegal trades. Canary Capital paid $40 million to satisfy the judgment.

Many mutual funds are prohibited by the terms of their prospectus from engaging in market timing. The investment strategy involves trading in and out of the market as it rises and declines. Charges were leveled against several major mutual funds, including Janus, Bank One's One Group, and Strong Capital Management, for market timing. Some of their mutual fund clients traded more frequently than their fund prospectus permitted. To permit a privileged few to trade more frequently than the prospectus allows can increase the cost of operating the fund for others who are not engaged in trading. The incentive for fund managers to allow the trading rested in the fact that they were paid a percentage of the total assets of the fund.

Affinity Fraud

A serious investment trust fraud occurred in Illinois in 1994. Clyde D. Hood of Matton, Illinois, created Omega Trust. He claimed that he was one of several international traders who could make secret multimillion-dollar deals that would help humanitarian causes through debentures. He sought investments of $100 in return for the promise of $5,100 in return in 10 months. He avoided federal mail fraud laws by having the money sent in cash, wrapped in aluminum foil, via Federal Express. In a short period of time, he received over $10 million. Eventually, the total rose to $20 million. The money was invested in businesses run by Hood and his associates, but no payments were returned to his investors. Eventually, Hood and 18 associates were indicted, convicted, and punished. Hood was sent to federal prison for 14 years.

Affinity frauds are investment trust frauds that exploit people in identifiable groups. The groups may be ethnic, linguistic minorities, religious groups, professional groups, elders, or other identifiable groups. The scammer may be a member of the group or may pretend to be a member of the group. It is a standard practice to enlist the support of respected members of the community, including religious leaders. These leaders are enlisted to spread the word about the investment scheme and to color the scheme with legitimacy.

Because affinity scams usually occur within closely knit groups, they are hard to detect because victims may not report the crime to the police, or they may not seek legal restitution because of ignorance of the legal system. In addition, if the religious and other community leaders have been duped by the scam, they may be embarrassed to acknowledge the crime. Ponzi schemes (pyramid schemes) are commonly used among affinity groups.

For example, in recent years, the Armenian American community lost $19 million to an affinity fraud that involved an investment trust scheme.

Most of the victims spoke English poorly and had little financial experience. In another instance, Michael Owen Traynor, a Bradenton, Florida, investment broker, worked an affinity scam among his contacts at church and among private school associates until late 2007. He enlisted them as clients and then stole $6.5 million from them through fraudulent investment trust schemes. He was sentenced to 14 years in the Florida prison system.

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See Also: Dodd-Frank Wall Street Reform and Consumer Protection Act; Equity Funding Corporation of America; Keating, Charles; Real Estate Investments.

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Investors Overseas Services Ltd.

At the time that Bernard (Bernie) Cornfeld (1927–95) began selling mutual funds in the 1950s, the American stock market was shifting from closed-end investment companies (limited to providing start-up capital and a grubstake to see a new company through the early stages to open-end mutual funds that invested money in a variety of shares and stocks. Mutual funds operated on the assumption that diversity would guarantee that gains would consistently outnumber losses, given that all stocks inevitably and eventually rose.

Cornfeld formed Investors Overseas Services Ltd. (IOS) in 1955. In 1955, IOS incorporated in Paris, outside the United States, where there was not as much regulation. Government regulators and even investors knew little about IOS, other than it was wildly profitable. When France became suspicious, IOS relocated to Switzerland. By then, it was one of the major financial organizations in the world. IOS was an American company doing business in Europe, thereby exempting itself from European countries' rules and protections. In the United States, it was a European enterprise, so American rules and restrictions didn't apply.

Bernie Cornfeld: Prophet, Star, and Hero

Cornfeld convinced recruits that he could teach them how to become rich. IOS grew rapidly, as Cornfeld skimmed 20 percent of the invested money and paid 8.5 percent commissions. The mutual fund industry grew 10-fold in the 1950s. New funds proliferated, and often sales were door to door, like insurance policies. IOS, by the 1960s, was selling 18 mutual funds door to door in Europe, primarily in Germany. The workforce of 25,000 targeted small investors, nearly half Germans, the rest primarily expatriate Americans and U.S. GIs, and its selling point was tax avoidance. Cornfeld called it "people's capitalism." IOS formed a bank that bought other banks. It started factories, bought real estate, and invested in mining and oil exploration. IOS created new investment funds, including the Fund of Funds, which invested strictly in other mutual funds. Fund managers had high growth targets, and to meet their goals, they increasingly invested in junk bonds. These junk bonds were growing rapidly in value, almost totally because of IOS's surplus of investment money, which chased a relatively small number of available American shares.

In 1970, Cornfeld was a prophet, a hot property, a star, and a hero to stockbrokers, bankers, and money managers. The 1960s were good years for people's capitalism; IOS had $2.5 billion in an industry with total assets of less than $50 billion. By the end of the 1960s, the largely unregulated IOS managed $2.5 billion and predicted that by the mid-1970s, it would have $15 billion. Its goal was $100 billion. By the mid-1960s, over 100 salespeople were millionaires, and the company was almost legendary with its high yields in a rising market. Cornfeld had a personal fortune of more than $100 million. The Dow Jones Industrial Average reached 985 in December 1968 before sliding by 36 percent to 631 in May 1970. Within the year, an IOS accountant actually looked at the books in all their complexity and learned that the company was not making a profit after all the creaming by managers, salespeople, and overhead. The company had no margin for the inevitable downturn, which soon came.

The company used its Fund of Funds (investment in shares of other IOS vehicles) to raise $2.5 billion in the 1960s. When the markets were bullish, IOS's Fund of Funds did well, but when the market turned bearish, the company had to pay guaranteed dividends out of capital, rather than profit. IOS, its workers, and its investors were fully leveraged. IOS was a Ponzi scheme. When costs became unbearable, IOS had no recourse but to make an initial public offering (IPO), and the next bear market led investors to cash out depreciating stock holdings. IOS sold shares in the IPO to employees, directors, and outsiders, with everyone leveraging to get as much IOS as they could. Then the market tanked, and then investors noticed fees and underperformance, and cashed in. IOS had created 143 paper millionaires with its IPO, but all that disappeared.

Over the spring of 1970, share prices fell to $12 from $18. Cornfeld and others formed an investment pool, but shares continued to drop, hitting $2, at which point IOS employees and portfolio managers were also unloading their stock. Cornfeld received an offer of aid from Robert Vesco, but Vesco was also in trouble and used half a billion dollars of IOS money to cover his stake in International Controls Corporation. IOS collapsed, bringing down U.S. and European banks; Cornfeld spent 11 months in a Swiss prison before fraud charges against him were dropped. Cornfeld blamed German banks for a bear raid. Cornfeld did not regard himself as a crook, but rather as an entrepreneur with a big idea. Cornfeld sold snake oil to willing believers firmly in the clutches of greed. He and his investors were fully convinced that what goes up never goes down. His sales pitch included a bit of idealism as he convinced himself, at least, that he was giving the average Joe the same opportunities to invest as the rich had long enjoyed. Cornfeld created IOS and built it into a company with billions in investor dollars. It was large enough that it created bull markets both in the United States and overseas, and the bursting of the IOS bubble was at least in part responsible for the market crash of 1970.

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See Also: Ponzi Schemes; Securitization Fraud; Stock and Securities Fraud.

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Iran-Contra Affair

The Iran-Contra Affair was a political scandal involving a plan to free American hostages seized by pro-Iranian groups in Lebanon by selling arms to Iran and diverting the proceeds of the sale to support Contras (rebels) fighting against the government of Nicaragua. Iran was fighting the Iran–Iraq war at the time. Later revisions to the plan would see the profits made from the sale of the weapons to Iran used to fund Nicaraguan Contras in their fight against the Sandinista government in Nicaragua. The plan was to supply weapons to

Iran so that it could fight the Iran–Iraq war. In exchange, Iran would pressure the Hezbollah and Islamic Jihad to release seven American hostages held in Lebanon: Thomas Sutherland, Joseph Cicippio, and David Jacobsen, administrators from the American University of Beirut; Benjamin Weir, a Presbyterian minister; Father Lawrence Jenco, a Catholic Priest; Jerry Levin, CNN's Beirut bureau chief; and Frank Reed, from the Lebanese International School. The intent was to gain support from Iranian moderates to begin easing relations with the Iranian government.

Hatching a Plan

The precise origins of the plan are not clear. One version suggests that the plan originated with a consultant to the office of National Security Adviser Robert McFarlane. Another version suggests that Iranian interests, unable to secure weapons to fight the Iran–Iraq war, approached the United States to buy arms. Iran was designated a state sponsor of terrorism in 1984, making such a deal illegal. The deal divided the White House. Secretary of Defense Caspar Weinberger and Secretary of State George Schultz were opposed, whereas McFarlane and Central Intelligence Agency (CIA) Director William Casey approved. It is not known if President Ronald Reagan approved the deal, but analysts suggest that it would have been unlikely for the deal to proceed without his approval.

Nonetheless, plans to complete the deal proceeded. The Israeli government acted as an intermediary, selling arms to Iran, and the United States resupplied weapons to Israel. The plan was executed in several stages. In the first stage, Israel sent antitank missiles to Iran in August 1985. The first hostage, Reverend Benjamin Weir, was released shortly thereafter. Over the next several months, more weapons were sent to Iran, and all seven of the hostages were released. The weapons shipped included more antitank missiles, antiaircraft missiles, and spare parts for the missiles.

While the deal was in process, Lieutenant Colonel Oliver North of the National Security Council suggested modifications. The revisions called for diverting some proceeds from the sale of weapons to Iran to fund the Nicaraguan Contras. This deal violated the terms of the Boland Amendments. The Boland Amendments restricted CIA and Defense Department actions in Nicaragua and made direct support for the Contras impossible. A key issue in the affair was what President Reagan knew, and when he knew it. There is documentation showing that President Reagan signed a presidential "finding" (a document indicating that the president approves a given action) on September 18, 1983, that authorized CIA covert action against the Nicaraguan government. It is not known if he signed a similar finding authorizing funding the Contras via the sale of arms to Iran. Exactly who approved Oliver North's plan is not known. North testified that Admiral John Poindexter had approved the deal, but Poindexter refused to confirm that the deal had been approved by President Reagan. However, Weinberger, Poindexter's predecessor, would admit that he was aware of scheme. His handwritten notes indicate that President Reagan was aware of the arms deal with Iran, as well as the possibility of hostages being released. It is not clear that President Reagan was aware that the two events were connected. North testified at his trial that he witnessed Poindexter destroying the only copy of a signed finding from President Reagan, authorizing the arms shipments to Iran. If this is true, it still does not say that President Reagan knew of North's diversion scheme.

The Iran-Contra affair became known when a Lebanese newspaper, *Ash-Shiraa,* printed the story on November 25, 1986, and shortly thereafter the Iranian government confirmed its involvement. President Reagan denied any knowledge or involvement in a cash for hostages deal and denied that the United States had been supplying weapons to Iran. President Reagan's denial in the face of mounting evidence to the contrary weakened his credibility. Criminal indictments and convictions were registered for several key players. North was charged with obstruction of a congressional inquiry and destruction of documents. On appeal, his conviction was overturned because the prosecution had relied on testimony he had given under a promise of immunity. Weinberger was indicted, but not convicted, on two counts of perjury and one count of obstruction of justice. He was pardoned before his trial. CIA Director William Casey was charged, but he died before his trial concluded. Assistant Secretary of State for Inter-American Affairs Elliott Abrams was convicted of withholding evidence. Robert McFarlane was convicted of obstruction of justice. John Poindexter was convicted of perjury, obstruction of justice, defrauding the government, and destruction of evidence. Most of those convicted had their convictions overturned on appeal or received a pardon from President George W. Bush. Those pardoned were Weinberger, Abrams, McFarlane, and three former employees of the CIA: Duane Clarridge, Alan Fiers, and Clair George.

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See Also: Boland Amendments; Bush, George W.; Reagan, Ronald; State Crime Theory; Watergate.

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Iraq War

Corruption, fraud, theft, and negligence may have cost U.S. taxpayers as much as $10 billion during the nine-year occupation of Iraq (2003–11). The true cost of corruption and negligence will probably never be known because the financial management systems that should have tracked the spending on hundreds of contracts were never fully effective.

From 2003 through 2011, the U.S. government allocated more than $750 billion for the war in Iraq. In addition, the United States has incurred hundreds of billions of dollars in future obligations in the form of interest payments and medical care for tens of thousands of wounded service members. Many analysts believe that the war will end up costing the United States more than $2 trillion. Of the direct costs of the war incurred to date, nearly $800 billion, most was spent to fund U.S. military operations, including contracted logistics and security services. In addition, more than $61 billion was spent on Iraq reconstruction efforts that were performed largely by contractors.

Although poor planning and negligence characterized all aspects of the occupation of Iraq, U.S. contracting efforts were especially vulnerable to corruption and theft. The congressionally mandated Commission on Wartime Contracting estimated that waste and fraud during contingency operations in Iraq and Afghanistan averaged about $12 million every day for more than 10 years. Causes of contract waste, fraud, and abuse included ill-conceived projects, poor planning and oversight by the U.S. government, poor performance by contractors, and criminal behavior.

The waste, fraud, and corruption that permeated Iraq was a result of a combination of factors, including Iraq's disastrous prewar condition, a nearly total lack of effective U.S. planning, the U.S. government's unprecedented reliance on private contractors, the lack of trained and experienced government contract specialists, and the chaotic security situation. Waste in contracts occurred at all levels, including the host country level, the program and project level and the individuals contract level.

Prewar Iraq

Through the 1970s, Iraq was a relatively prosperous and reasonably well-managed nation with a growing middle class of professionals and one of the highest standards of living in the Middle East. The rise to power of Saddam Hussein led to a disastrous eight-year war with Iran (1980–88), a misguided invasion of Kuwait (1990), a staggering defeat by a U.S.-led coalition (1991), and more than 10 years of crippling economic sanctions. By 2003, despite Iraq possessing the world's second largest usable oil reserves, its economy was moribund, its infrastructure was crumbling, and its people were traumatized by more than two decades of unrelieved suffering. In public health, education, political freedom, and economic vitality, Iraq now trailed most nations in the Middle East. Corruption had become endemic, with the World Bank and Transparency International both ranking Iraq as one of the most corrupt countries in the world. Even the United Nations' Oil For-Food program (OFF), which had been established in 1996 to allow the Iraqis to bypass UN sanctions against oil sales in order to generate funds for food and medicine, had become a source of massive government corruption.

U.S. Planning Failures

Although the George W. Bush administration had decided to invade Iraq before the end of 2002, detailed planning for the eventual occupation of the country did not begin until after the invading forces had toppled Saddam Hussein's regime. Before the war, U.S. government planning was based on a trio of mistaken assumptions: that the war would be brief, war damage would be minimal, and Iraqi oil revenues would finance almost all required reconstruction.

When these assumptions proved inaccurate, U.S. government planners scrambled to develop a blueprint for overseeing the occupation of Iraq. U.S. planning efforts remained hobbled by the Bush administration's antipathy to nation-building and by the U.S. Defense Department's determination to turn the country over to the Iraqis as soon as possible. Occupation planning remained fragmented and decentralized.

The lack of planning led directly to a debilitating lack of resources for the occupation, including too few troops to maintain security and too few financial specialists to manage the enormous contracting program that was suddenly required. The lack of security forces resulted in massive looting and encouraged the beginning of a deadly insurgency. Looting of most government offices led to billions of dollars in damages, the arming of insurgent groups with looted arms and munitions, and

Iraqi workers unload bags of flour at the World Food Program (WFP) warehouse in Kirkuk, Iraq, June 12, 2003. The WFP was established under the United Nations (UN) Oil-for-Food Program (OFF), which allowed Iraqis to bypass UN sanctions against oil sales in order to generate funds for food and medicine. However, in its handling of OFF, the UN was declared guilty in 2005 of "corrosive corruption," according to a lengthy investigation headed by Paul Volcker, former head of the U.S. Federal Reserve.

lost opportunities to restore government services quickly.

U.S. planners assigned the responsibility for postwar reconstruction to the U.S. Agency for International Development (USAID), but USAID had not conducted large-scale contingency relief and reconstruction operations since the war in Vietnam, and the agency had no surge capacity. As a result, virtually all of its missions in Iraq would be executed by private contractors and nongovernmental organizations (NGOs).

The overreliance on contractors and the lack of effective oversight left the U.S. occupation authority and the nascent Iraqi government exposed to large-scale corruption and theft throughout the occupation period.

Coalition Provisional Authority

Within weeks of the fall of the Iraqi regime, it became obvious to U.S. officials that the United States would not be able to turn administration of Iraq over to an indigenous government. To administer the country until an Iraqi government could be formed, the United States established the Coalition Provisional Authority (CPA). The CPA ruled Iraq for a critical period, from May 2003 until June 2004.

CPA's immediate priority was to restore government services and restart the Iraqi economy. Initial funding for Iraq reconstruction came from the Development Fund for Iraq (DFI), which comprised Iraqi funds that had been frozen in U.S. banks, seized by coalition forces, or collected by the United Nations as part of the Oil-for-Food program. In 14 months, the CPA disbursed $20 billion of Iraqi money, including a final disbursement of more than $6 billion in the last days before the CPA turned sovereignty over to the Iraqi interim government. However, the CPA's handling of the DFI was soon questioned, leading to the creation of the Special Inspector General for Iraqi Reconstruction (SIGIR).

Throughout its brief existence, CPA was never adequately staffed, severely hindering the authority's operations. SIGIR auditors reported that CPA's contracting activity was grossly understaffed and completely overwhelmed by hundreds of DFI contracts. The most serious problem was the lack of qualified contracting personnel. In a report released following the disestablishment of the CPA, SIGIR auditors claimed that CPA's management of the DFI was inadequate, and because of a lack of financial controls, it was impossible to determine how more than $8.8 billion had been used. Later, the Special Inspector General told a congressional committee that the $8.8 billion figure was too low and that the amount of funds that could not be tracked included the entire $20 billion allocation.

CPA officials disputed SIGIR's assessment, arguing that it was unreasonable to hold war-torn Iraq, with all of its problems, to the high standards of budgetary transparency and execution that wealthy Western nations do not always achieve. CPA officials argued that they could, and did, account for all funds that had been released to Iraqi ministries, but they should not be expected to account for how the ministries spent the money. Government functions had to be reestablished: schools and clinics had to be opened, teachers and nurses had to be paid, garbage had to be collected, and sewage had to be treated. There was no alternative to using Iraqi institutions for these purposes and no way to install effective financial management and tracking systems in the time available to the CPA.

Although the CPA's management of the DFI was flawed, larger problems stemmed from the overreliance on contractors in Iraq.

Contracting

In the 1990s, the end of the Cold War led to a sharp decrease in the number of military and civilian positions within the Department of Defense. While force structure was reduced, military planners saw no corresponding decrease in the requirements for military forces. In order to maintain the highest number of combat troops, the military reduced the number of support personnel, including contracting specialists, and began to rely on contractors for a wide range of logistic and administrative functions that had previously been performed by military personnel.

The reductions in contracting specialists, when coupled with an increase in the volume and complexity of contracts, left the government vulnerable to mismanagement, corruption, and fraud by contractors. In Iraq, the lack of contracting professionals led to widespread corruption, as the number and complexity of contracts far exceeded the oversight capabilities of the CPA and the multinational military command. Contract management was especially difficult in Iraq because of the chaotic security situation that prevented government officials from visiting contract sites, the small number of companies able or willing to bid on contracts in the war zone, the heavy reliance on third-control nationals as contractors, and the dynamic operational environment characterized by shifting priorities and compressed timelines.

Numerous audits and investigations identified a long list of recurrent contract management failings that demonstrated a pattern of poor oversight, including undefined contract requirements, improper use of sole-source contracts, excessive overhead costs, government officials requesting that contractors complete work outside the scope of the contract, the failure of contracting officers to obtain fair and reasonable prices, the failure of contracting officers to verify that the contractor actually delivered the goods or services, questionable award fees, failure to properly review invoices, a lack of transparency exacerbated by contractors inappropriately marking their data as "proprietary," and the failure to conduct site visits or monitor contractor performance.

Subcontracting caused additional problems, as key subcontractors often came from countries in which bribes and kickbacks are common practices, and because U.S. legal institutions had little or no leverage over foreign subcontractors.

The use of large numbers of security contractors hired to protect government employees, convoys, bases, buildings, and other economic infrastructure was especially problematic. Operating in a war zone with virtually no oversight, security contractors have been largely unaccountable for their actions. A series of high-profile incidents, including the killing of 17 Iraqi civilians at a Baghdad traffic circle in 2007 by armed contractors, sparked calls for an examination of the legality and utility of employing armed private security contractors. Following that incident, the Department of Defense took steps to improve contractor oversight, but overall, the management of security contracts remained weak.

Anticorruption Efforts

From the earliest days of the CPA, U.S. officials recognized the need to investigate and control corruption and contractor abuses. For more than 70 years, Iraq's premier anticorruption institution had been the Iraqi Board of Supreme Audit (BSA). However, the BSA was reluctant to participate in the U.S.-imposed anticorruption structure.

As a result, the CPA established two new anticorruption institutions: the Commission on Public Integrity (CPI) and the Ministry Inspectors General (IGs) system. Members of both organizations recognized the importance of their roles. The CPI officials estimated that the cost of corruption uncovered by CPI across all ministries was as high as $18 billion. However, the CPA failed to fully support the two institutions, and their effectiveness was hampered by misunderstandings concerning their roles and distrust concerning their association with the occupation authorities.

In the 18 months following its establishment, the CPI filed 541 cases with the Central Criminal Court of Iraq (CCCI), including 42 against ministers, their deputies, and ministerial directors general. These early cases led to a backlash against the CPI, resulting in government efforts to limit its powers. Meanwhile, the CCCI proved unable to prosecute cases effectively. Overburdened with criminal cases, including organized crime, terrorism, and sectarian violence, the CCCI was unable or unwilling to devote efforts to corruption cases.

As U.S. military operations in Iraq dragged on, U.S. officials relied on a number of audit and investigative agencies to counter corruption. Major organizations active in investigating fraud and corruption among contractors and government employees in Iraq include the Multi-National Force-Iraq; the U.S. Department of Justice, Department of the Treasury, Department of Defense Inspector General (DODIG), General Accounting Office (GAO), and Agency for International Development (USAID); SIGIR; the Army Audit Agency; the Army Criminal Investigation Command; and the Defense Finance and Accounting Service.

In 2005, the U.S. embassy conducted an anticorruption summit and rejuvenated its Anti-Corruption Working Group. The working group's task was to develop an anticorruption strategy and coordinate all U.S. anticorruption programs. The Working Group found that U.S. anticorruption programs suffered from a lack of consistent leadership and interagency coordination.

By 2012, the various U.S. agencies had undertaken more than 300 investigations involving fraud and corrupt activities, resulting in more than 100 felony convictions for corruption-related offenses including bribery, wire fraud, bulk currency smuggling, money laundering, violating the Anti-Kickback Act, accepting unlawful gratuities, major fraud, and making false statements.

While the numbers of Americans who committed significant fraud is small, their activities harmed the nation's effort in Iraq by diverting funds from important projects and tarnishing the reputation of the United States in the eyes of many Iraqis.

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See Also: Academi; Bush, George W.; Contractor Fraud; Corruption: Government Contract Fraud; Halliburton Co.

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Irving, Clifford

Clifford Irving (1930–), an amiable rogue now living comfortably, chose Howard Hughes as the secondary victim of his fraud, through the fake autobiography he prepared of him in the early 1970s. Through his fabrications, Clifford Irving may well have been one of the earliest celebrity offenders of the genre. There are many who believe that Irving's celebrity stimulated the prosecutions, given that other fabricators following him, though exposed, have not been prosecuted. It is at least equally debatable that such false claims, especially in writing, should be a criminal matter. They have become so, in part, perhaps to wipe some of the egg off the face of publishers happy to identify themselves as ostensibly innocent victims of the fraud. The crime of "false claims" is a convenient subset of the genus of white-collar crime because it suggests the commission of a crime by an educated person with a pen, not a pistol. Many of the victims of fraud who paid good money for something that was not true were also well educated.

The Reclusive Victim, Howard Hughes

When Irving brought out his autobiography of the reclusive Howard Hughes, it was guaranteed to attract attention because of Irving's existing fame, and that of his subject. Irving was a well-established, highly respected author or such well-reviewed fiction as *On a Darkling Plain,* set at his alma mater, Cornell. With an honors degree in English and experience at the *New York Times*, he had a literary pedigree was unquestioned. With his additional work as an investigative reporter, few would have doubted Irving's ability to write a searching biographical piece.

The scheme that led to the publication of the fake Hughes autobiography began in the early 1970s, when Irving met with another established author (of children's books), Richard Suskind, who was later also to serve five months in prison for his part in the Hughes conspiracy. Irving's wife, Edith, was also imprisoned for her part in the affair. In the end, Irving's conviction for fraud did not prevent the publication of the fake autobiography, eventually released in 1991.

In the best traditions of modern American popular culture, Irving and Suskind produced a book, *What Really Happened: The Untold Story of the Hughes Affair.* Later, Irving authored *The Hoax,* subsequently made into a film starring Richard Gere as Irving. Irving was well known for his sense of humor and may well have come up with the idea of the fraud as a caper, possibly inspired by fictional stories. In the well-known film *The Thomas Crown Affair,* a work of fiction, the conclusion must be that Crown, the miscreant millionaire, committed the crime, in this case an art theft, because it represented a challenge. Irving was financially comfortable at the time of the hoax, and after his prison term, he returned to writing successful real fiction, supporting the comfortable lifestyle he still maintains. Irving and Suskind knew going into their caper that their work would be challenged. Hughes, while reclusive, had shown enough legal clout to have suppressed several previous attempts to write about his life.

Modern Fabrications

The salutary lesson of Irving's conviction has not put an end to fake material being prepared and published. Stephen Glass's fabrications proved an embarrassment for the *New Republic*, and a Pulitzer Prize was retracted when it was learned that Janet Cooke had fabricated her material for a 1980 series on drug abuse that she wrote for the *Washington Post*. Similar behavior, albeit with different etiological explanations, exists in that Cooke and Glass both blamed the pressures of their competitive job environments for their delinquency.

Even more high profile was the revelation that Greg Mortensen, the author of *Three Cups of Tea*, a book that attracted enormous attention, winning numerous prestigious awards after its publication in 2006, had made up much of his material. To this point, none of the above has been prosecuted. The only conclusion must be that Irving's personality was so abrasive that it led to criminal charges. Modern information sharing and fact checking, enhanced by the resources of the Internet, leads to the conclusion that if enough effort is put into the exercise, fake biographies and journalism are even more likely to be discovered than ever. This did not deter Irving back in the 1970s and is not likely to deter all of his potential successors in fraud.

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See Also: Copyright Infringement; Counterfeiting; False Claims Act; Forgery; Internet Fraud.

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J

Jesilow, Paul

Paul Jesilow (1950–) is a professor in the Department of Criminology, Law, and Society within the School of Ecology at the University of California, Irvine (UCI). He also taught in the Department of Forensic Studies at Indiana University, Bloomington, from 1980 to 1987. His studies on white-collar crime have established him as one of the most respected names in the field. Jesilow has co-authored two books that are considered seminal works. Both *Prescription for Profit: How Doctors Defraud Medicaid* (1993) and *Myths That Cause Crime* (1984) were selected as Outstanding Book of the Year by the Academy of Criminal Justice Sciences. *Prescription for Profit* was instrumental in the heightening of federal oversight into Medicaid and Medicare fraud, and *Myths That Cause Crime* exerted a major influence on perceptions of criminals and the crimes they commit. Jesilow has also published works on topics such as gender differences in law enforcement, judicial ethics, sentencing patterns of municipal court judges, state medical reform laws, and the Guatemalan criminal justice system.

Jesilow was involved in an accident when he was 16 years old that left him a quadriplegic. Undaunted, he continued to pursue his education. At UCI, Jesilow received a bachelor's degree in sociology and political science in 1976, and a master's degree in social ecology in 1976. Continuing his study of social ecology, he received his Ph.D. from the same university in 1982, then began teaching full-time at UCI in 1987. Spending his entire academic life at the same university proved a boon to Jesilow, who likes to joke that the school not only gave him a home and a career but also gave him his wife, Julie, whom he met when she was an undergraduate. Jesilow was chosen as Outstanding Professor for the School of Ecology in 2006. *Myths That Cause Crime* became a standard in criminal justice courses throughout the United States. In the book, which is often praised for being highly readable, Jesilow and his co-author, Harold E. Pepinsky, set out to dispel common myths that are inherent to criminals in American society. They discuss influences on criminals such as social class, drugs, economic crime, punishment, and social policy and offer innovative solutions for addressing problems with the status quo within the criminal justice system.

In 1993, in *Prescription for Profit: How Doctors Defraud Medicaid*, Jesilow, Henry Pontell, and Gilbert Geis expose the fact that white-collar crime that has become rampant within the medical community. They argue that such crimes are committed not only among physicians but also among pharmacists and insurance companies, at a cost of 10 to 25 percent of the total outlay of the Medicaid program. They believe that the amount is actually far greater than reported. In a study of 138 physicians that was funded by a grant from the National Institute of Justice, Jesilow et al. discovered massive fraud. More than one-third of the physicians included in their study had been educated abroad. Jesilow, Pontell, and Geis illustrated the depth of Medicaid fraud by describing cases in which physicians had been outrageous in their efforts to defraud. One doctor had submitted $3,000 in charges for a period when he had been in Africa on safari. Another filed for reimbursement for 48 abortions that had allegedly been performed on women who were not pregnant. The authors also told of physicians running unnecessary tests and labs filing claims for tests that had been offered at "free" mobile clinics. A psychiatrist in California submitted charges for visits that were actually sexual liaisons, and a dentist filed claims for pulling more teeth than patients could possibly possess. Other dentists charged for X rays that had been taken without using film. In an article appearing in *Social Justice* in 1995, Jesilow and his co-authors pointed out that the United States continued to be the only industrialized country that did not provide state-subsidized health care, noting that 39 million Americans were without health care insurance in 1995. They argued that President Bill Clinton had failed to overhaul the health care system because his efforts had been too broad.

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See Also: Geis, Gilbert; Medicare and Medicaid Fraud; Pontell, Henry.

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Jett, Joseph

In 1994, Joseph Jett was a 36-year-old star government bond trader at Kidder, Peabody & Co., a subsidiary of General Electric (GE). He was Kidder's 1993 Man of the Year. In April 1994, Kidder dismissed Jett for allegedly creating about $350 million in fake profits. GE ultimately punished several senior executives. From 1990 to 1994, Jett allegedly lost an estimated $75 million to $85 million and reported large, nonexistent profits. The incident was then the largest trading fraud in history. Jett might be regarded as the first of a series of rogue traders, including Nick Leeson (Barings Bank), John Rusnak (Allied Irish Banks), and Jérôme Kerviel (Société Générale), who received prison sentences, unlike Jett.

Established in Massachusetts in 1865, Kidder, Peabody & Co. operated in investment banking, brokerage, and trading. The firm was acquired in 1986 by GE and sold in October 1994 to PaineWebber at a significant loss to GE. During the 1980s insider trading scandals on Wall Street, a former Kidder executive, Martin Siegel, then head of mergers and acquisitions at Drexel Burnham Lambert, admitted to insider trading and implicated Richard Wigton, Kidder's chief arbitrage specialist. A GE internal investigation led at that time to firing of some Kidder senior executives and a halt in trading on its account.

Forward reconstitutions of stripped U.S. Treasury bonds and a defect in Kidder computer software were involved in Jett's activities. In a strip, bond principal and interest were separated for sale. A reconstitution consisted of a trader buying Treasury strips sufficient to re-create the original bond. The Kidder software simply valued forward-dated transactions as if immediately settled, disregarding any time value of money for the waiting period until settlement. Phantom profit was generated by hedging bond strips (the price of which increased daily) against a short Treasury bond position (the price of which remained relatively stable over a settlement period for the strips). At settlement, any misreported profits reversed to actual losses. Thus, effectively a pyramid scheme, the activity required engaging in more and more trades to conceal losses. Jett received increasingly large bonuses, with the 1993 bonus requiring GE board approval. GE eventually asked that the size of the positions be reduced because of the observable effect on its balance sheet.

The Jett incident is significant for two reasons, beyond the demise of Kidder and revelations of internal problems at the firm. First, there was a complex set of investigations. The "Lynch Report," issued in August 1994 by an outside lawyer who had been former enforcement chief of the U.S. Securities and Exchange Commission (SEC), concluded that Jett acted alone and intentionally, but within a complete breakdown of supervision at Kidder. The New York Stock Exchange (NYSE) banned Jett from trading securities or working for any exchange-affiliated employer. In 1996, the National Association of Securities Dealers (NASD) rejected Kidder's monetary claims and ordered Jett's personal accounts released, other than deferred compensation. The SEC initially ruled that Jett did not commit securities fraud, but did charge a record-keeping violation concerning what amounted to a pyramid scheme exploiting the Kidder computer system and inferred intent to defraud. Upon appeals, in 2004, the SEC concluded that there was securities fraud and upheld forfeit of bonuses, a fine, and a lifetime bar from the industry. The U.S. attorney's office investigated but never filed criminal charges. The second reason concerns Jett's background. He was an African American who grew up near Cleveland, Ohio. Receiving bachelor's and master's degrees in chemical engineering from MIT, he worked at GE Plastics for two years, and then received an M.B.A. from Harvard Business School. He worked as a bond trader at Morgan Stanley for two years, and First Boston for 18 months, before he was hired in July 1991 by Kidder. Two books by Jett provide his story. He claims that the transactions were sound and under direction of his supervisor. He details racial barriers and other problems at Wall Street firms that raise serious and persistent concerns.

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See Also: Allied Irish Banks; Barings Bank; Bond Fraud; Drexel Burnham Lambert Inc.; General Electric Co.; Kidder, Peabody & Co.; Leeson, Nick.

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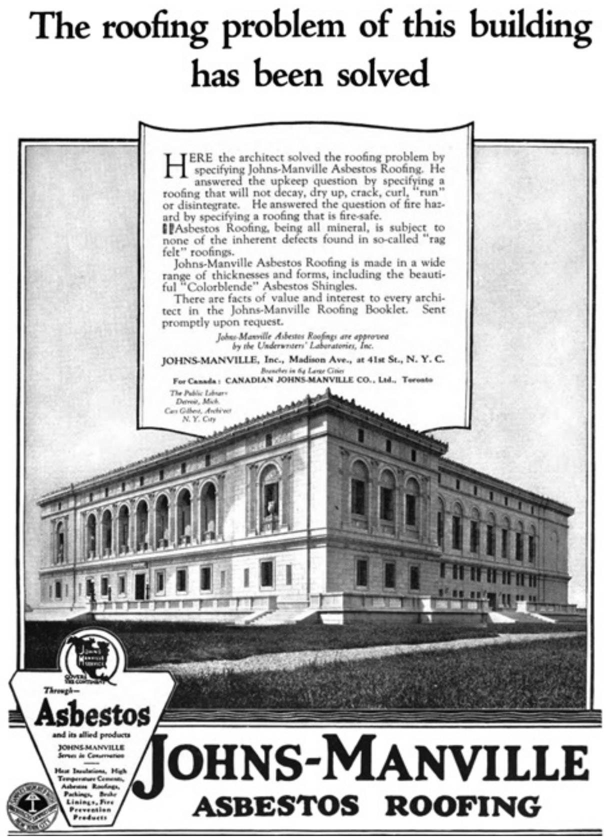
Johns Manville Corp.

The Johns Manville Corporation (Manville) mined and processed asbestos, a naturally occurring fibrous crystal with fire-retardant qualities that can cause diseases with long latency periods (20 to 40 years), including asbestosis, cancers, and mesothelioma. The corporation failed to protect workers, conspired with other industry leaders to manipulate studies and hide information linking asbestos exposure to health problems from the public and government, and became the first Fortune 500 company to strategically use bankruptcy to protect itself from tort claims.

The H. W. Johns Manville Company was created from the merger of the H. W. Johns Manufacturing Company (known for making fire-resistant roofing materials out of asbestos) and the Manville Covering Company (which used asbestos as a heat insulating material) in 1901. It was renamed the Johns-Manville Corporation in 1926. In the 1970s, the company also became a major fiberglass manufacturer. Despite claims that it was among the largest processors and manufacturers of asbestos products in 1982, Manville filed for Chapter 11 bankruptcy that year to protect it from the approximately 13,000 liability suits it faced. In 1988, it successfully emerged from bankruptcy as the Manville Corporation, then became Schuller International Group Inc. in 1992. With the passage of the Bankruptcy Act of 1994, Schuller received further protection from



An advertisement for asbestos roofing by Johns Manville Inc., in a 1921 issue of Architectural Forum, *features the Detroit Public Library. The first medical report of health risks posed by asbestos was published in the* British Medical Journal *just three years later.*

asbestos liability. In 1997, the company became known as the Johns Manville Corporation and was purchased by Berkshire Hathaway in 2001.

Shortly after 1900, evidence emerged that asbestos dust was dangerous. The fact that many individuals exposed to asbestos dust also smoked allowed both tobacco companies and asbestos processors to deny culpability for victims' lung ailments, with the exception of mesothelioma, which is caused solely from exposure to asbestos. Despite its denials, for decades, Manville was aware of health problems associated with asbestos and sought to suppress damaging information.

The first medical report of health risks associated with asbestos was published in the *British Medical Journal* in 1924. Denying the applicability of that study, Manville sponsored research into the link between asbestos and cancer in 1928. With that study, statements from the Bureau of Mines, and other studies showing a link between asbestos exposure and health problems, Johns Manville's general counsel, Vandiver Brown, and Raybestos-Manhattan's president, Summer Simpson, conspired to hide this information from the public and government. The company also manipulated the results of industry-sponsored studies. In 1936, they concocted a plan to pay for studies in return for complete control over the reporting of findings. Many medical professionals, by readily accepting funds for research that would support the industry's position, assisted asbestos companies in keeping adverse information out of trade journals and away from employees. The company's medical director even advised against informing workers that their health issues were caused by asbestos if they were not exhibiting debilitating symptoms.

Despite the company's efforts, by 1929, Manville's employees began claiming disabilities from lung diseases and filing lawsuits. Manville's policy of negotiating settlements with sick workers if they agreed to drop current or future claims against the company was another way in which it controlled information. This fact is documented in 1933 board meeting minutes that record directors voting to settle 11 asbestos cases with workers for $35,000 in exchange for their agreements.

Manville confronted multiple threats to its financial well-being after 1960. Foremost, in 1964, New York's Mount Sinai School of Medicine conclusively linked asbestos exposure to disease. By 1973, the federal government began banning asbestos and ordering its removal from schools. Manville finally warned its workers about the danger of asbestos exposure in 1964, but eight years later, it still refused to install dust-control systems that could protect workers because of their high cost. It calculated that it was cheaper to pay workman's compensation to disabled employees and deceased workers' families than to install the systems. When the attorney for Reba Rudkin, a 29-year Manville employee, successfully argued that workman's compensation should not shield Manville from fraud and conspiracy charges, the company was forced to recalculate. In *Borel v. Fibreboard Paper Products* (1973), an appellate court ruled that manufacturers that failed to warn of or test for dangers that were reasonably foreseeable could be held liable to those using asbestos products.

About 11 million Americans have been exposed to asbestos dust, including individuals working for asbestos processors, in mines, in construction, on Liberty ships during World War II, and in schools. Many of them named Manville as a defendant in lawsuits between 1968 and 1982. In 1976, Manville's liability insurance refused to cover the 15,000 to 18,000 outstanding claims, and the federal government refused to provide a bailout.

With limited options, Manville decided on a novel tactic. Despite earning $2.2 billion in 1981, it filed for Chapter 11 bankruptcy protection in 1982 to insulate itself from the financial impact of current and future asbestos litigation. Manville simultaneously sought to justify seeking bankruptcy protection while to trying to convince the public and suppliers it was solvent. As a result of its reorganization, the company was divided so it could channel asbestos claims to the Manville Trust, which allowed the other parts of the corporation to increase in value. The company emerged from Chapter 11 in 1988 as Manville Corporation.

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See Also: Asbestos; Conspiracy; Consumer Deaths; Employee Safety; Occupational Carcinogens; Occupational Safety and Health Act; Research Fraud.

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Johnson, Lyndon B.

Lyndon B. Johnson (1908–73) was a national politician who served as congressman and senator from Texas, vice president under John F. Kennedy, and upon the assassination of Kennedy on November 22, 1963, president of the United States. He ran successfully for election as president in his own right on the Democratic ticket in the 1964 contest against Republican Senator Barry Goldwater. During his career, a number of scandals surfaced, many of which involved his friends and close advisors. Republicans used moral issues against him in the 1964 election, but he benefited from a sympathy vote and was able to shrug them off. Johnson, on the positive side, pushed through civil rights legislation and created the War on Poverty, programs aimed at alleviating the lot of minorities and the poor. His larger rationale was based on the notion of the Great Society, which brought many liberal programs to fruition. Notwithstanding his very significant social achievements, Johnson was essentially driven from office by pressures from the left over his performance concerning the Vietnam War; he elected not to run in the election of 1968 and retired to his ranch in Texas.

After serving six terms in the House of Representatives (1937–48), Johnson was ready to move on to the Senate. He was forced to challenge popular Texas Governor Coke Stevenson in the Democratic primary contest, which at that time in Texas constituted the actual election. Johnson lagged in preprimary polls but decided to pursue Mexican American voters in south Texas. He assiduously courted political bosses who had influence with this large bloc as well as political bosses and politicos elsewhere in the state. On election night, Johnson was lagging behind Stevenson, but he surged when a "lost box" of votes containing 427 votes, 425 of which were for Johnson, mysteriously turned up. Days later, the contest was still in doubt. Crooked Democratic election officials swung the final vote, giving Johnson a 200-vote victory. This slim margin and the corruption involved led to the appellation "Landslide Lyndon." Stevenson tried to appeal, through numerous attempts, to the state party convention and to the federal courts but was unsuccessful. Johnson easily won the following general election and served in the Senate until 1961, when he resigned to become vice president.

Robert "Bobby" Baker was one of Johnson's closest associates, and was his secretary when Johnson was majority leader in the Senate. In

1963, while Johnson was vice president, Baker was sued for using his position to obtain contracts for his vending machine company from the Defense Department. Although he resigned, an investigation was begun, and it was suggested that Johnson would be implicated.

Kennedy's assassination on November 22 of that year disrupted the investigation, and Johnson was thrust into the presidency. Various business figures testified that Baker had pressured them to buy advertising time on Johnson's media outlets, to buy Johnson's expensive consumer electronics, and to sell Johnson several life-insurance policies. Although the Senate dropped its investigation after condemning Baker, it was also alleged that Baker engineered illegal contributions to the 1960 Democratic campaign. This was pursued by Republicans, who tried to subpoena Johnson aide Walter Jenkins, who had just been hospitalized as a result of another scandal and could not appear. The Federal Bureau of Investigation reported that it found no evidence of presidential wrongdoing. Baker was eventually convicted of fraud, conspiracy, and income tax evasion, and he served three years in a federal facility.

Strange Bedfellows

Walter Jenkins, a reserve Air Force officer and close aide of President Johnson, was arrested on October 7, 1964, on a "disturbing the peace" charge. Jenkins had been involved in a homosexual encounter in a restroom in Washington, D.C., a fact that was not reported until a week later. Furthermore, it was revealed that Jenkins previously had been arrested at the same site for the same offense a few years earlier. As this charge emerged at the end of the heated presidential campaign, Johnson feared that this imbroglio could do severe damage to his electoral hopes. Republicans fixed on the case as an example of slack morality that they asserted typified the Democratic administration. The charges did not gain ground with the public, and Johnson was able to easily prevail in the election. Jenkins, however, was forced into early retirement and attributed the lapse to "overwork, drinking, and strain."

Johnson appeared genuinely blindsided by the incident and was not implicated in any way. It has also been persuasively posited that Johnson engaged in decades-long affairs with Texas socialites and media personalities, and even had an unacknowledged child out of wedlock. Johnson was also accused of using political connections to obtain Federal Communications Commission (FCC) broadcast licenses for his family-owned media outlets. The Johnson family (the station was in his wife's name) for a time completely dominated the airwaves in Austin, the capital city of Texas, because he owned the only TV station in the market. Potential competitors were denied licenses to operate in the market.

Johnson's involvement in electoral fraud in the Texas Democratic primary of 1948 is a fact. However, this was common practice in that time and place. He cannot be linked to Walter Jenkins's sexual indiscretions because he was clearly shocked by their revelation. His involvement with Bobby Baker is troubling and suggests some wrongdoing. However, his apparent extortion of the FCC for favorable treatment for his radio and TV stations was unethical. His numerous peccadilloes, some of which were ongoing with a variety of women, suggest a tendency toward dishonorable and unbecoming behavior. He was not a figure who might be termed mediagenic; he was unattractive, had a strong Texas accent, wore an old-fashioned cowboy hat as a trademark, and did not come across well on television. His resolve to continue to prosecute the Vietnam War, in the face of growing elite and popular opposition, obscured his important contributions to civil rights and expanding economic equality to all Americans.

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See Also: Bribery; Campaign Finance; Corruption; Extortion; Kennedy, John F.; Kickbacks; Nixon, Richard M.; Public Corruption.

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Justice, U.S. Department of

The U.S. Department of Justice (DOJ) is America's largest law enforcement and justice organization, with over 110,000 employees spread across 37 distinct offices, divisions, and agencies, including the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), and the U.S. Attorney's Office. The DOJ is tasked with investigating, preventing, and controlling crime, as well as ensuring that U.S. laws are fairly and justly upheld.

The DOJ, therefore, occupies a prominent position with regard to law and order in the United States. For example, DOJ agencies have been responsible for waging wars on crime, drugs, and terrorism. They have also worked to investigate and prosecute individuals and corporations involved in serious financial crimes, like the 1980s savings and loan fraud crisis, and more recent financial crimes stemming from the toxic home mortgage loan bundling debacle. The dismantling of organized crime, including Italian crime groups known collectively as La Cosa Nostra, in addition to the apprehension and prosecution of other federal criminals and fugitives, are both important tasks undertaken by the DOJ. Additionally, the DOJ works to ensure that the interests of the U.S. federal government are represented in criminal and civil cases heard before the Supreme Court and other federal district and appellate courts.

Department Origins

The origins of the DOJ trace back to 1789. In that year, Congress passed the Judiciary Act, creating the part-time position of attorney general. At the time, the role of the attorney general was quite simple: to act as chief legal representative for the newly created United States of America. The first attorney general was President George Washington's aide-de-camp, Edmund Jennings Randolph. Randolph was given sole responsibility for representing the interests of the newly formed nation before the Supreme Court and for advising the president and other federal officials about important legal issues.

Change came to the office of the attorney general following the Civil War. Collectively, the post–Civil War United States was a much larger and more complex place than it had been previously, and the burden of legal tasks and responsibilities falling upon the shoulders of the attorney general became too great for one individual to bear. Thus, in 1870, Congress passed another act, to establish the DOJ. On July 1, 1870, the DOJ officially came into existence, occupying an important place within the executive branch of the federal government. The attorney general became the head of the department. Much like America, the DOJ grew quickly in the decades following the Civil War, and in order to keep up with its increasing role as a law enforcement entity, the department added many skilled attorneys, investigators, and support staff.

Command Hierarchy

The DOJ is a complex, multifaceted government entity led by the attorney general of the United States. There have been 82 attorneys general appointed by the president since the position was created in 1789. In terms of importance, the attorney general is the federal government's highest-ranking law enforcement official, occupying a key position as an advisor to the president and other department heads on national and international legal issues. Very rarely, the attorney general may argue the federal government's position regarding a legal issue in front of the Supreme Court.

The deputy attorney general, associate attorney general, and the solicitor general all support the attorney general. Theirs are three distinct leadership positions within the command hierarchy of the DOJ.

The deputy attorney general advises and assists the attorney general, helping ensure the smooth day-to-day operation of the department.

The associate attorney general also advises and assists the attorney general, but with a more specific focus upon the areas of departmental policies and program functions. In addition, the associate attorney general oversees 12 DOJ offices and divisions, including the Division on Civil Rights, Office of Justice Programs, Environment and Natural Resources Division, Community Oriented Policing Services, Civil Division, Tax Division, and Office of Violence Against Women.

Finally, the solicitor general oversees arguments made by the federal government in front of the Supreme Court. The solicitor general also monitors all legal cases and litigation involving the United States in lower federal and state courts.

In addition to the command hierarchy of the DOJ, the Department of Justice comprises numerous divisions, agencies, and offices—making it similar in certain respects to large ministries of justice found in many European countries. In fact, there are over 37 distinct divisions, agencies, and offices whose actions further the mission and goals of the DOJ. These sub-parts can be understood as serving three general purposes: departmental administration, law enforcement, and the administration and maintenance of fair and just laws.

As with any large government bureaucracy, the DOJ comprises numerous agencies and offices that function to keep it running smoothly. The Office of Professional Responsibility, for instance, investigates charges of misconduct against DOJ employees. In a similar vein, the office of the inspector general is charged with reviewing the programs and personnel of many of the agencies within the DOJ, including the FBI, DEA, and U.S. attorneys. Finally, the Office of Legal Counsel provides the attorney general with information regarding case histories, legal doctrine, and legal precedents, which the attorney general utilizes in order to provide the president and other important government officials with sound legal advice on important cases.

Most of the divisions, agencies, and offices with the primary task of maintaining existing federal laws employ skilled attorneys and support staff. Their primary method to protect federal legal interests and uphold federal laws is to utilize litigation or the threat of litigation to bring about compliance. These entities may employ special investigators, but their primary mission is generally not the apprehension of violent criminal offenders.

For example, the Civil Rights Division ensures that federal laws pertaining to racial, ethnic, age, and gender equality are upheld and enforced. Likewise, the Office on Violence Against Women coordinates federal programs and various tasks related to the Violence Against Women Act, passed by Congress in 2000. The Antitrust Division works to ensure that the economic marketplace of the United States remains competitive, seeking to enforce laws that pertain to America's industries. Finally, the Environment and Natural Resources Division works to protect the natural environment, public lands, and Native American land rights through litigation and the acquisition of land and resources.

Crime Prevention and Investigation

Protecting public safety through the prevention and control of crime, the investigation of criminal acts, the apprehension of criminal offenders, and the dissemination of crime-related information is a major component of the DOJ's mission. Numerous agencies and divisions fulfill various roles in order to support this mission.

The FBI is perhaps the best known of all federal law enforcement agencies, because of its prominent role in enforcing the law and apprehending criminals. The primary tasks of the FBI are to investigate and prevent federal crimes as codified under the U.S. Legal Code, Title 18. The FBI, with origins dating back to 1908, has long been the preeminent federal law enforcement agency. With a multibillion-dollar budget, over 13,000 special agents, 56 major field offices and 60 international offices, located at U.S. embassies around the world, the FBI conducts investigations into a variety of crimes, including terrorism, white-collar crime, organized crime, cyber crime, civil rights crime, public corruption, art theft, bank robbery, gang activity, serial murder, and crimes against children.

Through a combination of intelligence-gathering efforts and coordination with state and local law enforcement entities, the FBI is a significant force in preventing crime and protecting public safety. Some of the FBI's most notable successes have come via the Racketeer Influenced and Corrupt Organizations (RICO) Act, which has enabled the dismantling of many organized crime groups within the United States. The FBI is also well known for its Behavioral Analysis Unit, especially in relation to the detection and apprehension of serial murderers.

The FBI provides advanced laboratory testing facilities for state and local law enforcement entities, maintains a listing of the nation's top 10 most wanted criminals, and disseminates an annual Uniform Crime Report (UCR) that provides data about crimes reported to police in the United States. The UCR is a key tool utilized by criminologists and other crime researchers.

A brief sampling of the FBI's most notable cases emphasizes its vast and important role in furthering the mission of the DOJ. FBI special agents have been responsible for investigating and apprehending the Unabomber, Ted Kaczynski; the Washington, D.C., beltway snipers Jon Allen Muhammad and Lee Boyd Malvo; and notorious criminals such as Al Capone, John Dillinger, Ted Bundy, and John Gotti. In addition, the FBI has played crucial roles in investigating the Enron, ABSCAM, and Hurricane Katrina–related frauds; the civil rights–era 16th Street Baptist Church bombing; and the murder of Emmett Till. The espionage cases of Aldrich Ames and Robert Hansen are also part of the FBI's legacy. The FBI, however, is not the only DOJ agency tasked with law enforcement.

The DEA is responsible for upholding federal laws concerning controlled substances (i.e., some prescription and other drugs). Like the FBI, the DEA utilizes intelligence-gathering techniques and conducts investigations overseas, especially in the Caribbean and the Latin and South American regions, in cooperation with local governments. The DEA played an important role in undermining the South American cocaine trade led by Pablo Escobar, and in conjunction with the FBI and the Bureau of Alcohol, Tobacco, and Firearms (ATF), the DEA contributes resources and expertise to the Organized Crime and Drug Enforcement Task Force, which was initiated in 1982.

The ATF was transferred to the Department of Homeland Security in 2002 and renamed the Bureau of Alcohol, Tobacco, Firearms and Explosives but still was commonly referred to as the ATF. ATF is charged with enforcing laws relating to federal firearms, explosives, alcohol, and tobacco, along with regulating each of these industries. ATF Special Agents conduct investigations and make arrests under the auspices of the Gun Control Act of 1968 and the Explosives Control Act of 1970.

Nearly 4,000 deputy U.S. Marshals provide security at federal courthouses, protect federal judges and witnesses, transport federal prisoners, and enforce federal court orders. U.S. Marshals are the oldest federal law enforcement officers in the nation, serving since 1789. The U.S. Marshals work vigorously to apprehend thousands of

Federal Bureau of Investigation Associate Deputy Director Kevin Perkins addresses the benefits of the coordinated Medicare fraud takedown operation during the Health Care Fraud Takedown Press Conference in Washington, D.C., October 4, 2012. He is flanked by (from left) Human Services Secretary Kathleen Sebelius, Assistant Attorney General Lanny A. Breuer of the Criminal Division, and Attorney General Eric Holder. The Medicare Fraud Strike Force charged 91 individuals for approximately $430 million in false billing.

fugitives every year and also manage over $3 billion in forfeited assets.

Each law enforcement agency within the Department of Justice works in close collaboration with the U.S. attorney in the jurisdiction within which their investigations take place. There are 93 U.S. attorneys, one for each judicial district in the United States, with the exception of Guam and the Mariana Islands, where one U.S. attorney takes responsibility for both jurisdictions. U.S. attorneys take criminal or civil cases brought to them by the DOJ's investigative law enforcement agencies and prosecute them in court. In addition, U.S. attorneys engage in trial work in any case within their jurisdiction that concerns the U.S. federal government.

The DOJ's criminal division works in close conjunction with U.S. attorneys and enforces over 900 federal criminal laws, except those specifically enforced by other divisions such as antitrust, environment, and natural resources. The DOJ's criminal division is overseen by the assistant attorney general and consists of five working groups, all headed by deputy assistant attorneys general. Each working group has either two or three sections. A few of the more important sections within the criminal division include those on narcotic and dangerous drug enforcement, fraud, capital crimes, organized crime, gangs, and child exploitation. The DOJ's criminal division has investigated and prosecuted many important cases. In July 2012, for example, the *New York Times* reported on pending criminal charges to be filed by the DOJ against several international financial institutions. Investigators and attorneys from the DOJ's criminal division had compiled evidence that these banks and trading firms had illegally manipulated interest rates before and after the global economic recession that began in 2007 in order to reap profits and mislead investors about their corporate health.

Department of Justice After 9/11

Since the terrorist attacks of September 11, 2001, the priority mission of the DOJ and many of its subagencies, especially the FBI, has shifted to the investigation and prevention of terrorist attacks against the United States. In fact, the number one goal of the DOJ is now the prevention of terrorism and promotion of national security, with crime prevention and the fair administration of justice ranking second and third. As a result, the DOJ and agencies like the FBI have worked to develop stronger international ties to similar law enforcement and justice agencies in European, South American, Asian, and African countries.

In order to fulfill its priority goal of terrorism prevention, the DOJ relies upon various agencies like the FBI and a newly consolidated National Security Division. The National Security Division of the DOJ includes the Office of Intelligence and Policy Review, the Counterterrorism and Counterespionage Section, and a Law and Policy office. In addition, the Interpol Washington office works to create a more coordinated working relationship between U.S. federal law enforcement agencies and similar entities in foreign countries.

In focusing upon terrorism prevention, the DOJ has become embroiled in cases and actions that have painted the department and some of its agencies in a negative light. The USA Patriot Act, passed after 9/11 and lauded as a key tool for federal law enforcement agencies seeking to combat terrorism, is one example. Critics of the Patriot Act and the greater intelligence and investigative powers it lent to federal agencies insist that it is unconstitutional and gives the federal government the legal authority to initiate investigations of U.S. citizens without meeting the necessary standards and burdens of proof typically required of investigators.

Similarly, conflicts over where to try terrorism suspects have also emerged post-9/11. In some cases, the DOJ has sought to try terrorism suspects on U.S. soil in U.S. courts. Other interest groups and individuals, including members of Congress and the U.S. military, have decried such efforts and insist that terrorism suspects should be tried in military courts, such as the U.S. naval base at Guantanamo Bay, Cuba.

These examples demonstrate the complexity of the legal climate encountered by the DOJ in the post-9/11 age, in which shifting priorities have outpaced the creation of laws to address emerging legal issues, and in which polarized interest groups compete for influence with regard to law enforcement and the administration of justice.

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See Also: ABSCAM; Antitrust, U.S. Department of Justice; Internet Fraud; Medicare and Medicaid Fraud; Mortgage Fraud; Organized Crime; Public Corruption; Racketeer Influenced and Corrupt Organizations Act; Savings and Loan Fraud; Terrorism; Victim and Witness Protection Act; War on Drugs; War on Terror.

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Keating, Charles

Charles Humphrey Keating, Jr. (1923–), is an American lawyer and businessman best known for perpetrating one of the largest savings and loan (S&L) frauds of the 1980s. The collapse of Keating's California-based Lincoln Savings and Loan Association in 1989 cost American taxpayers over $4 billion and served as an unfortunate exclamation point at the end of a decade of pervasive, rampant greed, fraud, and corruption within the American banking and financial industries.

Early Life

Charles Keating, Jr., was born in Ohio in 1923. He excelled in swimming, eventually attending the University of Cincinnati, where he competed in intercollegiate swimming events. Following his World War II service as a Navy pilot, Keating returned to Ohio and reenrolled at the University of Cincinnati, earning a law degree in 1948.

Keating began to mesh his law practice with various business ventures and political activities. Along with one of his clients, Carl Lindner, Keating formed the American Financial Corporation in 1960. Keating vigorously advocated against pornography, garnering national political attention for his efforts. His antipornography crusading led to his appointment as a member of President Richard Nixon's Commission on Obscenity and Pornography in 1969. Keating's consistent conservative political activism and his legal and business practices earned him numerous allies in the Republican Party.

Savings and Loan Fraud and Fallout

Before the 1980s, regulations precluded savings and loan institutions from doing much other than holding customer deposits and making home mortgage loans. S&Ls were precluded from investing heavily in risky ventures. Challenges confronted S&L banks throughout the 1970s, gradually undermining the vitality of the industry. Passage of the Depository Institutions Deregulation and Monetary Control Act in 1980 and the Garn-St. Germain Act in 1982 revived the ailing industry primarily through the loosening of federal regulations. Ronald Reagan–era deregulation gave savings and loans unprecedented financial freedom to invest and make large loans and, importantly, changed S&L stock ownership standards.

In 1984, at the age of 61, Charles Keating turned his attention to the S&L industry and, thanks to the regulatory changes enacted by the Reagan administration, purchased Lincoln Savings and Loan Association of Irvine, California. Keating immediately began utilizing Lincoln's funds as his own personal cash reserve, and he took advantage of the industry's lax regulatory climate, purchasing real estate, investing in resort properties, and playing the stock market. Among Keating's unwise investments were his purchase of high-risk "junk bonds" and his $260-million investment in the Phoenician Resort in Scottsdale, Arizona. Keating also hired his family members, including his son, placing them into high-level positions at Lincoln, and eventually paying over $34 million in salary to them and to himself. Keating's use of the bank's funds was questionable, but in the deregulated climate of the 1980s, his actions were neither unique nor immediately identified as criminal. Only after Keating's investments began losing more money than they brought in did state and federal regulators, along with the public, become aware of the extent of his criminal wrongdoing.

By 1987, bank patrons and federal officials grew suspicious of Keating's Lincoln Savings and Loan Association and began investigating, noting that it was losing money at a tremendous rate. Keating enlisted the aid of his Republican political allies, including five U.S. senators. The so-called Keating Five included Arizona Republican (and later presidential candidate) John McCain. Keating's political allies exerted pressure on state and federal investigators to treat Keating gently. The work of the Keating Five seemed to take effect—the San Francisco–based investigators assigned to Lincoln were taken off the case. Lincoln Savings and Loan survived for two more years.

In 1989, Lincoln finally collapsed under the burden of its financial losses. When federal regulators seized control of the bank, they uncovered the true extent of Keating's frauds—frauds that would end up costing taxpayers over $4 billion. Keating, along with three other Lincoln Savings and Loan officials, including his son, were indicted in Los Angeles in 1990 on multiple criminal counts, with Keating's state-level conviction following soon after, in 1991. A federal grand jury also indicted Keating and four other members of Lincoln's management on 77 counts of racketeering and securities and bank fraud. After being sentenced to 10 years in jail by a California judge, Keating and his son were convicted in federal court, with Keating receiving a 12-year federal prison term. Keating appealed both convictions. In 1996, his state conviction was overturned on legal technicalities, and in 1999, Keating's federal conviction was overturned as well. Despite perpetrating one of the largest S&L frauds in history, Keating served only four years in federal prison.

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See Also: Keating Five; Milken, Michael; Savings and Loan Fraud; Securitization Fraud.

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Keating Five

The Keating Five scandal, named after the five U.S. senators ensnared in it, illustrates the deleterious impact that individuals in positions of responsibility can have when acting improperly. The line between campaign contributions and outright quid pro quo bribery can be fuzzy, and Charles Keating's vast lobbying skills convinced senators to inject themselves into federal investigations on his behalf. The Keating Five scandal was made possible by the economic and political climate of the savings and loans crisis, the emphasis placed on deregulation, and the ability of donors to attract the attention and action of legislators.

The Savings and Loan Crisis

The 1980s were a period of crisis for the savings and loan (S&L) industry, which was managed and regulated in a manner dissimilar to that of commercial banks. Estimates indicate that most S&L firms were operating at a loss by 1981, with the industry insolvent a year later. These harrowing figures alarmed not only S&L owners but also politicians and the public. As a primary source of home mortgages, S&Ls helped people achieve the American dream. President Ronald Reagan viewed deregulation as a solution to the crisis. Advancing the Garn–St. Germain Depository Institutions Act of 1982, the administration hoped easing restrictions on investment strategies would enable S&Ls to offer depositors more competitive interest rates.

Charles Keating and Lincoln Savings

American Continental Corporation, owned by Charles Keating, acquired Lincoln Savings and Loan in February 1984. Although Lincoln had operated conservatively prior to Keating's arrival, the firm began investing more heavily in real estate ventures and high-risk bonds. This change resulted in rapid growth for Lincoln but made it vulnerable to sudden changes in the housing market. When the real estate market crashed in the mid-1980s, Lincoln (and many other S&Ls) was forced to absorb massive losses.

The Federal Home Loan Bank Board (FHLBB), charged with creating policies regarding thrifts and conducting oversight, was also undergoing change. In March 1983, Edwin Gray, a strong proponent of deregulation, was nominated by President Reagan and became the board chairman. However, after leading the organization for only a year, Gray began proposing and implementing policies to reregulate the industry based on the liability the new investment strategies posed to the federal insurance program.

Charles Keating waged a public fight with Gray and the board to be exempted from regulation. Keating argued that the loan decisions made by Lincoln were appropriate and the FHLBB was trying to bully the firm into adopting practices that would make it less competitive, and possibly bankrupt. Keating attempted to use the federal court system to limit the board's impact on Lincoln's investment policies and sued the board repeatedly from 1984 until 1989.

Keating also sought to exert his influence on the FHLBB through his congressional contacts. Keating targeted Senators Alan Cranston (California), Dennis DeConcini and John McCain (Arizona), John Glenn (Ohio), and Donald Riegle (Michigan) for particular campaign support. Each of these senators was singled out, in part, because firms with which Keating was associated were located in their states. From 1984 to 1989, Keating donated approximately $1.3 million to these five senators, including contributions to groups and causes they controlled and supported. Senator McCain and his family were also treated to vacations and to the use of corporate jets.

The influence of Keating reached its apex in 1987 with a series of meetings and letters orchestrated to derail an FHLBB investigation into Lincoln. While the firm's lawyers actively obstructed the inquiry, Keating turned to his congressional allies. These senators urged the FHLBB to come to an amicable resolution with Keating even after investigators recommended that Lincoln be seized and the U.S. Department of Justice contacted to examine likely violations of federal law.

The recommendations of investigators, however, never came to fruition. Edwin Gray, nearing the end of his term, believed the new chairman should be allowed to make the final determination on how to proceed with Lincoln. M. Danny Wall, nominated by President Reagan and confirmed by the Senate in May 1987, did not act on the report and worked to wind down the Lincoln investigation.

The Collapse and the Fallout

American Continental Corporation declared bankruptcy in April 1989, and on April 14 the FHLBB seized Lincoln Savings and Loan. At the time of the failure, Lincoln's sales staff had persuaded approximately 23,000 customers to purchase bonds backed by American Continental instead of the federal insurance program, erasing some depositors' life savings. The collapse of Lincoln cost federal insurers approximately $3 billion. In the fallout of the S&L collapse, Keating was convicted of several state and federal crimes, including racketeering, conspiracy, wire fraud, and bankruptcy fraud.

The involvement of Senators Cranston, Glenn, DeConcini, McCain, and Riegle in the Lincoln investigation was also scrutinized. The Senate Ethics Committee undertook public hearings to examine the influence exerted by the senators. Though none was formally censured by the chamber, the committee recommended that Cranston be reprimanded for his actions, that Riegle and DeConcini be criticized for acting improperly, and that Glenn and McCain be criticized for exercising poor judgment (although both were found not to have acted improperly). At the conclusion of their terms, Senators Cranston, Riegle, and DeConcini decided to retire, while Senators Glenn and McCain ran for reelection and retained their seats. Senator McCain's involvement with the scandal would continue to follow him even into his 2008 bid for the presidency.

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See Also: Arthur Andersen LLP; Charity Fraud; Investment Trust Fraud; Keating, Charles; Nonprofit Organization Fraud; Regulatory Enforcement; Savings and Loan Fraud.

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Kennedy, John F.

An oftentimes overlooked triumph in John F. Kennedy's (1917–63) brief term in office was the rescission of a planned hike in U.S. steel prices that he obtained from the big steel companies in the spring of 1962. Applying several methods of persuasion peculiar to his incumbency, Kennedy forced six steel companies to back down from their proposed price increases within 72 hours of the first announcement of a price increase by U.S. Steel. The president was concerned that the increases amounted to collusive price fixing that violated federal antitrust laws.

Steel Pricing Threat

When Kennedy revealed his economic plans for 1962, he specified that a tax increase in January might be necessary to maintain low inflation and a balanced budget. He was closely watching steel prices, which he believed to be a crucial element in maintaining price stability. The industry was such a dominant part of the manufacturing sector that it could disrupt the president's economic plans all by itself by raising its prices. Economics experts told the president that 40 percent of the rise in the wholesale price index between 1947 and 1958 was attributable to steel prices, which had risen more than the average of all other prices combined.

Equipped with evidence that a price increase would be damaging to the economy, Kennedy began to "jawbone" the steel industry not to raise prices after announcement of a scheduled increase set for October 1961. In September, he sent letters to the steelworkers union and to chief executive officers (CEOs) of 12 large steel companies, urging that a noninflationary course be followed in price and wage actions in negotiations that were soon to begin for a new contract. Kennedy hoped that both sides in the negotiations would put the country's interests before selfish interests and would cooperate with his plan to hold down inflation.

Reactions from labor and corporate leaders to Kennedy's pressure were more adversarial than expected. Secretary of Labor Arthur Goldberg, addressing an American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) convention in December on the need for wage restraints, was booed on stage and warned privately not to interfere in union negotiations. Business executives applauded the administration's pressure on labor but rejected any efforts by the government to set prices.

Kennedy refused to retreat from this issue despite the resistance from both sides. A steelworkers' strike would put 500,000 employees out

President John F. Kennedy in the Oval Office in his first full day in the White House, January 21, 1961. That fall, Kennedy began to pressure the steel industry into not raising prices, as that could derail the price stability built into the president's economic plans.

of work, plus thousands more in transportation and mining. Moreover, Kennedy was confident that he could pressure both labor and management into an agreement that would be good for the country. In December 1961, Goldberg met with David McDonald, the head of the United Steelworkers union, as well as U.S. Steel's vice president for industrial relations. He forcefully urged that a settlement was in the national interest and that obstructionism by either side was unacceptable to the administration.

In January 1962, the president met with Roger Blough, chairman of U.S. Steel's board, and David McDonald of the Steelworkers Union at the White House. He persuaded the men to start early negotiations in order to work out an acceptable, noninflationary agreement. The discussions lasted from February through April and produced a contract with no wage increases, a boost in pension contributions, and steps to reduce unemployment among steelworkers. These steps, if accompanied by no increase in steel prices, would likely produce low inflation and price stability in 1962.

On April 10, U.S. Steel broke the agreement reached with the president and announced a 3.5 percent price hike. Blough, who received an appointment to see Kennedy that afternoon, brought a mimeographed four-page statement on the increase that was being released as the two men met. Kennedy was furious, chiding Blough for making a mistake and accusing him of a double-cross. The country now seemed likely to face an economic slowdown with higher inflation. The unions felt misled. Kennedy looked weak, with his presidency under assault. A livid president told aides that the big steel executives were very much the "sons of bitches" that his father, Joseph Kennedy, had warned him about years ago.

President Kennedy and his economic team did not did not allow their anger to linger for long. For the president especially, this was the moral equivalent of war—a campaign to force capitulation to the price increase. The battle lines between the president and the companies solidified on April 11 when Bethlehem Steel announced a price increase, and four other steel companies quickly followed. Kennedy used a press conference that same day to criticize the companies. Citing statistics to show that an increase in steel prices was unwarranted, he was barely able to disguise his contempt as he denounced the steel industry's disregard for its public obligations to the country. President Kennedy ordered his attorney general to have the antitrust division investigate possible steel price fixing. Next, he urged Congress to conduct its own investigation of the planned increases and directed Solicitor General Archibald Cox to draft legislation requiring a rollback. The Defense Department began shifting contracts to smaller steel companies that were cooperating with the president's request to hold the line on prices.

Faced with the political equivalent of a full-court press, the steel industry rolled back the planned price hikes. Inland Steel, the most profitable of all the companies, declared that it felt very strongly about holding down prices. When Kaiser and Armco agreed with this assessment, and Bethlehem also changed its policy to support holding the line on prices, the remaining companies caved in.

The companies faced no official sanctions for the planned price increases in 1962; however, three years later, U.S. Steel was one of eight major companies that pleaded nolo contendere to charges of price fixing between 1955 and 1961. Each company received the maximum fine under the antitrust laws.

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See Also: Anderson, Jack; Antitrust, U.S. Department of Justice; Carson, Rachel; Clinton, William J.; Nixon, Richard M.; Political Assassinations; Racial Discrimination; Unions; United States; United States Steel Corp.

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Kepone Scandal

Kepone is a chemical insecticide, also known as chlordecone, that is toxic, nonbiodegradable, and carcinogenic. Kepone was created by Allied Chemical Corporation sometime in the 1940s and patented in the 1950s. The company knew from its own research—some reports say as early as 1949—that exposure to Kepone produced a variety of cancers, deteriorative nerve conditions, and other illnesses. Still, the company (and its affiliate, Life Sciences Inc.) produced Kepone commercially at a small plant in Hopewell, Virginia, on the James River from 1966 until 1975, when the plant was shut down by the state. Hundreds of persons who worked at the plant were partially or wholly disabled by traces of Kepone found in their blood. Some workers lost the ability to walk, others showed signs of sterility, and almost all affected workers experienced the "Kepone shakes" due to their exposure. In addition to causing physical and mental suffering of its workers, Allied, along with its later contractor, Life Sciences Inc., also contaminated 100 miles of the James River. In 1976, Allied, Life Sciences, the city of Hopewell, and employees of Allied and Life Sciences were indicted in federal court for various environmental crimes. The convictions that resulted were among the earliest successful criminal prosecutions under the nation's environmental laws.

Toxic Manufacturing

The commercial manufacture of Kepone was driven by its success in eradicating roaches, ants, and a species of banana pest. In 1965, Allied produced a mere 36,000 pounds of Kepone. By 1973—when it shifted its interest to Life Sciences Inc., operated by two former Allied chemical engineers—the Hopewell plant produced 400,000 pounds per year. The following year, Life Sciences produced 800,000 pounds of Kepone for Allied. In short, Kepone was in demand, and production was highly lucrative.

At the same time, the workers' physical suffering and the environmental degradation could have been prevented. Silvio Giolito, a former Allied Chemical company chemist who shared development of the compound, noted that Kepone was a good pesticide because in part of its toxicity. Although it was an effective insecticide, the qualities that made it effective were well known by its creators to be dangerous for humans exposed to it. Since the primary exposure during the manufacturing process was to a fine, light-brown dust, proper ventilation and individual respirators for workers would have mitigated much of the danger. When the state of Virginia's epidemiologist first visited the Life Sciences operation in Hopewell in July 1975, he asked if respirators were available. He was shown three white plastic dust-protective devices that were buried under papers covered by dust, on the corner of a desk. It was clear, as the epidemiologist testified, that they had not been used in a long time; one had a broken strap. Moreover, there were no posted warnings that Kepone exposure constituted a health hazard.

Life Sciences also took little action to protect the local air and water from the adverse environmental effects of its manufacturing processes. Shortly after the company began producing Kepone for Allied, Life Sciences was discovered to be operating its plant without the required Virginia air pollution control permit. The manufacturing process produced emissions containing trioxide, a Kepone ingredient. Emissions were so bad in some instances that the Life Sciences plant could not be seen from across the highway because a "Kepone cloud" enveloped the facility. A neighboring business owner reported that this cloud left a patina of Kepone dust on his office desk and the cloud sometimes drove him off his loading dock and back indoors. A survey of neighboring residents, followed by later testing, identified 40 persons with Kepone in their blood.

Watershed Dumping

Allied and Life Sciences also discharged Kepone waste into the local watershed. Between 1966 and 1973 Allied discharged its Kepone waste directly into a tributary of the James River. When Life Sciences began its manufacturing process, it arranged with the city to discharge filtered production waste into the municipal sewage system, where it would be further treated. However, as later trial testimony showed, the wastes routinely bypassed the plant's filtration unit and entered the city's sewage system in a raw state. Problems at the municipal treatment plant sprang up within three weeks of the start of production by Life Sciences. By mid-March 1974, the treatment plant's bacterial digesters had been killed by the Kepone. The city's response was to simply dump the solid waste sludge it could not treat—laden with Kepone—into a landfill, thereby permitting the city to meet the effluent limits for discharge into the James River. Eventually, the city accumulated as much as 1 million gallons of Kepone-tainted sludge in a shallow basin referred to as the Kepone Lagoon.

The criminal case was resolved quickly. The two principals in Life Sciences pleaded no contest and were fined $25,000 each (later reduced to $10,000) and given five years' probation. The city of Hopewell was convicted, was fined $10,000, and also received five years' probation. Life Sciences, which was virtually bankrupt, was convicted and fined $3.8 million. Allied Chemical pleaded no contest to 940 counts of violating federal water pollution control laws. U.S. District Court Judge Robert Merhige, Jr., imposed the maximum fine of $13.24 million. The judgment was later reduced to $5 million after Allied agreed to fund a state environmental endowment in the amount of $8 million.

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See Also: Allied Chemical Corp.; Employee Safety; Environmental Protection Agency, U.S.; Labor Crimes; Pollution, Air; Pollution, Water.

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Kerik, Bernard

Bernard (Bernie) Kerik became the 40th New York City police commissioner on August 21, 2000. During the subsequent decade, he betrayed the oath he took that day to support the Constitution of the United States. Several ethical violations of the New York City Charter, tax fraud, lying to White House officials, and conspiracy landed Kerik in federal prison. Before this, Commissioner Kerik rose to national prominence for his meritorious work and comforting presence at Ground Zero following the terrorist attacks of September 11, 2001. Although he took full responsibility for his actions, the crimes he committed violated the public trust that he had been charged with protecting.

America loves its heroes, and Kerik was a 21st-century hero. His meteoric rise from New Jersey high school dropout to police commissioner of the nation's largest police force, the New York City Police Department, and on to becoming an internationally recognized security specialist could be taken from a Hollywood script. The mustached martial arts master and best-selling author has been honored by Presidents Ronald Reagan and George W. Bush and Her Majesty Queen Elizabeth II. During his illustrious career, Kerik earned more than 100 awards for his heroism and public service. He was born in Newark, New Jersey, in 1955, and his alcoholic prostitute mother abandoned him when he was a toddler. Kerik served in the U.S. Army, where he earned a high school equivalency degree. Married three times, Kerik has three daughters and one son.

Fallen Hero

Sadly, however, the "stuff that legends are made of" strayed. In December 2004, shortly after being nominated by President George W. Bush to serve as secretary of homeland security, his first major legal problem surfaced. During the vetting process for this prestigious position, Kerik had to withdraw when he acknowledged that he unknowingly had employed an illegal immigrant as a housekeeper and nanny. This scandal marked the beginning of the end. Questionable private issues, including an affair with his book's publisher, Judith Regan, and their extracurricular activities in a Manhattan apartment intended for 9/11 workers focused sharp scrutiny on Kerik.

In 2006, former police commissioner Kerik pleaded guilty to misdemeanor ethics charges that stemmed from acceptance of a gift from a New Jersey–based company that was interested in contracting with New York City. The court ordered him to pay a $221,000 fine. The intensity of problems escalated, and on November 8, 2007, Kerik was indicted by a federal grand jury on charges of tax fraud, conspiracy, and making a false statement. This dark chapter climaxed when, on November 5, 2009, in a plea-bargain arrangement with federal prosecutors, Kerik pleaded guilty to eight felony charges of tax fraud and lying to White House officials. On May 17, 2010, Kerik began serving a federal jail sentence of 48 months. His current home is a minimum-security prison camp known as the Federal Correctional Institution in Cumberland, Maryland. In handing down a sentence longer than was recommended by prosecutors, Judge Stephen C. Robinson described Kerik as a "toxic combination of self-minded focus and arrogance."

White-collar crime, such as that perpetrated by Kerik, fundamentally rattles the public's trust. Bartering one's authority and influence for personal benefit defines corruption. Kerik had been entrusted with great responsibility and, consequently, great power. Judge Robinson declared, "I think the damage caused by Mr. Kerik is in some ways immeasurable."

Many will argue that Kerik executed his obligations with skill, efficiency, and panache. Clearly, he was the face of law enforcement's resolve to manage the unthinkable at Ground Zero. His presence during the city's darkest hours has been memorialized in U.S. history. As an individual who confronted and conquered challenges, Kerik had the opportunities and skills to become a legend. His meteoric rise and spiraling descent was perhaps summed up best in a statement he read outside the courthouse after being sentenced. "I'd like to apologize to the American people for the mistakes I've made and for which I have just accepted responsibility. As history is written, I can only hope that I will be judged for the 30 years of service I have given to this country and the city of New York."

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See Also: Bush, George W.; Conspiracy; Public Corruption; Reagan, Ronald; Tax Evasion.

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Kerr-McGee Corp.

In the 1920s and 1930s, Oklahoma was a magnet for aspirants to the oil industry. Some companies specialized in leasing land, giving them access to oil or mineral rights on a property. The presence of oil, of course, is not guaranteed, and exploratory activities, usually under the direction of a geologist, are first conducted. If signs indicate that oil is below ground, drilling will commence. That oil must then be refined, sold, and marketed. Companies in the industry might specialize in one particular aspect of the industry or take steps to become vertically integrated across the stages of the distribution chain.

History

Robert S. (Bob) Kerr was born in Indian Territory before Oklahoma was granted statehood. Realizing the fortune to be made in the oil industry, he and his brother-in-law James Anderson bought a stake in Dixon Brothers Incorporated, an oil-drilling company. In 1929, the pair borrowed $30,000, purchased the firm, and christened it Anderson-Kerr Drilling Company. In the early years, the company operated oil rigs on a contract basis for leaseholders.

In November 1930, as the two moved beyond contract drilling, the original partnership was dissolved and two separate companies were created, Anderson and Kerr Drilling Company, for oil-well drilling and production, and Anderson-Kerr Incorporated, for investments and securities. The following year, they created An-Ker, Incorporated, chartered in Delaware, with both earlier companies operating as wholly owned subsidiaries. Although the Depression impacted the business, the partners continued to operate contract wells in addition to at least six wells that they owned. With increased emphasis on oil production and a need for additional financing, the company created yet another corporation, A&K Petroleum Company, in 1932. During this period, Kerr provided the business acumen and drive to expand the company, while Anderson contributed technological expertise and an ability to operate at a cost lower than that of competitors. Kerr's brother, Travis helped negotiate contracts and drum up business across the state.

By 1936, Anderson decided he wanted to extricate himself from A&K Petroleum. Some sources assert that Anderson felt his expertise and labor on the wells allowed others in the company to profit at his expense. Others suggested that Anderson's more conservative approach conflicted with Kerr's ambitious attitude toward expansion. However, when the parties signed an agreement in which Anderson sold his 45 percent stake in the company and resigned from the board, all accounts indicate that the dissolution was amicable. At the same time, Anderson's departure left a gap in leadership and expertise. Subsequently, Kerr recruited Robert H. Lynn from oil giant Phillips Petroleum, who in turn lured the company's chief geologist, Dean Anderson McGee, who was enticed to the position because he would gain a stake in the reorganized company.

New personnel and a complicated ownership structure led the company to dissolve the An-Ker corporation into Kerr-Lynn & Company and rename A&K Petroleum as Kerlyn Oil Company. Under the new monikers, the company continued aggressive expansion, operating drills in Oklahoma and drilling in Arkansas, Oklahoma, Kansas, and Texas, and on the Gulf Coast. Despite the activity, John Ezell reports that the financial state of Kerr-Lynn was precarious, with significant debts and taxes at the same time that oil prices remained stagnant. In the early 1940s, as Pearl Harbor shocked the nation and precipitated the United States' entry into World War II, Kerr turned his attention to politics and ran for governor of Oklahoma. Lynn decided to extricate himself from the company; Kerr-Lynn & Company was restructured under the name Kerr-McGee & Company, while Kerlyn remained an ongoing concern.

Focused on his political career, Kerr relinquished many of his day-to-day responsibilities, leaving them to Lynn's successor, executive vice president Dean McGee. During this time, Kerlyn, which needed an influx of capital, entered an agreement with Phillips Petroleum in which the companies shared the cost of exploratory activities as well as the potential profits. Phillips also reserved the right to purchase oil from the drilling activities to refine and sell to the public through its Phillips service stations.

The Kerlyn Oil Company name, reflecting McGee's prominent role in the company, was changed to Kerr-McGee Oil Industries. McGee aspired to expand the company, both through vertical integration and also by entering new energy-related businesses, and he saw opportunities where others only perceived obstacles. Kerr-McGee was one of the first oil companies to establish commercial offshore wells in the Gulf of Mexico, as well as to enter into drilling contracts with companies outside the United States, operating sites in Mexico and the Middle East. Under McGee's leadership, the company started trading on the New York Stock Exchange in 1956.

The Suspicious Death of Karen Silkwood

Through a series of acquisitions, Kerr-McGee began selling branded gasoline, and drilling for and manufacturing new elements, namely helium and uranium. The company drilled for uranium in Arizona and processed it into pellets used in light nuclear reactors at an Oklahoma plant. Kerr-McGee employee and union activist Karen Silkwood died in a car accident during an investigation of Kerr-McGee's health and safety practices at the Oklahoma facility. A subsequent lawsuit by her family and an Oscar-nominated film (*Silkwood*, 1983) damaged the company's reputation but did not diminish its activities. Kerr-McGee expanded its chemical business, culminating in the spinoff of Tronox in 2005.

Though innovative and generally profitable, listed on the Fortune 500 and Standard & Poor's (S&P) 500, Kerr-McGee had inconsistent financial results and was criticized for poor management practices by investor Carl Icahn, who initiated a failed takeover attempt of the company. Meanwhile, the company faced significant environmental liabilities, including four Superfund sites in the Chicago area. In 2006, its shareholders agreed to an offer by Anadarko Petroleum Corporation to acquire its oil and gas assets.

Although Kerr-McGee no longer exists as an independent company, the results of its operations remain a specter to Tronox and Anadarko, which are engaged in a lawsuit over environmental and tort damages. Allegations of poor attention to employee and public health and safety mar the company's reputation, yet it also should be remembered as a driving force in developing and transforming the oil and gas industry.

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See Also: Environmental Protection Agency, U.S.; Minerals Management Service, U.S.; Silkwood, Karen.

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Kickbacks

A kickback is a form of bribery or corruption in which an individual in the approval process of purchasing or contracting operates with an implied understanding that an unauthorized incentive will be returned by the vendor for the favor of doing business. Because kickbacks typically involve an alliance related to purchasing, this fraud is associated with employees in the purchasing function. Kickback schemes involve collusion and thus are categorized by the Association of Certified Fraud Examiners (ACFE) as corruption rather than asset misappropriation schemes. Kickback schemes are a pervasive and global phenomenon; internal controls and watch lists help prevent their occurrence.

Kickbacks: Issues and Impact

One may speculate as to how kickbacks hurt entities involved and the overall economy, especially if there is no overbilling involved. The harm occurs related to the absence of an otherwise customary economic pressure for suppliers of goods and services to remain competitive, in terms of both price and quality. Although the cost of an initial kickback may result in a fair price to the purchasing company at first, over time the companies paying kickbacks to businesses will attempt to raise prices to cover the hidden costs.

Kickbacks are pervasive and likely to exist anywhere there is money. Transparency International is an organization that studies corruption in various industry sectors throughout the world. The Corruption Perceptions Index since 2001 has assigned annual index scores to countries; it compiles multiple assessments of informed world organizations to construct the index that measures perceptions of corruption by country. Kickbacks in public procurement, bribery, and using one's office for personal gain are examples of types of issues raised in the interviews and surveys compiled in the index. A Bribe Payers Index is also compiled, although it is published only triennially. Various other reports about corruption are accessible at no cost through Transparency International's Web site. The site includes information about data sources and diverse topical reports on corruption by industry segments including sports, oil and gas, humanitarian efforts, water, and judicial systems.

Kickback Schemes and Preventive Controls

A key control to kickback schemes is the ability to authorize purchases or make important decisions involving the award of favors. Kickback schemes range from the simple to the complex. An example of a simple scheme is achieved through the exploitation of internal controls because of the power inherent in individuals at high levels of organizations. "Tone at the top" is a basic and important internal control highlighted by the Committee of Sponsoring Organizations (COSO); the reason it is so crucial is the ability of top-level management or politicians to override controls in place at lower levels. A well-known example of an unsuccessful attempt to obtain a kickback was the effort of former Illinois governor Rod Blagojevich, who was found guilty in 2011 of corruption charges related to attempts to sell the appointment to the U.S. Senate seat vacated after Barack Obama became president. Blagojevich's guilt on those charges related to evidence from recordings of telephone conversations related to his shared perceptions regarding a "bleeping golden" opportunity. This simple scheme was enabled by his position of power; it was detected through Federal Bureau of Investigation (FBI) intervention because of lower players who were caught in "pay to play" schemes.

Although the ability to authorize or approve purchases is one means to perpetrate kickbacks, it is not the only one. Other means include companies' attempts to pay off inspectors to overlook or accept substandard products. Such schemes compromise product quality but are associated with customary prices; this may not otherwise send up a red flag. More complex schemes involve individuals such as untrained or uninformed subordinates (for example, new employees) who inadvertently serve perpetrators. An example is a perpetrator with the capability to exploit the unknowing individual's ability to initiate purchase requisitions related to bogus vendors or for unsubstantiated goods. Another similar scheme may undertake instead to process bogus or fake invoices. Adequate training in an organization is a key deterrent to these schemes. Ethical conduct policies that prohibit the acceptance of any kind of gift from vendors exist to deter inappropriate activity and serve to heighten employee awareness of potential improprieties.

To protect the public safety, there is an imperative for internal controls, including honest supervision of contracts awarded for all goods and services. An example related to a municipal transit district involved bid rigging to inflate prices on projects involving multiple vendors, including inflating change-order proposals. As a result of the inflated prices, the contractors would in turn

Vice President (1969–73) Spiro Agnew came under investigation by the U.S. Justice Department for taking kickbacks from construction contractors in his days as a county executive. Agnew denied all charges but resigned on October 10, 1973.

pay the kickbacks to the perpetrator in cash. This particular scheme became more elaborate, as related schemes unfolded pursuant to the kickback arrangement. To obtain the desired business, contractors agreed to do unauthorized repairs as personal jobs; another plan required the contractors to hire selected individuals for unrelated services for cleanup of construction sites. The selected individuals were companies related to the person approving the contract, but these agreements were then not visible on the books of the transit district. In this case, a respected engineer who had worked for the district for 25 years, and was not directly involved in the scheme, was terminated; in his supervisory capacity, he did not review and oversee the work as he should have done.

The Extensive Network

Kickback probes can take years to conclude and be finalized because often, when a scheme is found to be worthy of investigation, a network of related companies and parties is uncovered. This is true in a matter that surfaced in a qui tam lawsuit originally filed in Arkansas in 2004 when two whistleblowers, Norman Rille of Accenture and Neal Roberts of PricewaterhouseCoopers, set forth complaints pertaining to technology companies paying kickbacks for government contracts. The case wound its way for years through the judicial system, being picked up by the U.S. Department of Justice, with additional charges added and more companies investigated. Many of the companies have settled: Hewlett-Packard, IBM, EMC, Accenture, and Oracle (which later merged with Sun Microsystems in 2010). Some of the cases, originally filed related to kickbacks, led to a widening search of other corruption charges that dated back to the late 1990s.

As is the case with any kind of collusion, detecting kickbacks is not easy; that is the bad news. The intertwined nature of kickbacks with other corruption schemes, the human incentive to escalate once a scheme has begun, and the worldwide pervasiveness of the phenomenon all aid in uncovering kickback schemes. Humans sometimes make mistakes and afford cues that arouse suspicion, or an individual approached has sufficient ethics and feels compelled to report the activities. When such a case is investigated sufficiently to obtain all evidence, it is likely to yield more than expected as connections, players, and nuances of the schemes come to light.

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See Also: Accounting Fraud; Agnew, Spiro; Bid Rigging; Bond Fraud; Bribery; Campaign Finance; Corruption; DeLay, Tom; Enron Corp.; Extortion; Government Contract Fraud; Government Procurement Fraud; Grant, Ulysses S.; Health Care Fraud; Health Corporation of America; International Business Machines Corp.; Iraq War; Johnson, Lyndon B.; Mail Fraud; Medicare and Medicaid Fraud; Nixon, Richard M.; Police Corruption; Public Corruption; Standard Oil Co.; Stark Act; Teapot Dome Scandal; Whistleblowers.

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Kidder, Peabody & Co.

Kidder, Peabody & Co. was a Massachusetts firm founded in 1865 by Henry P. Kidder, Oliver W. Peabody and Francis H. Peabody, three clerks at J. E. Thayer & Brother who reorganized Thayer into Kidder Peabody. The firm has interests in trading, brokerage, and investment banking. The firm has changed hands many times, including in the downturn after the 1929 stock market crash, when Albert H. Gordon, with financing from Stone & Webster, bought the failing company and rebuilt it by specializing in niche markets such as municipal bonds and utilities. Kidder Peabody assumed the financial aspects of Stone & Webster.

Kidder, Peabody in 1967 helped arrange the deal that had the U.S. Department of Agriculture (USDA) Commodity Credit Corporation invest $21.8 million in the Lebanese IntraBank, preventing failure of the key Lebanese bank and deterioration of an already serious Lebanese financial crisis. In 1986, after the company had endured for 120 years as an independent, Gordon sold Kidder Peabody to General Electric.

Insider Trading Scandals

Shortly after General Electric (GE) took over Kidder Peabody, the firm became involved in the insider trading scandals that characterized 1980s Wall Street. Kidder Peabody was embarrassed by an insider trading scandal involving its marquee player Peter Brant in 1984. That episode revealed corruption and questionable morality involving of sex and drugs at the stodgy company that didn't even have an arbitrageur and was losing upward of $30 million a year.

Kidder, Peabody & Co.'s next star, Marty Siegel, was a featured player in the Ivan Boesky scandal of 1987. Siegel, a former executive and merger specialist at Kidder before taking over mergers and acquisitions at Drexel Burnham Lambert, admitted to insider trading and implicated Kidder's chief arbitrageur, Richard Wigton, who became the only executive handcuffed in his office during the scandals. A fictionalized version of the episode was depicted in the film *Wall Street* (1987). Facing threats of indictment in New York, GE conducted an internal investigation that revealed that there were insufficient safeguards against sharing information. GE fired the Kidder chair and two other senior executives and stopped trading for its own account.

The Jett Set

General Electric had to pay $26 million in fines as part of its settlement with U.S. Attorney Rudy Giuliani. GE slowly worked its way back to profitability, first under Si Cathcart, then Mike Carpenter. Between 1990 and 1994, Kidder was involved in another scandal, this one involving false profits booked through a computer glitch by Joseph Jett, a trader in government bonds. Jett worked the government bond desk. His job was to find a profit in price differences in basic government bonds and zero-coupon bonds. He stripped and reconstituted bonds to utilize arbitrage. He also used a flaw in the Kidder computer system that recorded profits on forward reconstitution daily, even for trades that would, when final, be worthless. By repeatedly moving his trades forward, Jett created paper profits and postponed the final settlement that would zero out his false profits. When the system was upgraded, rather than correcting the flaw, the upgrade allowed more false trades, keeping Jett safe longer. When GE noticed that Kidder was overextended in bonds and ordered a reduction in Kidder's bond stake, Jett's scam was uncovered. His false trades totaled about $350 million, and his performance bonuses reached $8 million. Jett showed profits of $275 million over the four years but in fact lost $75 million.

When the Securities and Exchange Commission (SEC) became curious, Jett admitted the trades but alleged the company knowingly engaged in false trades because it was trying to regain control from GE. The SEC banned Jett because of his securities fraud. Jett never faced criminal charges, but Kidder blamed him and fired him in 1994. Afterward, Jett protested his innocence. Jett was 36 when he was dismissed in 1994. He was a black Harvard M.B.A. whose guilt seemed obvious and whose name was mud in the press after his firing. Jett wrote a book, *Black and White on Wall Street*, to clear his name, still "mud" although he was cleared of fraud by not only the U.S. Department of Justice but also by the National Association of Securities Dealers and the SEC. Jett, Kidder Man of the Year in 1993, charged that the trading was legal but deceptive, an effort by Kidder to conceal from loss-averse GE the balance sheet of Kidder, but the effort got out of hand. Jett also wrote convincingly of the racist and sexist environment on the trading floor. He formed and became chief executive officer of Jett Capital Management, whose Web site notes his time at Kidder as a positive experience.

GE sold Kidder Peabody to PaineWebber in October 1994 for $670 million. GE unloaded Kidder to PaineWebber perhaps because it had the embarrassment of two high-profile scandals in a short time frame. PaineWebber eliminated the Kidder Peabody brand before being absorbed itself by UBS in 2000. GE bought Kidder for $600 million in 1986 and sold it for $670 million and a 25 percent share of the buyer, to Paine Webber in 1994. The 25 percent share was worth $1.5 billion when UBS bought PaineWebber.

With offices in the former Kidder Peabody suite on the 101st floor of One World Trade Center, PaineWebber lost two employees in the terrorist attacks of September 11, 2001.

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See Also: Bendix Corp.; Boesky, Ivan; Bond Fraud; Drexel Burnham Lambert Inc.; General Electric Co.; Giuliani, Rudy; Insider Trading; Jett, Joseph; Roosevelt, Franklin D.; Securities and Exchange Commission, U.S.; UBS.

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Kilpatrick, Kwame

Kwame Malik Kilpatrick, the 68th mayor of Detroit, Michigan, was born on June 8, 1970, to Bernard and former congresswoman Carolyn Kilpatrick. He is married to Carlita Kilpatrick and is the father of three children.

Political Career

Kwame Kilpatrick began his political career in 1996, when he was elected to the Michigan House of Representatives. During his term, he was elected to serve as minority floor leader for the Michigan Democratic Party, a position he held from 1998 to 2000. In 2001, he became the first African American to serve as the House minority leader. At the age of 31, Kwame Kilpatrick became the youngest mayor of Detroit, following his election in 2001.

During his first term as mayor, he made several controversial decisions, some of which were later overturned by the city council. Kilpatrick was also roundly criticized for his misuse of a city-issued credit card, charging expenses for spa massages, expensive wines, and extravagant dinners. After criticism of the charges was raised, he reimbursed the city for a portion of the costs. He was also criticized for using city funds to lease a luxury vehicle for his wife. In 2005, Kilpatrick's reelection campaign workers were accused of helping seniors with Alzheimer's complete their ballots. Despite this and other controversies, he was reelected.

Strippers, Murder, Perjury, and Assault

During his second term as mayor, Kilpatrick was embroiled in a number of controversies. In the fall of 2002, it was rumored that Kilpatrick's wife returned unexpectedly to the official mayoral residence, known as the Manoogian Mansion, and found strippers with Kilpatrick. Mrs. Kilpatrick attacked one of the strippers, who later sought medical treatment. At the time, the mayor was protected by a special detail of the Detroit Police Department known as the Executive Protection Unit (EPU). One officer, Harold Nelthrope, raised concerns about the abuses of authority by members of the EPU, resulting in an internal affairs investigation. Michigan State Police and the Michigan attorney general concluded that there was no evidence that the party occurred. Kilpatrick also denied that the party occurred and that members of his protection team acted inappropriately. After the investigation, Harold Nelthrope and Gary Brown, head of the Detroit Police Department's Internal Affairs Division, were fired. The two alleged that Kilpatrick and his administrative team fired them in retaliation for investigating the EPU. They filed suit and won a multimillion-dollar settlement.

During the lawsuit, Kilpatrick and his chief of staff, Christine Beatty, perjured themselves when they denied having had an extramarital affair. After learning that the plaintiff's attorney possessed irrefutable evidence of their affair, Kilpatrick urged the city's legal department to agree to a settlement. Several local news sources, using Michigan's Freedom of Information Act, requested all documents related to the settlement. Subsequently, it was revealed that the city's legal department, at the direction of Kilpatrick, had negotiated a secret deal designed to hide more than 14,000 text messages between Kilpatrick and Beatty on city-issued pagers that provided evidence of their affair.

Questions also surrounded Kilpatrick's involvement in the cover-up of the murder of Tamara Greene, an exotic dancer who was alleged to have been at the Manoogian Mansion party and attacked by Kilpatrick's wife. Eight months after the Manoogian Mansion party was alleged to have taken place, Greene was shot and killed while sitting in a parked car with her boyfriend. She was believed to be the intended target, killed in order to keep her from speaking with investigators about the party. Greene was shot with the same-caliber weapon as issued by the Detroit Police Department. Her family later filed a multimillion-dollar lawsuit against the city of Detroit.

In 2008, the Wayne County prosecutor conducted an investigation and charged Kilpatrick and Beatty with a number of crimes, including obstruction of justice, conspiracy, misconduct in office, and perjury. Also in 2008, an investigator from the Wayne County prosecutor's office attempted to serve a subpoena on an acquaintance of Kilpatrick and was shoved by the mayor. Michigan's attorney general then charged Kilpatrick with assaulting or interfering with an officer of the law. Kilpatrick pleaded guilty to obstruction of justice charges and no contest to the assault charge. The plea arrangement called for Kilpatrick to serve four months in the county jail, pay restitution in the amount of $1 million, surrender his law license, serve five years of probation and not run for political office during his probationary period, resign as mayor of Detroit, and surrender his state of Michigan pension. Kilpatrick's last day as mayor was September 18, 2008.

Other Controversies

Other controversies include a recall petition seeking to remove Kilpatrick as mayor after it was determined that he had misled the city council into approving a settlement agreement in the whistleblower lawsuit. Kilpatrick was also named in a slander lawsuit involving two police officers who stopped Beatty for speeding. Kilpatrick's name also surfaced in the Synagro sludge-hauling contract controversy that ensnared a former city councilwoman. Kilpatrick's mayoral legacy was also overshadowed by allegations of abuse of power, nepotism, tax evasion, and mail fraud.

In 2010, federal prosecutors indicted Kilpatrick on charges of extortion, bribery, and fraud along with several others, including his father and a former aide. Kilpatrick was alleged to have benefited from the fraudulent awarding of contracts by a city department. Kilpatrick was paroled from prison on August 2, 2011. He continues to pay restitution to the state of Michigan for costs associated with his incarceration. In one of the biggest public corruption cases in Detroit's history, Kilpatrick was convicted March 1, 2013, on 24 of 30 corruption charges and is awaiting sentencing.

He is the coauthor of a memoir that chronicles his life. The book, titled *Surrendered: The Rise, Fall and Revelation of Kwame Kilpatrick*, became the subject of controversy after the Wayne County prosecutor requested the publisher to remit proceeds from the sale of the book for payment toward his restitution and incarceration.

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See Also: Bribery; Corruption; Extortion; Government Contract Fraud; Government Procurement Fraud; Kickbacks; Perjury; Police Corruption; Prostitution; Public Corruption; Tax Evasion.

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Knapp Commission

Corruption has long plagued the New York City Police Department (NYPD). Periodically, from 1894 into the 1960s, investigative committees led by senior police or city government officials took up the issue of corruption within the city. Those various corruption commissions reached similar conclusions: corruption within the NYPD was a problem of individuals—the result of a few "bad apples." However, the findings of the Knapp Commission (named for its chairman, Judge Whitman Knapp), also known as the Commission to Investigate Allegations of Police Corruption and the City's Anti-Corruption Measures, overturned established thinking about police corruption in New York City and beyond.

The Knapp Commission report on police misconduct, published December 26, 1972, after a two-year investigation, revealed a systemic pattern of police corruption within the NYPD. The Knapp Commission—the first in New York City history comprising entirely NYPD and New York City government outsiders—found that corruption permeated the branches and ranks of the department from patrol officers to high-ranking department officials. Though only a fraction of the NYPD's 30,000-member police force was actively involved in corrupt practices or behaviors, the degree, sophistication, and deeply entrenched nature of the corruption was shocking to the general public and to state and federal officials.

Origins of the Knapp Commission

In 1966 and 1967, NYPD plainclothes officer Frank Serpico told his superiors that he had observed corruption among his fellow officers in both the 90th Precinct and the 7th Division. Officer Serpico's corruption claims were generally ignored until he and fellow officer David Durk met with NYPD Deputy Inspector Phillip Sheridan. The result of the Serpico/Durk/Sheridan meeting was an investigation, which eventually resulted in the indictment of 19 officers from the 7th Division. However, despite Serpico's claims that corruption was prevalent throughout the NYPD's precincts and divisions, no larger investigation ensued. Frustrated by the lack of response to his allegations, Serpico went to the press. On April 25, 1970, the *New York Times* published a sweeping article on alleged police corruption within the NYPD. The *New York Times* article on police corruption resulted in intense public pressure for a full-scale investigation. New York City Mayor John Lindsey initially convened a group of NYPD officials to investigate the corruption allegations made in the *Times* story. However, the hastily assembled Rankin Committee urged Mayor Lindsey to establish a full-time civilian commission to conduct a large-scale corruption investigation of the entire department.

On May 21, 1970, Mayor Lindsey formally established a civilian investigative commission chaired by attorney Whitman Knapp. The commission consisted of five civilian members as well as investigators from multiple federal law enforcement agencies. The commission received 1,700 complaints of police corruption, served 296 subpoenas, conducted two public hearings and dozens of undercover operations, and solicited hundreds of hours of private testimony.

Commission Findings

The Knapp Commission report on police corruption revealed systemic patterns of police corruption within the NYPD. Corruption within the department was aided by lack of internal control, lax investigative procedures, and poor record keeping. According to the commission, corruption was most prevalent among uniformed and plainclothes officers, though supervisors and other members of the police force were also involved. The commission determined that the tendency to attribute corruption to lone individuals enabled corrupt behavior to occur and persist. The pervasive, informal, and strict code of silence among police officers also discouraged many from reporting corruption.

The commission determined that most police officers were not corrupt and that the majority of those engaging in corruption took part in already established corrupt practices. A fraction of corrupt police officers actively abused their powers and sought opportunities for illicit gain.

The illegal gambling and narcotics trades were the scenes of the most lucrative and sophisticated forms of corruption. Thousand-dollar-per-month bribes from illegal gambling payoffs were common, with the money often neatly divided among officers and supervisors, with those of higher rank receiving a larger share. Bribes and payoffs from narcotics dealers, often totaling several thousand dollars or more, would be divided in similar fashion. Within both venues—illegal gambling and illegal narcotics—organized crime played a significant role. The Knapp Commission report revealed the incredible diversity of corrupt activities being engaged in: from gambling and narcotics shakedowns, to theft from homes, businesses, and even corpses. Bribes and gratuities were accepted from construction companies, bars, private citizens, and petty crooks. Sometimes officers sold information to hijacking and auto-theft rings; at other times they bribed each other to gain key assignments. Allegedly, some police officers even engaged in kidnapping and murder.

Legacy

The Knapp Commission revealed a varied, intense, and systemic pattern of police corruption within the NYPD. Prosecutions, initiated by state and federal authorities, were successful: at one point, nearly 40 members of a Brooklyn police division were under indictment at the same time. However, the actual number of successful prosecutions was rather limited, partially because of the commission's lack of prosecutorial powers, and partly because many police officers were unwilling to break the informal police code of silence.

Importantly, the Knapp Commission findings heightened public and government awareness of the nature and extent of police corruption. Unfortunately, the Knapp Commission report on corruption would not be the last for the city of New York. Nearly 20 years later, the Mollen Commission would again take up the problem of police corruption and the parallel issue of police brutality within the NYPD.

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See Also: Corruption; Gambling and Lotteries; Mollen Commission; Police Brutality; Police Corruption.

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Labor Crimes

Labor crimes can be defined as acts of aggression, exploitation, or threatening behavior that take place in the course of one's occupation. Most commonly, death at the workplace due to environmental hazards, or from failure to implement safety standards that leads to injury or death, are considered labor crimes.

Labor Crimes in History

Upton Sinclair, a muckraker and journalist from the first decade of the 20th century¸ wrote extensively about labor crimes as he held a job with a large meatpacking plant in Chicago. Sinclair documented his experiences of witnessing horrific work conditions and inhumane treatment of employees, whereby workers toiled for long hours and earned meager pay while being subjected to injuries such as loss of limbs. Although Sinclair's book *The Jungle* created an immediate reaction by government officials who responded by creating the Meat Inspection Act and the Pure Food and Drug Act, the book did not stimulate improvements in working conditions. Sinclair's book was published in 1906; not long after, on March 25, 1911, a fire on the top floors of New York's Asch Building, which housed a garment sweatshop called the Triangle Shirtwaist Company, killed 146 women. Triangle shop owners routinely locked the doors where immigrant women, some as young as 14 years of age, worked in cramped conditions making clothes. The fire started in the clothing scrap bin, and the women were soon trapped. Several of them jumped out of the windows to their deaths rather than be burned to death. Although some of the women belonged to the newly formed International Ladies Garment Workers Union (ILGWU) or the Women's Trade Union League (WTUL), the unions had little power, as laws to protect workers' rights had not yet been created. It took workers' unions another two decades to see legal provisions requiring a shortened workday, overtime pay, and improvement in the physical conditions of workplaces.

There are many historical accounts of workers becoming ill as a result of workplace hazards. *Mad hatter* was a term coined to reflect the mercury poisoning that afflicted many hat makers or milliners during the 19th century. Animal furs were treated with mercury so they could be turned into felt. While working in confined spaces, the milliners were exposed to such significant amounts of mercury that they experienced mercury poisoning, which caused both neurological and kidney damage.

Another environmental toxin incident that led to worker injuries and deaths occurred between 1930 and 1931 in West Virginia, when 764 workers died during the construction of the Hawk's

Escaping desperate conditions of forced labor and political repression at home, these Burmese laborers, photographed by the U.S. State Department in 2005, look to commercial fishing in Thailand as a way to a better life. However, like illegal or marginalized immigrants everywhere, they are prey to unscrupulous traffickers who, for a fee, sell them to ship captains and exploiters. Tremendous assets are leveraged in order to assert a global influence on maintaining substantial profits.

Nest Tunnel to provide hydroelectric power to a nearby ferrosilicon alloy plant. Most of the workers, who were exposed to fine silica particles for 10 hours per day, did not last more than four months, even though work was scarce and pay was high. Within a year, nearly one-third of the workers died of silicosis, a lung disease that causes thickening and scarring of the lung tissue. The workers did not receive protective gear, even though the managers who came to inspect the tunnel wore masks when they were on site. The result of this high rate of death, which exceeded those of the most egregious mine and fire disasters in West Virginia, spurred the development of workers' compensation laws. The company responsible for the construction of the tunnel was Union Carbide, the same company that later caused the largest incident of chemical exposure and worker deaths in India in history.

On December 3, 1984, a cloud of methyl isocyanate leaked from the Union Carbide plant in Bhopal, India. The chemicals produced in the plant were used as pesticides. The company, based in Danbury, Connecticut, wasn't meeting projected profits. In order to cut costs and garner greater proceeds from the manufacturing plant, Union Carbide executives ordered the cessation of maintenance and inspections of the aging chemical plant, which was operational even when it began to rust. The immediate impact of the gas leak caused approximately 3,500 deaths, with an additional 10,000 to 15,000 deaths of elderly and children within a short time, the result of complications caused by the chemical exposure as the wind moved the chemical cloud to nearby cities. Union Carbide agreed to pay $470 million, but the U.S. government refused to extradite Union Carbide Chief Executive Officer Warren Anderson, whom the Indian government wanted to charge with manslaughter.

Union Carbide is not alone in its failure to protect employees from workplace hazards. Massey

Energy had a long history of safety violations when an explosion occurred on April 5, 2010, in its Upper Big Branch (UBB) mine in southern West Virginia, causing the deaths of 29 miners. A report issued by the U.S. Department of Labor concluded that Massey Energy caused the explosion through "unlawful policies and practices" such as "the intimidation of miners, advance notice of inspections, and two sets of books with hazards recorded in UBB's internal production and maintenance book but not in the official examination book." The government issued 369 violations and a $10.8 million fine. The U.S. Department of Justice (DOJ) could have criminally charged Massey under the Mine Safety and Health Act but elected to settle the case administratively instead.

Executives of large companies are rarely—if ever—held responsible for deaths of employees, even when their directives create a culture of disdain for regulation, cost reduction via failure to implement safety standards, and denigration of employee unions. This type of corporate culture seeks to promote risk and profit over employee well-being and safety. Under this approach, if a corporation cannot control the workplace culture or workers' demands, corporate executives routinely move company production elsewhere. Many American manufacturing jobs have been relocated to China, where employees work shifts of 10 to 12 hours, six days per week, earning $200 per month. This leads to rule avoidance and lack of accountability within companies.

Rule Avoidance

Meatpacking, dangerous at the start of the 20th century, remains one of the most dangerous jobs in America today. Some meatpacking companies, such as Smithfield Farms, have gotten around workplace safety standards by hiring undocumented immigrants. As highlighted in the film *Food, Inc.,* when these workers start to require expensive medical care, their employers call in the federal department of Immigration and Customs Enforcement to deport them, thereby avoiding workplace scrutiny as well as the burden of the financial costs associated with hazardous jobs. Immigrant labor is more prone to exploitation because of language barriers, fear of immigration enforcement, social isolation, ignorance of labor laws, and intimidation by employers.

For example, neither the Triangle Shirtwaist Company fire nor emergency-exit construction regulations has eliminated the problem of garment-worker exploitation in the United States. It is estimated that 67 percent of garment workers in Los Angeles and 63 percent of garment workers in New York City continue to work in sweatshop conditions, with minimum wage and overtime pay laws ignored. Factory owners claim they must suppress wages in order to stay competitive against Chinese manufacturers that pay their employees 60 cents per hour.

Additionally, domestic (household) workers, often immigrant women, are excluded from federal statutes on occupational health, minimum-wage laws, and the lawful right to organize. Because they work behind closed doors, they are subject to mistreatment and exploitation. On June 16, 2011, the International Labour Organization Convention on Decent Work for Domestic Workers was signed as a treaty in Geneva, Switzerland. Although the United States was a signatory to the treaty, Congress is not likely to ratify it, as it would require changes to federal law. Without ratification, there is no enforcement. In 2011, Human Rights Watch reported that approximately 50 million to 100 million domestic workers are employed worldwide and have been subjected to "excessive working hours, nonpayment of wages, forced confinement, physical and sexual abuse, forced labor, and trafficking." If these women complain, they often lose their job.

Corporate preference for nonorganized labor extends beyond American boundaries, as tremendous assets are leveraged in order to assert a global influence on maintaining substantial profits. For example, Ecuador has been one of the largest producers of bananas, and suppliers of them, to the United States. When workers on banana plantations demanded higher pay and recognition of their union, more than 120 employees were fired. Plantation owners were paying workers less than the minimum wage, and Ecuadorian law allows for the formation of unions for all workers. As a result, on May 6, 2001, many workers went on strike; they were quickly removed from plantation housing and replaced by nonorganized labor. More than 90 percent of the banana plantation workers in Colombia and Panama are union members, compared to a mere 1 percent of workers in Ecuador. U.S.-based companies have taken advantage of the lower prices garnered by the poorly paid Ecuadorian labor by importing 25 percent of Ecuador's banana production.

Lack of Accountability

Jodi Enda, a Washington-based journalist who specializes in politics and government, argues that as government regulation has been routinely relaxed—along with dramatic cuts in enforcement by myriad administrative agencies tasked with protecting people and the environment—fewer reporters are assigned as watchdogs of the federal government. Some argue that this may be a bigger threat than the lack of enforcement itself. For example, governmental agencies such as the U.S. Mine Safety and Health Administration (MSHA), which oversees mines in every state, have been pressured by politicians (seeking to garner favor with their campaign donors) to become lax in their enforcement. In fact, only one Washington newspaper reporter regularly covers the MSHA.

This situation is partially as a result of the transformation of media from print to digital form, where immediacy of story development and sound bytes became paramount over in-depth, long-term investigations. Sinclair was effective because he developed his story by conducting firsthand research while he experienced the conditions of meatpacking workers. Few journalists have opportunities to uncover systemic failures or develop relationships with those in industries or regulatory agencies that could reveal compromises to working conditions.

There is substantial media coverage of the White House, the Supreme Court, and departments such as Justice and Defense, but almost no coverage of agencies such as the Occupational Health and Safety Administration (OSHA) or the MSHA. A lack of scrutiny results in gaps in regulation and enforcement. As an example, 11 men were killed in 2008 while installing items on 200-foot cellular towers for AT&T. Their employers, which were vendors three or four layers of contracts removed from AT&T, did not train or equip them with appropriate gear that could have prevented their deaths. Their employers claimed that the workers were responsible for their own deaths by not engaging in their own safety practices. Cellular carriers like AT&T are free from liability, however, given the legal structures that govern contractual labor. Administrators from OSHA claim that there are no laws that allow them to pursue criminal or administrative actions against cellular carriers. The laws protect the contractual agreements, not the workers who are employed via a string of contracted companies to conduct the work on the carrier's behalf. These multilayered contractual agreements insulate each employer from liability, leaving no recourse for workers or their families. These deaths were not recorded by mainstream media outlets.

OSHA is not alone in its inability to pursue damages, as regulatory agencies often rely on laws that have been in place for dozens of years, while in many cases older, stricter provisions have been removed. The MSHA can only pursue misdemeanors under its current policies and statutes, which were put in place in the 1930s. Because of these antiquated administrative laws, the MSHA was not able to levy much more than fines against Massey Energy over the explosion in its UBB mine. Only the DOJ can levy felony sanctions.

In the absence of political pressure, few workplace protections will likely be undertaken, as they add operational costs. Many argue that governmental policy shifts will not be likely to occur unless there is media coverage or union efforts to assert demands against employers. For example, treaties such as the International Labour Organization Convention on Decent Work for Domestic Workers can make an impact because of their global scale. Simply trying to address labor rights in one country may lead to limited protections as the global marketplace ensures that cheaper labor is routinely available elsewhere.

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See Also: Bureau of Safety and Environmental Enforcement, U.S.; Canadian Mining Scandals; Coal Mining; Employee Crimes; Employee Safety; Human Trafficking; Meat Inspection Act; Mine Safety and Health Act; Minerals Management Service, U.S.; Occupational Carcinogens; Occupational Safety and Health Act; Reform and Regulation; Regulatory Enforcement; Sinclair, Upton; Unsafe Working

Conditions; Unions; Whistleblowers; Workplace Deaths.

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Leeson, Nick

Dubbing himself the Rogue Trader, Nick Leeson (1967–) is best known as the man who brought down Barings Bank, England's oldest investment bank, which boasted illustrious customers that included Queen Elizabeth and other members of the royal family. After it was discovered that, almost unchecked, Leeson had lost $1.4 billion in bank funds through fraud and unwise speculations, the 233-year-old bank was forced to close its doors. On his Web site (www.nickleeson.com), Leeson refers to the scandal as the "biggest financial scandal of the 20th century."

In 1996, the London newspaper *The Mail* paid Leeson a substantial sum for the serialization rights to *Rogue Trader: How I Brought Down Barings Bank and Shook the Financial World,* Leeson's account of his activities and the ensuing scandal. That same year, director Adam Curtis released the documentary film *25 Million Pounds*, which traced Leeson's career and the fall of Barings Bank. *Rogue Trader* was turned into a film in 1999, starring Ewan McGregor as Nick Leeson and Anna Friel as his wife, Lisa Leeson.

Nicholas (Nick) William Leeson was born in Waterford in 1967 to a working-class family. By the age of 18, he was working for Coutts Bank. In 1987, he moved to Morgan Stanley. He began working for Barings in 1989 at the age of 22. Leeson later said that there was a lot of pressure at the bank to bring in profits. With some justification, he blamed the bank for failing to train him properly, neglecting to oversee his activities, and creating an atmosphere in which he was reluctant to ask for help when he needed it. Despite the bank's faults, Leeson was certainly responsible for his role in the scandal because he was reluctant to call attention to his losses out of fear that such an action would jeopardize his lavish lifestyle.

Leeson's trading activities took place in Singapore, where he bet on the Asian futures market through the Singapore International Money Exchange (SIMEX). His particular responsibility was placing bets on the future direction that the Nikkei Index would take. Initially, he was Barings's "golden boy." In 1992, he made $10 million pounds in profits for Barings. As he became more experienced, he branched out into the practice known as "straddles," where he bet on whether the Asian market would rise or fall. On January 16, 1995, Leeson predicted that little change would occur in the market, but overnight a major earthquake hit Kobe, with the result that the Japanese stock market fell 1,000 points. Instead of cutting his losses, he tried to recoup. Over time, his losses had climbed from 2 million pounds to 208 million pounds. Calling on his prodigious computer skills, Leeson hid his losses in a secret bank account, Error Account 88888, which had originally been created to hide a 20,000-pound mistake made by an experienced colleague.

After he had hid his losses from Barings officials for three years, Nick Leeson's scheme began to unravel in 1995. After he asked for and received more than 900 million pounds in the first two months of the year to cover up his losses, Barings officials began to get suspicious and initiated a spot audit into Leeson's activities. By that time, his losses amounted to more than the bank's capital and resources combined. Learning that his crimes had been discovered, on February 26, Nick Leeson left a note of apology on his desk, and he and his wife, Lisa, fled to Borneo before flying to Frankfurt, Germany, where he was ultimately arrested. Barings Bank went into an immediate spiral, with executives being fired or resigning and the bank eventually collapsing.

Later that year, Leeson pleaded guilty to bank fraud and forgery in a Singapore court and was sentenced to six and one-half years in prison. Ultimately, he only served four years in what he describes as a "gang-ridden" prison before being released in 1999. While he was in prison, his wife, Lisa, learned that he had been engaged in sexual liaisons with geisha girls and divorced him. He was also diagnosed with colon cancer and experienced major weight loss while undergoing treatment.

Upon his release, Leeson issued a public apology to all those he had harmed. Since remarried, Leeson lives in Ireland with his wife, Leona, and their three children. He obtained a degree in psychology in 2001. He published *Back From the Brink: Coping With Stress* in 2005. That same year, he became the commercial manager for Galway United Football Clubs and was later promoted to general manager. He resigned from that position in 2011 but continues to be a shareholder in Galway United. Leeson has become a popular speaker, lecturing on business risk and corporate responsibility, reportedly earning $12,000 for a 30-minute speech. While admitting guilt in the Barings scandal, Leeson continues to insist that Barings also bears major responsibility for providing so little oversight to an inexperienced trader that he could continue his fraud undiscovered for three years.

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See Also: Allied Irish Banks; Bank Fraud, Barings Bank; Jett, Joseph; Metallgesellschaft.

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Legacy Lending

A legacy loan is a mortgage on an asset that is in danger of default or that is troubled because the value of the collateral (such as a home) has diminished in value to less than the amount owed on the mortgage. For example, *legacy loan* may be the term used for a mortgage that is in danger of defaulting, or that is "nonperforming." It may also be that the mortgage payments are being made but the value of the property is "under water," because it dropped to far less than the balance owed on the loan.

Therefore, the term *legacy loan* is really an euphemism for a "toxic asset," which is an asset that has dropped significantly in value. Toxic assets is a colorful expression for assets that have dropped so significantly in value that they are acting like toxins, or a poisonous substance. In effect, the toxic assets are "poisoning the balance sheet of the lender." Because lenders may have investors or other clients who may be frightened by the negative fiscal reality caused by the dramatic drop in the value of the assets on its books, a positive term or euphemism is useful to retard a drop in investor confidence.

The market for toxic assets, worth as much as $1 trillion, had frozen by 2009. The subprime mortgage crisis had put many banks into financial distress as their toxic assets dropped the value of the banks' holdings in relation to their reserve requirements. Many people want to see weak banks and financial institutions go into receivership (bankruptcy), but the Barack Obama administration was opposed to this option unless absolutely necessary.

To aid the banking sector and the recovery from the subprime mortgage crisis of the late 2000s, a program of federal government purchases of toxic assets was announced on March 23, 2009. The program was called the Public-Private Investment Partnership (PPIP) for Legacy Assets and was a joint venture of the U.S. Federal Deposit Insurance Corporation (FDIC), the Federal Reserve. and the U.S. Treasury Department. It was also supposed to attract private purchases of "legacy assets." The program's goal was to provide liquidity for banks with toxic loans on their balance sheets.

The PPIP was an initiative that emerged from the Troubled Asset Relief Program (TARP), which Secretary of the Treasury Timothy Geithner had instituted. The effect upon the stock market was dramatic and positive. However, by June 2009 the program was not in force.

One of its initiatives purchased toxic assets that were dubbed "legacy loans." The Legacy Loans Programs (LLP) then began to purchase residential mortgages directly from banks. The goal was to help the banks clear their books of toxic loans, which were hindering lending. The second program was called the Legacy Securities Program, which was to purchase residential mortgage-backed securities (RMBS), commercial mortgage-backed securities (CMBS), and asset-backed securities (ABS), which are rated AAA.

Legacy Loan Program

The Legacy Loan Program (LLP) was expected to attract a variety of investors, including individual investors, pension plans, insurance companies, and others. The goal was for the LLP to boost private demand for toxic assets held by banks and to free their capital for new lending. Oversight of the program was tasked to the Federal Deposit Insurance Corporation (FDIC). It would guarantee debt financing issued by the PPL.

RMBS were based on home equity loans and were rated AAA. Although most loans are paid off in a regular and timely manner, many RMBS were based on mortgages granted to people with low credit ratings and a limited ability to repay (i.e., subprime borrowers). Therefore, many loans made to borrowers with subprime credit ratings became toxic, as did securities based on them. During the subprime crisis many people lost their jobs and thus their ability to pay their mortgages, so they were forced to default. At the same time, in areas where subprime lending had been the greatest, market prices dropped from inflated highs to one-third or one half, putting the mortgage "under water." The money for the legacy loan and legacy securities programs came in equal parts from the Troubled Asset Relief Program (TARP) and from private investors. The remainder was from loans made by the Federal Reserve's Term Asset Lending Facility (TALF).

As the LLP moved forward, public accusations were leveled against major banks such as Citigroup, Bank of America, and others of buying toxic assets in the secondary market, which were then sold to the Treasury for a profit. In effect, the accusation was that these and other banks were enriching themselves instead of cooperating to end the recession. Many of the legacy loans were to be sold at auction in pools of loans to the highest bidder. The holder of the winning bid would have access to the PPIP for 50 percent of the purchase. In addition, the FDIC would guarantee the loan if the seller accepted the purchase price. The effect was that banks could bundle mortgages that had value with those that were toxic. Then they could participate in the bidding in a way that excluded rational-pricing bidders in order to purchase their own loans or to accept bids that were grossly overpaying for the toxic assets.

People from various walks of life were of the opinion that the legacy loans were products of a housing industry and a lending industry in which many of its members should have been prosecuted for racketeering. The reason for this opinion was the widespread corruption and the financial and personal harm done to millions of people.

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See Also: Collateralized Debt Obligations; Corruption; Mortgage Fraud; Mortgage Modification Fraud; Mortgage Reform and Anti-Predatory Lending Act; Mortgage-Backed Securities; Savings and Loan Fraud; Subprime Loans; Troubled Asset Relief Program.

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Legal Malpractice

Professionals associated with the judicial system are sworn to an oath to serve their clients (whether the American people, the people of a state, or some other subgroup) to the best of their ability. They are also bound—by oath as well as by a code of ethics—to energetically work for their clients, to behave ethically within the bounds of their profession in acting as trustees for their property, and to hew to the letter and spirit of contracts. Violating these oaths—with harm to their clients—is termed *legal malpractice*. Malpractice may involve misfeasance, that is, the negligent or mistaken committing of an act; or malfeasance, that is, the committing of an affirmative act that is wrongful and results in harm to another. Nonfeasance may also be an element in malpractice, being inaction in the face of duty that may allow injury to occur.

Famous Cases

Some of the more famous cases of legal malpractice have occurred when an officer of the court simply does not do what he or she is expected to do on behalf of a client. Criminal defense attorneys are expected to provide the best possible defense for a client, regardless of their personal feelings about the case, the victims of the original act, or the client himself/herself. The "Cape Fear scenario" is reminiscent of the movie by the same name and marks an egregious situation in which a criminal defense lawyer, appalled that his or her client may walk free, leaks critical information to the prosecution. Conversely, a defense attorney, in zealous defense of a client, may offend in the opposite direction, by suborning perjury or tampering with witnesses or evidence, or, in some circumstances, attempting to suborn or tamper with a juror or jury. Malpractice may also occur because of the things a lawyer does not do, including neglecting a client in some fashion, as the case of Calvin Burdine illustrates.

When Burdine went on trial for his life in Texas in 1984, he was appointed a public defender, Joe Cannon, who had tried several death cases in the past. Cannon called no witnesses, performed no investigation, did not pursue discovery—indeed, he did not even view the crime scene and apparently slept through long parts of the trial, including parts of the sentencing phase. Cannon had apparently spent about four hours preparing for the trial, and had not objected to the repeated use of antihomosexual language regarding his client on the part of the prosecution. Perhaps not surprisingly, Burdine was sentenced to death for murder of his former roommate, but he pursued an appeal based on the tenet that he had not had an attorney worthy of the name. The appeal for relief and then a habeas corpus brief first twisted through the Texas state court system and then moved forward through federal appeals. The eventual disposition of the case fell to the U.S. Supreme Court, which denied an appeal by the state of Texas, upholding a lower court ruling for a new trial based on the fact, the court ruled, that Burdine had been denied his Sixth Amendment right to a fair trial based on his defense attorney's behavior (or, in this case, his lack thereof).

When Is It Legal Malpractice?

Determining legal malpractice is, in itself, a legal proceeding and requires the usual elements: a harmed party with standing to sue, a clear accusation of what the malpractice was, when it occurred, and exactly how (with precedent) the actions or inactions of the attorney or attorneys accused were a violation. Even with a favorable ruling that malpractice occurred, the next step, setting damages, may be more problematic.

Although determining the "damages" that accrue in a case such as Burdine's is fairly simple (Burdine deserved a new trial, as the first trial was determined to be tainted by the inaction of his attorney; thus, "damages" were the relief from the unfavorable outcome), it is not always easy to determine such "damages" in cases in civil law.

Harvard law professor Lawrence Lessig interviews Jack Abramoff about corruption and the nature of lobbying at a Harvard Law School discussion forum, December 6, 2011. In the mid-2000s, Abramoff earned millions of dollars as a lobbyist, selling clients access to the Republican House leadership and trying to influence policy. After three and one-half years in prison, Abramoff discussed his desire for reform, especially regarding the U.S. legal code, in order to prohibit the kind of influence peddling at which he once excelled.

If a lawyer is sued for malpractice by a client, the client must show "harm"—in that such a suit must allege that the outcome, absent the accused attorney's malpractice, would have had a more favorable outcome for the client. Determining what "would" have occurred is not always easy, and malpractice damages are not easy to set. For example, in *Hummer v. Pulley, Watson, King & Lischer, P.A.*, 157 N.C. App. 60, 577 S.E. 2d 918 (2003), the Court of Appeals stated the following:

> In a legal malpractice case, a plaintiff is required to prove that he would not have suffered the harm alleged absent the negligence of his attorney. *Rorrer v. Cooke*, 313 N.C. 338, 361, 329 S.E. 2d 355, 369 (1985). A plaintiff in order to prove this causation element must establish three things: (1) the underlying claim, upon which the malpractice action is based, was valid; (2) the claim would have resulted in a judgment in the plaintiff's favor; (3) the judgment would have been collectible or enforceable. *Id*. In other words, a legal malpractice plaintiff is required to prove the viability and likelihood of success of the underlying case as part of the present malpractice claim.

Thus, there is always a "case inside a case" that must be demonstrated: if the attorney accused did not do what he/she is accused of doing, the client would have won the case or been able to settle it in a more favorable manner. For practical purposes, this means that blaming the attorney for not making a winning case, per se, will not prove legal malpractice.

This formidable test does not mean that lawyers who fail to live up to their responsibilities always go free. In a famous Kentucky case, a Louisville attorney, Fred Radolovich, was the lead attorney in a death penalty case in which he not only did almost nothing for his client but actually failed to learn even his client's name. He was eventually disbarred by the Kentucky Bar Association for this and other instances of malpractice. Similarly, a number of lawyers involved in the fen-phen "bad drug" case deployed their legal skills in defrauding their clients, who had been harmed by the drug, of millions of dollars in the settlement itself. In this case, attorneys handily won their case but refused to live up to their fiduciary responsibilities to their clients.

Over-Aggressive Defense

Sometimes the aggressive defense of a client may also lead to legal trouble. In 2008, an alleged crack cocaine peddler named Demonte White hired Washington, D.C., criminal defense lawyer Charles Daum, a longtime veteran of the D.C. drug wars, to defend him on criminal possession and other felony charges. White faced as much as 20 years in prison if convicted. The entire case turned on whether drugs, found in White's grandmother's apartment, belonged to White. Daum strayed badly from the ethics of the legal community by scheming with White, White's brothers, and White's girlfriend to pervert the cause of justice. Daum involved his own investigators to fabricate evidence that someone other than White (apparently White's younger brother, who would have faced less time) "owned" or "possessed" the drugs.

The convoluted story Daum and his investigators tried to create centered on a pair of Gucci boots, owned by White, that was found in the apartment and seized as evidence. Daum persuaded White's girlfriend to journey to New York City to purchase a similar pair of boots and then had his investigators take photographs of White's brother in the boots in a D.C. nightclub, all in order to link the brother to the boots and thereby to the apartment and the drugs. Daum also took additional photographs of someone else in the apartment with a razor (used to cut the cocaine "rocks") and enjoined witnesses to leave town prior to the trial. He also forged a lease that attempted to show that White lived elsewhere.

The whole mess came apart as the court—the jury deadlocked in the first trial—began to proceed with the second trial. Federal prosecutors interviewed the family members, and it did not take long before the entire mess was uncovered. Daum was tried and convicted on six of the seven felony charges against him (he was acquitted on a charge of witness tampering).

A *Washington Post* reporter writing about the case at the time noted that, "Defense attorneys had said prosecutors had failed to prove a motive—Daum made only $6,000 on the case, hardly enough, they argued, to risk his career over. Prosecutors, however, suggested during the trial that Daum was an egomaniac who wanted to win." Assistant Attorney General Lanny Breuer of the U.S. Department of Justice, Criminal Division, which prosecuted the case, stated that, "In his zeal to defend his client, Mr. Daum betrayed his profession and obstructed justice." Breuer added in a statement that "it's astounding that a lawyer could commit these crimes, which undermine the integrity of our criminal justice system."

The intersection of politics and law often results in questionable and sometimes criminal actions by lawyers. More generally, the list of lawyers disbarred, serving time, and generally seeing their careers go down the drain in the pursuit of politics is long and includes a former president (Richard Nixon), former governors (Arkansas's Jim Guy Tucker, for his role in the Whitewater scandal; Illinois's Rod Blagojevich, for attempting to sell the office of U.S. senator), and the lesser lights of the political world (Donald Segretti, convicted of "dirty tricks" during Nixon's 1972 presidential campaign; both Alger Hiss and Roy Cohn, who were icons of both sides of the anticommunist crusade of the 1950s; and even Robert B. Anderson, secretary of the Treasury from 1957 to 1961). Though not all of these people were guilty of malpractice per se, their sheer number and prominence demonstrates that the legal community is often tempted (or in some cases, inclined) to criminal activity that sullies its connection to the judiciary.

One egregious case is that of the attorney general of the United States—the highest office to which an attorney can aspire. John Mitchell was a longtime friend of, campaign official for, and eventually attorney general for President Richard M. Nixon. Mitchell resigned from the office in order to run Nixon's reelection campaign, the Committee to Re-Elect the President (nicknamed with the acronym CREEP).

Mitchell was eventually convicted of three counts connected to the Watergate scandal, which merited disbarment: (1) conspiracy to commit offense against or defraud the United

States; (2) injuring or influencing an officer, juror or witness; and (3) perjury.

A more recent case is that of Lewis "Scooter" Libby, a high-ranking official in the George W. Bush administration who was convicted of obstruction of justice and various forms of lying in court in the Valerie Plame affair. This scandal also involved presidential advisor Karl Rove, who was called to testify and eventually admonished as well. Some of the most famous cases—such as that of lawyer and lobbyist Jack Abramoff—involve people who were not actually in government but were attempting to influence government policy.

Mob Lawyers

The most public of the cases of malpractice have involved those who work closest with career criminals: the so-called mob lawyers. Although few would argue that the alleged perpetrators of organized crime are somehow less deserving of the best defense the law can offer, there is a stigma, and sometimes more, that attaches to attorneys who make their living in this way. The proximity of the counselor to powerful people who make their own living on the wrong side of the law invites, perhaps, the temptation to cross the line from time to time. This was certainly true in the case of Robert Cooley, mob lawyer extraordinaire, a member of Chicago's Democratic "Circle of the First Ward" and eventually an informant on organized crime in the city of Chicago for the Organized Crime TasForce.

Cooley's checkered career began as a police officer, a job in which he had his first contacts with the Outfit, as the Mafia was known in Chicago. He soon traded in his blues for a suit, went to law school, and became the in-house attorney for anyone who was anyone in organized crime. Cooley tells that while he employed legal means whenever it was possible, his tougher cases were won by simply suborning perjury, frightening off witnesses, and bribing judges. His most celebrated case involved Judge Thomas J. Maloney, a Cook County Circuit Court judge sometimes called "the most corrupt judge in America." The case involved a murder, with the dying declaration of the victim at the center of the prosecution's case. Cooley learned that the judge was bribable but expensive. He lined up $100,000 from his mob friends (who were also tied to the alleged murderer) and paid off the judge through intermediaries. A few days later, the judge pitched out the critical testimony as "unreliable" and acquitted the defendants. Cooley eventually became disgusted with the perversion of justice and turned informant, subsequently testifying against many of his former clients and helping break the back of the Mafia in Chicago during the 1990s.

As repulsive as it may seem—and is—the role of judicial officer as criminal covers nearly every aspect of crime: they betray their clients, they steal from their clients, and they personally profit from knowledge they have only because of their position. Insider trading, negligence, political shenanigans, and simple laziness make up their crimes, demonstrating, perhaps, that lawyers, in the end, are as likely to commit crime as their less-educated brothers and sisters.

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See Also: Insider Trading; Libby, Lewis (Scooter); Nixon, Richard M.; Organized Crime; Plame Affair; Public Corruption; Racketeering; Rove, Karl; Whitewater Scandal.

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Lehman Brothers Holdings Inc.

Long one of the United States' largest and most prestigious investment banks, Lehman Brothers had important business interests in investment management, equity and fixed income sales and trading, private banking, private equity, and investment banking. As a result of the global financial crisis that began in 2008, Lehman Brothers faced a massive devaluation of its assets by credit rating agencies, the mass departure of many of its clients, and a plunging share value. These events combined to force Lehman Brothers to file for Chapter 11 bankruptcy protection and ultimately led to the dissolution of the firm. Lehman Brothers' sudden collapse was caused by several factors, including manipulation of the firm's financial statements, the global subprime mortgage crisis, and a culture in which failure was not tolerated. The failure of Lehman Brothers had a significant impact upon investors and led in part to the U.S. government's $700 billion intervention into the financial markets.

Background

Founded in 1850 by brothers Henry, Emanuel, and Mayer, immigrants from Bavaria, Lehman Brothers was originally operated as a dry goods store in Montgomery, Alabama. Over time, the brothers' side business in cotton trading grew to be an increasingly important part of their business, and in 1858 Lehman Brothers relocated to New York City. The move proved fortuitous, as Lehman Brothers' location in the North during the American Civil War permitted its operations to grow. A founding member of the New York Cotton Exchange in 1870, Lehman Brothers later became a member of the New York Coffee Exchange and the New York Stock Exchange. After underwriting its first initial public offering in 1899, Lehman Brothers grew as a house of issue, placing offerings from such stalwart companies as Digital Equipment Corporation, Gimbel Brothers Inc., the B. F. Goodrich Company, R. H. Macy & Co., the May Department Stores Company, Radio Corporation of America (RCA), and the F. W. Woolworth Company.

During the Great Depression, Lehman Brothers focused upon providing venture capital to new companies and thrived in the era following World War II. A family partnership until 1924, members of the Lehman family controlled the firm until 1969. After merging with Kuhn, Loeb & Co. in 1975, the resulting firm was the fourth largest on Wall Street. In 1984, following a series of disputes between Lehman Brothers' investment bankers and traders, the firm merged with Shearson/American Express, an arrangement that lasted until American Express offered the firm in an initial public offering a decade later as Lehman Brothers Holding Inc. Under chairman and chief executive officer (CEO) Richard S. Fuld, Jr., Lehman Brothers thrived, weathering the Asian financial crisis of 1997 and the collapse of the dot-com bubble in 2000. After its headquarters building at Three World Financial Center was severely damaged in the September 11, 2001, attacks, Lehman Brothers purchased a 32-story building near Times Square in New York City to house its displaced business.

Subprime Mortgage Crisis and Bankruptcy

During the first decade of the 21st century, the percentage of lower-quality subprime mortgages increased dramatically. Subprime mortgages represent loans to individuals who, because of a history of credit problems or a lack of income, may have difficulty making payments on a timely basis. Whereas subprime mortgages had historically made up less than 8 percent of all home loans issued, during the period from 2004 until

2006 they made up over 20 percent of all such loans. Equally troublesome was that over 90 percent of subprime mortgages were based on adjustable rates, which means that the rate of interest charged for the loan could be adjusted upward by the lender or holder of the mortgage. Banks continued their practice of securitizing loans, which means they packaged multiple loans that were then sold to investors, who were eager to acquire them because of default rates that were historically low. Though the lowered lending standards were not problematic while housing values were rapidly increasing, they became disastrous when housing values began to decline steeply in 2006. Borrowers were faced with declining property values, and those with adjustable rate mortgages that increased were unable to refinance because their homes were often worth less than the amount of the mortgage. Lehman Brothers, which had been heavily involved in the subprime mortgage market, was jolted by this downturn.

By the mid-2000s, Lehman Brothers' investing was funded in large part by borrowing, and a large percentage of its investments were in mortgaged-backed securities. A later examination by the bankruptcy court found that during this period, Lehman Brothers was making use of accounting manipulations at the end of each financial quarter that served to make its financial position appear better than it was. These actions later led Fuld and Lehman Brothers' accountants Ernst & Young to be accused, respectively, of criminal actions and malpractice. This combination left the firm especially vulnerable to the downturn in the value of residential properties that began in 2006. Although Lehman Brothers had shuttered its subsidiary subprime lender, BNC Mortgage, in August 2007, the firm was less able than some competitors to weather the downturn. By early 2008, Lehman Brothers found its investment portfolio contained large positions in subprime mortgage securities. During 2008's second fiscal quarter, Lehman Brothers reported a loss of $2.8 billion, which forced it to sell off over $6 billion in assets in order to raise capital. These losses proved devastating to Lehman Brothers, as its stock lost nearly three-quarters of its value during the first half of 2008.

In response to these losses, Lehman Brothers made several personnel changes. Fuld was stripped of authority, and president and chief operating officer (COO) Joe Gregory and chief financial officer (CFO) Erin Callan were forced to resign. Bart McDade was named president and COO, and he brought Alex Kirk and Michael Gelband back to Lehman Brothers. Kirk and Gelband had previously been demoted by Gregory for being unwilling to take risks.

Fuld remained at the firm but was effectively stripped of authority. Although attempts were made to sell the firm during August and September, none of these plans came to fruition. The U.S. government also showed no inclination to avert Lehman Brothers' collapse, a move some suggested was linked to Fuld's pugilistic attitude toward regulators. Lehman Brothers' third-quarter fiscal report showed an additional loss of $3.9 billion, and its already beleaguered stock lost an additional 40 percent of its value. While investors such as the Korea Development Bank, the Bank of America, and Barclays PLC considered purchasing Lehman Brothers, these deals could not be worked out. On September 15, 2008, Lehman Brothers announced it would file for bankruptcy protection, citing $768 billion in liabilities and $639 billion in assets. This action caused the Dow Jones Industrial Average to plunge, setting in place the events that led to the U.S. Congress authorizing the $700 billion Troubled Asset Relief Program (TARP) to help other financial firms.

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See Also: Accounting Fraud; Bond Fraud; Capitalism; Countrywide Financial Corp.; Crédit Lyonnais; Liar Loans; Merrill Lynch and Co. Inc.; Mortgage-Backed Securities; Naked Short Selling; Oligopoly; Ponzi Schemes; Salomon Smith Barney Inc.; Securities and Exchange Commission, U.S.; Subprime Loans; Troubled Asset Relief Program.

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Levi, Michael

The first modern criminologist in the United Kingdom (UK) to seriously consider issues related to white-collar crimes is Michael Levi. From as early as the 1970s, Levi's empirical works on fraud, money laundering, and organized crime have served to earn him the moniker of "father of white-collar and organized crime of contemporary Europe."

Michael Levi (1948–) was born and raised in northern England during a time of significant social and economic changes. The end of World War II brought a period of reconstruction and rebuilding in Europe. England was fertile ground for crime research, similar to America and the Chicago school. Michael Levi, the son of a concentration camp survivor, was the first member of his family to receive a university education. He studied philosophy, politics, and economics at Hertford College, Oxford. This combination significantly impacted the direction of his research, which, grounded in the work of Émile Durkheim, focused on questions regarding the workings of society.

Two Pivotal Questions

Two such questions regarding the issue of disparity in the labeling of certain persons and types of crimes—that is, why one type of crime was viewed more negatively than others, and why one group of persons was viewed as more criminal—was constantly on his mind during his early academic years. In addition, like the early criminologists, he became interested in why some persons committed crime and others did not. This interest led him to further studies in social prejudice. While at Cambridge, a curiosity in deception and the disparity of treatment regarding certain forms of fraud emerged, which led to his doctoral dissertation, "The Organization and Control of Bankruptcy Fraud." However, because of a financial error regarding his funding at the London School of Economics (LSE), he had to revisit the choice of school. He quickly found Professor John Martin at Southampton University, who was more than willing to supervise and guide the completion of his doctoral study. From his thesis, the highly acclaimed book *The Phantom Capitalists* was published in 1981 (and again in 2008), which began more than three decades of writing.

At the time of his studies in the 1970s, very little consideration was given to the area of white-collar crime. Levi almost single-handedly pushed the issues of financial fraud and organized crime to the forefront of academia and public policy in the UK and throughout the world.

Levi spent several years teaching and conducting research in the southern part of England and since 1991 has been at the renowned Cardiff University. His major contribution to the field has been empirical work in a wide range of financial crimes—more specifically, types of fraud, the organization of these crimes and the methods used for control by the various agencies—using a plethora of research methods, both quantitative and qualitative. For more than three decades, his comprehensive view of fraud, its elements, the judicial process, and legislative attempts at control, as well as the public's perception of fraud, are still being developed.

In addition, his research has served to debunk a number of myths regarding the factors correlating with fraud and organized crime, as well as the effects and the fairness of legal proceedings. Within the last decade, his work has focused more on transnational organized crime and money laundering, which has resulted in a number of policies implemented globally. Currently, he is focused on the cost of e-crimes, their organization, and their control.

As a prolific writer, he has published approximately 200 articles and book chapters in scholarly outlets. He has contributed to four editions of the *Oxford Handbook of Criminology*. Levi has authored and edited more than eight books, some of which are *Regulating Fraud: White–Collar Crime and the Criminal Process* (1987), *Fraud: Organization, Motivation and Control I and II* (1999), and *Drugs and Money: Managing the Drug Trade and Crime-Money in Europe* (with Petrus van Duyne, 2005).

Levi leads a very active public life and serves in various capacities, often simultaneously, in organizations globally. These include the Council of Europe on Organized Crime, where he served as scientific expert advisor for approximately six years; the Organized Crime Council of the World Economic Forum; the UK Home Office; the UK Prime Minister's Strategy Unit; and the European Commission Money Laundering Statistics Sub-Group. His extensive research, publications, and association with both government and nongovernment bodies have earned him the status as the most sought-after presenter and keynote speaker on fraud and organized crime at conferences around the world.

As a result of his global achievement in both academic and public spheres, Levi is the recipient of a number of awards, including the Lifetime Award for Distinguished Contribution to Research by the International Division of the American Society of Criminology. Furthermore, he was nominated for the prestigious Sellin-Gleuk 2012 award, which is the highest award given by the American Society of Criminology. Additionally, Levi is a man who looks forward to spending time with his family between conferences, classes, and research.

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See Also: Bank Fraud; Computer Hacking; Cyber Crime; Internet Crime; Marketing Fraud; Money Laundering; Mortgage Fraud; Organized Crime; Racketeering; Savings and Loan Fraud; World War II.

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Levine, Dennis

As the managing director of Drexel Burnham Lambert (Drexel), the junk bond company established by Michael Milken, Dennis Levine (1952–), who came from a working-class background and had worked hard to obtain an education and the necessary polish he needed for success, saw the life that he had dreamed of crumbling around him. Setting off the chain of savings and loan scandals that plagued the 1980s, Levine was charged with insider trading involving 54 corporate takeover deals. He was ultimately forced to make full restitution, giving up $11.6 million of illegal profits.

Web of Deceit

The web of deceit that Levine was involved in at Drexel was extensive. The web included both investment bankers and attorneys. At Drexel, clients were unwittingly steered toward buying securities from one another and investing in securities that feathered the nest of Drexel. Because government regulation of the junk bond industry was virtually nonexistent at the time, Drexel was able to act free of government restrictions and oversight. Levine's responsibilities involved active participation in the hostile acquisitions and mergers that became a Drexel signature, including James Goldsmith's takeover of Crown Zellerbach and Ron Perelman's takeover of Revlon.

As the money rolled in, Levine hid his profits in a secret account established at Bank Leu, a Swiss bank located in the Bahamas. Frequently, millions of dollars went through Levine's account in a single day, and profits continued to mount. Levine, known by the bank as Mr. Diamond, believed that his affluence would remain undetected because of the secrecy laws that governed banking in both Switzerland and the Bahamas. Unfortunately for him, his success did not go unnoticed by certain Bank Leu officials, who began mimicking Levine's trading habits in order to feather their own nests.

Without either Levine or Bank Leu being aware of it, two traders at Merrill Lynch, the company handling the piggybacked trades, also began mimicking Levine's trades. Levine's downfall was precipitated by a handwritten, anonymous letter postmarked Caracas, Venezuela, received at Merrill Lynch on May 22, 1985, directing official attention at Merrill Lynch to the personal trading accounts of two of its traders. Merrill Lynch forwarded information about its investigation to the U.S. Securities and Exchange Commission, implicating Bank Leu and setting off a federal investigation that spiraled into an industry-wide scandal.

Even with Bank Leu under investigation, Levine hoped that banking secrecy laws would keep his name out of the scandal, but pressure by U.S. officials led to the discovery of his identity. On May 12, 1986, Levine was accused of having been involved in insider trading since 1980. Estimated profits on illegal deals were estimated at $11.6 million. The following day, Levine was also charged with obstructing justice and attempting to destroy records of his illegal transactions.

On June 5, he pleaded guilty to securities fraud, tax evasion, and perjury. Eager to cut a deal, he identified 11 others involved in the scam, including Ivan Boesky, the prominent speculator. Investment bankers Ira B. Sokolow, Robert M. Wilkis, and David S. Brown were all charged with exchanging confidential information with Levine. The extensive investigation that followed Levine's exposure eventually brought down "junk bond king" Michael Milken and forced Drexel to file for bankruptcy in February 1990. Levine's restitution included $2 million for back taxes. The $11.6 million was the largest such penalty ever levied at that time. Levine was banned from the securities industry for the rest of his life. In 1991, he published his own take on the scandal in *Inside Out: An Insider's Account of Wall Street*.

Levine spent 17 months of his two-year sentence in prison. He also paid a fine of $362,000. With most of his life in ruins, he did manage to hold onto his apartment on Park Avenue. Once released from prison, Levine established the financial consulting firm ADASAR Group, which is named after his children Adam and Sarah. He also began lecturing on business ethics and technology. Levine has used his knowledge of business technology to work toward the promotion of global sustainable development. His post-prison life has not always been smooth. In 1991, *60 Minutes* reported that Levine had been accused of defrauding clients by hiding the criminal backgrounds of individuals recommended as business partners. Additionally, two developers sued Levine when a major development deal failed to materialize.

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See Also: Boesky, Ivan; Bond Fraud; Drexel Burnham Lambert Inc.; Jett, Joseph; Merrill Lynch and Co. Inc.; Milken, Michael.

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Liar Loans

The term *liar loans* was applied by mortgage industry insiders and picked up by the public press as a nickname for a class of subprime mortgages known officially as Alt-A, especially during the housing bubble of the early 2000s. These mortgages are also called "stated-income mortgages," and borrowers can apply for such a loan with full income documentation, with lower standards for income documentation (low-doc), or with no income documentation required (no-doc). These products emerged in the 1970s with the development of securities backed by pools of mortgages that allowed loan originators and underwriters to sell these assets rather than hold them over the life of the loan. Stated-income mortgages have been available for the purchase of a primary residence, a non-owner-occupied residence (investment property), or a second home.

Borrowers in this category generally have higher credit scores than subprime mortgage borrowers but may have difficulty providing sufficient documentation of income and typically pay slightly higher interest rates than prime mortgage borrowers. Income documentation may be difficult for individuals with highly variable income streams or self-employed borrowers, who may use accounting procedures to reduce their taxable incomes but who have relatively good credit scores. These products were available at a variety of loan-to-value ratios as either fixed rate or adjustable-rate mortgages for new purchases and refinancing, either with the withdrawal of equity or not, during the early 2000s.

Fraud in the Alt-A Mortgage Market

Although the name *liar loan* suggests that the applicants for these products are being dishonest, these types of mortgages are often considered to stimulate fraudulent activities throughout the mortgage market. In the savings and loan crisis of the early 1990s, pervasive issuance of low-doc stated-income loans was identified as a key fraudulent activity by industry insiders that resulted in market collapse. These loans incentivize fraudulent behavior at every stage of the lending process: the individual borrower, the mortgage broker or loan officer, the real estate appraiser, the lending institution, and the market in securities based on mortgage-backed assets.

High-quality applicants who qualify for prime mortgages would not necessarily participate in this segment of the mortgage market unless they had difficulty documenting income. During the housing bubble of the early 2000s, these nonprime mortgages allowed the purchase or refinance of real estate at a price above what documentation might support, possibly with a cash-out in the case of refinancing, providing a strong incentive for borrowers to overstate income. Studies have shown that the majority of applicants for Alt-A mortgage products overstate their incomes, some significantly. In some cases, mortgage brokers or loan agents filled in the income amounts for applicants.

The mortgage brokers who were compensated by loan volume rather than loan quality had a strong financial incentive to encourage applicants to state incomes that were inflated, as did the real estate appraisers who supported ever-increasing property valuations. Furthermore, the development of the market in collateralized debt obligations (CDOs) provided another way for banks and other lenders to pass these particular assets and the risks associated with them off the books of the originating organization. All of the institutional components of the lending chain could book profits in the course of offering these products, as long as they quickly sold them and were not holding the asset when or if it became nonperforming.

The temporary profits that might get booked because of liar loans prior to the collapse of the market can result in significant financial compensation for institutional players and allow the buyer to hold a risky asset, at least as long as the process allows for continual increased valuations and refinancings based on nondocumented income. Buyers taking cash-out refinancings allowed for increased consumption of other goods and services that became unsupportable when the system eventually collapsed, further contributing to the economic downturn known as the Great Recession.

Therefore, liar loans were supported not only by borrowers hoping to benefit from rising house valuations or who were unable to participate in the prime mortgage lending market but also by mortgage brokers who were compensated on the basis of loan dollar volume and by loan originators who anticipated that rising home values would stimulate refinancing that would take these questionable loans off the books.

Entities issuing large numbers of these types of loans failed or experienced massive losses after the collapse in the housing and CDO markets in the period 2006–07. Industry giants that failed or took massive losses from these types of loans include Lehman Brothers, WaMu (Washington Mutual), and Citicorp.

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See Also: Collateralized Debt Obligations; Countrywide Financial Corp.; Loan Origination

Schemes; Mortgage-Backed Securities; Savings and Loan Fraud; Subprime Loans.

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Libby, Lewis (Scooter)

I. Lewis Libby is an attorney, author, and former government advisor to Vice President Dick Cheney and President George W. Bush. The initial "I" stands for Irve, Libby's first name, and his nickname, Scooter, was given to him by his father for the way he crawled around his crib as a child. Libby was born in 1950 in New Haven, Connecticut, graduated from Yale in 1972, and earned a law degree from Columbia University in 1975. After an illustrious legal and public service career, he was indicted, tried, and convicted for his involvement in leaking the covert identity of Central Intelligence Agency (CIA) officer Valerie Plame Wilson.

After graduating from law school, Libby practiced law in Philadelphia at the firm of Schnader, Harrison, Segal & Lewis. In 1981, he accepted an invitation from his former Yale professor, Paul Wolfowitz, to join the U.S. State Department's policy and planning staff. Libby served as the State Department's director of special projects in the Bureau of East Asian and Pacific Affairs, and he received the Foreign Affairs Award for Public Service from the U.S. Department of Defense. During this time, he also wrote a novel titled *The Apprentice*, a thriller about a group of travelers stranded in northern Japan in the winter of 1903 during a smallpox epidemic. In 1985, he returned to private practice at the firm at Dickinson, Shapiro, and Morin, where he remained until he was offered a position in 1989 as principal deputy undersecretary for strategy and resources with the U.S. Department of Defense. During the George H. W. Bush administration, the U.S. Senate confirmed Libby as deputy undersecretary of defense for policy, and he also served as legal advisor for the House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China. In 1993, he received the Defense Department's Distinguished Service Award and the State Department's Distinguished Public Service Award.

Libby returned to private legal practice from 1993 to 2001, serving first as managing partner at Mudge, Rose, Guthrie, Alexander & Ferdon, then later in the same position at Dechert, Price, and Rhoads. In 2001, he became Vice President Cheney's chief of staff, and over the next four years he also held the titles of assistant to the vice president for national security affairs, and assistant to the president during the George W. Bush administration. As one of President Bush's core national security team—along with Donald Rumsfeld, Condoleezza Rice, and Wolfowitz—Libby became part of a network of neoconservatives known as the Vulcans. During his tenure, he was actively involved with the Defense Policy Board Advisory Committee and efforts to negotiate peace between Israel and Palestine.

The Plame Affair

Between 2003 and 2005, Libby became the center of intense speculation concerning leaked classified employment information about Valerie Plame Wilson, a covert CIA agent and wife of former U.S. ambassador and Iraq war critic Joseph Wilson. During meetings with investigators from the Federal Bureau of Investigation (FBI), Libby maintained that he had no prior knowledge of Mrs. Wilson's employment and that he had first learned of her position with the CIA through conversations with Vice President Cheney, and then later from journalist Tim Russert. Yet, a grand jury investigation revealed that Libby knew with certainty that Mrs. Wilson worked for the CIA and that Russert never told him about her employment. Additional evidence showed that Libby had several conversations—including a conversation with the *New York Times* reporter Judith Miller—about Mrs. Wilson's CIA employment before ever speaking with Russert. Moreover, FBI investigators found that Libby told reporters that Mrs. Wilson worked for the CIA without making any mention that he was uncertain of her employment status.

United States v. Libby

As a result of the grand jury investigation, on October 28, 2005, Special Counsel Patrick J. Fitzgerald indicted Libby on five counts: two counts of making false statements while being interviewed by FBI agents, two counts of perjury for repeating those false statements to the grand jury, and one count of obstruction of justice for using those statements to intentionally mislead the grand jury. Libby resigned from his government positions hours after he was indicted. Ultimately, he was convicted on four of the five counts, with the lone acquitted count being one of the two counts of making false statements. On June 5, 2007, Libby was sentenced to 30 months of imprisonment, a fine of $250,000, 400 hours of community service, and two years of supervised probation. Libby was also disbarred by the District of Columbia Court of Appeals but was eligible to reapply for a license to practice law in 2012.

Presidential Commutation

Soon after Libby was sentenced, the Libby Legal Defense Trust, journalists, and members of Democratic and Republican parties made statements for and against a presidential pardon by George W. Bush. On July 2, 2007, President Bush commuted Libby's federal prison sentence but left all other parts and conditions of his sentence in place.

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See Also: Bush, George W.; Iraq War; Legal Malpractice; Plame Affair.

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Lloyd's of London

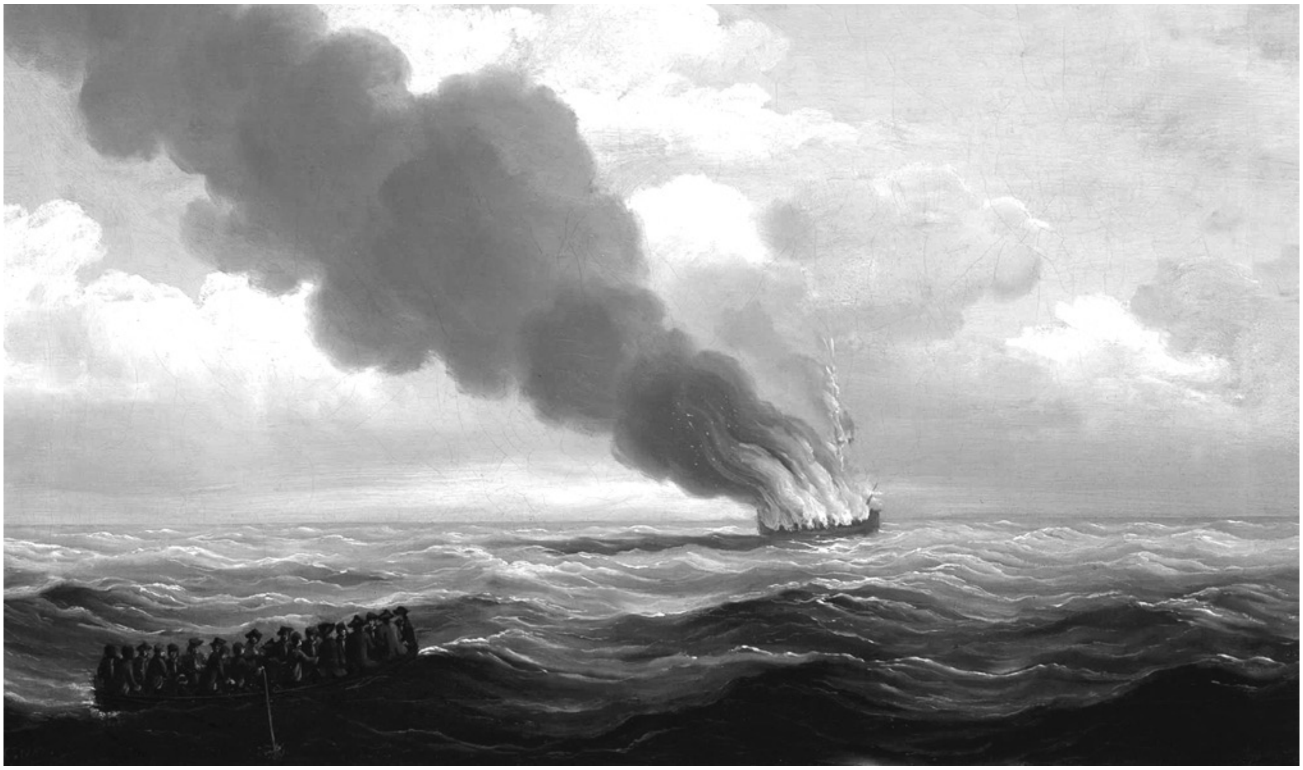
Lloyd's of London is the popular name of an insurance society that is known simply as Lloyd's. It is famous for insuring almost any kind of risk from the perils of this world and all manner of human-made calamity.

Maritime Insurance

Around 1688 Edward Lloyd began operating a coffee house on Tower Street in Old London. Coffee, a new drink at the time, was growing in popularity, so Lloyd's Coffee House, located close to the London docks, became a convenient place for conducting the maritime insurance business. Ships and cargos were insured against the natural hazards of shipping losses due to storms, floundering on rocks, damage to cargo, or criminal acts.

Losses due to criminal acts included losses to pirates (especially in the West Indies, off the Barbary Coast, and in the Malaysian Archipelago), criminal conspiracies, and other thefts. Losses could occur if, for example, a valuable cargo such as gold were secretly off-loaded and the ship then scuttled at sea with or without the loss of crew members to silence potential witnesses.

Prior to 1871, Lloyd's operated with "gentleman's agreements." It was given a legal basis by act of Parliament in 1871 (Lloyd's Act). The society's business objectives were formalized in the Lloyd's



A 1727 painting shows the galley Luxborough *burning fiercely with its crew in a lifeboat. Carrying rum and sugar on the last leg of the infamous slave trade triangle, the ship accidentally caught fire on June 25, 1727, between the Caribbean and England. It is very possible that the* Luxborough *was one of the many slave ships insured by Lloyd's of London. Standard Lloyd's policy—at least in 1781, when the infamous galley* Zong *jettisoned its slave cargo in an early case of insurance fraud—was 30 pounds sterling compensation per slave.*

Act of 1911. Its goals are to promote the interests of the members of the society and to collect and disseminate information. The information goal seeks public information (news) and private information (reports). News and honesty have been foundational principles since the society's beginnings. Its motto, *Uberrimae fidei* (of the utmost good faith), expresses the need for strict honesty in its dealings. Today, Lloyd's publishes *Lloyd's List and Shipping Gazette*, a daily newspaper founded in 1734 to provide information on worldwide shipping gathered globally by its agents.

Some historic losses incurred by the Society of Lloyd's have been the losses of HMS *Lutine* (1799), HMS *Titanic* (1912), the San Francisco earthquake of 1906, the burning of the airship *Hindenburg* (1937), and, in recent years, the 9/11 terrorist attacks on New York City and Washington, D.C. (2001), Hurricane Katrina (2005), and the Tohoku earthquake and tsunami (2011). The *Lutine* sank with the loss of all aboard and a large quantity of gold and silver destined for the merchants of Hamburg, Germany. The quick payment of the loss by Lloyd's stamped it with the reputation of a firm that paid its bills. The bell of the *Lutine*, recovered in salvage operations in 1859, now hangs in the atrium of Lloyd's in London, a symbol of the international insurance business. Its reputation was also renewed when its agents in San Francisco were authorized to pay losses after the 1906 earthquake.

The members of Lloyd's have always put their capital at risk to insure ships and cargos. In the 20th century, any number of other insurance risks were included, such as houses, boats, horses, cars, and art works, and even odd risks such as dancers' legs, singers' voices, taste buds, mustaches, hands, and teeth.

Lloyd's has been associated with unethical and illegal practices in its history. From its founding to the end of the slave trade and it insured slave ships—between 1688 and 1807, when the Slave

Trade Act, championed by evangelical Christians led by William Wilberforce, was adopted by Parliament. Previously legal, the business was thereafter both immoral and illegal.

In the modern regulatory world, criminal indictments can occur when new regulations are issued to criminalize what was acceptable practice(s) previously. Lloyd's has had to be vigilant to protect its business from such changes around the world. With electronic financial transactions a growing practice, it also has to be alert to possible financial criminal activity to which it may be an unwitting party. It also has to guard against bribery by any of its agents of business or governmental agents, regardless of their nationality.

Tort Claims

In the 1960s, the carcinogenic nature of asbestos became public knowledge. Numerous tort claims for asbestosis were filed, which began to have very serious financial implications for Lloyd's. The tort claims arose from Lloyd's underwriting insurance on construction using asbestos, in the United States beginning in the 1930s. Lloyd's, realizing that asbestosis claims could bankrupt the company, suppressed the information. In 1968, a secret internal Lloyd's commission compiled the "Cromer Report," advocating expanding the membership of Lloyd's to include nonmarket participants. Membership was increased to include women, wealthy non-British citizens (external names), and minor investors who were called *mini-name* investors. Dangers due to possible conflicts of interest were also cited in the report.

The Lloyd's Act of 1982, adopted by Parliament, gave it the power of self-regulation, which gave its principals tort immunity. Actions by some of Lloyd's agents to reduce or eliminate their asbestosis liabilities included purchasing "runoff" insurance from other Lloyd's syndicates. This concentrated claims in the hands of a few. By 1991, losses were mounting, with external Names (members of Lloyd's) being hit the hardest. In 1995, Chief Executive Officer Peter Middleton admitted that fraud had occurred at Lloyd's and resigned. As heavy legal judgments continued, losses from natural disasters continued to mount. By 1997, Lloyd's was increasingly being supported by corporate financing, as thousands of Names were wiped out, had family breakups, or committed suicide. Since 1997, Lloyd's has continued to operate as a modern insurance underwriter. It is located on Lime Street in the City of London. It engages in underwriting, which began literally from the practice of Lloyd's principals writing their names on a Lloyd's slip created for this purpose under the risk information about the ship and its cargo.

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See Also: Asbestos; Insurance Fraud; Occupational Carcinogens; Paulson & Co. Inc.

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Loan Origination Schemes

Loan origination is an ordinary business practice in which a borrower seeks a new loan from a lender. The borrower fills out a loan application for a new loan, and the lender processes the application. The term *origination* is used broadly to include all of the steps from making a loan application to the final disbursement of the loan funds. The origination process may also end with a denial of the loan application. After the loan is granted and disbursed, "loan servicing" is used to cover all collections, communications, and considerations affecting the loan account.

Many people specialize in loan origination. These specialists include commercial lenders and consumer lenders as well as mortgage brokers. The latter loan originators handle loan applications in banks, mortgage originator companies, savings and loans, credit unions, and other financial institutions. The steps involved in loan origination differ with the different kinds of loan types. The steps evaluate the credit of the applicant, the loan risk, lending policies of the lending institutions, regulator rules, and other factors.

Types of Loan Origination Schemes

Loan origination schemes usually occur in the application for a loan. Lending fraud occurs when the borrower or the lender deliberately misrepresents material facts or omits facts on the loan application about credit, income, work, assets, or other information that, if included, could reduce the likelihood of the loan being granted. The misrepresentation prevents the borrower or the lender from knowing the truth about the loan.

There are many ways to falsify a loan application. Identity theft is one form of fraud that is growing. In loan origination theft through identity theft, the loan applicant assumes the identity of another person. The victim of the identity theft is unaware that one or more thieves are applying for a loan. If it is granted, the thief/thieves disappear with the mortgage money. The deception is often not discovered until the lending institution seeks to collect the loan from the victim of the identity theft. The victim may have to spend time and money defending his or her good name.

Another loan origination scheme is income fraud. The borrower(s) falsely overstate their income. Until recently, income was accepted as stated by the borrower without documentation. These "stated loans" were often called "liar loans" because there was no obligation to verify the stated income. To tighten underwriting standards, greater documentation is being required, including employer W-2 tax forms, bank account records, and other records. In the halcyon days of the subprime mortgage era, incomes were accepted as stated by the borrower, with fraud most often occurring through falsified income declarations. The large number of these contributed to the mortgage meltdown after 2007.

In some cases, lending agents falsified the income statement in order to get fees for origination of the loan. Usually, this falsification took place without the borrower's knowledge. In many cases, the borrower was put into a financial situation in which repaying the loan was difficult if not impossible.

Occupancy fraud is a loan origination scheme in which the borrower seeks a loan in order to purchase investment property. The investment property is used for "flipping," that is, a quick resale that nets a profit. The borrower also may declare an intention to live in the property as a primary or second home but not actually live in it. Borrowers may engage in this type of fraud because lenders charge higher interest rates for loans for properties that are not owner occupied. These types of properties usually have higher delinquency or default rates than loans on properties that are primary dwellings. The fraud occurs because a borrower may not mislead the lender about the risk of lending for what is an investment property.

Employment loan origination schemes occur when the facts about the loan applicant's employment or employment history are deliberately misstated. Among the ways in which this can occur are falsely claiming employment when unemployed, claiming a higher position in a company, and claiming self-employment in a real company or self-employment in a nonexistent company. In the latter two cases, the borrower may act in collusion with a partner, who answers a phone call seeking to verify the employment with false verification claims.

Loans are based in part on the capacity of the borrower to repay the loan. If the borrower hides other loans or debt obligations, such as alimony payment obligations, recently incurred credit card debts, or other debts, this lowers the debt-to-income ratio and increases the borrower's credit rating.

During the peak of the subprime mortgage era, there were cases of appraisal fraud. Lending uses the value of a property as collateral for the mortgage. Dishonest appraisers have engaged in a loan origination conspiracy to either overstate or understate the value of a property. In addition, using modern computer technology, the appraisal may be altered to allow for an inflation of the loan amount. A false appraisal giving an overstated value enables the borrower to get extra money based on the falsely inflated equity in a "cash-out refinance" scheme. Understated appraisals more frequently occur in foreclosure sales. The understatement of the appraised value allows the appraiser to share in illegal gains from a future sale at a higher price, or it may mislead the lender into reducing the amount owed in a loan modification process.

A variation of appraisal fraud occurs when the price of a property is inflated in order to provide "cash out" for the borrower. This occurs when the borrower acts in collusion with other participants (realtor, seller, or others) to share an excess loan amount paid to the buyer who has accepted the mortgage. The property and the mortgage may be allowed to go into default with a loss to the lender.

Shotgunning: The Cox and Hartmann Cases

"Shotgunning" is a loan origination scheme in which multiple loans are applied for on the same piece of property. Because a mortgage is a lien on a piece of real estate, this activity may require collusion with a conspirator in a courthouse where deeds are registered. If successful, the conspirator may fraudulently make off with large sums of money. Two infamous cases involved Matthew Bevan Cox and Robert Douglas Hartmann, who each received federal prison terms for their crimes.

The Hartmann case was an example of fraud for profit. It involved a complex conspiracy among a number of professional mortgage specialists. A "straw borrower," that is, a real person with a social security number, was used as a cover to hide the conspirators. The straw borrower would usually be rewarded for the use of his or her financial identity, or the straw borrower may have been the victim of false promises that legal liability for a mortgage could be avoided. Acting in collusion with dishonest appraisers and others, larger loans or multiple loans could be gained that would defraud the lender and in some cases leave the innocent straw borrower a ruined victim. This type of fraud is often connected with conspiracy—the organizer promises to repair or upgrade the property with loan proceeds; however, the conspirator and the money quickly disappear.

The loan origination scheme of "working the gap" uses the time lag between the conclusion of the sale of a property with a new mortgage and the recording of the sale as a change in the titling of the deed with a new lien on the property. The time lag allows conspirators to "work the gap" by concluding multiple sales on the same property, collecting the sale funds, and disappearing. Before a loan is granted, a title search is conducted. In many jurisdictions today, the search can be conducted electronically; however, if the search is conducted shortly before the closing on the property, the search may miss the multiple stacking of liens on the property that eventually will be recorded.

Fraud can occur in loan originations at any stage of the origination process. The fraud can be on the borrower's side or on the lender's side. The Federal Bureau of Investigation (FBI) has reported that loan origination fraud, especially in mortgage lending, has been increasing.

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See Also: Debt Restructuring Fraud; Foreclosure Fraud and Rescue Schemes; Identity Fraud or Theft; Liar Loans; Mortgage Fraud; Mortgage Modification Fraud; Savings and Loan Fraud; Short-Sale Schemes; Subprime Loans.

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Lockheed Corp.

The Lockheed Martin Corporation came into existence in 1909 when aviator Glenn Martin developed a small business into what is today one of the largest aircraft suppliers in the world. Though growth was slow in the early years, Lockheed capitalized on the expanded global trade markets in the immediate aftermath of World War II to expand and increase revenues quickly. In particular, the company benefited from strong ties with Japan, Germany, Italy, Indonesia, Turkey, Brazil, the Netherlands, the Philippines, and Saudi Arabia. While there was not a large American market originally, in time it would develop as well.

Not all would go well for Lockheed, as severe allegations of corporate crime would riddle the company. Trouble began for Lockheed when William Findley, an auditor, discovered unusual accounting practices within the company and, in February 1973, began to ask why the company was making contributions to Indonesia. First, there were large donations to an orphanage and then similarly sized contributions to the Indonesian Air Force. What spiked Findley's suspicions, however, was a receipt that claimed someone received 100 peanuts. Only later would it be learned that 100 peanuts stood for a million Japanese yen.

Strong allegations of wrongdoing would not arise until Northrop Grumman Corp., a rival manufacturer, admitted in 1973 to a U.S. Senate subcommittee that it had paid individuals to facilitate business deals with foreign governments. Under oath, Northrop executives stated that they modeled their practices after those employed by Lockheed. This opened the floodgates to a full investigation of Lockheed. Ultimately, the Church Committee (named after Senator Frank Church) reported that the Lockheed scandal consisted of "a sordid tale of bribery, and of shadowy figures operating behind the scenes with a cast of characters out of a novel of international intrigue."

Between 1972 and 1974, Lockheed had spent millions of dollars attempting to obtain valuable contracts with Nippon Airlines in Japan. Carl Kotchian, the chief executive officer of Lockheed at the time, worked with sales consultants and agents to make sure Lockheed obtained the contacts. He went as far as to enlist the help and support of the Japanese government. Once this became public knowledge, many cohorts began facing punishments from governments around the globe. The greatest punishment would be reserved for Lockheed, with the American public. As the Senate investigation continued, Americans learned about secret payments to offshore banks, charities, and dummy corporations. Most infuriating, however, was evidence of large payments to General Minoru Genda, the architect of Pearl Harbor. In 1959, less than two decades after the American entrance into World War II, Genda came to the United States to visit Lockheed and test its new Starfighter. Later, Japan purchased 230 of the planes and, in exchange, Lockheed paid the man responsible for getting the deal completed almost $2 million. The man was Yoshio Kadama; he received upward of $10 million throughout the life of the Lockheed–Japan connection.

The activities in Japan were enough to potentially sink the company, but it also quickly became apparent that Lockheed had been conducting similar business in other parts of the world. Indonesia was much like Japan, with a sustained record of efforts by Lockheed to gain undue influence with contracts. The relationship began in the mid-1950s and continued through the early 1970s. When the new government arrived in 1967 under Suharto, payments were no longer permissible to individual brokers. Instead, money was required to be sent to agencies. Thus, the widows and orphans fund received 5 percent and eventually 10 percent. Despite the name of the organization, it was well known that little to no money from the sales actually went to help any charitable causes. Unlike his predecessor Sukarno, Suharto simply wanted to present the public image that the bribery was aiding those in need within the nation.

In West Germany, Lockheed worked with the minister of defense, Franz Strauss. In 1959, Germany bought 96 planes from Lockheed. In exchange, Lockheed donated money for each plane bought to the air force, the Christian Socialist Union Party (of which Strauss was the figurehead), and a series of other officials. It was similar in the Netherlands. Lockheed paid Prince Bernhard over $1 million through a Swiss bank. The eventual outing of this information led Prince Bernhard to abdicate his title and position. From then on, the Dutch bought solely from French manufacturers. Lockheed undertook similar operations in Italy, where it paid over $2 million to individuals to bring the company business with the Italian government. In the end, those individuals were tried for their roles in the questionable business practices.

Although there was quite a series of questionable business practices undertaken by Lockheed, there were no illegal activities according to U.S. law. The practice of paying consultants and brokers to connect companies to buyers was actually quite common. Kotchian, however, ruined this image during testimony by admitting to unethical practices. Lockheed had suffered a billion-dollar loss when producing its initial jumbo jet. Without the government contracts to guarantee production, the company would have folded. In the end, Lockheed was used to make a public example of unethical contract practices, both domestically and around the globe. After the Church Commission, Congress passed the Foreign Corrupt Practices Act in 1977. Signed by President Jimmy Carter, the act made it a criminal offense for U.S. companies to offer money to officials of other governments for the purposes of gaining business deals or contracts. Lockheed has recovered from its corporate misgivings and today remains a top airplane manufacturer.

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See Also: Bribery; Ethics; Extortion; Foreign Corrupt Practices Act.

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Love Canal Disaster

The Love Canal disaster began in the 1950s and came to light in 1976 in Niagara Falls, New York, when the effects of toxic waste buried beneath the neighborhood were discovered. One of the most widely publicized toxic waste disasters, it has remained an important symbol of environmental mismanagement in the environmentalist, public health, and urban planning communities.

The canal for which the Niagara Falls neighborhood is named was never completed. Named for developer William Love, the canal was intended to connect the Niagara River to Lake Ontario in the 1890s, but was delayed by banking panics, Love's limited funds, and new laws that limited waterway construction in the area in order to preserve Niagara Falls as a natural attraction. About a mile of canal had been dug before the project was abandoned. The canal gradually filled with water and became a swimming hole for the local community before being turned into a dumpsite in the 1920s. Originally used by the city of Niagara Falls, from 1942 the site was used by the Hooker Electrochemical Company to dump its hazardous wastes. The canal was prepared for this purpose with a protective clay lining. Dumping by the city continued, as well as by the U.S. Army, which used the canal during the war years as a dump for various waste materials, including nuclear waste. Hooker became the sole owner of the site in 1948 and continued to use it for the next five years, until the canal was full.

After burying the canal in soil, Hooker sold the site to the Niagara Falls City School District. Initially, the company resisted the sale, but in the economic boom of the 1950s, the area was expanding rapidly and the school district was desperate for lands on which to build new schools. Parts of the property were subject to possible expropriation and eventually Hooker relented. The land was sold to the school district, with the sale agreement including a lengthy caveat detailing the presence and extent of the toxic waste. Hooker entered into the agreement in the belief that the company would be shielded from liability.

Construction on a new school, the 99th Street School, began in 1953, and in January 1954, drums of chemical waste were discovered in the excavation site, prompting the lead architect to advise that an alternate site be chosen. The district moved the school only 85 feet to the north. A second school opened in 1956, the 93rd Street School. During this time the clay lining of the canal was compromised, as portions were dug up to use as fill dirt for the new school, while other parts were breached by the installation of water lines. Rainwater then accessed the buried toxic waste and carried portions of it to neighboring properties. The school district soon sold off its unused land, which was developed into housing by both private developers and the Niagara Falls Housing Authority. In 1962, after the construction of an expressway interfered with the flow of groundwater and spring flooding began, locals began to discover pools of colored or sludgy liquid, as well as oil, accumulating in yards and cellars.

The first investigation of Love Canal's toxic waste problem seems to have been conducted in 1976, when *Niagara Falls Gazette* reporters David Russell and David Pollak confirmed the presence of toxins in the contents of Love Canal sump pumps. In 1978, another reporter, Michael Brown, conducted a survey of local residents and found what seemed to be a disproportionate number of birth defects in the local children. When he brought attention to the issue and encouraged residents to do the same, a state health department investigation found the number of miscarriages experienced by women in the neighborhood was also disproportionately high. More investigations followed, and reports included high levels of asthma and chronic infections, poor quality of vegetation, strange smells, unknown substances appearing from the ground or in the groundwater, widespread mental retardation, high cancer rates, and toxins present in the breast milk of nursing mothers. The Love Canal Homeowners Association reported that more than half of the children born from 1974 to 1978 were born with a birth defect. Reports of multiple birth defects were common.

The homeowners association, led by resident Lois Gibbs, sought to prove that Hooker's toxic waste was responsible for the many problems in the neighborhood. Proving the origin of waste found outside the dumpsite was impossible, no matter how strongly suggestive the proximity. The 99th Street School and 93rd Street School both closed but Niagara Falls politicians downplayed the seriousness of the matter for various reasons. While the Environmental Protection Agency (EPA) confirmed the presence of toxins and the general belief that they were implicated in the neighborhood's endemic health problems (conclusively proving this was beyond available science at the time), determining liability, and thus responsibility for dealing with the situation, was more complicated.

On August 7, 1978, President Jimmy Carter declared a federal health emergency in Niagara Falls, which allowed federal funds and other resources to be used to remedy the situation. This was the first time federal emergency funds had been used to remedy a manmade disaster. Over time, nearly 1,000 families were relocated and reimbursed for their homes, which were demolished. Hooker was found negligent in its handling of the waste, but not reckless, and Occidental Petroleum—which had acquired Hooker in 1968—was found to be liable for the waste cleanup. Occidental was sued by the EPA and settled on a $129 million restitution payment in 1995, and lawsuits filed by residents were also settled. Despite attempts by industrial interests to control the spin—including a 1998 article which claimed the health problems of Love Canal residents were induced by stress caused by media hype over the toxic waste—Love Canal had a significant impact on American life and law. It inspired the passage of the Comprehensive Environmental Response Compensation and Liability Act, better known as the Superfund act, in 1980. The act created the Agency for Toxic Substances and Disease Registry and empowered the federal government to deal with hazardous waste disasters that have a significant environmental or public health impact.

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See Also: Clean Water Act; Corporate Dumping; Environmental Protection Agency, U.S.; Hazardous Waste; Pollution, Water; Three Mile Island Disaster; Times Beach Contamination.

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White-Collar and Corporate Crime

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Madison, James

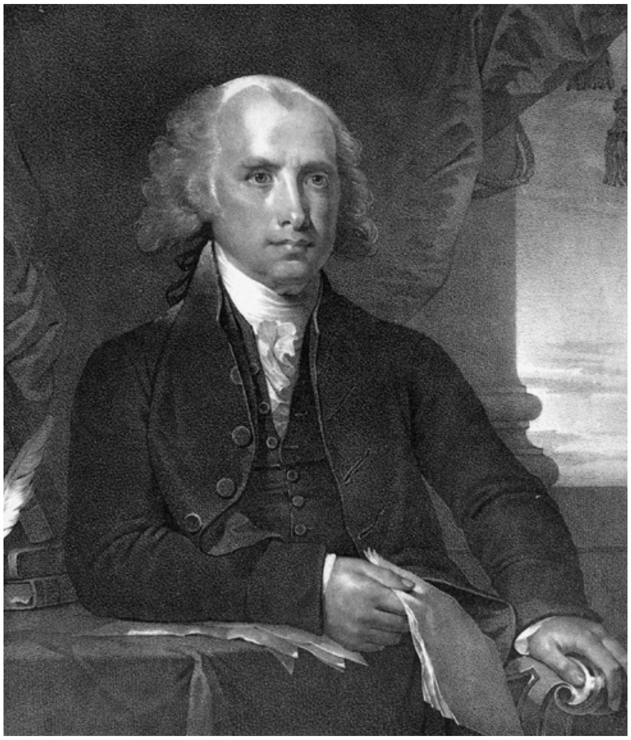
James Madison occupied a key position in early American politics and law. He served in the Virginia legislature and the Continental Congress. Madison advocated the Philadelphia Convention of 1787 and drafted the Virginia Plan, which became the basis for the U.S. Constitution. He coauthored the *Federalist* essays, helped create the first Republican Party, and served as secretary of state and the fourth president of the United States. Madison helped create the federal system of government in the United States, but he also worked to protect individual liberty and minority rights against corruption and encroaching power, whether in the form of state and national governments, religious institutions, or monopolies and financial corporations. His achievements as a legislator and politician have shaped American government for two centuries.

Madison was born on March 16, 1751, in Orange County, Virginia, and died June 28, 1836, at his plantation Montpelier, also in Orange County. Madison was the son of James and Nelly Conway Madison, and his ancestry reached deeply into Virginia's gentry group and gave him a heritage of political service that linked him with other leading Virginia families like the Lees and the Randolphs. Madison grew up in one of Orange County's wealthiest households and participated in the gentry culture of his day. Unlike many of his peers, Madison traveled outside the region for his education, studying from 1769 to 1771 at the College of New Jersey (now Princeton University). Madison came under the tutelage of John Witherspoon, the college president and one of the key figures in the Scottish enlightenment, and his exposure to Witherspoon sharpened his already considerable intellect.

As one of the youngest members of the Revolutionary generation, Madison missed active participation in the early phases of the growing conflict with Great Britain but returned home to Virginia as a college graduate in time to serve as a colonel in the Orange County militia in 1775 and to win election to the Virginia Provincial Convention (successor to the House of Burgesses) in 1776. Madison served in the state legislature on and off throughout the 1770s and honed his political skills there before entering the Continental Congress in Philadelphia in March 1780.

Concern Over Corruption

As a young legislator, Madison witnessed first hand the greed and corruption of many opportunistic politicians as they passed laws and pursued policies that benefited them personally but, in Madison's view, harmed the virtue of the infant republics. His experience as a delegate to the Continental Congress also acquainted him with the difficulties



James Madison was the fourth U.S. president (1809–17). As a young legislator, Madison was concerned that the greed and corruption he saw in many politicians would harm the young republic. As president, Madison pursued limiting the expansion of centralized power.

of effective national governance under the weak Articles of Confederation. As the postindependence economic crisis worsened, Madison—then back in the Virginia legislature after four years of service in Philadelphia—became increasingly convinced that the detrimental policies of self-serving legislators were a key cause of the crisis, and he began to formulate ideas to curb their influence by strengthening the national government.

As a legislator in Virginia, Madison, along with Thomas Jefferson, also promoted several liberal reform measures that modernized the state's legal structure and protected freedom of conscience. Madison's views remained broad and sensitive to issues outside Virginia. Having observed alarming political practices at both the state and national levels, by the mid-1780s Madison had begun to conceive of a major alteration of government that positioned him intellectually alongside such figures as Alexander Hamilton and John Jay. Madison promoted the ineffective Annapolis Convention of 1786 and became a driving force behind the Philadelphia Convention of 1787.

The Virginia Plan

Early in the Philadelphia Convention, Madison drafted the now famous Virginia Plan. Madison had suffered from ill health since childhood, and he allowed his cousin and ally, Virginia governor Edmund Randolph, to present his document at the convention. Although the Virginia Plan ultimately became the prototype for the Constitution drafted by the convention, it differed significantly from the final document, containing two houses based on proportional representation but with only one of them popularly elected. The delegates in this lower house would, in turn, choose those who sat in the upper house from candidates nominated by the state legislatures. The Virginia Plan proposed three independent branches of the national government. As originally written, it would have created an extremely weak executive branch. Along with the judicial branch, however, the executive would form a Council of Revision that would possess the power to review and strike down questionable legislation at both the state and national levels.

Questions that Madison wished to answer in drafting the Virginia Plan included, on one hand, how to remedy a centralized national government too weak to be effective and, on the other hand, how to limit the unrestrained self-serving legislators at the state level who pursued speculative schemes and other policies that failed to promote the general welfare. Although the Constitution adopted by the convention differed significantly from the original Virginia Plan, Madison believed the most important issues had been resolved.

Throughout the 1780s, Madison and Alexander Hamilton worked together as allies, first to draft the Constitution of 1787 and then to promote and explain it through the *Federalist* essays. Madison later drafted the Bill of Rights, although he then believed such a declaration unnecessary, in an effort to win greater support for ratification by clearly stating the rights of the citizenry and the limitations of centralized authority. Such measures as the necessary and proper clause and the commerce clause, both later used to justify the expansion of central authority, were products of the documents that Madison and Hamilton helped create, although it is doubtful that Madison ever desired such a wholesale expansion of federal power as later occurred.

Concerns Over Centralized Government

Historians have difficulty reconciling the nationalist Madison of the 1780s, who, along with Hamilton and other Federalists, promoted the ratification of the Constitution after 1787, with the Republican Madison of the 1790s and beyond. Following the party split during George Washington's first administration, Madison gravitated toward Jefferson and the emerging Democratic-Republican Party, promoting such measures as the Virginia Resolutions of 1798, which clearly stood to block centralized power and to promote state rights. Madison scholars such as Jack Rakove, however, have proposed that Madison never really changed; his interest had always been in promoting and protecting the rights of ordinary American citizens, but the source of danger to those rights had itself shifted from the tyrannical majorities found in state legislatures of the 1780s to the encroaching centralized government of the 1790s.

Madison became Jefferson's closest ally and a driving force in organizing the new Republican Party; he served as secretary of state throughout Jefferson's administration and then succeeded him in 1809 to become the country's fourth president. As such, Madison led the country through its first war after independence and consistently pursued Republican measures aimed at limiting the arbitrary expansion of centralized power and protecting individual rights.

After retirement in 1817, Madison returned to Montpelier in Virginia, where he died in 1836. Called the Last of the Fathers, Madison had outlived every other prominent member of the Revolutionary generation and nearly saw the country enter its seventh decade as an independent nation. Madison's legacy is tremendous. He played a leading role in drafting the Constitution that still governs the nation, but he also pursued policies as secretary of state and as president that set precedents for limiting federal authority.

His actions as secretary of state inadvertently generated the *Marbury v. Madison* case that overturned a portion of the Judiciary Act of 1789 and resulted in the doctrine of judicial review. Using measures written into the Constitution to bolster federal authority, Alexander Hamilton successfully pursued policies of funding the revolutionary debts owed by individual states and of establishing the Bank of the United States as a central banking agency for the new nation; together, Jefferson and Madison opposed the bank as undemocratic and corrupt and worked to limit its power. Madison was alert to the possibility for corruption that existed when, as president, in 1816 he signed the act rechartering the bank as part of Henry Clay's American system. Madison thus uniquely played a role in creating an expansive federal machine and then engineering ways to counter its power and influence in order to protect individual liberty and minority rights; in doing so, while recognizing the greedy and exploitative instincts inherent in human nature, Madison helped generate a flexible and enduring system of governance that also contained the mechanisms for restraining those who would unfairly exploit it.

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See Also: Corruption; Ethics; Reform and Regulation; United States.

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Madison Guaranty Savings and Loan Association

Madison Guaranty Savings and Loan Association started operations in 1982 and was part of the major failure in savings and loan companies in the late 1980s. It was formed as Jim McDougal–Susan McDougal Madison Guaranty Savings and Loan and was based in Little Rock, Arkansas, where it was a financial trust company, although its legal headquarters were in Augusta, Woodruff County, Arkansas. Both McDougals, as well as Bill Clinton and his wife Hillary Rodham Clinton, became involved in what was known as the Whitewater political scandal.

The founder, James Bert (Jim) McDougal, was born on August 25, 1940, and served in the U.S. Air Force in Vietnam. Bill Clinton mentions that McDougal worked in the office of Senator J. William Fulbright and describes him as "an old-fashioned populist who told great stories in colorful language and worked his heart out for Fulbright, whom he revered." He was married to Susan Carol McDougal (née Henley), the sister of Bill (Friendly) Henley, a member of the Arkansas State Senate.

Involvement With the Clintons

In the spring of 1978, Jim McDougal approached Bill and Hillary Clinton, who had been married three years earlier. The plan was for Jim and Susan McDougal, along with Bill and Hillary Clinton, to buy some 230 acres of land along the south bank of the White River that could then be subdivided to provide land for vacation homes, as it was hoped that there would be a boom in people moving south to Arkansas, where there were much lower tax rates than in some other states.

The four investors borrowed $203,000 to buy the land, and it was then transferred to be wholly owned by the Whitewater Development Corporation. Because of rising interest rates, there was a major downturn in people buying land for holiday homes, and the Clintons and the McDougals decided to hold onto the land in the hope that the market might change. When Jim McDougal lost his position as an economic aide to the governor of Arkansas after Bill Clinton lost his reelection bid in 1980, he asked the Clintons to pay some of the costs of maintaining the land and making repayments on interest demands.

Jim McDougal used some of the money to go into banking, and in 1980 he bought the Bank of Kingston; two years later, he bought the Woodruff Savings & Loan, with the former renamed the Madison Bank & Trust and the latter renamed the Madison Guaranty Savings & Loan. There were continual connections between the Clintons and the McDougals, with Madison Guaranty holding a fund-raiser in 1984 that paid off the last of the campaign debts of Bill Clinton's election from the previous year. The Madison Guaranty Savings & Loan also retained the Rose Law Firm, which employed Hillary Clinton, with the amount of work that Hillary Clinton did for the Madison Guaranty Savings & Loan being in doubt.

The savings and loan crisis hit the United States in the mid-1980s. This involved the crash of a large number of companies, including Madison Guaranty Savings & Loan, which collapsed in July 1986 and was placed under the supervision of federal authorities, with Beverly Bassett Schaffer, the most senior banking official in Arkansas, urging that the company be closed. However, the business staggered on until spring 1989, when it was finally closed. All the savings and loan companies around the United States had their funds guaranteed by the U.S. government, which paid a total of $87.9 billion, contributing to the U.S. budget deficits in the early 1990s. In the case of Madison Guaranty Savings & Loan, the cost to taxpayers was some $68 million. There were later complaints that the Madison Guaranty Savings & Loan was a "pyramid scheme."

When Bill Clinton became U.S. president, there was an investigation led by special prosecutor Kenneth Starr into what became known as the Whitewater Scandal. The Clintons had actually lost money on their investment in the real estate on the White River, but it was found that Jim McDougal had used some money from Madison Guaranty Savings & Loan to start a real estate development called Castle Grande near Little Rock. McDougal hoped to establish a shopping center, trailer park, and other projects. Although he was allowed to invest a maximum of only 6 percent ($600,000) of the Madison Guaranty Savings & Loan in the project, he wrote a loan to Arkansas businessman Seth Ward for $1.15 million, who then put that money into the project, which failed.

The Trial

A federal trial began in 1996, with David Hale, a former municipal judge, testifying that Bill Clinton, then governor of Arkansas, had discussed a loan of $300,000 between himself and McDougal. Jim McDougal was found guilty and started cooperating in the hope of avoiding a jail sentence. On April 14, 1997, Jim McDougal was convicted of 18 felony counts of fraud conspiracy. His wife had been convicted on May 28, 1996, but her prison term did not start until March 7, 1998, because she was involved in other court proceedings. She refused to answer three questions about Bill Clinton and whether he lied in his testimony at the trial about the $300,000 loan. She was sentenced for civil contempt of court and served 18 months in prison, including eight months in solitary confinement, and was transferred from one prison to another on a regular basis. Jim McDougal died on March 8, 1998, at the Fort Worth Federal Correctional Facility, Texas, and was buried at the Rest Haven Memorial Gardens in Arkadelphia, Arkansas. His wife received a full presidential pardon in 2001.

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See Also: Clinton, William J.; Legal Malpractice; Whitewater Scandal.

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Madoff, Bernard L.

Bernard Lawrence (Bernie) Madoff (1938–), through his firm Bernard L. Madoff Investment Securities LLC (BLMIS), orchestrated one of the largest frauds in U.S. history in a far-ranging Ponzi scheme that cost investors an estimated $65 billion. In the wake of these charges, Madoff pleaded guilty and is currently serving a prison term of 150 years at the Butner Federal Correctional Complex in North Carolina. The breadth and duration of Madoff's financial scheme (spanning some 20 years) in large part derives from an aura of legitimacy, secretiveness, and exclusivity of his firm's investment opportunities.

Madoff's aura of legitimacy was derived from a folksy image that led friends and clients to dub him Uncle Bernie. As a hallmark of white-collar offending, this perception of legitimacy engendered both trust and respect garnered over many years of working in the securities industry. Madoff's legitimacy, paradoxically, was actually derived from an outsider status. Madoff rose from modest beginnings in Queens, New York. In his early years, Madoff worked as a lifeguard and installer of sprinkler systems, and he began BLMIS as a college senior. He graduated from Hofstra College (1960) and entered the industry through the development of a "third market" trading company (i.e., trading New York Stock Exchange (NYSE)–listed stocks on NASDAQ). Madoff also built BLMIS with help from his brother Peter, who was innovative in implementing electronic trading.

Eventually, Bernard Madoff thrice assumed the chairmanship of NASDAQ for these and other pioneering efforts. With this nominal designation and the extraordinary trade volume of NASDAQ (sometimes accounting for 10 percent of stocks traded on the NYSE), Madoff appeared legitimate to current and prospective investors. This aura of legitimacy partially accounts for Madoff's ability to successfully fend off Securities and Exchange Commission (SEC) investigations and allegations in both 1992 and 2008 (which allowed the fraud to continue for another 16 years).

Madoff's secretive nature served to mystify and hide the wrongdoing itself. Madoff seldom appeared in social settings or media outlets, and he often refused to conduct business in social settings (Madoff actually loathed the praise received from adoring and unsuspecting fans). Even his sons Mark and Andrew (employed at BLMIS) claimed no knowledge of the Ponzi scheme until their father revealed the fraud to them on December 10, 2008. Rarely did Madoff draw attention to himself or his firm's investment activities and strategies. Only when confronted about his firm's extraordinary returns for investors (measured against other firms and in bear market conditions) would Madoff provide scant and suspicious responses to such queries. Madoff also distanced himself from the solicitation of clients and preferred to work through intermediaries and other investment firms. Once clients were invested with Madoff, he could be gruff and evasive, sometimes threatening to drop those clients who asked too many questions.

Madoff borrowed against both the aura of legitimacy and his secrecy as he cultivated what became very exclusive investment opportunities that were available to only a very limited pool of investors but were solicited on a global basis, often through staid investment firms such as Banco Santander (Spain). Most notable was the "affinity fraud" aspect of the Ponzi scheme in which fellow members of the Jewish community were targeted. Madoff deliberately recruited investors from the Fifth Avenue Synagogue (New York) as well as Palm Beach country clubs frequented by the Jewish community. This caused some clients to nickname the BLMIS fund the Jewish T-Bill because it delivered a steady 10–15 percent return (whereas other funds provided only 3–4 percent). The allure of Madoff's investments was exacerbated by the "invitation only" aspect and his secrecy in dealing with clients.

Both crime and criminal are fused in Madoff's investment scheme, with stability serving as the essential element for successful Ponzi schemes (with a balance of new investors coupled with limited outflow of profits). Had this scheme been orchestrated by almost any other individual, it may not have proven so costly or run for such a long duration. As some have noted, the scheme might still be ongoing if not for the significant downturn in the overall global market that necessitated the withdrawal of large sums from Madoff's investment vehicle by some investors.

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See Also: Bank Fraud; Bernard L. Madoff Investment Securities LLC: Hedge Fund Fraud; Madoff Ponzi Scheme; Mail Fraud; NASDAQ; Ponzi Schemes; Securities and Exchange Commission, U.S.

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Madoff Ponzi Scheme

Bernard (Bernie) Madoff orchestrated one of the largest Ponzi schemes ever known. He was a well-respected investor and one of the developers of NASDAQ. His notoriety and his investment firm allowed him to conduct his Ponzi scheme to the tune of $50 billion to $170 billion from investors over a 20-year period. He was caught after his sons turned him in to the authorities. Victims included his own family members, movie stars, chief executive officers, and other powerful and influential people, all of whom are still recouping some of their losses. Madoff's Ponzi scheme still impacts people and federal agencies today, as well as the general public, who were left to feel a little uneasy that an individual's life savings and retirement funds could be exploited and destroyed by a single person.

Bernie Madoff

Madoff grew up in a modest household in New York City. His parents were both involved in finance, and there is uncertainty about how much they influenced him with their questionable trading practices. He graduated from Hofstra University and obtained a job in the stock market after graduation. Soon after, at age 22, he and his wife, Ruth, started Bernard L. Madoff Investment

Securities LLC. His father-in-law, who was very influential in Madoff's career, was helpful in obtaining clients such as Steven Spielberg. His company had a reputation of consistent investment returns. By the 1980s, his firm continued to prosper and he added more of his family and friends as employees.

His investment firm is only one of many involvements that maintained Madoff's flawless reputation and savvy business knowledge and skills. His experiences, which significantly helped the scam, led him to assist in the development of the National Association of Securities Dealers Automated Quotations, or NASDAQ. He also served as president of the NASDAQ board of directors. In the late 1980s, his firm handled more than 5 percent of the trading on the New York Stock Exchange, putting him in a top paid position. Throughout the years and until December 2008, Madoff maintained the respect and trust that helped him pull off the world's largest Ponzi scheme.

Ponzi Schemes

Ponzi schemes require a person to orchestrate a process that can be quite successful, though illegal and devastating to its victims. The individual facilitator must convince potential investors to give him/her their money to invest, with promises of a higher-than-normal return rate, which is depicted by a specific percentage, and a short time period to receive their payoff. Potential investors must be convinced the investment is legitimate and typically something that is a "sure deal" but not too extravagant to raise speculation. In order for the scam to work, the facilitator must continually get new investors, as their money will be used to pay the existing clients what was promised. When they see that the process works, clients are more likely to reinvest with the scammer, as well as to get their friends and family involved.

A continuous influx of new investors is the key to the scheme. If a lack of investors occurs, the facilitator cannot meet the original promises and clients demand their payouts in cash. When the scammer cannot meet the demand, the investors may contact authorities, but they may be too late if the facilitator has left the country and/or all of the investment monies are depleted.

Madoff Ponzi Scheme

Madoff's Ponzi scheme was similar to other scams of this sort but also differed in several ways that impacted his ability to maintain the scam for so long and to reap unconscionable profits. Madoff's scam was similar to other Ponzi schemes in that new investors were used to pay the promised returns to existing clients. As the number of new clients stagnates and existing investors want to cash out their investments, especially when there is a recession, the scheme begins to fall apart. Madoff's Ponzi scheme was classic in that manner. Before he was arrested, investors wanted millions of their dollars paid in cash, but there was not enough money to meet their demands.

In the beginning, Madoff's agency did buy and sell stocks for its investors. Because Madoff was one of the originators of NASDAQ, his firm had been one of the largest traders in the market. He stopped trading in the 1990s, though he did not inform his investors or his employees. Madoff kept his purported returns modest, but consistent, in order to draw limited attention. He was able to maintain a wealthy pool of potential clients, so his lack of trading went unnoticed. Clients, friends, family, and employees were satisfied, so the Ponzi scheme worked perfectly for Madoff—until 2008, when the United States hit a deep recession.

Key factors in the success of Madoff's Ponzi scheme were his influential career in finance and his connectedness to people in powerful positions. Madoff earned a good reputation as a knowledgeable and successful investor. His work with NASDAQ solidified his position as someone to be trusted. Madoff's family, as well as Ruth's, had significant ties to powerful people in Washington and those involved in the stock market. Many of his clients were well-known and respected Hollywood stars and sports athletes who invested their money with him. Little did these people know that they were instrumental in maintaining the Ponzi scheme Madoff started.

Caught in the Act

With the arrest of Madoff, great concern arose about how he was able to maintain the scheme for so long without being detected. His powerful influence in the stock market and his possible client base may have played key roles, as well as his skills and savvy workings. By the time Madoff was arrested, he knew it was going to come sooner, rather than later, as the scam was falling apart.

After the fact, there seem to have been signs that Madoff was involved in illegal activities, though they were extinguished each time. In 1992, accountant colleagues of Madoff's father-in-law, Frank Avellino and Michael Bienes, were investigated as partners in a Ponzi scheme with Madoff. Their accounting firm closed its doors, and inquiries ceased. Avellino maintained connections with Madoff by running foundations that invested funds with him.

From 2000 to 2004, four complaints were filed with the U.S. Securities and Exchange Commission (SEC) in regard to Madoff's hedge fund being fraudulent. Each of these reports contained numerous "red flags" to alert the SEC that something questionable was occurring. Specific information explaining the unrealistic returns that no one else could realistically replicate was in the complaints. Two journal articles that questioned the unbelievable results Madoff provided his investors were also published during this time period.

In 2005, a private investigation firm in Boston sent its findings to the SEC, explaining that Madoff may be running the largest Ponzi scheme in history. Harry Markopolos, who worked for this firm, had expressed these concerns originally in 1999. The SEC explored the claims and decided that no fraud charges were to be filed against Madoff. In this same year and continuing into 2006 and 2008, more complaints were given to the SEC. Some of these concerns were provided by anonymous citizens and expressed specific information related to a potential Ponzi scheme.

Finally, in 2008, the U.S. economic recession caused many of Madoff's clients to cash out their investments at a rate that was beyond what Madoff could keep up with. He could no longer obtain new clients to pay off the existing investors. Madoff knew the end was coming, so he began getting money ready to write checks to certain investors and family members. He disclosed the entire scam to his brother and two sons, who all worked for him. His sons were so distraught and angered they contacted authorities and Madoff was arrested on December 11, 2008. On March 12, 2009, Madoff pleaded guilty to all 11 federal counts against him. On June 29, at age 71, he was sentenced to the maximum of 150 years in a federal prison.

Impact

Madoff was able to conduct the largest Ponzi scheme known, one that has a significant impact on many people. The United States was in an economic recession when news of this scam broke, so reactions of fear, rage, and concern were heightened. Many questions arose as to how this scam was able to exist with no one or no federal agency taking notice. Although the impacts of this Ponzi scheme are still evolving, current effects are significant.

With the arrest of Madoff, the SEC was questioned as to how this criminal act went unnoticed under its watch. After Madoff's arrest, the SEC quickly began making adjustments and changes to reduce the chance of this happening again. In late 2009, reports were issued discussing the errors and misgivings by the SEC. Its Office of Inspector General investigation found that SEC employees were not connected or influenced by Madoff or his family. The report did find that the SEC received enough information to support a thorough investigation of Madoff's investment agency. From 1992 to 2008, six complaints were raised against Madoff, with no illegal activity found and no thorough investigation initiated.

Many of Madoff's clients, employees, friends, charities, and family members were victims of his Ponzi scheme. Long lists have been compiled of his victims, who include entertainers such as Kevin Bacon and his wife, Kyra Sedgwick. These people were caught off guard, most hearing about their financial ruin with news accounts of Madoff's arrest. Most of his clients were wealthy people hoping to earn even greater wealth through his investments.

Many of the victims had moved retirement funds to Madoff, which were now depleted, and some had to go back to work. Some victims claimed they were now homeless, as their income source was now gone. Other victims were astonished at how sincere Madoff could be while talking to potential investors about giving him their life savings to invest, knowing all the time it was a scam. Madoff left millions of dollars, so some of his clients will get some of their money back, though in total, his victims lost billions of dollars that cannot be replaced.

Madoff's arrest confirmed to his clients that their money and livelihood was gone. For some people, this was more than they could take. Rene-Thierry de la Villehuchet, a French aristocrat, committed suicide in December 2008. He had invested, for himself and others, at least $1.4 billion. In December 2010, Mark Madoff, Bernie's eldest son, hanged himself in his home while his 2-year-old son was sleeping in the next room. His wife still ponders the reasons behind his suicide. Even Ruth Madoff, Bernie's wife, claims she and Bernie took various prescription pills in a suicide pact on Christmas Eve 2008 that was not successful.

Today, Bernie Madoff is in a federal prison in Butner, North Carolina, where he will spend the rest of his life. He is estranged from his wife, Ruth. His eldest son's family have changed their name for protection. Victims still and will continue to feel the impact of his crime. Governmental agencies have been questioned and have made changes to ensure that a large-scale scam does not happen again. The general public has a little more apprehension in trusting their savings and retirements to investment firms. This is an example of how one man can make a serious change in people's lives.

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See Also: Bank Fraud; Bernard L. Madoff Investment Securities LLC: Hedge Fund Fraud; Madoff, Bernard L.; Mail Fraud; NASDAQ; Ponzi Schemes; Securities and Exchange Commission, U.S.

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Mail Fraud

The federal mail fraud statute is codified under 18 U.S.C. § 1341 and has two essential elements: (1) use of the U.S. mail and (2) use that is in furtherance of defrauding someone. The law has been utilized in diverse cases by federal prosecutors in pursuing everything from simple confidence games to bribery of public officials and, more recently, especially in cases of money laundering and credit card fraud; §1341 has been used against virtually every new method of defrauding and sometimes has been the only way to prosecute and adequately punish sophisticated offenders. Despite the broad application and peculiar elements that give §1341 great prosecutorial power, those characteristics also place it in jeopardy of inappropriate and abusive usages.

Its offspring statute, wire fraud (18 U.S.C. § 1343), is in almost all cases interpreted similarly to §1341. Mail fraud encompasses the use of the mails, either inter- or intrastate, whereas wire fraud outlaws the use of interstate wires for fraudulent purposes. Federal jurisdiction of both mail and wire fraud originates in the Constitution under Article 1, Section 8. However, mail fraud is based on Congress's control of the postal authorities, and wire fraud is based on Congress's right to make laws regulating interstate and foreign commerce. Mail fraud may be seen as more straightforwardly tied to federal jurisdiction than wire fraud because its overt act is any use of the mails in furtherance of a fraud, and the mails are owned and operated by the government. Wire fraud, on the other hand, involves wires owned by entities other than the federal government, so federal jurisdiction is, as with many federal offenses, based only on the commerce clause.

Instruments of Crime

The underlying legal evil of mail fraud is not that associated with the fraud but rather the evil in using the mails, trying to use them, or causing their use by others as an instrument of crime. This allows extremely distinctive enforcement interpretations. First, the statute is completely unconcerned with the harm inflicted by the fraud. Second, the culpability structure of §1341 is much more inclusive than that of almost all other criminal offenses because the statute allows merely a "scheme" to be prosecuted, regardless of whether the scheme actually took place or was successful.

The idea of a "scheme" is somewhat similar to a conspiracy to commit a crime, but a conspiracy necessitates at least two participants; there need be only one participant in the scheme to be prosecuted under mail fraud. Second, whereas conspiracy can be charged only once regardless of the number of separate overt acts committed that constitute the conspiracy, mail fraud law punishes each act of mailing as a separate crime. Further, the intent to violate §1341 only need involve a broadly interpreted "foreseeable" use of the mails; most offenses require that the perpetrator have knowledge of the commission of the act and also intend its commission. The burden of proof need not involve all aspects of the scheme, only that the person willfully and knowingly devised it or participated in it and that at least one instance of mailing occurred.

Because only the scheme is required for the offense to occur rather than actual fraud, proof of fraudulent intent is necessary. Fraudulent intent can be shown if a representation is made with reckless indifference to its truth or falsity, or from the modus operandi of the scheme. Any purposeful harm from a scheme is seen as intent to commit fraud. However, simply deceiving someone through a scheme is not sufficient for a mail fraud conviction. The government must show that some actual harm or injury was contemplated by the schemer and that it was coupled to the deceit. On the other hand, intent may simply be inferred from the totality of the circumstances, such as statements or actions, and need not be proven by direct evidence. For instance, continuing a misrepresentation after receiving a victim's complaint may be enough to infer intent to defraud.

A 1914 cartoon depicts a housewife shooing away a mail-order salesman. The mail-order "trust" was perceived to threaten patronage at small, local businesses and to promulgate quackery, false advertising, and false representation.

In some cases, determining whether a mail or wire fraud occurred may be more difficult if the thing that was alleged to have been defrauded is not tangible money or property. Based on a 1987 case, *Carpenter v. United States* (484 U.S. 19, 1987), persons can be defrauded out of intangible property such as trade secrets or other confidential business information, and such fraud would also be included under mail and wire fraud statutes. Exactly what constitutes intangible property may be the exclusive legal question in a mail or wire fraud case—if the object that was taken is not property, whether tangible or not, then the crime cannot occur.

In 1994, Congress added to §1341 the use of common carriers to execute a fraud; it also added schemes against financial institutions in 1989 and those related to disaster relief in 2008 as constituting more egregious victimizations. The maximum penalty for devising a scheme that affects a financial institution was raised from 20 years to 30 years in 1990, that for mail (and wire) fraud generally was raised from five to 20 years (Section 903 of the Sarbanes-Oxley Act) in 2002, and that for a disaster relief scheme was declared to be 30 years when such offenses were added in 2008. The statute of limitations for mail fraud (and wire fraud) prosecutions is five years (18 U.S.C. § 3282), except for such schemes that affect a financial institution, in which case the statute is 10 years (18 U.S.C. § 3293). The current §1341 is titled "Frauds and Swindles" and reads as follows:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish

or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

History of Mail Fraud

The two central legal questions that have dominated the history of this statute center on what constitutes the use of the mails and what constitutes fraudulent use. Prior to the Civil War, the general legal position was that the federal government had no right to open mail matter. This changed with the forerunner to the modern mail fraud statute, the "lottery law" of 1868, which made it illegal to mail any materials that involved a lottery or other similar prizes. The legal theory behind the lottery law, which is also the foundation of all subsequent mail fraud statutes, is based on the authorities first obtaining information about an illegal use of the mail and then securing a search warrant to inspect mail contents for evidence.

Given the large numbers of mail swindles during that time of Reconstruction, there was a perceived need for federal help in combating frauds at the local level. Congress did not want the national postal system to be used as an instrument of crime and moral turpitude, so it passed the first mail fraud statute in 1872 as part of much larger legislation affecting the mails. The first section of the statute proscribed obscene and other objectionable materials, and the second section forbade lotteries. The third section, on mail fraud, outlawed "having devised or intending to devise any scheme or artifice to defraud" that principally depended on the mail for execution.

The first mail fraud statute, then, projected a fairly limited conception of what is meant by the intended misuse of the mails. People were punished under the statute according to the extent that the abuse of the post office establishment entered as an instrument into fraudulent schemes or devices. Judicial validation of this first statute came quickly, in 1877, through the Supreme Court case *Ex Parte Jackson* (96 U.S. 727, 1878). Although *Jackson* came to the court under questions about the "lottery law," its opinion rang a sound constitutional endorsement for the mail fraud statute, finding that Congress controls the mails and that controlling the mails includes determining what will not be carried.

The most significant revision to mail fraud law took place in 1909, during the Progressive Era, and involved the major change in defining what constitutes the use of the mails to defraud. It deleted all specific language of the "instrumentality" theory requiring that the perpetrator intended to directly misuse the mails as a necessity to the fraud. In its place, Congress worded the statute to include *any* use of the mails in furtherance of a fraud, regardless of whether the perpetrator sent or received mail, regardless of whether the mails were intended to be used, and regardless of whether the mails represented a central or peripheral instrument of crime in the scheme.

This statutory language exploded the number and variety of cases in which the federal government could intervene jurisdictionally and, more than anything else, reflected the federal government's desire, as was characteristic of the time's Progressivism, to become involved in innumerable types of acts that had been local matters. Since 1909, incidental, or even accidental, use of the mails during a fraud scheme has been enough to fall under the law.

Going back to 1909, the wording of the mail fraud statute has caused courts to grapple with many undefined issues because it does not address the kinds of "schemes" or "artifices" to defraud that fall under its punishment; rather, it counts only the number of times the mails were used in one or more schemes. Courts have tried to focus on whether an act of mailing was somehow necessary for the offense's fruition, and the precedents seem to focus on a matter of timing. For instance, a confidence artist can be convicted of mail fraud because he waited for his check to clear before absconding, and the check cleared through the mails—waiting for the cash was seen to be a part, however small, of the fraud scheme.

On the other hand, a person who embezzles monies previously received through mailed donations is not punishable for mail fraud because the use of the mails occurred before the scheme to defraud. Mailing to a credit card holder a statement with a fraudulent charge by another person does not constitute mail fraud for the thief, because the mailing occurred after the crime. The 1909 statute considers mail fraud to be present in all cases where mails are used to carry out the scheme in any way and where such use would be foreseeable by a reasonable person, even if the person did not him/herself use the mails. Thus, the reach of the 1909 statute has resulted essentially in its intended effects for more than a century and has been able to operate fundamentally unchanged by the courts.

Evolution of Section 1346

One strongly debated legal question has been whether mail fraud can be applied to both public officials and those in private business who use the mails to further a bribery or kickback scheme. Since the 1930s, the meaning of fraudulent schemes within the mail fraud statute has been interpreted as including depriving someone of an intangible right to honest service. This interpretation eventually encompassed under mail fraud any use of the mails associated with a solicitation or acceptance of corrupt, quid pro quo bribes by private individuals and public officials. The use of mail fraud in bribery cases was consistently upheld by various courts until 1987, when the Supreme Court decided *McNally v. United States* (107 S.Ct. 2875, 1987). Here, the court broke long tradition by finding that the historical intent of §1341 did not include as fraud depriving someone of something intangible, such as a right to honest services. Instead, according to *McNally*, the deprivation must involve actual or intended loss of property or property rights. Eventually, the *McNally* reversal was applied retroactively to those previously convicted of mail-related bribery that did not involve property losses.

Congress immediately exercised its check-and-balance role by passing in 1988 a completely new statute, 18 U.S.C. § 1346, which stated simply, "For the purposes of this chapter [covering mail and wire fraud], the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services." Section 1346 was meant by Congress especially to reinstate the pre-*McNally* ability of federal prosecutors to go after bribery under the mail fraud and wire fraud statutes. It also tried to allow coverage of any other situation that involved deprivation of honest service using the mails or wires, including bribe-taking by a fiduciary.

The conflict over the idea of "dishonest services" among the courts, prosecutors, defendants, and Congress recurred in the allegation that the single sentence in §1346 is unconstitutionally vague because a reasonable person would not know what is meant by the statute's wording of depriving another of the intangible right to honest services. Further, there is no implication in §1346 about the circumstances in which it should be applied. Indeed, §1346 for more than two decades tied lower courts in knots.

In 2010, the U.S. Supreme Court finally put the §1346 controversies to an end in *Skilling v. United States* (554 F. 3d 529, 2010). That case involved Jeffrey Skilling, one of the Enron convictees, who asked the court both to declare his trial unfair because his jury was biased and to eliminate his federal fraud convictions based on the vagueness of §1346. The court refused to agree on the jury issue and also refused to invalidate §1346. However, the court did decide to more clearly define §1346 by reinstating the pre-*McNally* common law principles that allowed bribery and kickback schemes that touch the mail or interstate wires to be punishable under federal mail and wire fraud. In so doing, the court ruled in the specific case of *Skilling* that his actions involved neither bribery nor kickbacks and therefore §1346 could not be applied to him. There remain legal questions associated with *Skilling*, especially about what constitutes a bribe or a kickback aside from the offender receiving things of obvious value. More generally, there will always exist some question about whether certain things defrauded constitute property.

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See Also: Bribery; Butcher Brothers; Charity Fraud; Conspiracy; Daisy Chains; Direct-Mail Fraud; Enron Corp.; Hedge Fund Fraud; Investment Trust Fraud; Kilpatrick, Kwame; Marketing Fraud; Mortgage Modification Fraud; Offshore Bank Accounts; Offshore Entities; Ponzi Schemes; Rich, Marc; Unisys Corp.; Wire Fraud.

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Major Fraud Act

The Major Fraud Act of 1988 (18 U.S.C. § 1031), subsequently amended by the Major Fraud Act Amendments of 1989, was legislated to protect the United States against major fraud, which by definition is an intentional act that involves making a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed. The act, promulgated in response to increased incidences of major fraud against the United States, established major procurement fraud as a criminal act and was legislated to complement procurement fraud through the False Claims Amendments Act of 1986 and the Program Fraud Civil Remedies Act. The legislation focuses on major procurement fraud that exceeds values over $1 million, extends the statute of limitations for investigation and prosecution, and encourages others with information about fraudulent activities to report the same, otherwise referred to as whistleblowers.

Procurement fraud includes but is not limited to cost and labor mischarging, defective pricing, providing defective parts, price fixing, bid-rigging, and product substitution. Cost and labor mischarging involve schemes by contractors who fraudulently inflate the cost of labor or materials. Defective pricing involves the failure to disclose cost pricing data that are accurate, complete, or agreed upon. Providing defective parts entails knowingly providing parts that are defective in design, specification, material, manufacturing, or workmanship, which, in addition to causing significant financial loss, could lead to injury or death. Price fixing and bid rigging involves any activity to suppress and eliminate competition on contracts that restrict trade and commerce; bid rigging represents an activity where one or more bidders agree not to submit a bid, or two or more bidders agree to submit bids that have been prearranged among themselves.

The Major Fraud Act, which serves to amend Chapter 47 of Title 18 of the U.S. Federal Code, states the following:

> whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent—(1) to defraud the United States; or (2) to obtain money or property by means of false or fraudulent pretenses, representations, or promises, in any procurement of property or services as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, if the value of the contract, subcontract, or any constituent part thereof, for such property or services is $1,000,000 or more shall, subject to the applicability of subsection (c) of this section, be fined not more than $1,000,000, or imprisoned not more than 10 years, or both. (18 U.S.C. § 1031)

The act’s legislative history underscores wide-ranging implications of procurement fraud from defense contracts to road-building contracts. The record further indicates that procurement fraud against the United States has included the theft of copier paper, sales from Army and Air Force floral services, and deliberately providing defective parts and equipment for critical military weapons such as the M60 machine gun, the CH-47 helicopter, Cruise missiles, and the F-18 fighter jet and B-1 bomber. Such intentional procurement fraud involving millions of dollars not only causes significant financial loss to the United States but also potential injury and death of American soldiers and civilians, as well as a threat to national security.

Given the extraordinary complexity involved in detecting, investigating, and prosecuting major procurement fraud, the Major Fraud Act has some special features. First, the act establishes a seven-year statute of limitations, even longer when cases involve obtaining foreign evidence. Second, the act provides a financial incentive for those with information about major fraudulent activities to report. Commonly referred to as the "whistleblower clause," it authorizes the attorney general to make payments up to $250,000 to persons who furnish information that leads to a conviction. Equally important, it provides protection for employees from being discharged, demoted, suspended, threatened, harassed, or discriminated against in employment.

Because major fraud cases often involve large corporations that have significant financial resources available to secure legal representation for their defense—which often surpass those of the federal government, sometimes by five and even 10 times in strongly contested cases—amendments to the legislation earmarked additional funds ($8 million in 1989 alone) for the hiring of additional assistant U.S. attorneys and support staff positions to investigate and prosecute government fraud.

The Major Fraud Act was initially intended to "provide federal prosecutors with an additional criminal statute targeting major procurement fraud committed against the United of America." Because of the steady increase of procurement fraud involving all aspects of the federal government—frauds that have entailed tens of millions of dollars—since its initial legislation in 1988, the Major Fraud Act was amended in 1989, establishing greater incentives to investigate and prosecute alleged violations.

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See Also: Bid Rigging; Contractor Fraud; Government Contract Fraud; Government Procurement Fraud; Price Fixing; Public Corruption; Whistleblowers.

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Market Manipulation

Market manipulation involves transactions or orders to trade that give—or are likely to give—false or misleading signals as to the supply, demand, or price of financial instruments. It also involves the alteration, by one or more persons acting in collaboration, of the price of one or several financial instruments to an abnormal or artificial level. It employs various fictitious devices or any other form of deception or contrivance; it also includes the dissemination of information through the media and the Internet that may affect the aforementioned situations through rumors, false news, and nontrade actions. Overall, its notion entails the deliberate attempt to interfere with the free and fair operation of the market and to create artificial, false, or misleading appearances with respect to the price of or market for a security, commodity, or currency. Manipulation damages markets because it distorts prices, which may lead directly to economic inefficiencies and resource misallocation; it allows transactions to take place at prices that do not reflect a true balance between supply and demand, so some market participants benefit unfairly at the expense of others. It also reduces confidence both in the market affected and in markets generally, and so discourages their use and indirectly damages the economy.

Common Types of Market Manipulation

Typical examples of market manipulation include pooling, churning, running, ramping, wash trade, and bear raid. Pooling refers to usually oral agreements to delegate power to a manager in order to trade in a particular stock for a given amount of time and then share the outcome of the investment, no matter if it is losses or profits. Churning occurs when a trader places both buy and sell orders at about the same price. This increase in activity is meant to attract additional investors and consequently increase the price of operations. Running happens when a group of traders creates activity in order to drive the price of a security higher. A famous example was the Guinness share-trading fraud during the 1980s.

Ramping refers to actions designed to artificially raise the market price of listed securities and to create the impression of voluminous trading in order to make a quick profit. Wash trades happen when selling and repurchasing the same or substantially the same security for the purpose of generating activity and increasing the price, whereas bear raids attempt to push the price of a stock down by heavy selling or short selling. Examples that yield high profits for relatively low risk include the energy and fuel industry.

Market manipulation is usually divided into two subcategories: information-based abuses and trade-based manipulations. Other types of market abuse also include insider dealing and front-running. Information-related abuses are those in which the manipulator creates a false market by disseminating false or misleading information. Manipulators also spread false rumors to induce buying or selling by others. Trade-based manipulation is characterized by the manipulator leading others to believe that trades are or should be occurring in certain volumes or at certain prices and to treat that information as if it were a bona fide reflection of the needs and beliefs of market participants. Trade-based manipulation includes generalized incidents intended to create the shortage of stock, such as squeezes.

During a squeeze, a graph against time has its own characteristics, like a heartbeat. A spike at the price climbs rapidly and then, as the pressure is released, it drops not back to the initial resting point—equilibrium price—but a little below that before it returns to the equilibrium level. The dip below the line is called "burying the corpse," because supply briefly exceeds demand as the efforts of those who needed supplies diverted the commodity from other users into the delivery mechanisms of the market. Actions intended to create an impression of false activity, for example to ramp, have been highly observed in many instances; firms often buy their own shares to raise the price or to prevent it from falling. According to studies, brokers are able to manipulate prices for their benefit and earn rates of return that are even 50 to 90 percent higher than those of outside investors.

Explanation of Market Manipulation

It is well established that markets for goods and services have two major components: demand and supply. Markets are generated via a human need; through our desire to satisfy our needs, we create things both for our personal use and for others. Such production leads to markets where things are bought and sold on both large and small scales. Supply is obviously a very important issue, as it depicts the availability of a product for customers. In a perfectly competitive market, four main elements emerge: unlimited entrants and customers in the market, perfect information and mobility, lack of product differentiation, and unlimited entrance and exit from it. When market manipulation occurs, it dilutes some of these elements in order to create artificial demand or supply that will increase the price of the good and, consequently, the profits. It also dilutes the main principles of scarcity and desirability and thus interferes with all the fundamental economic principles that form an open market.

The famous economist Milton Friedman was one of the establishers of the free market approach; he supported that arbitrage (the purchase of a good on one market for immediate resale on another market in order to profit from a price discrepancy)

Price manipulation may be prevalent among principal brokers, as they have the ability to infuse the market with rumors or false information, which is indispensable for the efficiency of any market manipulation technique. Studies have shown that brokers are able to manipulate prices for their benefit and earn rates of return that are as much as 50 to 90 percent higher than those of outside investors.

would render a strategy of buying and then selling an asset self-defeating. One of the most troubling and frequent techniques that agencies have tried to combat was the pump-and-dump scheme; it involves brokers trading among themselves when the price of a stock is low in order to artificially increase its value. Once the price has risen, they sell their trades, which results in a great fall in the price of the stock and a considerable profit for themselves. The release of false information has quite often enforced this type of fraud. Some studies contemplate that stocks involved in U.S. Securities and Exchange Commission antimanipulation enforcement actions from 1990 to 2001 demonstrated that prices, trading volumes, and volatility rise during the alleged manipulation and then prices fall afterward, suggesting that profitable manipulation could have occurred.

Allegations indicate that major market manipulation occurred during the stock pools of the 1920s, through which groups of investors actively traded in a specified stock. These incidents prompted the creation of the antimanipulation laws in the United States and often motivate academic discussions of market manipulation. Many studies, even after very thorough examination of data, fail to prove that market manipulation has occurred. They trace a pattern of stock price and trading volume that could potentially be consistent with market manipulation; however, no hard evidence is found easily. The invisible nature of the crime renders its prevention much more difficult. Famous analyses include a data set of hand-collected daily prices and trading volume data as well as book value from the 1920s. By comparing pool stocks with industry-matched portfolios, researchers found several important differences between pool operations and acknowledged instances of successful manipulation. The average pool stock was of comparable size and more liquid than stock of other companies in its industry. Important differences were also spotted among the pool stocks. Researchers assumed that either manipulation was not a significant problem on the exchange or the investigators focused on the wrong phenomenon.

Market manipulation succeeds because everyone ranks his or her needs for goods and services from the most important to the least important. Every service or product offers a specific amount of pleasure or utility. This scale of desire dictates that we may be willing to enjoy less of a product that is not high in our ranking in order to maintain our initial utility of a product more important to us. Utilitarianism, which emerged through Jeremy Bentham, framed this theory, explaining the utility that one draws from different elements. Ranking is also affected through scarcity. This means that if, for example, water is greatly restricted in availability, it will immediately become the most important element in a person's ranking, and that person would be willing to pay almost any price in order to enjoy it. Consequently, if water were priced with the open market's principles instead of a state's monopoly, one would see its price increase during a drought and vice versa.

Having analyzed the above, it is easier to understand how market manipulation works; producers mainly manipulate an important product for either the general public or a specialized audience (e.g., oil, electricity, stocks) by managing to increase its price, knowing that the utility of the product is high enough that a person will choose to enjoy it and restrict its other elements of utility. Some writers contemplate that profit among brokers could arise for another reason than market manipulation. First, the brokers are better at market timing because of quicker access to private information, and second, they are market makers, leading the trends. However, these explanations do not suffice to justify the surreal profit percentages generated by the brokers. It is not surprising that price manipulation may be prevalent among principal brokers. Besides, they have a natural advantage to spread rumors or false information among the market, rumors being indispensable for the efficiency of any market manipulation technique.

Usually, markets choose to manipulate the supply side of the equation rather than the demand side, as the latter is so widespread that it cannot be easily controlled. On the other hand, it is much easier to withhold supplies, thus creating an artificial lack of the product, which increases prices. The aforementioned water example can be used to demonstrate that people would be willing to pay more for the available marginal units of water than before. If demand for water were inelastic enough ($\eta < 1$), there would most likely be an increase in profits, at least temporarily. This hypothetical act would, however, trigger a domino effect, as increased profits would be an incentive for other companies to enter the market and enjoy profit as well. This would destroy the temporary monopoly and reduce the profit until the price reached its initial normal level. Such forms of market manipulation are successful only in the short term.

The Example of Enron

Probably the best-known example of market manipulation is embodied in the example of Enron. In the famous case of California's energy drought, the method used was to withhold electricity from the market until the suppliers could obtain an outrageous price for it, which was the source of the problems. An interesting note in this case is that California's policy of deregulation led to capped prices at levels far below wholesale prices for electricity, a legal technicality that drove the state's utilities into bankruptcy. For several months in late 2000 and early 2001, the price of natural gas and electricity in California increased by as much as 1,000 percent.

It was later revealed that Enron had engaged in many forms of serious misbehavior; however, the other side of analysis stipulates that this phenomenon was not a product of market manipulation but rather a delicate mixture of severely flawed markets with bad luck. Nevertheless, all markets are both vulnerable to potential manipulation and flawed. It is physically impossible to design a market in a manner that renders it invulnerable to all forms of manipulation. Fraud and collusive withholding of capacity are greatly profitable in any market.

The uniqueness in market manipulation rests in the fact that it is a crime open to interpretation. In particular, research in the "smoking gun" memos of Enron may suggest that most of Enron's trading practices can be characterized as arbitrage made profitable by flaws in the California electricity market. The same practices could be considered market manipulation as well. In this particular case, arbitrage was a powerful incentive for Enron to maximize market flaws in order to consequently maximize its profits.

Market Manipulation Prevention

Even though legislation is differentiated depending on the various legal systems, a uniformity of suggestions may be proposed regarding prevention. More specifically, the environment exchange, the design of contracts, and disciplinary processes are some examples. Regulatory authorities demonstrate the importance of issues of contract design, market surveillance, and market sanctions in international markets. However, the particularities of the markets must be noted, as the price of a product may not remain stable for a long time. In commodities, supply is limited, subject to relatively high production, transport, and storage or delivery costs, or subject to seasonal shortages or long production lead times. However, the proper design of commodity contracts must be underscored, whereas equally important is an active and effective market surveillance program by the market regulatory authority.

A balance must be maintained, as the proposed legislation to tackle insider trading and market manipulation must not fragment markets because this would make such abuses even harder to detect. Administrative sanctions cannot in any way replace criminal regimes, but they can complement them for more effective crime prevention. A suggested financial threshold above which managers must report their transactions needs also to be justified. Managers hold inside information that they should not use at any time, but they must also have clear rules on when they can trade in their own account. Whistleblower protection programs must be in place in order to further regulate this crime.

A very important element with regard to prevention that requires attention is the improved access to data that may enable the detection of market manipulation. Transparency in the markets would strengthen the prevention dynamic; regulatory agencies should mandate the increased availability of relevant data for the detection of manipulation. Even if data cannot be provided in real time, they should be provided with time delay or for strictly scientific use. What is more, large traders naturally have significant influence on the market; scientific analyses and models should therefore recognize the role of large traders and consider both past events and potential future events they may cause. Besides, manipulation events may not actually manifest in averages and distributions that are usually considered.

Current legislation focuses mainly on retroactive penalties; this is ineffective because of the discrepancy between the time scale of enforcement response and that of market manipulation. Severe failures in the financial system may therefore include cascading global market crises and numerous takeovers and bankruptcies, making the disentanglement of individual events difficult, if not impossible. The uptick rule, even though simple in its creation, was designed to minimally restrict traders' actions while simultaneously providing underlying stability for the financial system and inhibiting particular forms of manipulation. Regulatory agencies should thus focus on creating more rules in the uptick-rule spirit, which would be effective immediately and certainly would be more effective than punitive rules. The element of time is as important as the element of information, and its great significance should be stressed.

Effective regulation and enforcement may be very useful tools, and their efficiency can guarantee that market price changes are genuine and not a product of manipulated data. The complexity of financial markets suggests that data analysis is increasingly necessary for guiding decisions about setting market regulations and their enforcement. Ideally, market flaws will also be dealt with; however, this will require time, given that markets are inherently flawed and any evolution will occur in the long term. In the meantime, alternative crime prevention measures must be in place to effectively deter market manipulation, despite its manifold manifestations and difficulty of detection.

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See Also: Antitrust, Federal Trade Commission; Capitalism; Commodities Futures Trading Commission, U.S.; Corporate Criminal Liability; Corporate Dumping; Corporate Raiding; Enron Corp.; Globalization; Hedge Fund Fraud; Oligopoly; Predatory Practices; Price Fixing; Short-Sale Schemes; Stock and Securities Fraud.

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Marketing Fraud

Marketing involves all the activities related to the flow of goods and services from their creation to their consumption; it includes the processes of pricing, promoting, and distributing products with the sole aim of increasing the success and the profitability of the product. It further identifies the customers' needs or desires and then tries to fulfill them efficiently; it quite often focuses on creating a desire in customers for a product that they had not previously thought they wanted to obtain and then offers the product as the solution to the newly created desire. It greatly involves communication techniques in order to promote products and is influenced by several stakeholder groups, such as the customers, the partners, and society at large. Overall, it can be said that marketing is a management process designed to provide customers with what they want or need. It was initially incorporated in the broader field of economics and only recently has been recognized as a separate branch.

Four eras mainly determine the evolution of marketing: the classical school (1900–50), which focused on aggregate market behavior using economics and sociology to explain the market's desires; managerial marketing (1950–75), which focused on the role of management and individual behavior, continuing on borrowing techniques from other social sciences; the behavioral marketing school (1965–), which incorporated the element of psychology as a major factor related to marketing; and the adaptive/strategic marketing school (1980–), which focused again on a more economic perspective encapsulating Michael Porter's five forces model and the paradigm of competitive advantage.

Main Types of Marketing Fraud

Marketing fraud consists of illegal practices used by a company or an individual for the purpose of promoting a product or a service. It usually involves making false claims, exaggerating the qualities of a product or a service, hiding negative aspects or side effects, claiming that using a service will profit the customer, and selling imitations as a genuine product. Even though marketing fraud is an old phenomenon that is found mainly in mass media such as television and radio, the expansion of the Internet has reinvented this crime through numerous techniques used to deceive desperate or unsuspicious customers.

Further methods of marketing fraud include anticompetitive practices, bait and switch practices, planned obsolescence, pyramid schemes, vendor lock-in, and viral marketing. Debatable techniques also include embrace, extend and extinguish, search engine optimization, and spyware/adware. Anticompetitive practices include dumping, exclusive dealing, and price fixing. Multilevel marketing has become associated with pyramid schemes and, consequently, the U.S. Federal Trade Commission (FTC) warns that not all the multilevel marketing schemes are legitimate, as some may involve products that do not actually exist.

Perhaps the best-known example of marketing fraud is the pyramid scheme, which involves participants being promised various payment or services as an incentive to enroll other people into the scheme rather than actually supplying any product or service. It has existed for more than a century and is a subpart of multilevel marketing. The most indicative examples include chain letters and Ponzi schemes. A pyramid scheme works by attracting customers to a seemingly simple but extremely profitable business that they can get involved in simply by promoting it. More specifically, this marketing fraud requires its victims to recruit a number of other people before they starts earning a profit. The new victims go on and recruit others and so on. The initial victims are paid once new people they are recruited with a percentage and are then intrigued to stay in business and expand their reach in order to further their profit.

In most cases, these pyramid schemes do not actually correspond to a realistic product or service but rather they are solely based on a deceptive activity. Eventually, only the originator and some of the persons at the beginning of the pyramid extract considerable amounts of money but the vast majority of the victims involved end up in deficit. There are different variations of the pyramid scheme, including the eight-ball scheme and the matrix scheme.

Bait and switch is another common marketing fraud used in retail sales; in the first stage, customers are attracted by products being sold at low prices in order to draw them into the store. They are then told that the product they are looking for (the bait) is unavailable and are redirected to another, costlier product. The goal of this simple but widespread fraud is to convince the customer to buy the substitute good in order to avoid disappointment because the bait is unavailable. It creates the desire in the customers to buy a product at a very low price, and once they express this desire, they are redirected to an expensive alternative on the assumption that they will eventually buy it no matter the increased cost. The stores consequently earn a higher marginal profit by deceiving the customers.

False claims exist when the product's manufacturers and sellers claim that the product or service has a quality that it actually has not. Typical examples are various medicines that claim to cure diseases but they are either not approved or their efficacy does not extend to curing a disease. The psychological perspective of marketing encapsulates consumer choice, which is widely driven by the desire to obtain a product that is extremely efficient or that fulfills a specific need. This type of marketing fraud is also widespread in services where, for example, an Internet provider may claim that the speed of its service outranks all the other competitors though this is not true. Provided that consumers rank their needs and prioritize their desires according to true facts or statistics, such manipulation of information constitutes marketing fraud.

Exaggerating the qualities of a product or a service is similar to the previous situation; however, in this case the statements made are not entirely false but rather misleading in order to render the product more desirable to consumers. Examples may include the whitening effects of a toothpaste, the durability of a battery, the quality of a telephone service, or the transformative effects of protein pills. Numerous advertisements have been created not only to shed light on the positive elements of the product but also to exaggerate its qualities and results. Again, provided the psychological element that embarks on a consumer's decision process, these exaggerations may not be rationally rejected but rather enthusiastically adopted. People often want to believe that a product will make their life easier or themselves more successful, so they consequently fail to critically analyze the situation in front of them. This constitutes a totally deceitful behavior and is one of the most widespread forms of marketing fraud.

Hiding negative aspects is the opposite technique from those described above, as it fails to inform customers of a negative issue or a side effect of a product. The failure to disclose this information is described as marketing fraud because consumers have full rights to be aware of the consequences a product or service may have on their lives. Typical examples include side effects of a medicine and major service disruptions by an Internet provider. The best-known example of this kind of marketing fraud was undoubtedly the refusal of tobacco companies to link, by any means, the use of cigarettes with lung cancer. They systematically deceived public opinion, emphasizing the relaxing effects of a cigarette that may even do good to one's health and refused to recognize any causal link with diseases.

Selling an imitation as a genuine product is also a known form of marketing fraud, as customers believes that they are buying a product that, in fact, they are not, even though they are paying the price of the original. This technique is widespread in products rather than in services and ranges from watches to sunglasses and bags from famous designers. When someone knowingly purchases the fake product and pays a proportional amount, there is no marketing fraud but rather a criminal activity of counterfeiting trade. Marketing fraud exists when the customer is misled to believe that he or she is paying a premium price for a unique product of status when this is not the case; this type of fraud may be expressed either through sellers going to a home selling supposedly original products, through e-commerce, or through retail stores that, in order to maximize their profit, include some fake products among their originals.

Selling an imitation or a fraudulent item is more and more widespread because of the usage of the Internet and electronic auction sites, catalogs, mail order services, and classified advertisements. Eventually, the goods are not delivered, or they are delivered significantly later than promised, or they are worthless or of significantly lower value than they should be. Technological items are more likely to be part of this fraudulent activity, even though authorities have also identified various other products such as vacations, health products, and even animals. A modification of this scheme finds perpetrators asking for money from the victims and threatening legal action if they are not paid in full.

Mass-Marketing Fraud

Besides the more traditional types of marketing fraud previously mentioned, technology and especially the Internet have expanded the possibilities of extorting money from victims in various ways. Typical examples include foreign lotteries and sweepstakes, letter scams, credit and loan scams, overpayment scams, charity scams, investment scams, service schemes, and romance schemes.

Foreign lottery fraud is definitely one of the most famous mass-marketing frauds in which victims are told that they have won a specific lottery or sweepstakes in a lottery they had never entered. In return, the perpetrator asks the victim to buy a service or a product in advance in order to have access to the money he won. Another usual condition in order to collect the profits is that the victims need to pay various taxes and fees for administrative purposes. In most of the cases, the victim is asked to provide his or her bank account details in order for a check to be paid and he or she is then asked to transfer a part of the money to the perpetrators. A few weeks later, the bank informs the depositor that the financial instrument was counterfeit and he is held liable for the full value of the instrument in question.

Emergency assistance schemes include cases in which a supposedly close family member of a person known to the victim requests urgent financial assistance either for a medical situation or to cover expenses to get back from a trip where all of his or her money was stolen.

In letter scams, victims are asked to help transfer funds from a given country—African countries are widely used in this kind of scam—and they are to be given a share of this amount for their cooperation. Victims then are asked to provide their bank account details, which may lead to identity theft incidents, or to pay up front, supposedly for legal fees, in order to be able to have access to the money. This kind of fraud also has alternative scenarios, such as cases of inheritance as well as schemes where the victim offers financial assistance to transfer or embezzle money from one country to another in exchange for a share of the funds.

Investment fraud targets victims and makes fraudulent promises of high returns in exchange for devoting various investment funds to the purchase of various commodities such as securities and real estate. Subtypes of this fraud are the Ponzi and pyramid schemes that were described above. The main characteristic of these schemes is that they promise easy and certain profit should the victim invest his or her money and/or invite more people to join the scheme. Credit scams include companies offering credit cards or loans even though they do not have the financial credentials to support them.

Romance schemes involve perpetrators taking advantage of victims through building a relationship of trust and then asking for various gifts that escalate to fraudulently extracting money and merchandise. Such victims often report paying for airplane tickets or hospital bills, funding charitable work programs, or just helping their date partners (perpetrators) to overcome a financial difficulty. Romance schemes have a great psychological impact on their victims, who experience violation of their privacy as well as the financial loss that is a common element in all these frauds.

Service schemes involve false or misleading promotions for services; various forms of this fraud involve people being approached for various telecommunications services, Internet services, health services, or even automobiles. They try to convince the victim to give his or her money for these services, and if he or she does, the money is lost.

Finally, charity scams occur when con artists solicit donations in the name of nonexistent or fraudulent charities. These incidents are particularly common after various catastrophes, when philanthropy is more forthcoming. In these cases, various sympathetic causes are exploited and individuals are prompted to donate money for a higher cause. However, the offenders keep the money for themselves.

Marketing fraud is, overall, a crime with various different extensions and types of commitment. It has been widespread mainly in the last decades because of the evolution of technology that renders such crime very cheaply and easily committed, targeting an indefinite number of people around the globe. A point regarding this situation is the lack of regulation in the field, which is of paramount importance. Few laws have been implemented that aim to minimize and prevent marketing fraud, and they have not been as efficient as they should be. It is of immense importance that state authorities prioritize this type of fraud in their policy agendas given the billions of dollars lost every year in such activities.

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See Also: Advertising Fraud; Bait and Switch; Charity Fraud; Cigarette Advertising; Credit Card Fraud; Direct-Mail Fraud; Identity Fraud or Theft; Telemarketing Fraud.

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Maxwell, Robert

This entry relates to the misappropriation, or embezzlement, of approximately £400 million from the Daily Mirror Group pension fund by then owner of the company, the late Robert Maxwell, and to his criminal business activities. Misappropriation is the intentional, unauthorized, and illegal use of property or funds for one's own use or other unauthorized purpose. Embezzlement is the act of dishonestly withholding assets for the purpose of theft by an individual to whom such assets have been entrusted to be held and/or used for other purposes. This topic is relevant because such crimes are normally committed by employees and not by company owners themselves, which raises issues of breach of trust, mismanagement, corporate governance, corporate crime, and corporate malfeasance.

Ian Robert Maxwell was born Ján Ludvík Hyman Binyamin Hoch on June 10, 1923, in Czechoslovakia, apparently of humble beginnings. His rise from poverty is a classic rags-to-riches entrepreneur story. After relocating to the United Kingdom in 1943, Maxwell built up a powerful media empire and was generally lauded as a successful if somewhat ruthless entrepreneur. Maxwell even became a Conservative member of Parliament.

Perpetual Risk Taker

It is part of the entrepreneurial personality to take risks, and Maxwell appears to have been prepared to shoulder considerable risks. There were earlier warning signs of this in the Permagon Press case. In 1969, American businessman Saul Steinberg attempted a strategic acquisition of this Maxwell company. Sternberg complained that Maxwell had made false claims about the profitability of a subsidiary responsible for publishing encyclopedias to maximize share prices through transactions among his private family companies. A subsequent Department of Trade and Industry (DTI) investigation concluded that Maxwell could not be relied upon to exercise proper stewardship of a publicly quoted company. In 1971, a judge criticized the tone of the DTI inquiry as being accusatory rather than inquisitorial, claiming inspectors had acted contrary to the rules of natural justice. Maxwell survived, acquiring Mirror Group Newspapers in 1984.

Maxwell had a propensity for litigation and a legendary acerbic style of communicating with others. He pursued anyone who spoke out or wrote about him, suing the satirical magazine *Private Eye* for an estimated $340,345. His communication style verged on being intimidating and bullying. Maxwell was also able to commit his crimes undetected for so long because of his dictatorial leadership style and because he placed family members in management positions, making it less likely that he would be challenged by management. Thus, a combination of personal traits and organizational issues perhaps explains why his criminal business activities remained hidden until his death.

It is notoriously difficult to prosecute white-collar criminals whose modus operandi includes the use of aggressive business tactics to prevent interference from outsiders. Moreover, such crimes are normally discovered only when the perpetrator either dies or confesses. Investigators invariably face an internecine web of interlocking public and private companies in which money and assets are traded, allowing perpetrators to avoid established networks of regulations and controls. It is normally investigative journalists who expose the crimes and chicanery of the rich and powerful, like Maxwell.

Maxwell was himself a media mogul and adept at the politics of power. During the period of his crimes, there was a tendency in the British press not to report financial crimes because of constrictions faced by journalists due to tough defamation laws. It is unreasonable to expect the press to act as an early warning system for undetected crimes. Thus, misappropriation and embezzlement by business owners are difficult to monitor, investigate, and eradicate.

On November 5, 1991, at age 68, Maxwell reportedly fell overboard from his luxury yacht, the *Lady Ghislaine,* while cruising off the Canary Islands. His death has been the subject of conspiracy theories. It transpired that there were huge discrepancies in the finances of the Mirror Group pension fund. Maxwell had, without adequate prior authorization, used the monies to shore up the shares of the Mirror Group to prevent bankruptcy. Maxwell's fall from grace was sudden, and a thorough investigation by the Serious Fraud Office determined that he had fraudulently misappropriated the missing funds. Maxwell's death triggered a crash when banks called in their massive loans. The pensioners were later compensated but received only about 50 percent of their entitlement.

Such infamous cases have resulted in a lasting backlash, anger, and disillusionment among victims. Maxwell's sons Kevin and Ian tried unsuccessfully to save the empire, but collapse was inevitable. The Maxwell companies filed for bankruptcy protection in 1992, and Kevin was declared bankrupt with debts of $605 million. In 1995, Kevin, Ian, and two former directors went on trial for conspiracy to defraud. All were unanimously acquitted by a jury in 1996. Robert Maxwell is a classic example of a "robber baron," and his life and the pension scandal are well documented in numerous biographies and academic articles.

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See Also: Embezzlement; Misappropriation Theory; Risk Analysis; Robber Barons.

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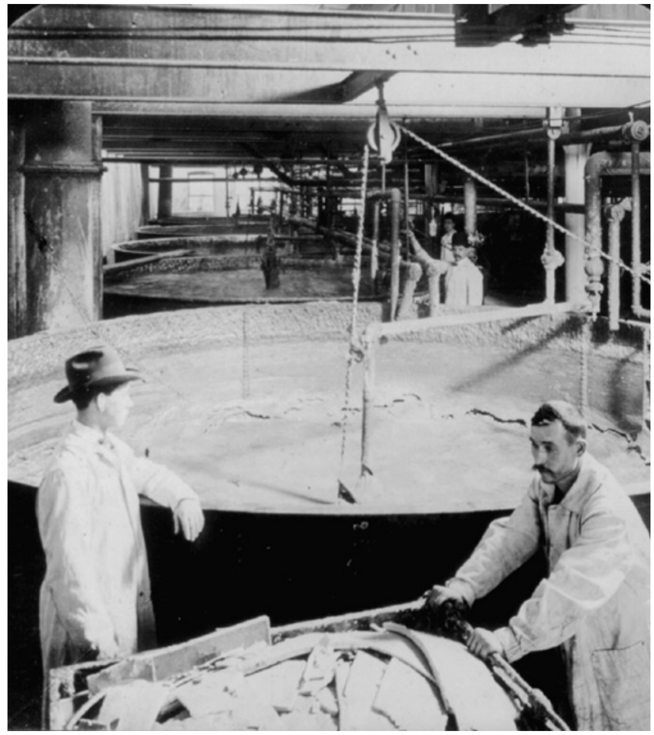
Meat Inspection Act

From the start of the American Industrial Age in 1820, the newly formed cities in the Midwest swelled with immigrants. The dramatic increase in population, accompanied by the modernistic technology, led to an alteration of food production and distribution. The plethora of impoverished immigrants led to cheap labor that could be put to use in the newly formed slaughterhouses and packing plants that operated as food factories. These industrial units were not regulated or scrutinized by public health or other government agencies. Those who owned and controlled the large-scale commodities such as livestock and poultry dictated the conditions and standards of the slaughterhouses. By the late 19th century, an entity known as the Beef Trust encompassed a few large companies that dominated the Union Stockyards in Chicago. The trust had significant power through its considerable wealth and political associations. Chicago became the concentration point for livestock slaughter and meatpacking because of the centralized railroad lines that connected the farms of the Midwest with the large urban cities of the east.

The city of Chicago attempted to control the smoke, waste, and odors that emanated from the stockyard and slaughterhouses. Foreign countries demanded standardization and inspection of American exported pork products. No other regulation or inspections were conducted, in large part because of the influence of the trust. The condition of the slaughterhouses was deplorable, unsafe for workers, and created questionable meat products. Upton Sinclair, a writer and muckraker, took a job in the Union Stockyard. What he observed and experienced was later documented in a book titled *The Jungle*. The book, published in 1906, for the first time exposed in graphic detail the unsanitary conditions under which exploited labor worked in the packing plants, such as the following excerpt:

> They advertised "potted chicken," . . . the things that went into the mixture were tripe, and the fat of pork, and beef suet, and hearts of beef, and finally the waste ends of veal, when they had any. They put these up in several grades, and sold them at several prices; but the contents of the cans all came out of the same hopper.

Sinclair sent a copy of his book directly to President Theodore Roosevelt. The book was so popular that the government was pressured into



At Swift & Co.'s Packing House in Chicago, Illinois, in 1906, bare-handed workers split backbones on the line before hogs were ready for the cooler (left). The "great soup kettles"—with a capacity of 350,000 pounds each—are stirred while a worker hauls scrap nearby (right). Upton Sinclair's The Jungle *(1906) exposed conditions in the enormous packing houses of Chicago, shocking the nation and sparking new legislation to address the processing and sanitary standards of domestic livestock prepared for human consumption.*

responding to broadly recognized unsanitary conditions. Representatives from southern states and the Beef Trust opposed any regulatory reforms, but Congress responded by creating two new laws: the Pure Food and Drug Act, 34 Stat. 768 (which later became the Federal Food, Drug, and Cosmetic Act of 1938, 21 U.S.C.A. § 301 et seq.) and the Meat Inspection Act, 21 U.S.C. 12 §§ 601–695.

The Meat Inspection Act addressed the processing of domestic livestock destined for human consumption. All animals were required to pass an inspection by the U.S. Food and Drug Administration prior to slaughter, all carcasses were subject to a postmortem inspection, and cleanliness standards were established for slaughterhouses and processing plants.

Unfortunately, issues relating to meat safety are not relegated to history. On June 25, 2009, the U.S. Department of Agriculture (USDA) filed charges against Filiberto Berrios of Puerto Rico. Berrios purchased and transported more than 45,000 pounds of spoiled and mislabeled meat. Berrios, who had been neither trained nor licensed as a food handler, repackaged the spoiled meat in order to alter its appearance. Berrios then offered the meat products for sale to restaurants and to various retailers. The USDA seized, then analyzed the meat Berrios was marketing for sale. It was too spoiled to be used for human consumption.

In 2011, poultry companies asked for the regulations on poultry slaughter to be relaxed. Currently, the standard is for 91 birds to be slaughtered each minute. The poultry processors would like the standard to be 175 birds per minute. This rate would inevitably cause workplace-related injuries and might lead to food safety concerns. Although vast improvements have been established since the days of Sinclair, work in meatpacking plants remains one of the most dangerous jobs in America.

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See Also: Adulteration, Economically Motivated; Employee Safety; Food and Drug Administration, U.S.; Food Fraud; Labor Crimes; Pure Food and Drug Act; Roosevelt, Theodore; Sinclair, Upton; Unsafe Working Conditions.

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Medical Malpractice

The ancient Greek physician Hippocrates once proclaimed "make a habit of two things: to help; or at least to do no harm." Some health care facilities and/or medical professionals failed to follow this sage advice from the man known as the father of Western medicine. As a result, civil lawsuits involving claims of medical malpractice became far more prevalent during the 20th century. However, issues relevant to medical malpractice claims have been part of the American legal landscape for over 200 years.

Legal Aspects

The sources of American law include statutory law, which is enacted by state or federal legislatures; case law, which is based on legal precedents; and administrative law, which are enabling statutes enacted to define powers and procedures when an agency is created. Civil lawsuits do not involve crimes. Rather, civil lawsuits involve disputes between private individuals. A plaintiff initiates a civil action against a defendant for damages. Criminal prosecutions occur when the government files charges, based on state or federal law, against an individual for an act against society. If convicted, the criminal defendant may face fines, imprisonment, and/or death.

Criminal acts may be categorized as felony or misdemeanor. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt. In a civil case, the plaintiff has the obligation to prove the allegations by a preponderance of the evidence. If this is accomplished, the civil defendant is liable or legally responsible for the damages. The burden of proof in a civil case is less rigorous than the burden of proof in a criminal case. One set of circumstances and/or acts may implicate both civil and criminal law. For example, it is a crime to practice medicine without a license. Additionally, a facility that unknowingly employs an unlicensed individual may be liable for medical malpractice under civil law for negligently hiring such person.

Though the nuances of medical malpractice law may vary from state to state, medical malpractice claims are typically categorized as malfeasance, nonfeasance, and/or misfeasance. A completely wrong or illegal act constitutes malfeasance; for example, if a nurse's aide prescribes the wrong drug, this constitutes malfeasance because he does not have the legal authority to dispense drugs. The failure to act when one should act constitutes nonfeasance; for example, if a physician fails to administer life-saving treatment and her terminally ill patient has explicitly authorized that any and all life-saving measures be utilized, this conduct would be considered nonfeasance. Finally, when a lawful act is performed in any illegal or improper manner, this constitutes misfeasance; for example, if a nurse fails to follow a physician's orders properly, this would constitute misfeasance.

Medical malpractice claims maybe brought against any facility or individual who provides medical care, treatment, or services, such as hospitals, clinics, rehabilitation centers, and/or nursing homes. These claims may be based on either contract and/or tort law. For example, if a patient reasonably perceives that a specific result was guaranteed and that result fails to materialize, or if a medical professional exceeds the bounds of consent, a malpractice claim based on contract law alleging breach of contract may be initiated. More frequently, medical malpractice claims are rooted in tort law.

Torts are generally categorized as either negligence, or strict liability, or intentional. When a defendant acts despite a substantial certainty that the act will cause injury, a medical malpractice claim may be based on an intentional tort such as assault, battery, intentional infliction of emotional distress, and/or disclosure of private facts. Moreover, it is also possible that a medical malpractice action be rooted in strict liability law. Strict liability is an area of tort law in which fault is irrelevant. Specifically, if the acts of the defendant are considered to be ultrahazardous and the person harmed could not reasonably protect himself or herself, a cause of action based on a theory of strict liability may be initiated. Additionally, injuries caused by certain defective products may be litigated via a theory of strict liability.

Often, medical malpractice claims present themselves as allegations of professional negligence through an act or an omission. Specifically, negligence occurs when a health care provider or health care facility's professional acts fall below the accepted standard of practice in the medical community and cause injury or death to a patient. Medical malpractice actions often involve medical errors due to negligence, as well as failures to follow guidelines that are stipulated by law and/or that are standard for a particular institution. The result may be a catastrophic injury or death. Such scenarios sometimes result in large awards of damages.

Large verdicts and the purported ripple effect of those verdicts on other health care costs have served as a catalyst for state legislatures across the country to wrestle with tort reform as well as other public policy questions. Additionally, various white-collar crimes may be associated with medical malpractice litigation or with attempts to cover up malpractice.

Responsibilities of Professionals

The tort of negligence, which is at the heart of many malpractice claims, has four key components: duty, breach, causation, and damages. All four components must be present and proven by a preponderance of the evidence. The first element of a negligence claim involving medical malpractice is duty. Generally, one has a duty to exercise reasonable care. One must establish what the standard of care should be in a particular case in order to determine and prove that the duty of care was breached. A reasonable person standard applies in most negligence cases. According to this standard, a defendant must behave as a reasonable person would behave under the same or similar circumstances to escape liability. This standard does not take into account the defendant's shortcomings, except in very limited circumstances.

However, professionals, including those in the medical field, are held to a higher duty than the average person in society because of their training and knowledge. In a negligence suit not involving a professional malpractice claim, the defendant's conduct is compared to a hypothetical standard of care. In contrast, the custom of the profession sets the standard of care in a medical malpractice claim. In some jurisdictions, a physician in general practice is expected to conform to the standard of care as established by other general practitioners in his or her own community or a comparable community. Generally, this standard is known as a locality standard. However, in other jurisdictions a physician in general practice is expected to conform to other general practitioners, no matter where they practice. This is known as a national standard. Thus, in certain jurisdictions, the standard of care is broader.

It should also be noted that direct contact with the patient is not always required for establishing a duty. Specifically, *respondeat superior* is a legal doctrine rooted in agency law that holds employers legally liable for the acts of their employees, if the acts were completed within the scope of the employees' duties. Hence, physicians in some circumstances are legally liable for the negligence of employees working within the scope of their employment. A physician's duties include the following: to inform the patient of the need for a different treatment; to inform the patient of medical test results as well as diagnoses; to give proper notice prior to withdrawing treatment; and to obtain appropriate consents.

Typically, a jury lacks the specialized medical training and/or knowledge necessary to determine the appropriate standard of care in a malpractice action. Thus, the plaintiff in a medical malpractice case often needs to rely on an expert or experts to testify regarding the standard of care. In turn, the defendant will often rely on other expert witnesses to counter this testimony. Expert witnesses possess skills, knowledge, experience, and education beyond that of a layperson or a typical fact witness. An individual must be "qualified" as an expert based on experience, knowledge, skill, education, and training. Ordinarily, one must accurately answer a specific set of foundational questions to establish his or her expertise. Specifically, expert witnesses usually give their opinions regarding the facts of the particular case. In contrast, a fact witness may only testify to the facts that he or she observes. A medical practitioner providing fact testimony is not permitted to give an opinion on the facts. Some medical malpractice cases hinge on the credibility of a particular expert.

The second element of any negligence claim is breach. At this stage, the plaintiff has the obligation to prove that the medical professional or medical facility behaved unreasonably and to identify the specific conduct that fell below the appropriate standard of care. Additionally, the plaintiff must explain why the conduct was below the appropriate standard of care and rule out alternative explanations.

The plaintiff may rely on expert witnesses, eyewitness testimony, and/or documentary evidence, such as medical records. To sustain a claim of negligence, the plaintiff must also prove a causal link between the defendant's acts or omissions and the plaintiff's damages; if the plaintiff has established this, then the plaintiff has established factual causation, the third element. Often a defendant will argue that there are multiple causes that could have led to the plaintiff's injuries. In this situation, the substantial factor test is applied to the facts of the malpractice claim and the question becomes whether the defendant was a substantial factor in causing the injury. Again, expert witnesses are often a crucial component in proving causation. If the plaintiff is unable to identify what or who caused the alleged malpractice but can demonstrate that this type of injury does not normally occur in the absence of negligence, the plaintiff may be able to rely upon *res ipsa loquitur*. If applicable, *res ipsa loquitur* creates an inference that the defendant was negligent. However, the jury is not bound to accept this inference as truth.

Finally, damages are the fourth element needed in any successful malpractice claim. Specifically, the plaintiff must be able to prove that the breach of duty caused him or her to suffer harm. If successful, the plaintiff will likely be awarded monetary damages. There are several different types of damages that may be awarded, including compensatory damages, which compensate the plaintiff for losses or injuries such as mental anguish, loss of earnings, physical disability, losses to date, and future losses; punitive damages, which are designed to punish the defendant and are based on the seriousness of the breach of conduct; and nominal damages, which simply recognize that the rights of an individual were violated even though no actual loss was proven. The majority of states also have enacted wrongful death statutes. These statutes allow a patient's family or beneficiaries to sue for damages related to the patient's future earnings. The majority of states with wrongful death statutes also include a cap on the amount of certain types of damages that may be recovered in a medical malpractice claim. It should be noted that a medical practitioner or facility may also be prosecuted under a criminal statute for wrongful death.

Statutes of Limitations

There is a limited period of time during which the perceived victim of medical malpractice may file a civil action. Such time limits are known as statutes of limitations and they may vary from jurisdiction to jurisdiction. If there is evidence that the defendant deliberately and fraudulently concealed information from the plaintiff(s) that would have reasonably led to the discovery of the malpractice or if the plaintiff was a minor at the time of the malpractice, the statute of limitations would likely be tolled until the discovery and/or the minor reaches adulthood. Statutes of limitations in regard to the malpractice claims of minors also vary from jurisdiction to jurisdiction. Additionally, the application of statutes of limitations in regard to malpractice claims of mentally incompetent individuals varies depending on the jurisdiction. Finally, fraudulent concealment of medical malpractice may also be considered the crime of obstruction of justice.

Impact of Medical Malpractice

Medical malpractice may impact an individual's employment as well as his or her professional licensure and/or certification. After being notified of a lawsuit, any attempt to conceal, destroy, or alter relevant records or other evidence is considered a crime (obstruction of justice). Attempting to influence, encourage, or intimidate witnesses to give anything less than truthful testimony in a medical malpractice action also qualifies as obstruction of justice. Most litigators aspire toward settlement, and the majority of cases are settled. Once a case proceeds to trial, a case may still settle until a verdict is reached and even during the appeals process. Settlement is attractive because going to trial is extremely risky. Discovery is supervised by the court and occurs prior to trial, and it is crucial to either encouraging or discouraging settlement. Discovery includes the court-supervised exchange of information among the parties. During discovery, both the plaintiff and the defendant have more leniency to explore possibly relevant issues through interrogatories, depositions, and admissions. Depositions enable both sides to evaluate the strengths and weaknesses of opposing witnesses and case theories, Depositions are sworn statements given by parties to a suit, as well as by key witnesses. Perjury, which is lying under oath in a civil case during a deposition and/or a trial, is a serious crime.

Alternative dispute resolution techniques such as arbitration and mediation may also be relied upon to facilitate a resolution prior to a trial by allowing the input of objective third parties. If this is unsuccessful, the case proceeds to trial. A malpractice trial typically includes opening statements; the presentation of evidence through witnesses, exhibits, and testimony; and closing arguments. The plaintiff has the obligation to prove by a preponderance of evidence that the defendant committed malpractice. After the judge or jury reaches this decision, either party may appeal the decision to a higher court if either side believes the trial court committed an important error or exceeded its authority.

The increase in medical malpractice claims and verdicts has allegedly had a significant impact on health care in the United States. Many states have passed legislation impacting and limiting malpractice claims via such mechanisms as statutes of limitations and caps on damages. Proponents of tort reform argue that these measures are necessary to keep the costs of both professional liability insurance and health care from soaring. Today, professional liability insurance is absolutely necessary for providers of health care. Moreover, all providers should retain their own attorney in a malpractice case. It is also important to note that the defendant and the insurer frequently have separate and distinct objectives during the litigation of a malpractice claim. A plaintiff's insurance provider may also play an important role in the negotiations surrounding a malpractice claim. Opponents of tort reform argue that the medical profession fails to self-regulate and point to the fact that the vast majority of medical malpractice claims go unreported. As a result, negligent practitioners and facilities continue to inflict harm upon innocent patients and consumers.

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See Also: Edwards, John; Health Care Fraud; Medicare and Medicaid Fraud; Negligence; Perjury; Respondeat Superior.

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Medicare and Medicaid Fraud

In the novel *Great Expectations*, social critic and Victorian author Charles Dickens wrote: "Take nothing on its looks; take everything on evidence. There's no better rule." A fraud is committed when one purposefully obtains the property of another by deception. For example, when an individual such as a nurse, doctor, or health care company attempts to collect money from the Medicare or Medicaid program based on fallacies, they are perpetrating a fraud that collectively costs taxpayers billions of dollars each year. Along with embezzlement, extortion, and forgery, in the study of white-collar crime, fraud is classified as a crime of theft. There are many different variations of Medicare and Medicaid fraud. In reality, it is impossible to know how much Medicare and/or Medicaid fraud is truly committed each year in the United States because much of it goes undetected.

Creation of Medicare and Medicaid

As part of President Lyndon Johnson's Great Society, Medicare and Medicaid were created in 1965 via amendments to the Social Security Act of 1935. These initiatives were implemented to provide health-related and/or medical services to separate and distinct groups of people in the United States.

Specifically, Medicare guarantees access to health insurance for individuals with certain disabilities and for individuals 65 and older. Medicaid provides individuals below a certain income level, among others, with access to health care. Medicare is a social insurance program funded and controlled entirely by the federal government. However, Medicaid is a needs-based social welfare program funded by the federal and the state governments but managed for the most part at the state level.

Expenditures and Funding

In regard to Medicaid, each state has significant freedom in establishing standards of eligibility, administering the program, and formulating key parameters of service. In addition to income, an individual's eligibility or lack of eligibility may be based on that individual's citizenship, age, pregnancy status, disability status, and/or other factors. Any state receiving matching federal funds from the federal government must provide certain required services. These services include home health care for individuals eligible for skilled-nursing services; X-ray, laboratory, and physician services; prenatal care; vaccinations; family planning services; family nurse practitioner and pediatric nurse practitioner services; ambulatory services; nursing facility services for persons aged 21 or older; early and periodic screening, diagnostic, and treatment (EPSDT) services for children under age 21; and inpatient and outpatient hospital services.

Each state also has an option to provide other services delineated by the federal government and to receive matching funds from the federal government. These services include prescribed drugs and prosthetic device coverage; optometrist services, including eyeglasses; and physical therapy and rehabilitation services. Medicaid sends the payments to the health care providers. More precisely, states may pay based on prepayment arrangements, commonly known as health maintenance organizations (HMOs), or on fee-for-service agreements. Subsequently, the federal government reimburses the state for its share of the Medicaid expenses, which are based primarily on the state's average per capita income level.

Medicare consists of four parts: Part A, Part B, Part C, and Part D. Part A, which in most circumstances does not require a monthly premium, assists in paying for hospital stays; skilled nursing care in a facility; medical equipment such as wheelchairs; and home health care services, which may include such therapies as speech, occupational, or physical. Specifically, Part A covers costs associated with rooms, meals, supplies, and/or testing in skilled nursing facilities and/or hospital stays. Part B, which is voluntary, requires a monthly premium and an annual deductible before coverage actually begins. Part B covers such costs as physician visits, home health care treatments, outpatient hospital care, eyeglasses, prosthetic devices, X-rays, laboratory testing, diagnostic testing, nursing services, physician services, and durable medical equipment such as canes and walkers and/or wheelchairs.

Enrollment in Part C allows individuals to create a more customized plan for their individual needs. These plans recruit private insurance companies to provide some of the coverage. Some Part C plans work with preferred provider organizations or with health maintenance organizations (HMOs) to facilitate preventive health care programs, as well as specialist services that may be geared toward individuals suffering from a particular disease. Part D, which requires payment of a premium and a deductible, is a prescription drug plan that started in 2006. Specifically, various private insurance companies offer different plans encompassing various drug coverage and costs. Unless disabled, one must be 65 years of age or older, or suffer from permanent kidney failure that requires dialysis or a transplant.

Moreover, one must be a U.S. citizen or permanent legal resident for five continuous years who is eligible for Social Security benefits with at least 10 years of payments contributed into the system. Medicare is primarily funded by payroll taxes collected through FICA (Federal Insurance Contributions Act) or through the Self-Employment Contributions Act. The government uses these funds to reimburse those claiming to have provided products or services.

Both programs are administered on the federal level by the Centers for Medicare and Medicaid Services (CMS), a division of the U.S. Department of Health and Human Services. Soon after Medicare and Medicaid were created, the costs of these two programs began to grow rapidly. Currently, Medicare and Medicaid make up a large portion of the U.S. federal government's budget. As of 2008, Medicare served approximately 44 million individuals. In 2007, Medicaid served approximately 40 million individuals and was estimated to cost over $300 billion that year. Cumulatively, during fiscal year 2007, Medicare and Medicaid represented, by some estimates, 21 percent of the U.S. federal government's spending. Some estimate that up to 30 percent of total Medicare spending is fraudulent. However, most estimates of Medicare fraud fall between 10 and 30 percent of the total program's spending. The estimates may vary but the cost of this type of fraud is indisputable.

Service Provider Fraud and Beneficiary Fraud

Medicare and Medicaid fraud manifests itself in various forms. Most of these manifestations focus on fraudulent behavior on behalf of the medical facility or the medical professional such as a physician, medical product supplier, or health care professional. Some common types of fraud include billing for services not rendered, upcoding services, upcoding items, making duplicate claims, unbundling products or services, excessive services, medically unnecessary services, and kickbacks. If an individual bills for services, procedures, or treatment not rendered, the physician, for example, submits a claim to Medicaid or Medicare for a service that was never provided, rendered, and/or performed by the physician. This is one of the most prevalent forms of Medicaid/Medicare provider fraud. When a provider bills Medicaid and/or Medicare for falsified patient visits, this is referred to as billing for phantom visits.

Upcoding occurs when a claim is submitted under a code that yields a larger payment than the code indicating the actual service provided. Thus, upcoding occurs when a provider inflates the level of services provided. For example, if a patient sees a medical professional for a short time about a simplistic issue but the medical professional then submits a bill for an hour-long complex visit, the medical professional has upcoded by inflating the amount of time the provider spent with the patient. In contrast, a health care supplier upcodes an item by claiming a more expensive product than that which is actually supplied. For example, when a hospital or pharmacy bills Medicaid/Medicare for the cost of a brand-name prescription but actually supplied a far cheaper generic substitute, the facility is upcoding.

Or a provider may attempt to incorporate inappropriate expenses in claims made to Medicaid or Medicare. These expenses tend to encompass the costs of items for personal use and consumption. For example, a nursing home facility may fraudulently include personal costs in its annual report to the government. However, only those costs that are incurred for resident care are

President Jimmy Carter signs the Medicare-Medicaid Anti-Fraud and Abuse Amendments into law, October 25, 1977. Medicare and Medicaid fraud takes various forms; most occur on behalf of the medical professional or facility, such as a physician or medical product supplier. They include billing for services not rendered, upcoding services and items, creating duplicate claims, unbundling products or services, excessive or medically unnecessary services, and kickbacks. Beneficiaries also commit fraud through false or exaggerated claims.

allowable, so the provider then submits a bill for an inflated rate for resident care. Additionally, individuals may steal patients' identities and/or attempt to use provider numbers for fraudulent purposes. Specifically, those attempting to commit fraud may use this information to bill the Medicaid program for health care services or goods that were not provided. Additionally, some beneficiaries may sell their Medicaid number to others who submit bills for health goods and services that were not provided.

Physicians and other health care professionals may also submit duplicate claims in an attempt to be paid twice for the same service. This practice is referred to as double billing. For example, a dentist may submit a bill to Medicaid and/or Medicare and/or a private insurance company for treatment; or two dentists may attempt to get compensated for services rendered to the same patient for the same procedure on the same date. By unbundling items that are required to be billed as one, an individual attempts to fraudulently maximize reimbursement from Medicare and Medicaid. Hence, a provider divides a singular medical occurrence into its constituent parts. For example, a dermatologist unbundles the removal of a mole when he charges for removing the mole and a week later charges for an office visit to see how the patient is doing. The office visit is actually part of the bundle of services involved in the mole removal. When a practitioner or supplier provides more of a given service than is actually necessitated by the patient's condition, the practitioner has fraudulently provided and billed for excessive services.

Similarly, corrupt doctors or providers may often bill for medically unnecessary services that exceed the amount of care and testing justified by the patient's condition. When an individual misrepresents the qualifications of a provider in an attempt to commit a fraud, this is known as falsifying credentials. Finally, physicians and other medical providers fraudulently profit from kickbacks by offering incentives in exchange for referrals of Medicaid and Medicare patients. Although many discussions of Medicaid and Medicare fraud focus on the service provider, beneficiaries also commit fraud. Some individuals attempt to secure free health care by submitting false or exaggerated claims of medical disability. Others attempt to collect on several policies for the same illness or injury to make a profit.

Legislation and Enforcement

In 1977, President Jimmy Carter signed the Medicare-Medicaid Anti-Fraud and Abuse Amendments into law. Federal laws aimed at stopping these types of fraud include the Anti-Kickback Statute, the Physician Self-Referral Law (Stark Law), the False Claims Act (FCA), the Social Security Act, and the U.S. Criminal Code. Individuals who violate these laws may face criminal as well as civil penalties. Additionally, individuals who violate such laws may be forbidden from participating as a provider in the future. The government agencies that assist in enforcing these laws include the Department of Health and Human Services Office of Inspector General (OIG), the Department of Justice (DOJ), and the Centers for Medicare & Medicaid Services (CMS). The frequency of certain types of Medicare and/or Medicaid fraud lessens or intensifies as enforcement measures are implemented and adapted. For example, over the past several years, Medicare fraud involving durable medical equipment, such as hospital beds and wheel chairs, has decreased significantly due to more intense regulations. Moreover, the penalties for Medicare/Medicaid fraud vary and are dependent upon the particular deception used to commit the fraud. Finally, each separate offense, or count, carries with it its own penalties, such as jail sentences and fines.

The Office of Inspector General for the U.S. Department of Health and Human Services (HHS) has the responsibility of protecting the integrity of both the Medicare and Medicaid programs against fraud. Additionally, the Federal Bureau of Investigation (FBI) also assists in the battle to fight fraud. Since 2007, groups of antifraud agents have systematically targeted individual cities where fraud is rampant. In 2009, the Health Care Fraud Prevention and Enforcement Action Team (HEAT) was created as a collaborative effort between the HHS and DOJ to fight waste, fraud, and abuse. The creation of HEAT affirmed the Obama administration's commitment to stop fraud while optimizing agency resources and maximizing care quality. HEAT'S Medicare Fraud Strike Force is a collaborative venture between agencies, comprised of investigators on the federal, state, and local level. The group relies upon various data analyses as well as local policing to identify and stop fraud. The Medicare Fraud Strike Force continues to expand into various cities across the United States including Miami, Chicago, Houston, and Detroit. HEAT has successfully identified and charged individuals who committed frauds, likely saving the government billions. Since the passage of the Patient Protection and Affordable Care Act (PPACA) in March 2010, new attempts have been made to identify and stop Medicare and Medicaid fraud. Additionally, the PPACA also created the Medicare-Medicaid Coordination Office to more efficiently coordinate and streamline the services provided by these programs, especially for individuals enrolled in both.

Due to the number of citizens receiving benefits from these programs and the amount of money distributed via these programs, it is difficult to design and implement effective monitoring mechanisms. Fraud most commonly occurs in areas where the United States is spending the most money on Medicare and Medicaid, because those perpetrating frauds are able to hide under the umbrella of large urban population centers. Medicare is considered high risk in part because of its complexity and susceptibility to improper payments, and Medicaid because of concerns about the adequacy of its fiscal oversight in regard to preventing inappropriate spending. Medicaid is set to expand with the passage of the Affordable Care Act (ACA). As the baby boomer generation ages, Medicare will expand. Without proper prevention, fraud may also expand proportionately. By ridding the system of criminals who are exploiting Medicare and Medicaid, the costs of health care can be reduced and the quality of care improved.

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See Also: False Claims Act; Government Contract Fraud; Health Care Fraud.

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Merrill Lynch and Co. Inc.

Now the largest brokerage firm in the world, Merrill Lynch was founded in 1914 by Charles E. Merrill and Edmund C. Lynch. Merrill Lynch has a reputation for its strong broker network, which gave the firm the ability to place securities that it underwrote directly. During the 1990s, Merrill Lynch was sued by Orange County, California, over accusations that it sold risky investments that were inappropriate for a municipal investor, ultimately resulting in payments of over $400 million by the firm. During the subprime mortgage crisis, a series of financial setbacks led Merrill Lynch to divest various subsidiaries and ultimately be accused of fraud with regard to the sale of certain mortgage-backed securities. After losing over $50 billion as a result of such transactions, Merrill Lynch was forced to merge with Bank of America. With over $2.2 trillion of assets under management, the firm traded publicly until 2009 and was known as Merrill Lynch & Co. Inc. Today, Merrill Lynch serves as the wealth management division of Bank of America.

Background

Charles E. Merrill opened his brokerage in early 1914 in New York City. Within months, Merrill's friend Edmund C. Lynch joined him as a partner, resulting in a change in the firm's name. The firm was highly successful in its early investments. In 1921, for example, Merrill Lynch purchased Pathé Exchange, the American division of French filmmaker Compagnie Générale des Établissements Pathé Frères Phonographes & Cinématographes (CGPC). Pathé Exchange produced and distributed films until 1927, when it was sold to financier Joseph P. Kennedy, who later merged the firm with the Keith-Albee-Orpheum chain of theaters and FBO Pictures Corporation to form RKO Radio Pictures Inc., one of the five major film studios of the 1930s and 1940s. In 1926, Merrill Lynch purchased Safeway Stores, then a regional supermarket chain focused mainly on California, and merged it with Skaggs Cash Stores and Skaggs United Stores. By the mid-1930s, Safeway Stores was the third-largest grocer in the United States.

These successes led Merrill Lynch's leadership to make the decision to focus on investment banking, which resulted in the sale of the firm's retail operations to E. A. Pierce & Co. in 1930. During the 1930s, E. A. Pierce was the largest brokerage in the United States and led the industry in using technology, such as employing International Business Machines (IBM) equipment for record keeping and building the nation's largest private telegraph network. Despite this strength, E. A. Pierce was thinly capitalized and struggled financially.

By 1940, E. A. Pierce merged with Merrill Lynch and a third company, Cassatt & Co., to form what was for a short time known as Merrill Lynch, E. A. Pierce, and Cassatt. In 1941, this firm became the first Wall Street financial concern to publish an annual financial report. The same year, the firm merged with New Orleans–based powerhouse Fenner & Beane, which was the second-largest securities company. The merged firm was known as Merrill Lynch, Pierce, Fenner & Beane. By 1952, a holding company, Merrill Lynch & Co., was formed and the firm was incorporated after a half-century of partnership status, and the name of its brokerage was changed to Merrill Lynch, Pierce, Fenner & Smith. During the 1960s, Merrill Lynch also added expertise in the government securities market, allowing it to develop money market products and government bond mutual funds during the 1970s and 1980s. Through the end of the 20th century, Merrill Lynch was the largest and, arguably, most influential brokerage.

Orange County Crisis

Merrill Lynch's stellar reputation led it to have close relationships with many leaders of local governments across the country. The firm served as an advisor to Orange County treasurer Robert Citron, resulting in his investing large amounts of county money in a series of investments. After these investments lost nearly $1.7 billion in value, Orange County was forced into bankruptcy in late 1994, and the county sued Merrill Lynch and other securities firms, alleging that the investments sold to Citron were overly risky and inappropriate for a local government. Without admitting liability, Merrill Lynch agreed to a settlement of $400 million in June 1998. Merrill Lynch's payment amounted to two-thirds of the total recovered by Orange County.

Subprime Mortgage Crisis

During the first few years of the 21st century, Merrill Lynch was deeply involved in packaging and reselling securities consisting of packaged subprime mortgages. Because Merrill Lynch enjoyed a network of over 15,000 brokers, it was able to sell many of the securities it packaged directly through its own brokers. This practice was different from that of many of its competitors, who did not attempt to sell securities that they had packaged through their own brokers. Merrill Lynch also held onto large amounts of these collateralized debt obligations (CDOs) in its own portfolios, which would cause the firm catastrophic losses later. As banks made money available for home loans in ever-increasing amounts, mortgage-backed securities became increasingly popular, as they were perceived to be a safe investment based upon historical default rates.

When the value of the national housing market crashed in 2007, however, Merrill Lynch was faced with an $8.4 billion write-down in the value of its portfolio. The firm at this time also decided to remove its chief executive officer, E. Stanley O'Neal, and replace him with John Thain. Early in Thain's time in power, he announced that Merrill Lynch was selling its commercial finance business to the General Electric Company and large blocks of its stock to Temasek Holdings, a Singapore investment group. Together, these deals raised over $6 billion.

In the year between July 2007 and July 2008, Merrill Lynch lost over $19 billion as a result of defaults and bad investments, which equated to a daily loss of $52 million. In August 2008, then New York attorney general Andrew Cuomo threatened to sue Merrill Lynch over alleged misrepresentations regarding the level of risk associated with mortgage-backed securities. That same month, Merrill Lynch's British subsidiary announced losses of nearly $30 billion. After the collapse of Lehman Brothers in September 2008, Merrill Lynch entered into merger discussions with Bank of America, which agreed to purchase the firm for $50 billion later that month. Although this represented a nearly 70 percent premium over Merrill Lynch's market value, it amounted to a discount of over 60 percent from its September 2007 price. Bank of America later asserted that federal regulators had exerted pressure on its officers and directors to complete the acquisition of Merrill Lynch.

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See Also: Accounting Fraud; Lehman Brothers Holdings Inc.; Mortgage Reform and Anti-Predatory Lending Act; Mortgage-Backed Securities; Subprime Loans.

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Metallgesellschaft

In late 1993 and early 1994, Metallgesellschaft AG (MG), headquartered in Frankfurt am Main, Germany, reported its U.S. affiliate MG Refining and Marketing Inc. (MGRM) had lost about $1.3 billion on energy futures and swaps. MG spent another $1 billion buying out of energy contracts. To avoid MG bankruptcy and default, over 100 creditor banks mounted a $1.9 billion rescue. The MG incident is an important, extensively studied lesson in the risks of hedging. The MG trading loss was comparable in size to Barings Bank in Orange County, California, and Procter & Gamble Inc.

Background

MG was established in 1881 as a global metals trading firm, investing in mines and metallurgical plants. At the end of World War I, the firm began chemicals trading. In 1992, MG acquired Dynamit Nobel AG (GEA AG). Chief Executive Officer Heinz C. Schimmelbusch expanded MG to a large industrial conglomerate with more than 250 subsidiaries and $10 billion in annual revenues. Key lines of business included mining, specialty chemicals, commodity trading, financial services, and engineering.

Expecting rising or stable oil prices, MG had taken short positions against long-term forward contracts to deliver oil to customers. The structure was a stack-and-roll hedge against rising prices, in which futures contracts rolled over consecutively. MGRM held positions reportedly equivalent to about 160 million barrels of oil. An imprudently large hedge undertaken as insurance is not necessarily speculation, although both can be equally bad bets.

The price of oil fell dramatically, and MG had to buy oil at a price well above market. Brent crude oil was over $17 in January 1993 and below $14 in December 1993. Although profitable again in 1996, MG ultimately became part of GEA Group AG. One view is that Deutsche Bank's (DB) action turned paper losses into real losses. Another problem was that German and U.S. accounting treatments of this hedging situation differed markedly.

MG's senior management, including Schimmelbusch, lost their jobs in December 1993, and MG sued Schimmelbusch for breach of duty. Schimmelbusch countersued the new management and DB, one of MG's largest shareholders, which reportedly forced liquidation of MG's positions. Schimmelbusch claimed that DB's action had forced MG toward bankruptcy for the bank's interest. In 1998, all charges against Schimmelbusch were dropped after MG withdrew its lawsuit and granted him a nearly $1 million settlement as well as a pension.

The financial crisis resulted in a fundamental restructuring of MG, with disposal of many companies to refocus on engineering and chemicals. In 1999, MG acquired Gesellschaft für Entstaubungsanlagen (GEA), and in 2000 it became MG Technologies AG. Subsequently, MG focused even more narrowly on engineering, and over time it disposed of the chemicals division and Dynamit Nobel. In 2005, the company name changed to GEA Group AG. In 2008, GEA (now Global Engineering Alliance) became the corporate master brand.

The Risks of Hedging

Theoretically, the purpose of derivatives—new securities deriving from other securities—is to help reduce risk. A hedge, understood as a form of insurance, is designed to do so. Trading losses can arise in cases of abuse, however. The Barings Bank example involved risky arbitrage trading that became speculation, facilitated by rogue employee Nick Leeson. Suggestions that Schimmelbusch may have desired MGRM speculation to offset losses in environmental cleanup equipment have not been substantiated. In effect, MG arguably made a bad bet on future environmental sales, compounded by a bad bet on energy futures. It is open to question as to whether governments and industries can design better regulations for control of these various forms of judgment error due to conditions of both cognitive complexity (i.e. misjudgment) and temporal complexity (i.e., rapidity and interaction of events).

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See Also: Allied Irish Banks; Barings Bank; Hedge Fund Fraud; NatWest Markets Ltd.; Procter & Gamble Inc.; Sumitomo Mitsui Banking Corp.

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Microsoft Corp.

White-collar crime has become a generic term used to describe crimes that are financially motivated and typically nonviolent, in reference to commercial fraud, insider trading, embezzlement, and, as in the Microsoft case, monopolistic practices that would tend to dampen or eliminate equitable competition in the wider marketplace. Corporate crime is often slippery, particularly when the perpetrator is a large incorporated business—this is not a "person," like Bernie Madoff, who can be arrested, jailed, questioned, and brought to the justice in the traditional way. Companies are "persons" only in the legal sense ("fictitious persons," as it were) and digging through the layers of responsibility may present particularly difficult challenges for law enforcement.

Microsoft, a software company, had humble origins in the early days of explosion of the computer revolution in Silicon Valley, California. In very short order, however, it became the lingua franca of operating systems, residing on hundreds of thousands of machines and becoming the basic foundation platform for thousands of basic operations and major full applications by 1995. Microsoft very quickly developed software of its own. Including staples such as a word-processing application (MS Word), a spreadsheet system (MS Excel) and an Internet browser (MS Explorer). While the software might have been competitive on its own, the fact that it was developed in concert with the disk operating system (DOS) made it relatively "bug" free through its internal connections to the DOS. As the software developed through its initial stages, the operating system became vastly more complex, eventuating in a "shell" system trademarked "Windows," which mimicked the presentation of their greatest competitor, a hard-wired or resident system of software from Apple Inc. As Microsoft came to dominate, then allegedly strangle, the market through their vertical and horizontal cartel practices, some believed a monopoly had been formed—not only within the United States but also in the European Union (EU).

Microsoft's many problems began in 1988 when Apple filed a $5 billion lawsuit against Microsoft and Hewlett-Packard for copyright infringement and breach of contract. The lawsuit stemmed from a licensing agreement made between Microsoft and Apple in 1985, in which Apple allowed Microsoft to continue to market Windows 1.0 and all of its versions to follow. In this agreement, Apple also allowed Microsoft to sublicense the rights to Hewlett-Packard, and in return Apple was given rights to certain Microsoft products. Microsoft, Apple alleged, delayed the release of an IBM-compatible product.

The *United States v. Microsoft* case is one that has been the center of much debate over the years. The major focus of the case was the Microsoft browser, Explorer, which was linked to the Windows system, and was allegedly favored by that system over other browsers made by competitors. Microsoft argued that the two items—the operating system and the browser—were one and the same product. The company's chief competitors, such as Netscape, Sun Microsystems, and Novell, argued that Bill Gates had developed a strategy for Microsoft's market domination as far back as 1996. If so, this constituted a conspiracy to eliminate competition and not the simple evolutionary development of ancillary products, as claimed by Microsoft.

Microsoft was accused of violating U.S. Antitrust laws, and in doing so, abusing its power in the marketplace. Microsoft was federally charged with violating the Sherman Antitrust Act, sections 1 and 2, by unlawfully maintaining its monopoly in the market for Intel-compatible PC operating systems and by attempting to unlawfully monopolize the market in Internet browsers by tying its Internet Explorer browser to its operating system, Windows, to the detriment of other competing internet browsers. In the District of Columbia District Court in 1999, presiding Judge Thomas Penfield Jackson, found that Microsoft's action put the company Netscape (which offered an Internet browser alternative), at an illegal disadvantage. Jackson ruled that Microsoft should be broken up into two separate companies.

On appeal, the District of Columbia's Appeals Court rebuked Judge Jackson for not stepping down from hearing the Microsoft cases, because prior to the hearing he had made controversial statements to the media. The court concluded that Microsoft had preserved its monopoly power through anticompetitive means, attempted to monopolize the Web browser market, and unlawfully tied its Web browser to its operating system; all of these violate the Sherman Antitrust Act. But the court did not find that Microsoft's marketing measures to promote its Web browser did so at Netscape's expense. Thus, the appeals court limited the scope of Microsoft's liability while leaving the findings of "fact" untouched. The Department of Justice then announced that they would no longer seek the breakup of the company.

In 2001, a settlement was reached between the company and the Department of Justice required Microsoft to allow companies like Netscape to link to its operating system, but did not require the company to halt the practice of packaging its own software with Windows, then or in the future.

Almost eleven years later, in 2012, European officials charged Microsoft with antitrust violations for failing to uphold settlement terms that were reached in 2009, which stated that Microsoft would agree to give consumers equal access to rival Internet browsers. EU antitrust commissioner, Joaquin Almunia, who made the decision, allowed the EU to submit Microsoft to hefty fines for Microsoft's misrepresentation. Microsoft apologized to EU regulators and stated that the lack of access to Internet browsers other than their own was due to a technical glitch that they were previously unaware of. Microsoft pledged that they would fix the problem. Yet, in 2013, the EU's antitrust regulators saw no improvement in Microsoft's newest system, Windows 8, and the regulators fined Microsoft $732 million.

The case is of particular interest to students of business practices as it greatly narrowed the scope of what software companies might be required to do in terms of accommodating their competitors' use of a foundational program while remaining within the letter of the law. It also brings to light the type of regulation that may be needed within the coming years, and begs the question of how much regulation is too much. Europe is a highly regulated society because of their social form of government, but the United States is less so. This case further pushes citizens to think about how much government regulation is needed when large businesses cannot or refuse to regulate themselves; when the focus is on making the highest possible profit without any concern for the effects the businesses have on the market place.

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See Also: Illegal Competition; Reform and Regulation; Sherman Antitrust Act.

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Milken, Michael

Michael Milken founded the high-yield debt market. He earned between $200 million and $550 million a year during his heyday. Milken's junk bonds were highly attractive for savings and loan associations, some of which failed. Critics blame

Milken for the savings and loan crisis, but Milken and his supporters deny the claim. He is now banned for life from the securities industry.

Born on July 4, 1946, Milken grew up in Encino, California. He is a product of Birmingham High School in Los Angeles and the University of California, Berkeley (Phi Beta Kappa, summa cum laude). His master's in business administration is from the University of Pennsylvania's Wharton School. He has honorary degrees from medical and business schools, and he's been married to the same woman since 1968.

He joined the obscure Drexel investment bank in 1970. There, he began researching and trading junk bonds. Milken felt that securities laws and rules restricted free trade, and he condoned questionable and illegal behavior by colleagues, but he never personally broke the rules. In the 1980s, he created the junk bond market at Drexel Burnham Lambert (Drexel). Milken had over 50 different types of securities in his repertoire. He regarded credit ratings as unreliable, noting that hundreds of triple-A companies never deserved that rating but used it to overextend themselves through leveraging. He provided capital when the banks encountered capital flow crises in the 1970s.

He bought junk securities for himself and for clients, then began underwriting bond issues from entrepreneurs and corporate raiders who had difficulty raising capital from conventional sources. Milken's bonds financed companies with good cash flow and human capital rather than relying on their reported earnings. In all, he financed over 3,000 companies. Conservative corporate America, under attack from Milken-financed raiders, turned against him for corrupting financial markets.

According to Drexel's Dan Stone, Milken was watched by the U.S. Securities and Exchange Commission (SEC) virtually full-time from 1979 but was not charged until Ivan Boesky implicated him in several illegal deals involving insider trading, stock parking, fraud, and stock manipulation.

The SEC and U.S. attorney Rudy Giuliani both began investigating Drexel, particularly Milken's department, in 1986. Drexel began an internal investigation as well. The SEC sued in 1988 and Giuliani contemplated indictments under the Racketeer Influenced and Corrupt Organizations Act (RICO). Drexel plea-bargained, but the talks collapsed. Then Drexel found suspicious activity in Milken's department. In 1989, a grand jury indicted Milken on 98 counts, including insider trading, stock parking (hiding the real owner of the stock), tax evasion, and illicit profits repaid. Milken resigned and established International Capital Access Group. In 1990, he made a plea bargain, accepted six technical violations, including three stock parking charges, and paid a $200 million fine. He received a sentence of 10 years and served 22 months. After he got out of prison, he worked as a strategic consultant. Because this violated his probation, he was fined $42 million. During his 16 post-prison years, he bested prostate cancer, raised hundreds of millions for medical research, and reinvented himself. He began his medical philanthropy in 1972 after his mother-in-law had breast cancer. He founded the Milken Family Foundation in 1982. He also chairs the FasterCures think tank (www.fastercures.org) and other medical research organizations as well as the Milken Institute, an economic think tank. *Esquire* magazine ranked Milken as one of the 75 most influential people of the 21st century. Milken in 2009 had a net worth around $2.5 billion.

Disgraced King

Milken remains the "disgraced junk bond king," but in 2009—16 years after getting out of prison—he was still trying for a pardon. Presidents Bill Clinton and George W. Bush declined to pardon Milken, even though Milken had backing from people prominent in business, government, and medical research. Food and Drug Commissioner Andrew von Eschenbach under Bush, sought forgiveness for Milken, whose philanthropy saved lives, enhanced awareness of prostate cancer, and changed medical research. Backers credit Milken with making modern capital markets more efficient, democratic, and dynamic and expanding access to thousands of smaller companies in cable television, cell phones, home building, and other businesses. His use of equity-based securities, hybrids, bonds, and so on created millions of jobs by providing capital to clients who would not have been able to build without him. He was a major factor in a two-decade U.S. economic boom, and he and Drexel were credited with creating more wealth than all trustbusters ever.

But there were foes, too, some in the U.S. Department of Justice and some on Wall Street.

A former chair of the Federal Deposit Insurance Corporation (FDIC) and the Resolution Trust Corporation (RTC), Bill Seidman, cited the major economic harm that Milken did in the 1980s. Seidman seemed to think that Milken was trying to buy back his reputation, to buy a pardon. Seidman notes that Milken cost the federal government more than any other person in the savings and loan disaster. His crimes were bad enough, but his dealings in the savings and loan industry cost the government hundreds of millions of dollars.

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See Also: American International Group; Arbitrage; Boesky, Ivan; Bond Fraud; Corporate Raiding; Drexel Burnham Lambert Inc.; Global Crossing Ltd.; Levine, Dennis; Savings and Loan Fraud.

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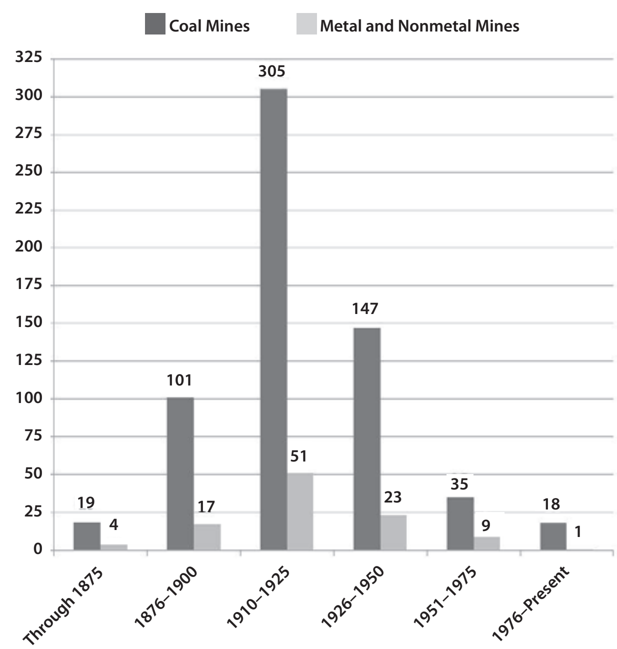
Mine Safety and Health Act

Mining, the extraction of minerals from the earth, is a dangerous business with significant costs to human and environmental health. The industry produces fuel, such as the coal that powers electrical plants, that is essential to the operation of today's society. Federal statutes such as the Mine Safety and Health Act were instituted to create more accountability for the protection of worker health and safety. During the 1800s, mines proliferated in the United States. Without regulation, operators of these mines could remove the maximum amount of material at the lowest possible cost without regard to the safety of miners or the environmental impact of the mine's operations. Accidents in which five or more miners were killed occurred with appalling regularity, and the United States experienced the most devastating coal mine disasters during this period. In 1907, an explosion at the Monongah Mine in West Virginia killed 362 workers. As a result of a 1909 fire at the Cherry Mine in Illinois, 259 miners perished. Two hundred sixty-three miners died following a 1913 explosion at the Stag Canyon Mine in Dawson, New Mexico.

During the first decade of the 20th century, mining fatalities annually exceeded 2,000. With these grim statistics, Congress created the Bureau of Mines in 1910 to reduce accidents in the mining industry. However, until 1941, at which time it was also given inspection authority, the bureau was authorized only to conduct research. (In 1995, the Bureau of Mines was closed and its responsibilities transferred to other agencies.) Legislation to regulate metal and nonmetal mines was first enacted

Figure 1 Number of documented mine disasters



Source: Mine Safety and Health Administration.

with the Federal Metal and Nonmetallic Mine Safety Act of 1966, which delineated standards for mines and established investigation and inspection authority but did not provide for strong rule enforcement. Mines were subjected to additional oversight with the Federal Coal Mine Health and Safety Act of 1969 (the Coal Act). The legislation obliged surface and underground mines to undergo annual inspections, required monetary fines for violations, and instituted criminal penalties for willful and knowing violations. Improved health and safety standards were also established, and miners afflicted with "black lung," a progressive respiratory disease associated with repeated inhalation of fine coal dust, were given compensation.

The Mine Safety and Health Act of 1977 (Mine Act) amended the Coal Act by combining all federal health and safety statutes related to mining under a single framework and strengthening the rights of miners. It also established the Mine Safety and Health Administration (MSHA) as an agency within the Department of Labor "to prevent death, disease, and injury from mining and to promote safe and healthful workplaces for the Nation's miners." Under the Mine Act, the MSHA inspects surface mines twice a year and underground mines four times a year, and it issues citations for any violations of health and safety standards. Additionally, the MSHA investigates mine accidents and any complaints filed by miners, generates improved health and safety standards, levies and collects monetary penalties for violations of standards, and reviews operators' mining plans and training and education programs. The MSHA operates the National Mine Health and Safety Academy, which trains inspectors as well as mining industry and technical support personnel and works with states to create safety and health programs. Furthermore, the Mine Act also created an independent group, the Federal Mine Safety and Health Review Commission, to assess the MSHA's enforcement activities.

High-Profile Accidents

Although mining disasters decreased during this heightened regulatory period, high-profile accidents drew attention to this treacherous business. In 2006, a January explosion at the Sago Mine in Buckhannon, West Virginia, killed 12 miners, and an explosion at the Darby Mine in Middlesboro, Kentucky, killed five miners. At the Aracoma Mine in Stollings, West Virginia, two miners perished in a January fire. The mine operator, Aracoma Coal Mining, a division of Massey Energy, received 25 citations for safety and health violations from the MSHA, and the company paid more than $44 million in fines after pleading guilty to corporate criminal charges. Inspectors observed that, had the operators complied with safety and health standards, the two deaths would have been avoided. These tragedies prompted Congress to pass the Mine Improvement and New Emergency Response Act of 2006 (the MINER Act), which requires improved training, enhanced standards, upgraded emergency response plans, and new communication technologies during underground disasters.

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See Also: Buffalo Creek Disaster; Canadian Mining Scandals; Clean Water Act; Coal Mining; Employee Safety; Labor Crimes; Occupational Carcinogens; Pollution, Air; Pollution, Water; Regulatory Enforcement; Unsafe Working Conditions; Whistleblowers; Workplace Deaths.

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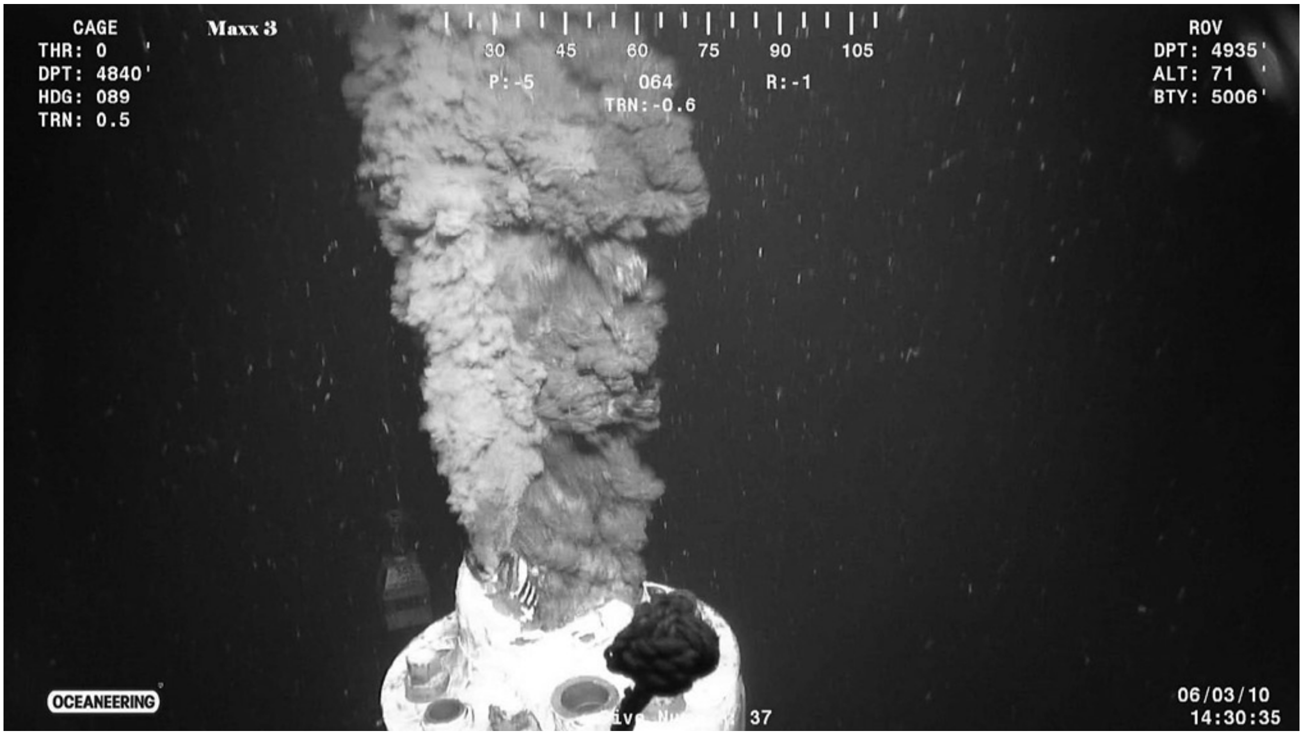
Minerals Management Service, U.S.

The U.S. Minerals Management Service (MMS) was the agency within the U.S. Department of



A video still from the underwater footage recorded by BP on June 3, 2010, shows an oil plume still emanating from the ruptured oil pipe of Deepwater Horizon, which suffered a catastrophic blowout on April 20, 2010. The U.S. Minerals Management Service (MMS) sold BP the mineral rights to drill in 2008. After the oil rig explosion, the cozy relationship that MMS maintained with the oil and gas industries—which it was supposed to regulate—were exposed, and the agency was disbanded and split into three new agencies.

the Interior (DOI) responsible for overseeing offshore oil and gas development. Tasked with collecting revenue from the industry it was charged with regulating, a pervasive pattern of corruption developed between the MMS and the offshore industry. The agency was dismantled on May 19, 2010, after the explosion of the Deepwater Horizon drilling rig and the blowout of the Macondo well in the Gulf of Mexico caused the world's largest offshore oil spill.

Established in 1982 by President Ronald Reagan's secretary of the interior, James Watt, the MMS combined the functions previously held by two separate agencies: the U.S. Geological Survey (USGS) and the Bureau of Land Management (BLM). By placing the mandates of regulatory oversight of offshore development and revenue collection within the same agency, Watt allowed maximization of revenue to become the dominant mission of the MMS. Secretary Watt also introduced the practice of area-wide leasing (AWL), which opened much larger sections of land to industry at one time, rather than the previous practice of only offering select areas specifically nominated by firms. Policy changes such as AWL during this period expanded the industry's access and choice of leasing areas while requiring less government oversight. These changes at the MMS mutually benefited both the federal government and the offshore oil industry. Income from offshore oil leases represents the second-largest source of revenue for the federal government, providing strong motivation for both government and industry to pursue revenue collection at the expense of regulation.

As deepwater exploration and development began to increase, the MMS's budget declined dramatically in 1996. Salaries stagnated, and the agency struggled to attract trained and qualified personnel. The agency was unable to keep up with the evolving deepwater technology, and the training that inspectors received was inadequate. In some cases, inspectors depended on industry representatives to explain technology at facilities.

A culture of complacency concerning federal environmental regulations also developed within the MMS because of a lack of funding. Scientists at the agency experienced strong pressure from their managers to rapidly approve development plans without proper evaluation of the environmental effects. As the volume of lease applications increased, especially in the Gulf of Mexico, the capacity of MMS regulators to oversee implementation of federal environmental policy diminished.

The means by which the agency collected revenues from industry changed significantly in 1997. Known as taking "royalties in kind" (RIK), accepting payment in this manner differed from the MMS's former policy of accepting cash payments based on the value of oil produced, known as "royalty in value" (RIV). This new method of royalty collection allocated payment to the MMS in the form of oil and gas. The agency could then transfer the commodities to other federal agencies or sell them to refineries. The switch from RIV to RIK advantaged the oil industry because it reduced administrative costs and made it so leases were not subject to audit, despite being worth millions (and sometimes billions) of dollars.

After extensive lobbying from the oil industry, the RIK program became a central part of the George W. Bush–Dick Cheney administration's energy strategy. As RIK continued to blossom, so did the relationship between the MMS and the oil industry. Attesting to the "revolving door" between government and industry, there were multiple examples during the Bush administration of high-ranking DOI and MMS officials who left their appointments to go to work for companies they formerly oversaw. Similarly, the Barack Obama administration also favored a continuation and expansion of deepwater exploration and royalty relief through the RIK program.

In September 2008, the intimate relationship between the MMS and the offshore industry was revealed in an investigation by Inspector General Earl DeVaney of the DOI. The investigation uncovered that up to one-third of MMS employees in the RIK program based in Denver, Colorado, had engaged in serious misconduct over the past several years, including rigging oil contracts, taking money as oil consultants, and having sexual relationships and using drugs with oil and gas company representatives. Adopting a private-sector model to almost everything they did, employees at the MMS attempted to legally exempt themselves from federal ethics guidelines. After the fallout from the RIK scandal, Interior Secretary Ken Salazar announced that it was time to end the RIK program in September 2009.

Though the RIK program was terminated, the influence of the oil industry continued to pervade the MMS organizational culture. Catering to the offshore industry's interests became an implicit part of the MMS's mission, and corruption became a pervasive part of the organization in multiple sectors. Because of the revolving door between government and industry, most of the employees at the MMS had at some point worked in the private sector. Even after attempts by Secretary Salazar to reform the MMS following the 2008 RIK scandal, the closeness between the MMS and the offshore industry had become far too ingrained to prevent the explosion of the Deepwater Horizon rig on April 20, 2010. Following the blowout of the Macondo well owned by BP (formerly British Petroleum), Secretary Salazar disbanded the MMS into three new agencies: the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resources Revenue.

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See Also: BP PLC; Bureau of Ocean Energy Management, Regulation, and Enforcement, U.S.; Bureau of Safety and Environmental Enforcement, U.S.; Corporate Capture; Corruption; Gulf of Mexico Oil Spill; Kerr-McGee Corp.; Office of Natural Resources Revenue, U.S.

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Misappropriation Theory

Misappropriation theory is one of the more expansive rationales that the U.S. Securities and Exchange Commission (SEC) and the U.S. Department of Justice (DOJ) have used in insider trading prosecutions in recent decades. Under this view, an individual may be liable for making a securities transaction on the basis of material, nonpublic information that he or she misappropriated in breach of a duty owed to the source of that information. This broad understanding of insider trading was not explicitly set forth in any federal statute or regulation. However, it was recognized by a variety of federal appellate courts starting in the early 1980s and then upheld by the U.S. Supreme Court in *United States v. O'Hagan* in 1997.

Federal judicial and administrative courts have long understood insider trading to be a violation of SEC Rule 10b-5, promulgated under the Securities Exchange Act of 1934, which prohibits any person from using manipulative or deceptive devices in connection with the purchase or sale of a security. Initially, these bodies only applied the so-called traditional or classical theory of insider trading. In this framework, the individual trading on material, nonpublic information was liable only if he or she was (or was tipped by) a corporate insider who owed a fiduciary duty to the shareholders of any of the companies tied to the transaction. The courts developed this theory incrementally over time before the U.S. Supreme Court solidified it with its decisions in *Chiarella v. United States* and *Dirks v. SEC* in the early 1980s. As this happened, government attorneys and judges were also considering a more expansive view of impermissible insider trading.

Chiarella v. United States

In *Chiarella* (1980), defendant Vincent Chiarella was prosecuted for trading on confidential information that he had accessed as a printer at a financial press. Chiarella had profited by buying stock in companies that he knew were subject to pending, yet still unannounced, takeover bids. The court held that he was not liable. Applying the classical theory of insider trading, it found that he owed no duty—and thus violated no duty—to the takeover targets in whose securities he had traded. The government in its brief had argued that Chiarella should be subject to 10b-5 liability even absent a violation of fiduciary duty if he had simply improperly obtained the information at issue. The majority did not rule on the new theory, as it had not been presented to the jury in the lower court.

However, five justices discussed it in their separate concurring and dissenting opinions. Four of them endorsed a very broad theory of misappropriation under which the misappropriator would have an absolute duty to disclose the information to his or her transaction partner or abstain from trading. Justice John Paul Stevens offered a more narrow interpretation. In rejecting a general duty, he suggested that corporate outsiders might still be liable for insider trading if they had defrauded the source of the information in question, as Chiarella had when he had used confidential information entrusted to his employer.

In subsequent actions, the SEC and the DOJ successfully advanced Stevens's more limited "fraud on the source" misappropriation theory, first in the Second Circuit and then in other appellate courts. However, the Fourth and Eighth Circuits rejected the new framework in the mid-1990s, questioning the theory for its attenuated interpretation of the 10b-5 requirements. The U.S. Supreme Court resolved the split in *United States v. O'Hagan* (1997).

United States v. O'Hagan

In *O'Hagan*, a law firm had assisted a corporate client in preparing a tender offer to acquire another company. O'Hagan was a partner at the firm and, although he did not represent that particular client, he was privy to its plans, and he bought lucrative call options for its target before the offer was public. He was prosecuted after realizing a profit of more than $4.3 million. Under a classical theory of insider trading, O'Hagan would not have been liable, as he used the information to trade on the shares of the target company, to which neither he nor his firm owed any fiduciary duty as a corporate insider.

However, in resolving the circuit court split, the Supreme Court applied the misappropriation theory instead, finding a 10b-5 violation where an individual "misappropriates confidential information for trading purposes in breach of a duty owed to the source of the information." O'Hagan was liable, as he had breached his professional duties of loyalty and confidentiality by defrauding his firm's client of exclusive use of its information when he made undisclosed, self-serving use of it.

Courts have applied the misappropriation theory in a variety of contexts, finding a "breach of a duty owed" anywhere a relationship was determined to have had fiduciary-like expectations of trust and confidence. The SEC issued Rule 10b-5-2 in 2000 to further clarify the circumstances under which such a breach might occur. In general, there can be a duty of trust or confidence if (1) the recipient of information agrees to maintain it in confidence; (2) there is a reasonable expectation of confidentiality in a communication because the parties have a history or practice of sharing confidences; or (3) the person receives the information from a spouse, parent, child, or sibling.

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See Also: Insider Trading; Maxwell, Robert; Securities and Exchange Commission, U.S.; Self-Control Theory.

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Mollen Commission

Following a particularly notorious scandal in the early 1990s, Mayor David N. Dinkins established the Mollen Commission to investigate allegations of police corruption in the New York City Police Department (NYPD) in 1992. In 1994, following an investigation, the commission reported several serious incidents of corruption in a few precincts in the city but did not find the systemic corruption that earlier commissions, most notably the Knapp Commission in 1971, had uncovered. Nevertheless, New York City, still recovering from the shock and lack of confidence in its police engendered by that previous scandal, was subjected to yet another series of shocking revelations about officers acting badly. The catalog of problematic behaviors revealed was lengthy, and commentators speculated that the NYPD was seemingly doomed to relive a serious scandal every 20 years.

The chairperson of the committee was former deputy mayor and retired state appellate judge Milton Mollen. Investigators who were primarily attorneys outside the police force were appointed to conduct interviews, and televised hearings were held in September and October 1993.

Police Corruption and Brutality

Testimony by several bad actors, including Officer Michael Dowd, revealed that small groups of alcohol- and drug-fueled officers shook down drug dealers for cash and drugs, used or sold the drugs, planted drugs, worked for and protected drug dealers, and routinely used excessive force. These patrol officers persisted in this behavior for years and decades in spite of many complaints from civilians and from internal affairs officers.

One officer, Joe Trimboli, noting that Dowd had received an extraordinary 16 complaints in six years, had investigated Dowd for four years but found his reports and suspicions ignored by ranking officers in Dowd's precinct, the main internal affairs office, and the prosecutor's office as well. In fact, at one point, superiors ordered him to close his case file and move on to something else. It was only when Dowd was picked up in another jurisdiction in the course of a drug investigation and Trimboli went to the press with his huge case file that the investigation began in earnest.

Although the street-level corruption brought to light by the investigation was appalling, the blatant indifference to citizen complaints by supervisors and/or the unwillingness of senior officers to purge corrupt officers from their precincts, from the department, and from the law enforcement community was even more alarming. Much of this upper-level corruption stemmed from upper-level officers simply not wanting it revealed that they were poor supervisors. Other supervisory officers sincerely felt that revealing corruption would irreparably harm the reputation of the NYPD, which was still reeling from the fallout from the Knapp Commission 20 years earlier. For whatever reason, these officers, along with the police union, continued a policy of noncooperation and obstruction.

Why police corruption manifested itself in the manner revealed by the Mollen Commission was the result of two primary factors: changes in the drug market and decentralized and lax internal affairs procedures. The relatively abrupt appearance of crack on the streets in the mid-1980s afforded tremendous profits to street-level criminals. As drug markets were being sorted out over the next several years by rival gangs and dueling dealers, the ensuing chaos created tremendous opportunities for corrupt cops.

Working out of precincts typified by high levels of drug use and drug trafficking, these officers congregated in after-hours bars where they drank, socialized, had sex with prostitutes and police groupies, planned illegal activities, and divided drug hauls. Several were known to have drug problems and were known to be intoxicated on alcohol and cocaine while on duty. Dowd made few arrests and was known to "crib," or sleep on duty, sometimes in his patrol unit. Commission records indicate that some officers routinely beat drug dealers in order to extort drugs and money.

The use of violence reached a pinnacle when Dowd and another officer turned over a prisoner to drug dealers who later murdered him. Internal affairs (IA) units were understaffed and expected to investigate all kinds of issues involving 30,000 officers. Furthermore, in many cases, despite media portrayals of diligent and dedicated IA officers striking fear into the hearts of officers both straight and corrupt, IA officers in the NYPD were inattentive and not responsive to complaints about police misconduct.

The commission's final report, released in July 1994, suggested the use of more stringent hiring standards and background investigations to be completed before an officer was hired. Furthermore, supervisors should be freed from onerous administrative duties so that they could monitor officer conduct more carefully. Dowd, the source of many corruption complaints, had flaunted a red sports car and a lifestyle clearly beyond the means of a patrol officer—but no supervisor had thought to investigate the source of his wealth. The commission also wanted to banish the perception that a police officer reporting corruption was a traitor to other officers and to the department. The "police code of silence" clearly needed to be replaced by a culture based on professionalism and accountability. The NYPD had failed to provide leadership that would inculcate such an occupational cultural nexus. An important suggestion was that an agency outside the police organization be established to investigate police misconduct and corruption.

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See Also: Corruption; Extortion; Knapp Commission; Police Brutality; Police Corruption; Prostitution; Public Corruption; War on Drugs.

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Money Laundering

Money laundering is a broad descriptor of numerous techniques to move illicit funds into the legitimate economy. Money laundering can be used to hide foreign profits, avoid taxes, or cleanse the proceeds of crime. It is a crime that supports any level of crime that produces cash that cannot be spent freely.

Criminal enterprises tend to concentrate currency in the hands of one or a few people. Small amounts of cash are easy to blend into the general background of commerce. Large amounts of cash, large enough to amount to wealth, require the services of a financial institution. Anti-money laundering (AML) laws target these institutions with reporting and regulations like the know-your-customer (KYC) laws. Possession of large amounts of cash is not illegal, but the various AML laws and initiatives require identification of the personnel handling the currency and tracking of transactions involving large amounts of currency. Traditionally, AML laws target the concentration of currency, but as electronic funds transfers have become more common, AML laws have adapted. AML laws have recently been adapted to an increasingly international economy and international threat groups seeking to fund their operations.

Money laundering is described in three parts to help target identification and enforcement efforts. The initial step of money laundering is called placement, which occurs when illicit funds are first introduced into the financial system. Depositing illicit cash at a bank or buying money orders with illicit cash is part of placement. The next step is called layering. Layering usually involves multiple transactions to obscure the origin of funds in the financial system. Transferring funds to an offshore, privacy haven bank and transferring the funds back in small increments is an example of layering. There can be overlap between the steps. For example, carrying cash proceeds of a crime into a casino, buying chips, and later cashing the chips in as winnings and even paying taxes on the winnings includes both placement and layering in the same transaction. The final step is called integration. Integration is the point at which laundered funds are returned to legitimate uses. These stages are targeted by the various AML efforts and laws. AML compliance programs also recognize these categories and direct efforts at them specifically.

A Legislative History

In the United States, the Banking Secrecy Act of 1970 (BSA) began efforts to fight money laundering. Banks were required to identify depositors and keep records of financial transactions. The BSA required all transactions over $10,000 in cash to be accompanied by a Currency Transaction Report (CTR). In 1986, the Money Laundering Control Act made money laundering a federal crime and criminalized structuring of financial transactions designed to avoid CTR reporting requirements. The law also implemented civil and criminal forfeitures for violations. The Anti-Drug Abuse Act of 1988 added businesses with large transactions like auto and real estate sales to financial institutions required to report large currency transactions. The act also required identification of purchasers of financial instruments worth $3,000 or more.

The Annunzio-Wylie Anti-Money Laundering Act of 1992 instituted Suspicious Activity Reports (SARs). SARs allow a financial institution to report activity that may indicate money laundering. For example, a structured set of four money order deposits with identical amounts, on the same day, and with sequential serial numbers may be deemed suspicious because the transactions are clearly related and are apparently structured to avoid reporting.

The Money Laundering Suppression Act of 1994 made it a federal crime to operate an unregistered Money Service Business (MSB). The act required banks to proactively train employees to identify and report suspect transactions. A similar act, the Money Laundering and Financial Crimes Strategy Act of 1998, expanded the training requirement to bank examiners and made structural changes in the government's response to money laundering. The USA PATRIOT Act of 2001 broadened AML laws to all financial institutions, strengthened identification requirements under previous laws, and increased controls on international transactions. Most recently, the Intelligence Reform and Terrorism Prevention Act of 2004 strengthened requirements on financial institutions making electronic money transfers internationally.

New Orleans, Louisiana, Mayor Ray Nagin takes King Abdullah II Bin Al-Hussein of Jordan on a walking tour of the Ninth Ward on February 3, 2006, to view the devastation caused by Hurricane Katrina. Nagin's own political disaster finally made landfall on January 18, 2013, when he was indicted on 21 counts of corruption, including wire fraud, bribery, and money laundering. If convicted of conspiring to commit money laundering, Nagin faces up to 10 years in prison, a $250,000 fine, and three years of supervised release.

In 2005, the European Parliament issued its third Anti-Money Laundering Directive to member states of the European Union (EU). Since the first AML Directive in 1991, the EU has progressively expanded its definition of money laundering and also the list of predicate offenses and has expanded the professions and institutions targeted. Actual laws are implemented by EU member states. Member states are free to enforce AML laws going beyond the directives, but the directives serve as a minimum level of effort and cooperation in the Eurozone. AML efforts in the EU have been primarily directed at prevention rather than criminal penalties. The collective EU countries have only 1 percent of the convictions of the United States in recent years. Much of this can be attributed to a more aggressive definition of money laundering and the United States' substantial use of AML laws in connection with other crimes like drug trafficking.

The Financial Industry and AML Compliance

Both U.S. and European efforts have substantial requirements of the financial services industry to help prevent money laundering activities. A complex, vigorous, international economy helps hide money laundering activities from regulators, so current laws make it incumbent upon the financial service companies to be diligent in not becoming unwitting accessories to serious crimes. To address these concerns, the financial industry has established industry practices that often fall into four categories of response. First AML programs and written policies establish the scope of an organization's efforts to comply with AML practices. Policies usually include verification of customer identity, reporting requirements, record retention, response to law enforcement requests, licensing, statement of regulatory compliance, and training for employees. AML programs are not limited to these policies, but they illustrate the concept well. Second, designation of a compliance officer makes it the duty of a single responsible individual to ensure that AML policies are followed. Third, ongoing employee training ensures that new and existing employees will not unknowingly allow violations of AML policies. Training also establishes the organization's efforts to proactively support AML efforts. The fourth and final category of industry response is periodic review of AML policies and actual practices. If a third party is not required by regulation, review by someone outside the normal compliance office is necessary. Review by someone within the compliance office simply duplicates that function.

Know-your-customer (KYC) policies reflect legal requirements to positively identify customers in certain financial transactions and support broader AML compliance. By knowing the customer, an employee or business unit can spot unusual activities that must be reported in an SAR. Some entire business categories place a financial service provider at increased risk. Casinos, check cashing companies, money transmission businesses, and even charities are considered "vulnerable" to use in money laundering. KYC policies help identify these risky customers. Additionally, any business that regularly deals in large amounts of cash may require extra scrutiny. Restaurants, parking garages, and retail stores all have a typical profile with their use of financial services. Deviating from these profiles may signal that additional scrutiny is necessary.

For example, sudden increases in the cash deposits of a small restaurant owner may indicate money laundering or it may indicate a new mobile lunch cart or truck with more cash transactions. A parking garage that suddenly needs significantly more large denomination bills but does not show any other changes may be part of a drug dealer's efforts to change small bills to more easily transported large-denomination bills. Normally, garages need small bills for change and deposit large bills. Finally, a change in the ratio of credit deposits to cash deposits from a retail store may signal money laundering. These examples are illustrative of concerns that are not unique to a single type of business. KYC policies help financial services companies determine if certain questionable transactions or trends are actually out of character for their customer.

Suspicious transactions can be defined by nature or because of the client. Clients refusing to provide required identification or backing out of a transaction when asked questions causes justifiable concerns. Structured transactions that appear intended to avoid reporting or identification are also suspicious. Use of ATMs or other mechanisms that allow a customer to conduct transactions without being asked for identification fall into this category. Finally, transactions with banking privacy havens or Money Service Businesses (MSB) can draw scrutiny. Policies empowering employees to act on such suspicions and training on how to identify them provide meaningful AML efforts.

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See Also: Advance Fee Scam; Bank of Credit and Commerce International; Bank Secrecy Act; Campaign Finance; Check Kiting; Currency Fraud; Daisy Chains; Daiwa Bank Ltd.; DeLay, Tom; Federal Gambling Regulation; Financial Crimes Enforcement Network, U.S.; Gambling and Lotteries; Nonprofit Organization Fraud; Offshore Bank Accounts; Organized Crime; Racketeering.

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Moody's Corp.

Moody's Corp. is a credit rating agency (CRA), which is an independent financial institution that specializes in rating the credit quality of specific financial products or of the general creditworthiness of companies, institutions, and currencies. To locate the level of creditworthiness of products, Moody's uses a ranking scale ranging from AAA (highest ranking) to D (default).

John Moody & Company was established as a specialized financial medium in 1900 when it issued the *Moody's Manual of Industrial and Miscellaneous Securities*. Its founder, John Moody, was motivated to establish a company that would offer comparative, reliable, and knowledge-based information on the worthiness of railways-connected securities. Today, the company is present in 28 countries, employs around 6,500 people, and in 2011 reaped profits of more than $2.3 billion. Together with Fitch and Standard & Poor's, Moody's is one of the Big Trio of the largest and most influential CRAs. Collectively, they rate around 95 percent of all debt.

The goal of CRAs in general is to help overcome the information asymmetry between investors and issuers so that investors can invest in safe and good-quality products. Because of their role of investment information providers, CRAs are today some of the most powerful players in world finance. They have, however, also been occasionally implicated in some of the world's major financial fiascos.

Criticisms of Credit Rating Agencies

The role of CRAs in the financial markets has at times been controversial. Various criticisms have been raised regarding their principles and method of work, concerning the quality of the rating process, the integrity in dealing with issuers, and the business model. The rating process has been criticized as not sufficiently probing, timely, and efficient. Major corporate scandals have revealed a lack of deeper research by CRAs to establish the true worth of corporate products. In consequence, CRAs have occasionally maintained a complicit role in keeping a company's false image as a successful financial actor.

For example, unable to establish the massive accounting fraud taking place at the time, Moody's had rated Enron to the highest standard up until four days before Enron declared bankruptcy. This lack of deeper probing into Enron's affairs—which might have discovered its complex fraudulent practices—subjected Moody's to severe criticism by the Committee on Governmental Affairs of the U.S. Senate in 2004. A further example of Moody's lack of timely adjustment of its rating to the actual corporate circumstances is the continued keeping of a high rating for General Motors and Ford at the time when their bonds were trading at a "junk bond" level.

CRAs have also been criticized for their occasional lack of integrity in dealing with the issuers of products. Reportedly, CRAs sometimes pressure corporations to use their rating services through the threat of a negative rating. A famous case involving Moody's is the incident with Hannover Re, a giant German insurer. In 1998, Moody's approached Hannover Re, offering a free rating of its financial health with the prospect of payment for future ratings. The offer was declined, as the insurer was already using the rating services of two other CRAs. Moody's started rating it anyway, with increasingly weaker ratings over the next six years despite the positive ratings that Hannover was receiving from other CRAs. In 2003, Moody's downgraded Hannover's debt to junk status, inciting a worldwide dumping of the insurer's stock by investors and lowering its market value by $175 million within hours. Hannover's management claimed that the series of downgrades consisted of "pure blackmail" by Moody's, which had relayed on several occasions that the subscription to its services would positively impact Hannover's rating.

Finally, the business model of CRAs has been frequently highlighted as one of the factors that impact the objectivity of the rating process. Currently, CRAs operate on the "issuer pays" model, which means that they are funded by the very companies they rate. Depending on the size, companies pay between $1,500 and $2.5 million for the privilege. This creates a potential conflict of interest, as the CRA has an incentive to give companies satisfactory ratings in fear that they might take their business elsewhere. The question remains whether the amount of the fees paid affects the true value of the rating.

Credit Rating Agencies and Financial Crises

Moody's and the rest of the CRAs have suffered significant criticism over their role in the financial crisis of 2008. Specifically, one of the reasons for the downfall of the financial markets stemmed from the poor management and misjudgment of risky financial products. CRAs have been directly implicated in this process through their role in transforming the securitization of risky subprime mortgages into a reliable and high-quality product. The CRAs evaluated these structured products with an overblown rating of AAA, without considering the fact that they were backed by subprime mortgages of a suspicious quality. Unsophisticated investors without specialized knowledge in securitization, but also the market in general, relied on the CRAs' evaluation of these products as "secure" when making investment decisions.

The problematic role of CRAs became evident when the structured products, backed by subprime mortgages, started to default as numerous mortgage debtors defaulted on their mortgage obligations. The CRAs' had no choice but to swiftly degrade the ratings of the structured products, creating a systemic panic around the world.

The problematic role of CRAs in this process was connected to their model of risk calculation, the existence of conflicts of interest, and the lack of transparency in their dealings. The CRAs underestimated the risk of default in the securitized products because of an optimistic view, at the time, of a booming housing market. Further, the lack of transparency in the rating process used by CRAs led to keeping investors in the dark with regard to the true worth of the securitized products.

Finally, the expansion of the securitization process generated equally large rating fees for the CRAs. The aforementioned issuer-pays model contributed to the establishment of a "shopping for credit rating" practice whereby the companies asked around at the various CRAs for a preliminary evaluation and then picked the one with the most beneficial rating. There is also some evidence that it would have taken nothing more than a few phone calls to remedy an incidence of a low rating issued for a big rating buyer. The outcome was an inflation of credit ratings and a lack of methodological rigor in their production.

In sum, by sustaining the demand for securitized subprime mortgages and collateralized debts, the CRAs encouraged a great number of financial institutions to invest badly, contributing to the demise of the global financial system.

Credit Rating Agencies and Economies

The controversial role of CRAs in the current financial crisis is aggravated by their ongoing practice of unsolicited rating of the financial health of national economies. The highlighting of the seriousness of the situation in some countries has contributed to fueling the ongoing crisis as CRA downgrades have a cooling effect on potential investments in a country. For example, in July 2011 Moody's downgraded the rating of Portugal to the level of "junk," causing chaos in both the stock markets and European political circles.

This was one of the reasons for the increased calls by finance ministers for a "war" against the power of the Big Trio through tighter regulation and greater transparency in their rating process. The success in achieving this, however, remains to be seen, as Moody's has strongly indicated that it will continue its independent and objective ratings of countries and state bodies. The argument it puts forward in its defense is that CRAs have a duty to provide a public service to the informational needs of investors regarding all investment opportunities.

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See Also: American International Group; Standard & Poor's; Troubled Asset Relief Program.

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Morgan, John P.

John Pierpont Morgan (1837–1913) is an American icon who remains a lightning rod for controversy 100 years after his death. In a review of literature relating to Morgan, one finds various titles, such as "Captain of American Industry," "Savior of the Union," and "extraordinary philanthropist" applied during his lifetime. In the same review, one finds him to be a businessman without morals, a ruthless thug, a cheat—in general, a robber baron. The paradigm through which one reviews the facts places him in one of these historical categories. A brief review of facts relating to John Pierpont Morgan focusing on his business life as it may or may not relate to white-collar crime follows.

Morgan was born into a business family, as his father, Junius Morgan, owned and operated a large banking concern. He started working in the family business at the London Branch and eventually moved back to New York and worked with Anthony Drexel, who served as his mentor on behalf of Junius Morgan.

At the beginning of the Civil War, Morgan initiated a business deal that is held up as evidence of his criminal activity in business. In what is called the Hall Carbine Affair, Morgan purchased from the U.S. government 5,000 carbines that were defective and being liquidated by the government for $3.50 a carbine. Morgan sold the same carbines back to the government for $22 per rifle. The money used to purchase the rifles was the money the government used to buy them back from Morgan—none of his money was ever involved. Some suggest that Morgan was never aware that the guns were being resold. The weight of scholarly opinion is that this was highly unlikely. The Hall Carbine Affair is indicative of Morgan's business dealings throughout his career—no criminal acts, but pushing the edge of acceptable business behavior.

After the death of Anthony Drexel, Morgan's company was formed in 1895 with the name J. P. Morgan & Company, and within five years it had become one of the most powerful financial companies in the world. During his life, Morgan would have many partners and associates, but the he remained firmly in charge of the firm. J. P. Morgan & Company was involved in a wide range of financial operations but was most noted for its activities in the areas of business consolidations and reorganizations. These areas are where questions about both the ethics and legality of many of Morgan's actions arise, while others cite them as proof of his brilliance and the root of the American economic miracle.

Morgan's rise was in conjunction with his deals in the area of railroads. His company dominated large amounts of railroads through the formation of trusts. In 1885, he created a trust between two competing railroads, the Pennsylvania Railroad and the New York Central. This ended an ongoing rate war between the two railroads and made them more profitable. He also financially dominated other competing railroads, which included the Baltimore and Ohio, Chesapeake and Ohio, Northern Pacific, Great Northern, Southern, and Reading railroads. Even while making profits, their rates for shipping went up; and smaller competitors were ruthlessly crushed by undercutting their rates until they were broken. These railroads formed the basis for the Northern Securities Company, which was a railroad trust.

It became the first company broken by President Theodore Roosevelt's first antitrust actions under the Sherman Antitrust Act. In spite of this, Morgan continued to form trusts and consolidate major industries in the United States. He was the major figure in the creation of U.S. Steel, the first billion-dollar corporation. This act, as with much of what Morgan did, was praised as the creation of a dominant industry of the United States and the world but also was seen as the elimination of competition and the mistreatment of labor.

Morgan twice saved the United States from financial disaster. In 1895, by providing 3.5 million ounces of gold along with the Rothschilds, he saved the U.S. Treasury. Morgan again came to the government's rescue in 1907 during the financial panic. Morgan was hailed by conservatives as a hero for his acts but was seen as the root cause of these ills by progressives. Louis Brandeis stated that at one time, Morgan and three other banks controlled enough capital to buy all the land east of the Mississippi River.

Morgan was a philanthropist, a patron of the arts, and an avid collector of gemstones, books, and art. He dominated a room when he entered, having almost a physical effect on those present. Morgan remained larger than life 100 years after his death. No text on corporate or white-collar crime fails to mention him, and no review of American industry fails to pay tribute to his greatness.

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See Also: Antitrust, Federal Trade Commission; Carnegie, Andrew; Robber Barons; Roosevelt, Theodore; United States; United States Steel Corp.

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Mortgage Fraud

Real estate ownership is generally desirable to many Americans, as it has been viewed as a symbolic milestone of financial success or part of the achievement of the "American dream." Real estate ownership is the single largest investment for many American households. In real estate transactions, a substantial proportion of buyers apply for mortgages and borrow money from credit-issuing financial institutions. As in many other business transactions, there are potential threats of fraud associated with the process in this trillion-dollar mortgage market.

From a legal perspective, mortgage frauds occur when any misrepresentations, misstatements, or omissions of required information in the process of mortgage application lead to perpetrators' financial gains that would not occur if true information were presented in a timely manner. The perpetrators of mortgage frauds can be anyone who is involved in the entire real estate property transaction, ranging from the borrowers to the lenders, as well as any combination of third-party individuals or groups such as real estate agents, appraisers, brokers, escrow agents, title agents, inspectors, accountants, land developers, and attorneys.

Although it is difficult to gauge the extent of mortgage frauds, it is possible to determine a general pattern of the crime by comparing the ultimate target desired by the perpetrators. The purposes of mortgage fraud commissions can be largely divided into fraud for property and fraud for profit. The first group of mortgage frauds is committed for the purpose of obtaining the real property, and the perpetrators typically are the borrowers, who misrepresent their financial information, such as inflated income, occupational position, or employment status, in order to obtain an approved loan. Perpetrators may omit disqualifying financial information, such as poor credit history or recent debts, in the process of loan application. The misrepresentation or omission of financial information might also be facilitated by loan originators.

The second group of mortgage frauds is committed primarily for financial gains from relatively rapid real estate transactions. Perpetrators quickly "flip" the properties and turn them into transferable profits and often leave unpaid loans and unmaintained properties behind. The failure to comply with the conditions and terms of the mortgage or deed of trust leads to the lending party's fixing actions, such as selling or repossessing the property. Thus, there is a high correlation between mortgage frauds and payment delinquency and/or foreclosure. Also, the second scheme often involves field professionals in multiple loans, and the consequences can be very damaging and have devastating implications for the economy.

Mortgage Fraud Practices

In practice, four out of every five mortgage frauds involve information gathering and verification that takes place during the application process. The term *mortgage fraud* is broadly used to refer to a wide array of mortgage-related illegitimate practices with the intention of financial gains. These practices are described below.

Occupancy frauds: Occupancy frauds occur when borrowers claim to occupy the property as their primary residency in order to obtain a lower interest rate from the lenders. The misrepresentation of purchase purpose leads to lenders' underestimation of the lending risk. According to the federal Financial Crimes Enforcement Network (FinCEN), this is the most often reported misrepresentation.

Lending frauds: In lending frauds, mortgage transactions are based on gross fraudulent misrepresentations about the borrowers' financial capability, such as "puffy" income level, overstated values of assets, false or fictitious employment records, or inflated values of property in transaction. Some specific actions include income frauds, which refer to borrowers inflating their income for the purpose of obtaining a larger loan and employment frauds, which refer to borrowers' false statements of holding a lower-risk position or being self-employed in order to obtain the approval of the mortgage.

Failure to disclose liability: Failure to disclose liability occurs when borrowers omit information or conceal other financial obligations in the application for a mortgage, which leads lenders to underestimate the risk of the mortgage. Financial obligations that are omitted may range from other existing/applied/unpaid mortgages to credit debts to childrearing costs.

Appraisal frauds: Appraisal frauds involve deliberately over- or under-appraising a property's value, thus creating an unreasonable discrepancy between the property's market value and appraised value and enabling perpetrators to take financial advantage of the difference. Sometimes unethical appraisers take pictures of cosmetic facades of properties that are completely deteriorated inside or in back. It has been argued that the increasing competition among appraisers, especially during long durations of economic downturns, may generate a context in which appraisers are more likely to commit this type of fraud in order to keep themselves in business. For a hypothetical scenario, a mortgage broker probably is likely to continue to refer customers to an appraiser whose property valuations fall in line with the broker's business agenda.

Cash-back schemes: In cash-back schemes, the property price is inflated by participating parties who would receive cash-back profits in any form, including a set of new appliances or a new roof, which is not disclosed to the lenders. As the inflated price leads to a larger amount of loan, a greater level of risk is placed at the lender's end. This type of scheme is sometimes called a silent second mortgage, as the mortgage lender has no information about the hidden risks attached to the financed property in the transaction.

Mortgage Fraud and Predatory Lending

It is noteworthy that mortgage fraud is different from predatory lending, which is also an unethical or risky business practice. A loan agent may engage in these two hairline-separated actions in the origination. Although predatory lending has not been considered illegal in many states, such practice could be extremely harmful to the borrowers for the reason that predatory lenders rarely take borrowers' ability to repay the loan into consideration. It is not uncommon that desperate borrowers, after several denials of a loan, are led to financially unwise mortgage products. Generally, predatory lending includes charging excessive fees, steering borrowers into bad loans that create higher profits for the lenders, and abusing yield-spread premiums.

The burst of the U.S. real estate bubble in the first decade of the 21st century perhaps correlated with the escalating number of mortgage frauds. Accompanied by the high unemployment rate, many Americans could no longer afford to pay their mortgages on time. These economic factors led to an increased wave of mortgage rescue and loan modification scams witnessed across the country. This type of fraud occurs when a third-party individual or group claims to be able to help

Homeowners facing foreclosure share their stories with California Attorney General Kamala Harris in Stockton, California, January 19, 2012. The following May, Harris announced the creation of a Mortgage Fraud Strike Force to protect homeowners.

borrowers with unaffordable mortgage payments but, in fact, does not have any workable plans. The perpetrators charge up-front fees but take no action or make no meaningful effort to help the borrowers. The victims usually are not aware of the victimization until they receive lenders' or courts' documentations of harsher consequences like foreclosure. This type of scam occurs more often when area real estate prices drop substantially, especially in the wake of the Great Recession, and more legitimate owners suffer from "underwater" properties—the market value of the real estate being lower than the mortgage amount.

The large numbers of underwater residences have also meant that financial institutions have to process more short sale properties—borrowers requesting to sell their properties for less than the mortgage loan balance. To legitimate borrowers, dealing with short sales can be stressful and emotional. However, there is another emerging wave of short sales, abused by perpetrators who may use straw buyers to gain from target properties on lenders' costs. In a typical case, the straw buyers use no or low down payment mortgages to obtain the target properties and use home equity loans to obtain the transferable profit. Without paying the mortgages, the lenders initiate the short sale or foreclosure process; the perpetrators may then step in and offer a much-lower-than-market price. Upon the completion of "legal" transactions, the target properties are quickly sold at the market value and "flipped" into transferable profit to the perpetrators. As fraudulent mortgages typically lead to foreclosures of the properties, legitimate lenders might lose millions of dollars. In addition to financial damages, legitimate real estate buyers and owners in the area suffer from price fluctuations and disorganized, or possibly deteriorated, neighborhoods that further damage the local economy.

The emerged upward trend of mortgage fraud cases has caught law enforcement's attention. The number of mortgage fraud investigations initiated by federal law enforcement agencies, for example, increased from 721 cases in 2005 to 3,029 cases in 2010 (or more than 300 percent increase). In addition, the Federal Bureau of Investigation (FBI) designated a Financial Institution Fraud Unit to oversee the investigation of financial industry fraud schemes perpetrated by individuals and criminal organizations that target financial institutions in the United States. Task force activities like StopFraud.gov are formed to lubricate cooperation among federal law enforcement agencies, including the FBI and the Department of Housing and Urban Development (HUD). Likewise, suspicious activity reports (SARs) are routinely released by the FinCEN to signal alarming emerged activities.

Mortgage Fraud and Control Fraud

Mortgage fraud is also different from control fraud. Control fraud refers to people in an institution's leading positions with executive power who subvert regulatory controls, internally or externally, and lead the institution to commit frauds for personal gains.

One of the contemporary examples is the global economic slowdown incepted in 2008, resulting in part from the subprime mortgage crisis in the United States, which some scholars have argued can be traced back to deregulation. The financial deregulation incepted in the 1980s has been conducive to more "creative" mortgage products, such as interest-only mortgages, low/no documentation mortgages, and no-down-payment mortgages. These alternative loan products somehow were wildly more likely to be an open invitation to fraudsters. According to the Mortgage Bankers Association, for instance, subprime adjustable-rate mortgages (ARMs) accounted for 6.8 percent of the loans outstanding in the United States, yet they represent 43 percent of the foreclosures as of 2007.

These numbers are more understandable in the context that borrowers with subprime mortgages usually have credit scores lower than 620, which leads to a greater likelihood of denials of conventional mortgages. This group of borrowers would not be qualified to obtain a loan if the Alternative Mortgage Transactions Parity Act were not passed. These innovative financial products of securitization of mortgages into mortgage-backed securities are then repackaged and sold worldwide in the securitization markets. The collapse of the subprime mortgage market led to plummeting values of subprime mortgage-backed securities, as well as sinking financial institutions that hold a significant amount of the securities in their portfolio globally.

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See Also: Amerifunding; Bank Fraud; Dream Homes Scam; Fair Housing Act; False Foreclosures; Foreclosure Fraud and Rescue Schemes; House Stealing; Housing and Urban Development, U.S. Department of; Legacy Lending; Liar Loans; Loan Origination Schemes; Mortgage Modification Fraud; Mortgage Reform and Anti-Predatory Lending Act; Mortgage-Backed Securities; Obama, Barack; Operation Malicious Mortgage; Paulson & Co. Inc.; Pontell, Henry; Predatory Lending; Racial Discrimination; Real Estate Investments; Reverse-Mortgage Fraud; Securitization Fraud; Short-Sale Schemes; Small, Gerald P., III; Subprime Loans; Truth in Lending Act; Wells Fargo Mortgage.

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Mortgage Modification Fraud

Mortgage modifications can be made at any time during the life of a mortgage loan, usually to the benefit of the borrower. Modification can be made to the interest rate, principal, penalties, term of the loan, and other areas. Since the financial crisis and bursting of the subprime mortgage bubble in 2008, scores of homeowners have been desperate to modify the terms of their mortgages in order to save their homes. Scammers have taken advantage of their dire straits by offering rescue schemes in which they charge a homeowner exorbitant fees while promising assistance that will supposedly save the home. Instead, these scam outfits, which try to pose as legitimate businesses and even government agencies, take the money and run.

Background

Mortgages are loans for which real estate serves as collateral. Real estate is legally identified as some kind of realty, or real property, or immovable property such as buildings, including improvements made by human efforts, such as ponds, lakes, dams, wells, canals, roads, or even mines. Real estate is defined by law through surveyor descriptions, which are then used quite often to assess property taxes. As a consequence, the property has a legal identification and a deed that assigns title of ownership. In the United States, real estate descriptions and deeds are recorded at a local office, usually by the county clerk for the county in which the real estate is located.

Mortgage loans are made against real estate by a number of financial institutions, including banks, thrifts, savings and loans, credit unions, and other lending institutions. The amount of money committed to mortgages is huge. Because buying a home is the largest consumer purchase that most people make, it is of great importance to them. Often their life savings, or a good portion of their life savings, is tied up in their house, farm, or other real estate such as a condominium.

At the "closing" of a mortgage loan, the agreement normally includes documents that the borrower signs that give the lender a lien against the property (land and house on it). Other documents set out the terms under which the lender can take the property through foreclosure if the borrower fails to make payments.

A legal process for seizure, called foreclosure, allows a lender to attempt to recover the balance of a loan that is due the lender and associated costs of recovery. It can be instituted if the borowwer stops making mortgage payments. Foreclosure can force the sale of the property to allow the lender to regain the loan in cash. Generally, a large number of foreclosures end with the borrower losing the equity in the property and the lender getting less than the balance of the loan.

Although foreclosure is an action of last resort for a lender, there are unscrupulous people who seek to seize property through the foreclosure process, sometimes from the elderly who failed to pay some minor tax, such as a separately assessed alley access tax. Depending upon the loan and the political jurisdiction, a lender can repossess the property, but the borrower can, usually within a limited time period, be granted an equitable right of redemption if the loan is repaid.

Other documents that may be signed at a real estate closing include arrangement for monthly payments to be made through an escrow account. This PITI payment is one that covers four costs: principal on the loan, interest on the loan, real estate taxes, and property insurance (fire, storm, or flood damage). Sometimes mortgage insurance is included; this is a life insurance policy that covers the balance of the loan in case of the death of the borrower. If premature death occurred, the loss of the breadwinner whose income is being used to make the mortgage payments would not mean that the surviving family would lose their home because they could not make the monthly mortgage payments.

Some borrowers prefer to make their own arrangements to pay real estate taxes and property insurance; however, lenders do require that these be made in order to protect the lender's interest in the integrity of the property in case of foreclosure. If the creditworthiness of the borrower is weak, then the lender can require the purchase of mortgage insurance for several years to cover costs in case of a foreclosure in the early years of the loan. Private mortgage insurance protects the lender's interest but allows the borrower to purchase the home. There may be fees for government-guaranteed mortgages.

Mortgage payments consist of the monthly amount that returns the principal, pays the interest charges, and pays the property insurance and the taxes. They also may include an amount for mortgage insurance or some other fees. The payments amortize the loan, spreading the return of principal and the payment of the interest charges over monthly (12) payments each year for the number of years in the loan. Other payment schedules can be created, but monthly payments for 15-, 20-, or 30-year loans are standard. The monthly payment usually does not remain the same over the life of the loan because taxes and insurance premiums usually change. In addition, the amount of the monthly payment that is the return of principal increases over the life of the loan, while the interest charges decrease. Toward the end of the life of the mortgage, most of the monthly payment, apart from insurance and taxes, goes to the return of principal so that the loan can be paid out.

Historically, individual mortgages were made by institutional lenders directly with the borrowers. However, mortgage brokers entered the business as mortgages became more competitive and lending institutions competed for the business. When a mortgage loan is created, the buyer, the seller, the real estate agent, a mortgage broker if one is involved, a real estate attorney, and others may be present to sign the necessary documents. At the closing, realtors get fees for bringing the sale to market. There are also fees paid to the real estate assessor. Usually there are relatively small taxes to be paid, as well as some fees, for example, a fee to record the title with the mortgage owner's lien on the property.

Lenders make money from mortgages by charging fees for making the loan. If, for example, the loan is for 20 years at a fixed rate, then the lender (commercial bank, savings bank, or some other kind of financial institution) can expect to receive the return of the principal with interest over the course of the next 20 years. The monthly payment by the borrower pays the interest in large amounts in the first years of the loans, with the principal being paid in ever-increasing amounts as the interest payments decline over the course of the loan. At the end of the loan, the mortgage holder will have the original principal fully returned with interest. However, money is also made by turning over the loan to an investment institution, such as a retirement fund, which uses the steady income to pay its clients. The "turning" of the loan means that originating lenders can make quick profits.

Mortgages can be the subject of fraudulent actions by white-collar criminals, some of whom may even be acting for syndicate criminals. Mortgage fraud occurs if there is a material misrepresentation or the omission of information in a mortgage loan application. For a borrower to do this is a crime. For a borrower to seek to obtain a larger loan than would be possible if the lender knew the whole truth is also a crime.

Mortgage fraud is not the same as predatory mortgage lending, which is the practice of using deceptive and misleading information to trick a borrower. The tricks employed include misleading statements about the interest rate being charged, or borrowers may be so misled that a loan is made for more than the borrower can pay so that foreclosure in the near term is almost guaranteed, to the profit of the lender.

States have their own laws that cover mortgage fraud. Federal prosecution of mortgage fraud usually focuses on the acts that are violations of federal laws against wire fraud, bank fraud, or mail fraud. Since many banks are insured by the federal government, borrowing money under false pretenses from a federally insured bank is an act of bank fraud. In the case of a mortgage, because critical documents may be mailed, the use of the U.S. postal system violates the law against using the mail to commit a fraud. Using federally regulated communications also involves the laws against wire fraud.

Mortgage modifications can be made at any time during the life of a loan. They are usually made to the benefit of the borrower. Modification can be made to the interest rate, changing it from a floating to a fixed rate. The principal can also be reduced, as can penalties such as late fees. The term of the loan can be lengthened, which will reduce the monthly payments, making it easier for the borrower to make the payments. Other modifications are also possible.

Loan modifications can be made, if applied for by the borrower, at any time, even if the payment(s) are late or if the loan is in default, bankruptcy, or foreclosure. Modifications are made at the discretion of the lender in expectation that the borrower will be able to make the payments and ultimately pay off the loan. Both the state and federal governments may advocate a mortgage modification program. If the modification is voluntary, there may be incentives given to the lender. A mandatory mortgage modification program requires lenders to modify mortgages to meet different criteria, such as the credit rating of the borrower, the kind of property, or other criteria.

In 2009, Congress passed the Financial Stability Act. It created the Home Affordable Modification Program (HAMP), which is part of the Making Home Affordable Program designed to help seven or eight million homeowners struggling with their mortgage payments. The program gathered banks, services, credit unions, the Federal Housing Administration (FHA), the Veterans Administration (VA), the U.S. Department of Agriculture (USDA), and the Federal Housing Finance Agency in a collaborative effort to create standard loan modification guidelines. The guidelines would be used by lenders as they evaluate a borrower applying for loan modification.

Modification Scams

Since the 2008 financial crisis caused by the subprime bubble, home mortgage modification scams have victimized a number of struggling homeowners desperate for a solution to their mortgage troubles. Other scams offer some kind of foreclosure rescue solution. They may find their victims from foreclosure notices published in newspapers.

The con may be an offer to save the "mark" home, but a fee must be paid. Usually the fee is paid up front and is substantial, perhaps a $1,000, perhaps many thousands of dollars. There may also be a requirement that the fee be paid with cash or a cashier's check, or a wire transfer, before the "counselor" can act. Legitimate counselors charge only a small fee and then only after actually doing something to aid the desperate homeowner.

Scam artists offering to stop a foreclosure or to gain mortgage modification may urge the victim to "trust me" because they guarantee to save the home. Unrealistic promises are a likely sign that the victim will receive nothing but heartache.

Scammers may offer to rent the home back to the victim if they will sign it over. This is done with the promise that the homeowner can stay in the home, but signing over the deed gives the criminal perpetrating the fraud legal power over the property to raise rents or even to evict the homeowner. In addition, the sale of the house without satisfying the mortgage could leave the victim without a home and with the responsibility to pay off the mortgage.

Misleading advice can include the injunction to stop paying the mortgage or to not talk to the lender if the lender calls. The con artist may claim that it will be taken care of, which is really a spurious claim. Other claims include the assertion that the mortgage was illegal to begin with and that the scam artist has knowledge of secret laws or secret information that will be used to end the debt. Or the scam artist may use high-pressure tactics on the vulnerable, such as elderly people who are reduced in mental capacity. A very potent tool for perpetrating a fraudulent mortgage modification scam is to have the homeowner sign a blank document. The confidence man (or woman) will claim that the paperwork will be filled in later, which puts victims in the position of signing something they do not understand.

Scams can be run by legitimate-looking companies that claim they are affiliated with the government or that high fees are necessary in order to qualify for participating in a legitimate government program. Contacting the lender and getting any offers in writing from the lender is a safeguard that for many people seems impossible because they are intimidated by government offices or large institutions. Desperate homeowners may be induced to pay fees to join in a "mass joinder" lawsuit, when the suit, if filed, will be treated as frivolous.

Bankruptcy in some states may allow a family to keep its homestead. However, in general, filing for bankruptcy does not prevent foreclosure; it merely delays it. Thus, claims by con artists that it prevents foreclosure are fraudulent. However, there have been cases of con artists filing for bankruptcy in the name of a financially strapped homeowner without the knowledge of the homeowner. Since the bankruptcy temporarily stops foreclosure, the homeowner may be fooled into thinking the con artist has saved the home and reward that person only to discover that he/she still has mortgage obligations that must be met from the actions of the bankruptcy court.

Tragically, the problem of mortgage modification frauds is not confined to career criminals seeking spoils from those they deceive. Recent cases have involved lawyers and lenders who took advantage of distressed homeowners with false promises of loan modification while collecting significant advance fees. The presence of a lawyer adds a sense of legitimacy to a mortgage fraud that can con the victim more readily than other persuasive motivations. In recent years, over 100 California attorneys were disbarred for participation in fraudulent mortgage modification schemes. Several hundred more were under investigation in 2010.

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See Also: Dream Homes Scam; False Foreclosures; Foreclosure Fraud and Rescue Schemes; House Stealing; Housing and Urban Development, U.S. Department of; Loan Origination Schemes; Mortgage Fraud; Mortgage Reform and Anti-Predatory Lending Act; Real Estate Investments; Reverse-Mortgage Fraud; Subprime Loans; Truth in Lending Act; Wells Fargo Mortgage.

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Mortgage Reform and Anti-Predatory Lending Act

A bill titled the Mortgage Reform and Anti-Predatory Lending Act (Mortgage Act) (H.R. 1728) passed the House of Representatives on May 7, 2009. It sought to prevent white-collar crime and abuse in the mortgage industry. The bill later died when it failed to pass the Senate. It had been introduced in the 110th Congress as the Mortgage Act (2007) but had not passed.

The Mortgage Act bill was introduced on March 26, 2009, by its sponsor, Rep. Bradley (Brad) Miller (D-North Carolina) of North Carolina's 13th Congressional District. The 13th District apportioned according to the 2000 census bordered Virginia and included portions of Greensboro, Burlington, Wake Forest, and Raleigh as well as a number of smaller towns.

The bill ultimately attained 11 cosponsors, all of whom were Democrats in the Democrat-controlled 111th Congress. Original cosponsors were Melissa Bean (Illinois, 8th District), Barney Frank (Massachusetts, 4th District), Luis Gutierrez (Illinois, 4th District), Paul Kanjorski (Pennsylvania, 11th District), Walter Minnick (Idaho, 1st District), Melvin (Mel) Watt (North Carolina, 12th District), and Joe Baca (California, 43rd District). Joining the bill's sponsorship on April 23 were Kendrick Meek (Florida, 17th District) and Betty Sutton (Ohio, 13th District). Gregory Meeks (New York, 6th District) became a sponsor on April 27, and Sheila Jackson-Lee (Texas, 18th District) signed on as a sponsor on May 4.

The Mortgage Act bill followed the standard path for how a bill becomes a law. Its title read, "To amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, to provide certain minimum standards for consumer mortgage loans, and for other purposes." It was assigned a number—H.R. 1728—and sent to the House Committee on Financial Services, chaired by Democrat Spencer Bachus (Alabama, 6th District).

The Mortgage Reform and Anti-Predatory Lending bill was reported out of committee on April 29 and sent to the House Rules Committee, where it was assigned its rule and then placed on the House calendar as a bill authorizing actions but not appropriating any monies. It was taken up by the House of Representatives on May 7.

On the floor of the House nine amendments were made to the bill. Four of the amendments to the bill were major amendments. The major amendments were its 2nd, 5th, 7th, and 9th. The 2nd amendment proposed to the bill was adopted by a vote of 245–176. The 5th, 7th, and 9th amendments to the bill were defeated by votes of 171–252, 167–259, and 171–255, respectively. It then passed the House of Representatives on May 7, 2010. The bill was then sent to the Senate, where its subsequent legislative history ended with the bill's death.

Reformation of Wall Street

The Mortgage Reform and Anti-Predatory Lending Act was part of a wider effort to reform Wall Street. Specifically, it was a part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Mortgage Reform Bill was a long bill. Its mortgage section alone was over 200 pages. If it had passed, it would have required lenders to prevent subprime lending by ensuring that borrowers had the ability to repay a loan. Commentators believed that this provision would have banned stated-income loans and no-doc loans. Other provisions sought to prevent unfair lending practices by prohibiting the use of financial incentives to see and obtain subprime loans, which constituted a kind of "bait-and-switch" when borrowers were then guided into more costly loans. It was seeking to outlaw bonuses known as "yield spread premiums," which required lenders to pay brokers to inflate the cost of loans. It also prohibited prepayment penalties that were believed to be responsible for trapping many borrowers into unaffordable loans.

If the act had passed, it would have established penalties for bad lending practices. Those who did not comply with the new standards could be made to pay what would have been, in effect, restitution to the consumers. The penalties could have been as much as three years' interest payments, damages, and attorney's fees. In addition, borrowers would have been protected from violation of the standards in foreclosure procedures.

Other provisions would have given consumers protection from high-cost mortgages. It would have increased the federal rules on high-cost loans, and it would have lowered the triggers used to identify high-cost interest rates, points, and fees. It also required disclosure with a warning that payments on variable interest rate mortgages could easily change with interest rate fluctuations. At the same time, the bill promoted the "ownership society" by establishing in the Department of Housing and Urban Development (HUD) an Office of Housing Counseling. The office would also provide rental housing counseling.

Critics complained that the act not only was long and difficult to read but also that its language was quite vague. They also complained that the act was an exercise in futility because, most of the time, the mortgage industry was able rather quickly to subvert new regulations within days of their adoption.

After adoption by the House, the bill was referred to the Senate, where it was received, read twice, assigned a number, and sent to the Committee on Banking, Housing, and Urban Affairs, chaired by Chris Dodd (D-Connecticut). It was pigeonholed in Senator Dodd's committee in favor of the Dodd-Frank bill, which passed.

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See Also: Bank of America Corp.; Fair Housing Act; False Foreclosures; Foreclosure Fraud and Rescue Schemes; Merrill Lynch and Co. Inc.; Mortgage Fraud; Mortgage Modification Fraud; Obama, Barack; Subprime Loans; Truth in Lending Act; United States.

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Mortgage-Backed Securities

Mortgage-backed securities (MBS) are one of the world's largest fixed income markets. Mortgage-backed securities represent a claim on the cash flows from pools of mortgage loans. A mortgage is a loan that is secured by real estate, either land, property, or a building. Mortgage-backed securities typically include mortgage loans from residential properties and encompass most bonds that are backed by mortgages. These loans (or notes) are purchased from banks, mortgage companies, or other lenders. The purchasing entity may be a private corporation, a government-sponsored enterprise, or the government itself. Once the purchasing entity acquires a group of mortgage loans, it then assembles these loans into collections, or pools. The purchasing entity can then issue securities against these pools that represent claims to any payments (both principal and interest) made by the original borrowers of the loans, who continue to pay their debts. Additionally, the originator of the mortgage typically continues to service the loan, acting as a "pass-through" for principal and interest payments and collecting payments for the security holders for a fee. The pass-through is a key distinguishing feature of mortgage-backed securities. The process of issuing securities against the mortgage pools is known as securitization.

The introduction of mortgage-backed securities has helped stimulate the struggling housing economy by offering advantages for both lenders and borrowers. Lenders are able to increase liquidity, which allows them to offer more loans. This benefits the borrower not only in terms of funds being available but also in respect to interest rates on the loans—the more funds that are available for loan, the lower the interest rate will be to attract borrowers. Additionally, because of the inferred governmental guarantee that accompanies mortgage-backed securities, government-sponsored enterprises are able to borrow money at lower interest rates than other lenders. This savings can also be passed through to borrowers. Further, mortgage-backed securities are used on Wall Street as collateral for the issuance of new securities for investment.

Origins of the Current Mortgage Market

Following the Great Depression, President Franklin D. Roosevelt introduced the New Deal, which was a series of economic programs designed to help stimulate the economy. Among these was the introduction of the National Housing Act of 1934. Enacted on June 28, 1934, the National Housing Act was introduced to help decrease the number of home foreclosures that were occurring as a result of then-current economic crisis.

The creation of the Federal Housing Administration (FHA) was an integral part of the National Housing Act of 1934. The goals of the creation of the FHA were to improve housing standards and conditions, to insure mortgage loans to create a more adequate system of home financing, and to help stabilize the mortgage market. More importantly, the FHA also sought to stimulate the home-building market and increase the number of individuals who were able to own their homes.

One way in which this was accomplished was through the introduction of the fixed-rate mortgage. As a standardized loan, the fixed-rate mortgage offered an alternative to the balloon-payment mortgage, which required a large lump sum payment at the end of the loan because the loan did not fully amortize. This means that the majority of the funds paid on a loan payment were applied toward interest at the beginning of the loan, leaving a large balance on the principal at the end of the loan. Further, the FHA insured these fixed-rate mortgages.

The structure of the fixed-rate mortgage also helped boost home ownership. Fixed-rate mortgages were able to spread the loan payments over a longer period of time—typically, 30 years. On the contrary, balloon-rate mortgages were offered for a much shorter term (usually around 10 years) with higher interest rates (up to 8 percent). Prior to introduction of the New Deal, it was estimated that less than 40 percent of Americans owned their homes; however, the fixed-rate mortgage helped increase this figure.

The National Housing Act of 1934 and its extension in 1937 also included several other important changes designed to help stimulate the economy. The 1934 act also created the Home Owners Loan Corporation (HOLC). The HOLC was designed to prevent foreclosures by refinancing existing mortgages, typically from the shorter loans into longer-term loans. Selling bonds to mortgage lenders against the loans generated the capital used for these refinances. The National Housing Act of 1937 created the U.S. Housing Authority, which was designed to help low-income families on assistance from public housing agencies. In 1938, the first government-sponsored enterprise was created by amendments to the National Housing Act.

Government-Sponsored Enterprises

The majority of mortgage-backed securities are serviced by a government-sponsored enterprise (GSE). Government-sponsored enterprises are corporations created by the U.S. Congress to help improve the flow of credit to designated segments of the economy by using its powers to help develop private financial mediators. In other words, government-sponsored enterprises were designed to improve the efficiency of capital markets. They were not, however, created for the purpose of increasing home ownership among members of the lower and middle classes. They also do not directly loan money to members of the public sector. The first government-sponsored enterprise was created in 1916 and targeted the agricultural segment of the economy with the introduction of the Farm Credit System. In 1972, Sallie Mae was introduced as the main government-sponsored enterprise for the education sector.

Although government-sponsored enterprises made their first appearance in the home finance sector in 1932 with the creation of the Federal Home Loan Banks, the 1938 introduction of the Federal National Mortgage Association (FNMA), more commonly referred to as Fannie Mae, is most commonly recognized as the first government-sponsored enterprise for home finance. The main function of Fannie Mae was to provide federal money to local banks. This enabled the banks to issue more housing loans, thereby increasing the level of home ownership. A key component of this was the creation of a secondary mortgage market through which the banks could purchase FHA-insured mortgages.

Fannie Mae held a monopoly in this market until 1968, when the newly enacted Housing and Urban Development Act split the entity into two corporations: Fannie Mae (in the capacity in which it is more currently known) and the newly formed Government National Mortgage Association (GNMA), or Ginnie Mae. Other than issues by the U.S. Treasury Department, Ginnie Maes are the only securities that have a guarantee of the full faith and credit of the U.S. government; however, Ginnie Mae does not invest in private mortgages. Rather, its purpose is to attract new capital for mortgages, thereby stimulating the housing market. In its year of creation, Ginnie Mae guaranteed the first mortgage pass-through security for an approved lender.

In 1970, Fannie Mae was authorized by the U.S. government to purchase private mortgages. Private mortgages included those that were not issued by the FHA, Veterans Administration (VA), or Farmers Home Administration (FmHA), all of which were supported by Ginnie Mae. To compete with Fannie Mae, the federal government also established the Federal Home Loan Mortgage Corporation (FHLMC), better known as Freddie Mac, through the Emergency Home Finance Act in 1970. Both Fannie Mae and Freddie Mac are publicly traded companies. Freddie Mac issued its first mortgage pass-through in 1971 in the form of a participation certificate. The participation certificate was composed primarily of private mortgages. Between 1971 and 1977, the majority of mortgage-backed securities were either guaranteed by Ginnie Mae or directly issued by Freddie Mac. It was not until 1981 that Fannie Mae issued its first mortgage pass-through, though it continued to acquire mortgage loans throughout the 1970s; these were the first to be called actual mortgage-backed securities.

Each quarter, the Federal Reserve System publishes information related to outstanding mortgage debt, including the distribution of mortgage holdings by the type of holder (http://www.federalreserve.gov/econresdata/releases/mortoutstand/current.htm). At the end of the first quarter of the 2012 fiscal year, there was over $13.3 trillion in outstanding mortgages nationwide. Nearly 50 percent of these mortgages, or just over $6.3 trillion, were being securitized or guaranteed by GSEs. Further, the combined holdings of Fannie Mae and Freddie Mac represented the majority (76 percent) of this figure (just over $4.8 trillion).

Although mortgage-backed securities are not without risk, government-sponsored enterprises help guard the securities against default. The risk of default is lowered because the government-sponsored enterprise guarantees immediate repayment should a borrower within the pool of loans default—Fannie Mae guarantees both the interest and principal each month, whereas Freddie Mac guarantees only the interest on a monthly basis. Freddie Mac offers a looser guarantee—an eventual payment—on the principal.

However, mortgage-backed securities can present a risk to investors in terms of monthly cash flow. With Ginnie Maes, for instance, payments to investors each month vary because of a decreasing principal—the more payments a homeowner makes on the loan, the lower the principal, and therefore, the lower the payment to the investor. Additionally, when mortgage interest rates decrease, many homeowners are likely to refinance at the lower rate, thereby reducing the interest that would be due to the investor. Although the government guarantees against late payments for Ginnie Mae securities, it does not guarantee the interest that can be lost by homeowner prepayment. This is also called the termination risk.

How It Works

Although the Ginnie Mae, Fannie Mae, and Freddie Mac securities share similarities, there are subtle differences in their investment processes. Ginnie Mae, the only government-owned corporation (Fannie Mae and Freddie Mac are government-sponsored), issues investment certificates in the amount of $25,000. These are generated from $1 million (or greater) pools of mortgages. The lending institutions pool together loans of similar terms, and the mortgages are then either FHA insured or VA guaranteed. Once pooled, the investment certificates are sold, each representing a certain share or interest in the mortgage pool. Each month, investors receive monthly payments of the interest and the principal on the loans. Like Ginnie Mae, Fannie Mae also purchases conventional residential mortgages and pools them into $1 million blocks. Fannie Mae also sells investment certificates in $25,000 denominations. The principal difference between Fannie Mae and Ginnie Mae is that Fannie Mae is not fully backed by the U.S. government, even though it has a triple-A rating from two of the three main credit rating agencies. Freddie Mac operates nearly identically to Fannie Mae, issuing certificates in $25,000 denominations, except that its mortgage-backed securities are called participation certificates.

Mortgage-Backed Securities Scandals

Although the good of government-sponsored agencies has been continually touted, the mortgage-backed securities market has certainly not been free from scandals. The first scandal came in June 2003, when three of the top executives were dismissed from Freddie Mac over accounting errors in the wake of similar scandals at Enron and Xerox. In December 2004, Fannie Mae chairman and chief executive Franklin D. Raines and chief financial officer J. Timothy Howard were encouraged to resign after the Securities and Exchange Commission (SEC) became suspicious of accounting practices. In particular, the SEC suspected that company earnings were falsely inflated to increase bonuses to top executives. After spending billions of dollars to audit its books, Fannie Mae showed that between 2001 and the second quarter of 2004, earnings were overestimated by $6.3 billion—an amount that translated into more than $115 million in bonus payments to Raines, Howard, and former controller Leanne G. Spencer. U.S. regulators filed charges against the trio in 2006 to recoup the bonuses plus an additional $100 million in penalties.

Both Fannie Mae and Freddie Mac have also been embroiled in scandal surrounding the collapse of the subprime housing market. In an effort to rehabilitate their reputations following the accounting scandals and retain Congress's support, Fannie Mae and Freddie Mac made significant investments in subprime loans, becoming the largest purchasers of this type of loan, which also gave the government-sponsored enterprises credit for affordable housing. Between 2005 and 2007, the companies guaranteed over $1 trillion in junk mortgages. In fact, by 2007 approximately 33 percent of their mortgage business hinged on either buying or securing risky mortgages. By comparison, this type of business represented only 14 percent of their portfolios two years earlier.

The excessive purchases made by Fannie Mae and Freddie Mac, however, did not have the rehabilitative effect that was planned. Rather, they destroyed the stability of the financial market that they had been introduced to create and contributed significantly to the subprime housing crisis. The total combined losses of the companies were estimated at close to $15 billion. It also raised questions as to whether Fannie Mae and Freddie Mac could raise capital to settle the debt. These questions helped fuel the ongoing housing market crisis. In 2008, the U.S. Treasury placed the two government-sponsored enterprises into conservatorship under the direction of the newly formed Federal Housing Financing Agency (FHFA). In addition, several government agencies, including the Federal Reserve and the Treasury Department, invested close to $200 billion by way of purchasing mortgage-backed securities, stock, and government sponsored enterprise debt in order to help restimulate the economy.

In 2011, the SEC charged six executives from the two companies, including former Fannie Mae Chief Executive Officer (CEO) Daniel Mudd and former Freddie Mac chairman and CEO Richard Syron, with securities fraud for knowingly approving false statements about the companies' involvement in the subprime loan crisis. Mudd was also accused by the SEC of knowingly providing false testimony to Congress about the government's role in Fannie Mae's disclosure about activities of the company.

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See Also: Bond Fraud; Collateralized Debt Obligations; Countrywide Financial Corp.; Foreclosure Fraud and Rescue Schemes; General Electric Co.; Legacy Lending; Lehman Brothers Holdings Inc.; Liar Loans; Merrill Lynch and Co. Inc.; Mortgage Fraud; Mozilo, Angelo; Obama, Barack; Real Estate Investments; Roosevelt, Franklin D.; Securitization Fraud; Standard & Poor's; Subprime Loans; Troubled Asset Relief Program.

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Morton Thiokol Inc.

Morton Thiokol Inc. (MTI) is best known for its role in the fatal space shuttle *Challenger* explosion that killed six astronauts and schoolteacher Christa McAuliffe in Cape Canaveral, Florida. MTI supplied the National Aeronautics and Space Administration (NASA) with the faulty O-rings that leaked combustible gases and caused the tragic explosion of the spacecraft. A thorough investigation by the Rogers Commission concluded that the tragedy was the result of systemic organizational failures on the part of both MTI and NASA.

Founded in 1929, Thiokol Chemical Company initially specialized in the creation of synthetic rubbers. Years later, the company created an advanced polymer that was used for rocket fuel. This development positioned Thiokol as one of the largest producers of solid rocket motors and other aerospace products. More important, Thiokol was able to secure lucrative military defense contracts. By 1982, Thiokol completed a merger with Morton Industries to become Morton Thiokol Inc. Prior to the merger, however, Thiokol Chemical was awarded an $800 million contract to manufacture solid rocket boosters for NASA's space shuttle program.

Initial tests of the O-rings revealed major design flaws in the field joints on the solid rocket boosters. Rather than closing, the field joints remained open, failing to provide enough pressure to adequately seal in the hot, combustible gases. The explosive gases penetrated the putty surrounding the joints and quickly eroded the O-rings. In addition, secondary fail-safe devices were also destroyed by the faulty field joints. The destruction of the O-rings severely weakened the rocket boosters and caused the immediate destruction of the space shuttle. Engineers at MTI and NASA's Marshall Space Flight Center were keenly aware of these failings. MTI engineers, most notably Roger Boisjoly, advocated the redesign of the extremely dangerous field joints. Boisjoly urged MTI to develop a special task force to redesign a safer O-ring. Though a team was eventually assembled, a lack of resources and management support failed to reach a definitive solution. At the same time, Marshall engineers classified the O-rings as Criticality I, indicating that they did not meet shuttle safety standards and, more

On August 27, 1987, engineers test fire Development Motor-8 at Morton Thiokol's Utah facility. After the explosion of the space shuttle Challenger *on January 28, 1986, which was caused by a known problem with the solid rocket boosters that enabled hot gases to bypass two sets of O-ring seals, Morton Thiokol's solid rocket boosters were subjected to a rigorous redesign process and underwent several test firings to recertify them for the new shuttle. The space shuttle* Discovery *took flight on September 29, 1988.*

important, were subject to catastrophic failures. These problems became a major source of debate between the two agencies. Although some engineers supported delaying the scheduled *Challenger* launch, others opposed further delay.

Another point of contention was the deleterious effect of cold temperatures on the functionality of the O-rings. During testing phases, the field joints were unable to effectively compress and seal the hot gases under cold conditions. During the time of launch, temperatures in Florida were unseasonably cold and expected to be in the 30s. Indeed, on the day of the launch, it was 36 degrees F with ice buildup on the launch pad. In an infamous conference call between the two agencies, MTI engineers pleaded for another delay but NASA officials vehemently opposed the recommendation and encouraged MTI to reconsider its position. Eventually, MTI yielded and offered its approval, albeit reluctantly. Amid internal feuding and adamant objections, the *Challenger* launched on the morning of January 28, 1986, and exploded one minute and 13 seconds after takeoff.

Shortly after the explosion, President Ronald Reagan appointed the President's Commission on the Space Shuttle *Challenger* Accident to investigate the tragedy. Chaired by former secretary of state William Rogers, the committee chided MTI and NASA for negligence regarding obvious design flaws and willingness to continually redefine the O-ring problems as "acceptable risk." The final Rogers Commission report noted that both organizations faced tremendous internal and external pressures leading up to the fatal launch. Faced with budget constraints and waning political and public support during the early 1980s, NASA made significant compromises and became less of a research and design agency and more of a commercial organization. As such, NASA attempted to schedule 24 shuttle flights per year during this time period. Furthermore, budget cuts forced NASA to rely on cheaper but more dangerous parts, such as solid-fueled rockets. In the end, it attempted to build a highly functional spacecraft using inexpensive reusable parts. For its part, MTI faced pressure to manufacture a quality product in order to secure future defense contracts. Both agencies faced intense media pressure as well. First, Reagan's 1986 State of the Union address was expected to make a declaration that NASA was an internationally competitive agency capable of maintaining an accelerated flight schedule. Second, previous delays raised public concerns about the viability of the space program. Finally, the presence of Christa McAuliffe, a schoolteacher and the first private citizen to travel into space, placed additional attention on MTI and NASA.

The tragic story of the *Challenger* illustrates how organizations faced with tremendous performance pressures can make unethical decisions that compromise glaring safety issues in favor of production.

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See Also: *Challenger* Disaster; Ethics; Negligence; Organizational Compliance Programs; Vaughan, Diane; Weisburd, David.

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Mozilo, Angelo

Angelo Mozilo was born to Italian immigrants in the Bronx, New York, in 1939. He learned the mortgage business while working as a messenger for a mortgage company in high school. The owner took an interest in Mozilo, and he worked in every department. He graduated from Fordham University in 1960.

Mozilo and David Loeb, an older mortgage executive, founded Countrywide Credit Industries in 1968. The firm sold mortgages to residential home buyers and then packaged them for investors desiring interest payments. The same year, Mozilo moved to California to sell mortgages in its growing residential market, while Loeb stayed in New York to secure capital and package the mortgages. Mozilo aggressively pursued mortgages from realtors and developers in California. He instructed his sales associates to pressure realtors to use Countrywide.

Mozilo avoided writing subprime mortgages, which can be risky mortgages for borrowers with poor credit histories and past defaults. Mozilo's reluctance matched the standards of Loeb's buyers. For example, Fannie Mae (Federal National Mortgage Association, FNMA) could only package mortgages that were prime mortgages, which are mortgages that meet higher standards for down payments and borrower income.

"Always Closing"

In the 1980s, several thrifts and savings companies collapsed, and Mozilo hired their brokers as commissioned salespeople. Loeb opposed using independent brokers because their conduct could not be monitored easily. Mozilo disagreed and built a sales force across the nation. With fewer thrifts and savings companies, realtors now came to Mozilo for mortgages. His sales motto was "AC," or "always closing."

In the 1990s, Wall Street firms began securitizing mortgages to sell as mortgage-backed securities (MBS) and demand increased. Mozilo needed to find more borrowers, and his sales force responded. In 1992, Countrywide sold $30.5 billion worth of mortgages and was the largest U.S. originator of residential mortgages. That same year, the Mortgage Bankers Association named Mozilo its president.

Mozilo still avoided subprime mortgages, but some competitors made huge profits writing risky, high-interest loans, including loans for up to 125 percent of the value of a home. By 1996, a company called First Plus earned as much as Countrywide but only wrote 10 percent as many mortgages. Sales manager David Sambol encouraged Mozilo to begin writing subprime mortgages, and Mozilo reluctantly agreed.

Mozilo also began securitizing loans in-house. Business accelerated when interest rates dropped from 8.5 percent in mid-2000 to 5.5 percent by mid-2004. Adjustable-rate mortgages (ARMs), which have a low initial interest rate that balloons in three to five years, went as low as 3 percent. Mozilo pushed his brokers to increase sales, which they did with dangerous products such as no-documentation loans and ARMs with "exploding" interest rates. By 2005, 49 percent of Countrywide's loans were considered "poorly structured," up from 18 percent in 2003.

Between 2005 and 2007, Mozilo realized that the company was overexposed to risky mortgages. During the same period, he told investors that Countrywide was not exposed to credit risk, while selling $260 million of his personal Countrywide shares. His total compensation in 2007 was $120 million. On January 26, 2007, the stock price hit a high of $45.26, but it began to slide as loan defaults increased and Countrywide's subprime portfolio became public.

During 2007, Mozilo announced a third-quarter loss of $1.2 billion and terminated 12,000 employees. On January 31, 2008, the stock dropped to $6.96. Mozilo left Countrywide, and Bank of America purchased it for $4 billion in 2008.

On October 15, 2010, Mozilo agreed to pay a record $22.5 million penalty to settle U.S. Securities and Exchange Commission (SEC) charges that he and two other executives misled investors about the health of Countrywide during the subprime crisis. He also paid $45 million of "ill-gotten gains" from insider trading practices for a total penalty of $67.5 million. In both settlements, Mozilo did not admit any wrongdoing.

According to a 2012 congressional investigative report, Mozilo used special mortgage deals for Fannie Mae executives and government regulators to buy influence. Between 1996 and 2008, Mozilo's VIP mortgage unit made hundreds of loans to Fannie Mae senior managers and members of Congress involved in housing legislation.

Mozilo, who lives in California, sold one of three California properties in 2012 for $2.6 million.

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See Also: Countrywide Financial Corp.; Insider Trading; Mortgage-Backed Securities; Subprime Loans.

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Multinational Corporations

Multinational corporations (MNCs) are commercial organizations that operate in several jurisdictions simultaneously. Such enterprises have a parent or source company incorporated in one jurisdiction and conduct most of their commercial activities through subsidiaries in other jurisdictions. In essence, this means that an MNC is a grouping of corporations under a single system of management and control, each retaining separate legal identities. The best examples are financial institutions such as Barclays, Scotiabank, HSBC, Citibank, Morgan Stanley, and Merrill Lynch. In other sectors, such as energy, familiar names include Shell, BP (formerly British Petroleum), and ExxonMobil. Multinational business enterprises have their origins in the private overseas trading ventures in ancient civilizations or in the more modern trading companies active in the period of Europe's colonization of Asia, Africa, and the Americas, notably the East India Company. These entities have always operated alongside or with formal recognition by governments. In many instances, violence conducted by the state allowed profits arising from access to new markets and natural resources to accrue to MNCs. This uneasy alliance persists. As the power of MNCs grows exponentially, so too has their capacity to cause considerable damage and the problem of holding them accountable.

For the most part, MNCs provide capital, goods, and services that are at the heart of international trade and are principal players in key sectors underpinning the global economy. They wield considerable influence in the balance of power within and among states. The universal recognitions of corporations as legal persons that exercise rights in law, in ways analogous to real persons, extend beyond the borders of the source country when a corporation is part of an MNC.

The opening of markets through economic liberalization, deregulation, and privatization after World War II has facilitated the rapid growth of MNCs. For many countries, MNCs have become significant sources of foreign direct investment. With this comes considerable pressure on states to provide favorable environments and reduced regulation. Multilateral agencies such as the International Monetary Fund (IMF), the World Bank, and the World Trade Organization (WTO) act as key drivers in the privatization of industries, the liberalization of markets, and the removal of barriers to free trade. MNCs are thus able to exercise as much power as states and often operate above national legal regimes.

Law Challenges

The legal personality of MNCs, combined with the extent of their power and influence, presents particular challenges for the rule of law. It is the norm for such large, profit-driven entities to constantly develop innovative investment and governance strategies and structures. This challenge is further compounded when companies have establishments across national boundaries, often with weaker capacities to enforce regulation or the lack of geopolitical capital to influence changes to unsavory practices. Such practices may include inflicting harm on the environment (for example, the Esmeralda Exploration Ltd. cyanide spill in Romania in 2000 and the Union Carbide chemical pollution in Bhopal, India, in 1984), the displacement of indigenous peoples, the use of child labor in harsh working conditions, and bribing public officials. National governments are therefore presented with the problem of designing meaningful but not overly burdensome regulatory frameworks. Regulations may be breached or actively circumvented in pursuit of profit or other advantage.

Because the economic well-being of any economy is reliant on particular sectors, the capacity to rein in rogue or potentially harmful behavior by tightening regulation can be difficult. Major incidents increasingly attract political significance and strengthen the demands for stricter controls and/or criminalization of certain bad practices. The BP oil spill in the United States in 2010 is a good case study of the politicization of disasters caused by MNCs in which there was much pandering to popular sentiments. Similarly, the Libor scandal in 2012, in which some banks, among them HSBC and Barclays, allegedly manipulated the Libor interest rates for interbank lending, has drawn furious political interventions on both sides of the Atlantic. Central banks and banking regulators have themselves come under scrutiny, and the expectation is for criminal charges to follow for individual traders and higher fines for the entities concerned.

The dominant themes in the discussions, both lay and academic, about controlling MNCs may be summarized in two concepts: accountability and legitimacy. Both point to a need for appropriate regulatory structures and desirable consequences for certain kinds of misconduct. A balance must be struck between freedom to grow through innovation and imposing the bureaucratic burdens necessary for instilling discipline and responsibility. The question of accountability is essentially concerned with legal ethical frameworks. To be effective, these mechanisms and systems of values must keep pace with the rapid changes in the way business is done and how professional values are shaped. National corporate laws were developed in eras when commercial enterprises focused their businesses almost entirely within a country's own borders and trade with other parts of the world did not require separate establishments. In the United States and western Europe, it was not until the late 19th century that companies were allowed to own stocks in other corporations. The nature of global commercial transactions since then has become far more complex.

The rapid growth of MNCs since the second half of the 20th century coincided with the expansion of cross-border trade and the institutionalization of free trade (the reduction of trade barriers and the removal of preferential treatment regimes under the General Agreement on Tariffs and Trade (GATT) and its successor, the WTO. MNCs are able to do business using interconnected directorships, interlinking contracts, and cross-shareholding. As much as MNCs are motivated by profit, decisions to establish commercial links across national borders also bring associated risks, some of which include exposure to organized crime and corrupt practices among government agencies. Commercial assets become vulnerable to employee manipulation and external threats. At the same time, national governments have to regulate entities that are often more powerful than states and with laws that do not necessarily have extraterritorial force.

As significant players in the global economy, MNCs attract more scrutiny with each successive major scandal or disaster. Although codes of practice and corporate social responsibility remain useful reference points, these are being supplemented by raising the possibility and profile of corporate criminal responsibility. Efforts to address the problem of jurisdiction for tackling problems that emerge in one country with ripple effects in a series of others remain slow and piecemeal.

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See Also: BP PLC; Corporate Criminal Liability; Globalization; Global Warming; Offshore Bank Accounts; Offshore Entities; Merrill Lynch and Co. Inc.; Pollution, Air; World War II.

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Nader, Ralph

Without Ralph Nader's relentless crusade for consumer rights, Americans would lack many of the legal protections consumers take for granted and businesses would be free of many of the laws and regulations that keep consumers and the environment healthy and safe. For his work creating the consumer movement, Nader was recognized by *Time* magazine as one of the most influential people of the 20th century.

Ralph Nader was born on February 27, 1934, in Winsted, Connecticut. His parents, Rose and Nathra Nader, immigrants from Lebanon, operated the Highland Arms, a restaurant that served as a community meeting and gathering hub. There, Nader joined frequent conversations about politics and learned to value social justice. Nader graduated from Princeton University's Woodrow Wilson School of International Affairs in 1955, and in 1958 he graduated from Harvard Law School. While at university, Nader was disillusioned with the moral complacency of his professors and fellow students, and just five years after receiving his law degree, he hitchhiked to Washington, D.C., where he began his career as a "public citizen."

Nader gained national attention in 1959 when *The Nation* published his article "The Safe Car You Can't Buy," the themes of which were expanded in his 1965 best-selling expose *Unsafe at Any Speed: The Designed-In Dangers of the American Automobile*. Up to this time, the Detroit automakers blamed car accidents and injuries on drivers. Nader's work, however, revealed that vehicles, particularly General Motors' Corvair, were designed with marketing concerns given foremost priority, leading to engineering and design decisions that put driver and passenger safety at risk. Subsequently, federal and state hearings investigated automobile safety and federal laws were passed, including the 1966 National Traffic and Motor Vehicle Safety Act, which created the National Highway Traffic Safety Administration. Though automobile manufacturers resisted new safety standards and General Motors went so far as to hire a private investigator in an attempt to discredit Nader, his auto safety campaign achieved success by stimulating the federal government to pass legislation allowing it to set safety standards, such as for seat belts and airbags, recall vehicles, and initiate other programs to protect drivers and passengers on America's roadways.

Emboldened by the achievements of his car safety campaign, Nader spent much of the late 1960s investigating various issues. Because of his reports and lobbying efforts, Congress passed the 1967 Freedom of Information Act, the 1970 Wholesome Meat Act, and the 1970 Clean Air Act. Working with a coalition that included the Consumer Federation of America, Nader pushed for a number of bills that protected consumers against misconduct in the banking industry, including the Truth in Lending Act of 1968, the Fair Credit Reporting Act of 1970, the Fair Credit Billing Act of 1974, and the Equal Credit Opportunity Act of 1974.

During the same period, Nader organized law school volunteers, dubbed Nader's Raiders, to investigate corrupt and ineffective government agencies and other consumer issues. Their first report, which lambasted the Federal Trade Commission, spurred a reorganization of the agency and its field offices.

Subsequent investigations by the students examined such issues as water pollution, nursing home frauds, and use of dangerous chemicals by the agro-industry. The research produced by Nader's Raiders was used to inform the public and pressure the government to enact change.

To promote citizen action and consumer advocacy, Nader played a role in founding a number of organizations, including the Center for Auto Safety, the Center for Study of Responsive Law, the Clean Water Action Project, the Disability Rights Center, the Pension Rights Center, the Project for Corporate Responsibility, Public Citizen, and the Public Interest Research Group.

Because of the toxicity of corporate influence on the political process, Nader asserts that there are no true differences between the Democratic and Republican parties. Consequently, between 1996 and 2008, Nader embarked on four unsuccessful runs for president as a third-party candidate. When asked about his proudest achievements, Nader mentions, in addition to the legislation he helped enact, that promoting a model of citizen action counts among his most meaningful contributions. To inspire others to stand up for change is a legacy that will improve the country.

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See Also: Automobiles; Brown Lung; Clean Air Act; Clean Water Act; Consumer Deaths; Consumer Product Safety Commission, U.S.; General Motors Co.; Green, Mark; Federal Trade Commission; Kepone Scandal; Meat Inspection Act; Predatory Lending; Public Citizen Health Research Group; Reform and Regulation; Savings and Loan Fraud.

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Naked Short Selling

Naked short sales comprise a subset of short sales in which the short seller does not first borrow or arrange to borrow the security sold. In most short sales, the short seller borrows a security from another party and sells it on the market at its current price. The seller later purchases the security on the market and gives the purchased security to the lender to close out the deal. The seller makes a profit from the difference in the prices if the price of the security falls but loses the difference if the price rises. By allowing traders to wager whether the price of a security will decrease, short selling acts as a market force to indicate overvalued securities. When short selling naked, the short seller does not borrow or arrange to borrow the security but nonetheless sells it on the market. If the seller cannot purchase and deliver the security to the buyer within the three-business-day settlement window stipulated in the Securities Exchange Act of 1934, the security is called a failure to deliver. The Securities and Exchange Commission (SEC) requires that traders report failures to deliver and their reasons for failing.

Sellers may short sell naked for several reasons. Sellers may have difficulty acquiring sufficient shares of the security to sell if the security is being traded in high volumes. Additionally, for securities with less liquidity, the seller may have to pay such a high price to borrow the security that the price must fall by a large margin to break even on the sale.

Criminalization of Naked Short Sales

In January 2005, the SEC enacted Regulation SHO, which criminalized most naked short selling. Although the regulation only prohibits what it terms *abusive naked short selling*, the SEC has indicated that the term *abusive* may encompass any naked short sale in which the seller neither possesses nor has the ability to possess a security to deliver within the three-day settlement period and consequently fails to deliver. Regulation SHO has two components: a "locate" requirement and a "close-out" requirement. The locate requirement stipulates that a seller must borrow or arrange to borrow the security before executing the short sell and must document this arrangement. The close-out requirement stipulates that the seller must close out any failures to deliver within 13 days of the transaction. Until September 2008, the SEC waived the "locate" requirement for recognized market-making firms when engaged in "bona-fide market making," meaning that market-making firms could sell short naked, provided they could close out their positions within 13 days.

After the financial crisis in 2008, the SEC banned all naked short selling and began to more strictly enforce provisions of Regulation SHO. One high-profile investigation of brothers Jeffrey and Robert Wolfson resulted in a $14.5 million settlement for the SEC in July 2012, including $9.5 million in disgorged profits and $3 million in fines and fees. The SEC alleged that the two brothers had short sold securities without borrowing them and engaged in a series of sham transactions to give the appearance they had purchased the securities needed to close their short positions. In reality, they had been purchasing securities only to sell them back within a few days.

Not everyone agrees with the SEC that naked short selling should be prohibited. Defenders of naked short selling argue that it provides benefit by adding liquidity to markets, thus keeping transaction costs to a minimum. They point to studies that indicate that prohibiting naked short selling can result in greater volatility in security prices. Furthermore, defenders claim that naked shorting critics exaggerate its negative consequences, pointing to the relatively few positive cases of naked short selling leading to the downfall of a company. An August 2010 report by the International Monetary Fund argued that the German ban on naked short selling only harmed German markets by reducing liquidity and increasing volatility of "protected" securities. The report stated that the ban did not buttress prices as intended. Last, naked short selling defenders have alleged that many opponents are investors and executives of companies with poor performance who attempt to use naked short selling as a scapegoat for bad performance resulting from other factors, such as inept management.

Conversely, several situations support the SEC's claim that naked short selling can cause adverse consequences. Several critics of naked short selling argue that sellers and their brokers collaborate to engage in "bear runs," in which the sellers sell large amounts of securities to drive down prices so that they can be repurchased. Critics allege that both sellers and brokers can naked short sell and spread false rumors about a corporation to cause other investors to undervalue the stock. The sellers can then repurchase the securities at the new, lower price after other investors have responded to the misinformation. In this case, naked short selling misinforms proper pricing mechanisms in the market by creating an artificial supply of the securities.

In the case of financial institutions, naked short selling may lead to the demise of a stable institution if the price of its stock falls rapidly because of speculation deriving from an increased supply of stock resulting from naked short selling. Unlike with most other stocks, which simply revert to their correct market prices, financial institutions may collapse because they depend on the price of their stock to be sufficiently capitalized to do business. Some have argued that naked short selling played a part in the demise of Lehman Brothers in 2008 and has contributed to the collapse of other financial institutions.

Still others believe that naked short selling has little effect on the market either way. They argue that regulation of naked shorting attempts to solve a problem that does not exist but simultaneously does little harm to the economy.

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See Also: Arbitrage; Lehman Brothers Holdings Inc.; Securities and Exchange Commission, U.S.; Short-Sale Schemes.

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NASDAQ

The National Association of Securities Dealers Automated Quotations (NASDAQ) Stock Market was founded in 1971 by the National Association of Securities Dealers (NASD). An American stock exchange, it is now owned and operated by the NASDAQ OMX Group, which took control after the NASD members divested themselves of their ownership in a series of sales in 2000 and 2001. The stock of NASDAQ OMX Group began to be listed on its own stock exchange on July 2, 2002. It trades under the ticker symbol NASDAQ: NDAQ.

The over-the-counter system (OTC) handled stocks that were new or infrequently traded. NASDAQ was still being referred to as the OTC by news media in the monthly Stock Guide issued by Standard & Poor's Corporation until the late 1980s. NASDAQ is regulated by the Financial Industry Regulatory Authority (FINRA), which is the successor to NASD.

Computers were growing in importance from the late 1960s in the handling of stock market trades. Previously, trading was done by hand, and earlier trades were reported with listings on a chalk board or by ticker tape. The use of computers by NASDAQ created the world's first electronically managed stock market. It began with a computer bulletin board. Later, computers were able to connect buyers and sellers. The computerized system was able to reduce the spread between the bid price for a stock and the ask price. However, the brokers had previously made much of their money on the spread, so it was unpopular with them.

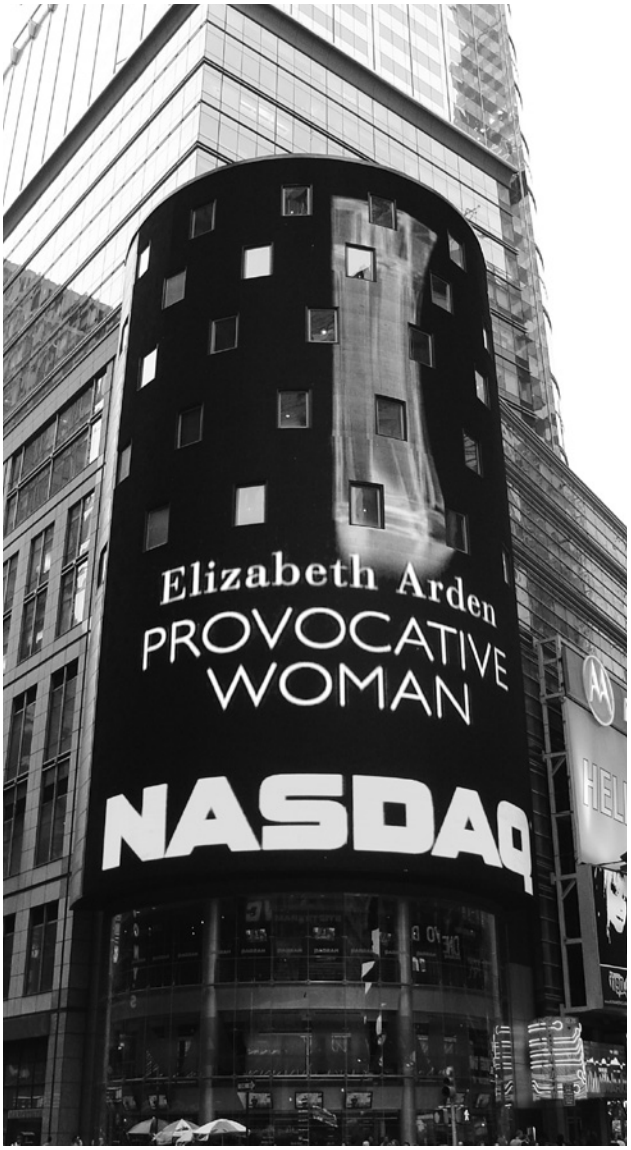
The Crash of 1987

In October 1987—Black Monday—the stock market crashed. The brokers and the traders did not answer their phones, which were jammed in many cases. To prevent a recurrence of this problem, the Small Order Execution System (SOES) was instituted. It created a way for dealers to enter their trades, which must by NASDAQ rules be honored by market makers. It allowed small volume trades (200 or fewer shares) to be traded efficiently, thereby leveling the trading floor for small and large investors. As computerization advanced, the SOES was phased out, as it was no longer needed.

As home and corporate computerization, along with the Internet, have grown since the 1990s, NASDAQ has been able to add automated trading systems along with trade and volume reporting. It pioneered online trading, making it possible for institutional and small investors to trade online from their respective offices.

In 1992, an intercontinental securities market was formed between the London Stock Exchange and the NASD. It spun off NASDAQ in 2000 to form a publicly traded company, the NASDAQ Stock Market Inc., which became a licensed national exchange in 2006. The purchase of the Philadelphia Stock Exchange (PHLX) on November 8, 2007, expanded NASDAQ operations. The PHLX had been in operation since 1790. About the same time, it also bought the Boston Stock Exchange.

In February 2008, NASDAQ bought OMX, the Swedish-Finnish financial company that controlled the seven Nordic and Baltic stock exchanges. It then formed NASDAQ OMX Group. In February 2011, the New York Stock Exchange announced that it was merging with Deutsch Borse. In response, NASDAQ sought



The NASDAQ in Times Square, New York City. The National Association of Securities Dealers Automated Quotations (NASDAQ) was founded in 1971. Its nonexecutive chairman, Bernard Lawrence Madoff, executed an enormous Ponzi scheme.

alliances with the Chicago Mercantile Exchange or with the Intercontinental Exchange (ICE).

For the shares of a company to be listed on the NASDAQ, it is mandatory that a company be registered with the U.S. Securities and Exchange Commission (SEC). It has to meet specific targets for its capital, public shares, shareholders, and assets, and it has to recruit at least three market makers, which are financial companies that act as dealers or brokers for specific stocks.

Several stock market indices are published by NASDAQ. Although every stock market is actually a market of stocks, it is useful to investors to have a sense of market trends, which are always either up, down, or sideways. NASDAQ's main index is the NASDAQ Composite. It is composed of securities that are common stocks, tracking stocks, ordinary shares, American Depository Receipts (ADRs), Limited Partnership Interests, Real Estate Investment Trusts (REITs), and Shares of Beneficial Interest (SBIs).

Another NASDAQ index is the NASDAQ-100 Index. This index lists 100 of the largest domestic and international stocks. Excluded are financial securities. The NASDAQ-100 Index averages the stock prices of companies from major industry groups—computer hardware and software, telecommunications, retail/wholesale trade, and biotechnology.

Scandals and Controversies

The NASDAQ has been slightly tainted by the white-collar crime scandal involving Bernard Lawrence Madoff. A renowned investment advisor, Madoff operated a Ponzi scheme. He was also the NASDAQ nonexecutive chairman. His fraudulent activities started in the 1970s but were not discovered until the mid-2000s.

Bernard (Bernie) Madoff was a NASDAQ associate who has been imprisoned for embezzlement. He was a successful investor who grew his firm, Madoff Securities, through the early use of computers. He then helped NASDAQ to computerize. He subsequently became the president of the board of directors for the NASDAQ stock exchange. His thievery is estimated to have cost clients $50 billion.

In 2011, Donald L. Johnson, a senior executive with NASDAQ Stock Market, pleaded guilty to insider trading fraud. He provided market intelligence to companies seeking understanding of news that could impact their companies. He took that information home, where he traded online in his wife's name. This enabled him use of his insider information to make up to $750,000 in illegal profits. The corrupt practice was a clear example of abuse of fiduciary trust.

In 2012, the social media giant Facebook offered shares to the public in its first initial public offering (IPO). The electronic sales on the first day went poorly as NASDAQ's computers in some cases broke down or in other cases failed to handle the volume. The fiasco kept some buyers from getting shares at their bid price. The dismay and anger in the public were enough to prompt the SEC to investigate the possibility that fraud had been involved. The concerns about fraud also included shares of Facebook Inc. traded before the opening of the market to the IPO shares.

In one specific instance, federal investigators looked at the records of Venture Trust, II LLC to see if its fund managers had solicited $3 million in funds for the Facebook Inc. IPO only to divert the funds. The money was raised using a forged letterhead that claimed an interest in 500,000 shares of Facebook Inc. that it did not own. The firm did not appear to have a direct connection to NASDAQ other than that it was a player in the marketing of the Facebook IPO shares.

A number of NASDAQ-listed companies have been accused of or have been involved with fraud in recent years. ZELTIQ, which is based in Pleasanton, California, is a medical technology company. It is listed as NASDAQ: ZLTQ. Its board of directors and others in the company were under investigation for fraud in the exercise of their fiduciary responsibilities.

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See Also: Bernard L. Madoff Investment Securities LLC; Madoff, Bernard L.; Madoff Ponzi Scheme; Outside Directors; Ponzi Schemes; Securities and Exchange Commission, U.S.; Stock and Securities Fraud.

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National Environmental Policy Act

The National Environmental Policy Act (NEPA) was passed by the U.S. Congress in 1969 and signed into law by President Richard M. Nixon on January 1, 1970. NEPA remains one of the most influential, comprehensive, and wide-ranging environmental policies enacted in the United States. NEPA not only altered how federal agencies make decisions regarding the environment, but also established for the first time an overarching environmental policy vision for the entire country. NEPA incorporates both practical and visionary components within a relatively straightforward legislative framework. The implementation of NEPA has helped reduce the likelihood of environmental exploitation and degradation stemming from federal practices such as the construction of new buildings, airports, military bases, and highways and has ensured an open dialogue regarding potentially harmful environmental decisions that might previously have been concealed from public view.

Changing Environmental Attitudes

NEPA's creation by Congress at the end of 1969 was no accident. In fact, NEPA can be seen as the product of over a decade of changing American attitudes toward the natural environment. Rachel Carson's *Silent Spring* (1962) and Garret Hardin's essay "The Tragedy of the Commons" (1968) increased awareness of environmental problems linked to the actions of human beings. Likewise, environmental disasters caused by human actions, including the burning of Ohio's Cuyahoga River and oil spills in the ocean near Santa Barbara, California, in 1969 highlighted the dire state—and spurred public concern for greater protection—of the natural environment in the United States.

However, NEPA differed significantly from past federal environmental policies, such as the Clean Water Act (1960), the Solid Waste Disposal Act (1965), and the Clean Air Act (1967). Each of those policies was limited in scope and intent, seeking to protect or regulating conduct with regard to only one specific aspect of the natural environment. NEPA's goal was much larger and included implementing national environmental values that would create a stronger, healthier relationship between people, the government, and the natural environment.

NEPA seeks to achieve greater environmental stewardship nationwide by (1) requiring federal agencies—for example, the Department of the Interior—to consider the environmental impacts of any planned activities prior to carrying out those activities;,(2) requiring that any planned federal actions with potential environmental impacts be opened to public comment and review, and (3) establishing a Council on Environmental Quality (CEQ) to oversee implementation and adherence to NEPA. Importantly, the CEQ reports directly to the president of the United States on environmental issues.

The practical, compliance components of NEPA are most easily understood as a process of review and analysis. Federal agencies seeking to undertake certain actions must prepare documents and assessments regarding their planned activities; these materials are then reviewed by the CEQ. Depending on the nature of the proposed project, one of three decisions may be applied. A categorical exclusion (CE) from compliance with NEPA is issued only if the planned activities pose no foreseeable environmental impact; categorical exclusions are rare. Environmental assessments (EA) must be conducted if planned activities appear to pose environmental impacts, regardless of degree. Environmental impact statements (EIS) are required when environmental impacts from planned activities are expected and/or if the particular agency is mandated to perform an EIS by agency regulations. Environmental impact statements often follow from environmental assessments. Environmental impact statements require that public comments be solicited and heard; the U.S. Environmental Protection Agency (EPA) then reviews submitted environmental impact statements. The EIS review process may take more than a year to complete.

In the decades since NEPA's enactment, various supporters and critics of the policy have emerged. Proponents of NEPA cite the EIS requirement as an invaluable tool for combating careless federal development projects and note that the CEQ has helped strengthen U.S. environmental policy by initiating important amendments to existing environmental policies. Critics of NEPA believe the EIS is an easily manipulated protocol lacking regulatory power. Moreover, critics of NEPA argue that court decisions regarding the EIS process have weakened the original scope and intent of NEPA.

Regardless of whether one is supportive or critical of NEPA, individuals and groups from both camps acknowledge that NEPA has significantly altered the course of U.S. environmental policy and decision making. NEPA was—and remains—one of the most significant environmental policies ever created.

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See Also: Bureau of Ocean Energy Management, Regulation, and Enforcement, U.S.; Carson, Rachel; Endangered Species Act; Environmental Protection Agency, U.S.; Racial Discrimination.

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National Medical Enterprises Inc.

National Medical Enterprises (NME), which was involved in a number of criminal investigations, was established in 1968 in Los Angeles by Richard Keith Eamer, Leonard Cohen, and John Charles Bedrosian, three California lawyers. The three had an initial plan, which was to invest money in medical facilities.

National Medical Enterprises started with three convalescent facilities in California and gradually started acquiring a large number of medical facilities and related businesses, initially in California. In 1971, it expanded with the financing of seven construction projects, tripling the size of NME within a year. Gradually, it shifted its interests to specialty hospitals but became entwined in a number of scandals in 2002, by which time it owned 111 hospitals across the United States. It also held 42.2 percent of shares in the Westminster Health Care Holdings, the second-largest nursing home group in the United Kingdom.

Plagued With Scandals

The company had been plagued with problems and scandals from the late 1980s. Its first major battle in the courts came when it was claimed that NME had been involved in admitting to its hospitals thousands of patients who did not actually need any hospital treatment but who were then charged massively inflated prices. The problem became so acute that in 1991, the U.S. federal government started to investigate claims of fraud and conspiracy, which then led to a legal case that ended with NME paying $2.5 million to settle suits from 23 former psychiatric patients in 1994. Later that same year, NME was also required to pay $380 million to the U.S. government and the governments of 28 states for fraud charges. NME also agreed to a five-year corporate integrity agreement with the U.S. Department of Health and Human Services.

In August 1993, more than 600 agents from the Federal Bureau of Investigation (FBI) and four other U.S government agencies raided 20 offices and hospitals owned by NME, starting investigations into overcharging. National Medical Enterprises changed its name in 1995 to Tenet Healthcare Corporation; the company was restructured (and merged with American Medical Holdings) and focused on acute medical care, running some 130 acute-care hospitals and related businesses in 18 states. In January 1997, Tenet Healthcare Corporation merged with OdNda, which owned 17 hospitals in California and 31 facilities in other states.

In the late 1990s, there was another scandal involving the company, with accusations that the Redding Medical Center in Redding, California (now renamed the Shasta Regional Medical Center), had been carrying out unnecessary heart surgery on as many as 600 patients. Tenet agreed to pay $54 million to the federal government and the state of California, without admitting liability, and sell the hospital, which was then renamed. This payment did not exempt Tenet from individual civil or criminal charges, and in 2004 Tenet agreed to pay $395 million to some 769 patients to settle claims for unnecessary surgery. It saw $17 billion wiped from the stock market value of the company, and the chief operating officer and the chief financial officer were both forced to resign.

The court cases continued, with Tenet accused of overbilling Medicare claims throughout the 1990s; as a result, Tenet Healthcare lost $426 million in the first quarter of 2005 and $21 million in the second quarter. In February 2006, Tenet offered to pay $7 million to settle charges brought against it by the attorney general of Florida. This failed to attract much attention and eventually, in June 2006, Tenet paid $725 million to settle, along with giving up $175 million in Medicare payments that were owed to it. Tenet then recorded a $2.19 billion loss in the third quarter of 2006 and was forced to sell 11 hospitals and enter into another five-year corporate integrity agreement in September 2006.

The last major allegation against Tenet was that during the period from 2008 to 2010, it had been involved in spending $3.43 million on lobbying, and although it made a profit of $415 million, it received $48 million in tax rebates, paid little tax, and increased the pay of its senior executives by 19 percent.

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See Also: Health Care Fraud; Insurance Fraud; Medicare and Medicaid Fraud.

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National White Collar Crime Center

The National White Collar Crime Center (NW3C) is a congressionally funded nonprofit organization established to provide assistance to federal, state, and local law enforcement agencies for the prevention, investigation, and prosecution of economic, white-collar, and high-tech/cyber crime. To accomplish this task, the center utilizes a multitude of research, training, and investigative services, tools, and technology. The organization is also home to the Internet Crime Complaint Center (IC3)—a flagship partnership established in May 2000 between the Federal Bureau of Investigation and Bureau of Justice Assistance—among many other partnerships with other crime-fighting agencies nationwide.

The history of NW3C traces back to 1978. In this year, the organization was initially founded as the Leviticus Project, which was an initiative created to provide a "formally structured and centrally coordinated multi-state investigation of a variety of crimes affecting the nation's coal industry," with funding provided by a central funding pool established by the federal government for multistate projects. The unique name was based on the Bible verse of Leviticus 19:13: "You shall not oppress your neighbor or rob him; the wages of a hired servant shall not remain with you all night until the morning," which fully captures the mission of NW3C. After a decade, the Leviticus Project Association grew to over 30 member agencies in 20 states, and in 1991, membership expanded to include all traditional law enforcement agencies in all 50 states, aided by focused efforts for expansion by the project. On November 30, 1992, the project's name was changed to the National White Collar Crime Center in order to more effectively reflect NW3C's expanded mission as well as to create a new national identity.

Along with keeping the public updated through regular press releases, NW3C also produces two publications: *The Informant* is the organization's magazine, intended to keep the law enforcement community up to date with cases and technology related to economic and high-tech crime prevention; and *The Briefing* is the NW3C's monthly newsletter, with articles on the organization's initiatives and projects as well as upcoming events and training seminars, and it is currently subscribed to by over 4,000 member law enforcement agencies worldwide.

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See Also: Credit Card Fraud; Internet Fraud; Nonprofit Organization Fraud; Terrorism.

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NatWest Markets Ltd.

National Westminster Bank Plc (NatWest) was established in 1968, operating from January 1, 1970, in London. NatWest merged three banks: National Provincial Bank (1833); District Bank (1829), owned by National Provincial; and Westminster Bank (1834). Certain other banking institutions, acquired with National and Westminster, were also operated. NatWest was the largest retail and commercial bank in the United Kingdom (UK) and one of the Big Four clearing banks.

NatWest was a founding member of the Joint Credit Card Company, which launched the Access credit card (later MasterCard) in 1972. It subsequently introduced the Servicetill cash machine and, with two other banks, the Switch debit card (later Maestro). Deregulation in the 1980s led NatWest into investment banking (County NatWest), mortgages (National Westminster Home Loans), and substantial international expansion. NatWest Markets was formed in 1992.

The 1990s Scandal

On February 28, 1997, NatWest Markets (NatWest) disclosed losses resulting from rogue trading that had gone undetected since approximately 1994. The situation was uncovered by an internal NatWest review; the company immediately disclosed the problem and conducted an investigation. It was discovered that between March 1995 and December 1996, long-term NatWest employee Kyriacos Papouis, trading in Deutschemark (DEM) interest rate options and swaps, allegedly misreported positions to conceal losses. Between late December 1995 and early 1996, Neil Dodgson, global head of interest rate options and Papouis's supervisor, also allegedly misreported positions in sterling (GBP) interest rate options and swaps. There was mismarking of some other option and swap books, but DEM and GBP positions accounted for 80.2 million pounds sterling of 90.5 million pounds sterling in total losses. Dodgson was suspended, but Papouis had already left NatWest in December 1996 and moved on to Bear Stearns, a U.S. investment bank. He resigned from there in March 1997, after the scandal broke. Other executives were either suspended from NatWest or resigned.

At the time, NatWest, not a separate legal entity, was the corporate and investment banking unit of NatWest Group. National Westminster Bank (NWB) trading activities were conducted by NatWest Capital Markets (NWCM), with transactions booked to NWB.

The UK Securities and Futures Authority (SFA), later part of the Financial Services Authority (FSA), conducted a lengthy inquiry. A May 2000 SFA report "severely reprimanded" NatWest Capital Markets Ltd. and NatWest Bank concerning internal controls and risk management, imposed a penalty of 420,000 pounds sterling (a 320,000 pounds sterling fine and a 100,000 pounds sterling contribution to SFA costs), expelled Papouis from the Register of Representatives and Trades with a penalty of 52,500 pounds sterling (including a 2,500 pounds sterling contribution), and reprimanded Dodgson with a penalty of 7,500 pounds sterling (including a 2,500 pounds sterling contribution). There was no evidence of misconduct for personal gain or loss to clients.

Assessment

The key issue is how traders managed to conceal misreporting for a significant period of time. Although options and swaps are not particularly complex derivatives, pricing of options is not straightforward because implied volatility of the underlying asset is not observable. Market-to-market pricing by the trader should be subjected to independent verification. Persistent mispricing should be a red flag for inquiry.

The losses were not significant in relationship to NatWest's overall assets. However, confidence in the bank was sufficiently damaged, which assisted in Royal Bank of Scotland (RBS)'s successful hostile takeover of NatWest in 2000. NatWest was broken up into parts, some sold during 1997, with the remainder becoming Greenwich NatWest in 1998. In 1999, a friendly merger with Legal & General Insurance, the first such bank/insurance merger in the UK, resulted in a substantial drop in NatWest's share price and precipitated bidding for the bank. NatWest was retained as a distinct brand and banking license, but the merger resulted in substantial job losses.

Poor management appears to have characterized the bank over time. In 1987, County NatWest, the investment arm of NatWest Bank, was involved in a very different financial scandal. Employees allegedly covered up a failed issue of 873 million pounds sterling in new stock intended for financing Blue Arrow, an employment agency, in its ultimately successful takeover of Manpower Inc. An investigation cleared Blue Arrow of any wrongdoing, and the chairman of NatWest Bank resigned.

In 2002, the so-called NatWest Three were indicted in Houston, Texas, on seven counts of wire fraud against their former employer, Greenwich NatWest, then a division of National Westminister Bank. The indictment concerned a 2000 transaction with Enron, an energy trading company that ultimately failed. The three—David Bermingham (who published a book), Giles Darby, and Gary Mulgrew—were extradited to the United States in 2006 after lengthy proceedings in UK courts. On November 28, 2007, the three accepted a plea bargain in exchange for one conviction of wire fraud. In February 2008, they were each sentenced to 37 months in prison. They were subsequently moved to UK prisons and released in August 2010.

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See Also: Allied Irish Banks; Banco Ambrosiano; Bank Fraud; Bank of America Corp.; Bank of Credit and Commerce International; Bank Secrecy Act; Banker's Trust Co.; Barings Bank; Offshore Bank Accounts; Daiwa Bank Ltd.; Procter & Gamble Inc.; Sumitomo Mitsui Banking Corp.; United American Bank; Vatican Bank.

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Negligence

Negligence is a basic legal concept reflecting the general duty of individuals and organizations within contemporary society to act with proper care. The legal notion of negligence thus has broad applicability. Although it most prominently comes into play in civil cases involving private disputes between individuals or organizations, it can also play a notable role in criminal cases in which the government brings prosecution because the wrong is considered harmful to society as a whole. In the business context, negligence can be a key issue in determining the legal liability of corporations or managers in a wide diversity of cases, ranging from defective products to employee safety to environmental hazards.

A Challenge to Define

Given the wide-ranging applicability of negligence, it is not surprising that this legal concept is often the subject of controversy. Such controversies can be philosophical in nature, as in today's society there are numerous and often differing views on the understanding and interpretation of the care that individuals owe each other. Asking a selection of random individuals "Am I my brother's keeper?" is likely to generate a variety of responses. Such diversity in popular opinion is mirrored in the scholarly discourse of academic journals, as the question of how to define our obligations to others is a perennial and contested one within ethical theory.

Such controversies about the care that individuals owe each other are not simply philosophical but also full of pressing and practical consequences. There are often immense amounts of money at stake in negligence lawsuits, and such lawsuits can easily involve the conflicting interests of powerful groups. Business corporations understandably want the ability to operate freely and efficiently, taking risks and innovating. But it is also true that employees want to be safe at work, customers want to depend on the products they buy, and citizens want a natural environment that is clean and sustainable. Doctors naturally want to be able to practice medicine without having their often-difficult decisions second-guessed by judges, but not everyone is pleased with their medical treatment, and attorneys have economic incentives to represent those who feel themselves harmed or otherwise aggrieved in their health care. With such critical issues at stake, these practical controversies often give rise to calls for

On March 24, 1989, the tanker Exxon Valdez *ran aground on Bligh Reef in Prince William Sound, Alaska. Within six hours of the grounding, the tanker spilled 10.9 million gallons of its cargo of crude oil. The spill would eventually impact more than 1,100 miles of Alaskan coastline, ranking it as the largest oil spill in U.S. waters at the time. Exxon admitted its failure to exercise proper care, including putting a captain who was a known alcoholic—and drinking vodka the night of the accident—at the helm of its oil tanker.*

legal reforms, such as efforts to limit the amounts awarded in negligence cases or the ability of one group even to bring suit against another, such as has occurred in the ability of shareholders to sue corporate directors.

In a common legal formulation today, negligence occurs whenever a person fails to exercise the care that a reasonably prudent person would exercise in the same or similar circumstances. The commonsensical core of negligence therefore lies in someone exhibiting a lack of the attention or concern that would normally be expected of a person in a given situation. Thus, if in backing out of his space in a parking lot, a driver were to fail to check his rearview mirror before proceeding and then hit another car, he would be showing the kind of carelessness the law today recognizes as negligence.

For an individual or corporation to be held liable for negligence in a civil case, there is a widely recognized four-part test the law often applies. Under this approach, the law requires that the individual or corporation (1) had a duty to exercise reasonable care and (2) failed to exercise that duty. The law also requires that this failure is (3) the actual and proximate cause of (4) damages. Thus, if some careless activity didn't actually hurt anyone or damage property, there will be no legal liability. It is also true that if the harm is too remote, freakish, or unusual, there may be no legal liability.

Case Examples of Negligence

An illustrative example of negligence in the business environment involved the *Exxon Valdez* oil spill. In 1989, the oil tanker ran aground in the Alaskan Prince William Sound. The oil spill from that occurrence involved nearly 11 million gallons of oil and damaged more than 1,100 miles of beaches. Beyond the immediate and long-term environmental damage, there were significant economic losses to property owners, fishermen, area businesses, and others whose livelihoods were curtailed. Along with compelling evidence of such wide-ranging harms, Exxon admitted it failed to exercise proper care and that it had caused the oil spill. Not only had Exxon put a known alcoholic captain at the helm of its oil tanker, but the captain himself abused alcohol on the night the ship ran aground as well, admitting to having at least three vodkas. This case thus offers a clear business example of negligence, with subsequent litigation revolving mainly around the amount and type of damages.

Because the conceptual core of negligence is the attribution of carelessness, the law of torts or civil wrongs distinguishes a negligence tort from both an intentional tort and a strict liability tort. An intentional tort occurs whenever an actor intends to inflict harm, such as when one person punches another without provocation. A strict liability tort happens whenever the harm arising from an actor's conduct is of a type for which the law declares the actor has absolute liability, even if the actor neither intended the harm nor acted carelessly. This would be true, for instance, if the harm sprang from the actor engaging in a highly hazardous activity, such as building demolition.

In criminal law, the concept of negligence becomes relevant when determining the state of mind of the person engaged in criminal conduct. In order for a person to be found guilty of a crime, the law generally requires that a person possess a particular state of mind while engaged in the act the law prohibits. Traditional common law recognizes three categories of crimes, each requiring a different mental state. There are general intent crimes, which require the person simply to intend the prohibited action. There are also specific intent crimes, which require the person not only to intend the prohibited action but also to do so with a specific additional intent or purpose. Finally, there are crimes of criminal negligence, which require not that the person intend the prohibited action but merely entail some unconscious creation of risk through that person's action.

One illustrative example of criminal negligence in the context of a business controversy occurred in a notable case involving Greenpeace. This case shows how even when the full consequences of an actor's disregard of risk are not realized, there can still be a finding of criminal negligence. In May 2005, Greenpeace was engaged in antilogging activism in Alaska. As part of this effort, a Greenpeace vessel entered waters off Alaska with over 70,000 gallons of petroleum products on board. Under Alaska law, ships carrying such cargo must file an oil-spill response/prevention plan and do so at least five days prior to entering waters under state jurisdiction. Greenpeace failed to file this required documentation on time and, even though it quickly corrected its mistake, the captain of the Greenpeace ship was found guilty of criminal negligence. Under Alaska law at the time, maximum penalties for criminal negligence allowed 12 months in prison and a $10, 000 fine for a person and a fine of $200,000 for the culpable organization.

In both civil and criminal cases, there is also the possibility of vicarious liability for negligence. This occurs whenever an individual or corporation is liable for the actions of another. In the civil context of negligence, for instance, this can occur under the doctrine of respondeat superior. Under the legal notion of respondeat superior, employers are liable for the torts of their employees committed within the scope of their employment. Thus, in the *Exxon Valdez* oil spill, Exxon had liability not only for knowingly allowing an individual with alcohol problems to captain its tanker but also for the captain consuming at least three vodkas on the night of the accident. In the Greenpeace case, it is noteworthy how Alaska law explicitly contemplates criminal liability for organizations.

Vicarious Liability

Vicarious liability of corporations and other organizations in negligence cases is an area in which competing policy considerations are at stake. Typical rationales for holding employers liable for the negligence of their employees include the generally greater capacity of employers to pay or purchase insurance for large financial judgments, thus insuring victims of adequate compensation for their harms. In the case of for-profit corporations, which can often pass along the costs of such judgments in the form of higher prices for their customers, the ability to socialize costs is also an important factor. The idea is that we should be willing to pay a little bit more for the goods and services we regularly purchase for the assurance that if ever we are tragically injured, we will have funds available to compensate us for our harms. Vicarious liability gives corporations and other organizations, too, a powerful incentive to hire responsible and competent employees, giving them the training and support needed to do their jobs safely and well.

Critics of vicarious liability in negligence cases point to the broader harms to society that flow from increasing the costs of doing business. Raising the costs of doing business not only increases the prices for goods and services but also can lead to job losses, curtailment of new investment, stifling of risk taking and innovation, and loss of a competitive edge for domestic enterprises in a globalized economy. Critics emphasize, too, how companies as a practical matter can never fully control all the actions of their employees and the importance of individual responsibility.

As a result of these concerns, there have been numerous successful efforts to limit damages available to injured parties in negligence and other tort cases. Indeed, in the *Exxon Valdez* case, Exxon appealed the case to the U.S. Supreme Court and successfully won a ruling that the damages awarded by the lower courts were unconstitutionally high and therefore had to be reduced.

In the business context, it is important finally to note the special case of corporate directors and officers when it comes to negligence. Among the fiduciary duties of corporate directors and officers is the duty of care. Under this fiduciary duty of care, shareholders may bring suit for negligence if such corporate leaders fail to exercise proper care in the performance of their duties. Negligence suits by shareholders, however, are sharply circumscribed by the protections of the business judgment rule. Under the business judgment rule, corporate directors and officers are isolated from shareholder negligence lawsuits alleging the violation of the duty of care if the directors and officers had no conflict of interest, made reasonable efforts to inform themselves, and did not make choices that were wholly irrational. Because of the protections of the business judgment rule, corporate directors and officers in major cases are only rarely held to violate their fiduciary duty of care.

Amid all these conflicting interests at work, the law of negligence is never a static or rigidly defined affair. It reflects the dynamics of conflicting desires and strives to articulate changing moral intuitions and social expectations. Through the law's rich concept of negligence, society attempts to articulate the care that is owed to each person.

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See Also: Board of Directors; BP PLC; Canadian Mining Scandals; *Challenger* Disaster; Coal Mining; Corporate Criminal Liability; Employee Safety; Ethics; *Exxon Valdez* Oil Spill; Fisher-Price Inc.; Greenpeace; Hazardous Waste; Medical Malpractice; Morton Thiokol Inc.; Respondeat Superior; Unnecessary Surgery.

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Nigerian 419 Scams

The Nigerian 419 scam is a prominent variation of advance fee fraud. In its simplest form, a scammer offers the victim something of great value but requires a nominal fee in advance. After paying the fee, the victim receives nothing. The classic 419 scam relies on the willingness of the victim to participate in a possibly illegal activity. Letters or e-mails will typically appear to be from a government minister or businessperson in custody of a large sum of cash. The scammer requires a fee to cover taxes, account fees, or some plausible expense before he or she can release the larger sum. Victims forward cash or identifying information until the victim is unable or unwilling to continue.

The 419 scam takes its name from the Nigerian Penal Code, Chapter 38, Section 419: Obtaining Goods by False Pretenses. According to the American Dialect Society, the use of the term can be traced back to an early 1992 article in *Business America*, indicating that these scams predate widespread use of the Internet. "Nigerian letters" and "Nigerian faxes" connected to a front company were initially used to bilk victims of large sums of money. Before knowledge of this scam was widespread, scammers targeted wealthier victims and institutions to cover the costs of mailing and faxing banks. As the scam became more known, however, the Internet made contacting victims cheaper.

Losses and Enforcement

There is no way to calculate the true losses from 419 scams. Several prominent documented cases show that business losses can be many millions of dollars. Interviews with scam operators suggest that an income of several thousand dollars a month or even a week is not uncommon. Furthermore, in several cases, victims have traveled to Nigeria and disappeared, been physically harmed, or been abducted for ransom. Some victims of the fraud have committed suicide.

International advance fee fraud can only be pursued through federal enforcement. In the United States, the Fraud Section of the U.S. Department of Justice or U.S. attorney offices have primary responsibility for international enforcement, and federal law enforcement agencies have jurisdiction in these matters. The U.S. Secret Service (USSS), Federal Bureau of Investigation (FBI), postal inspectors, and others have investigated losses. The Federal Trade Commission (FTC) also handles civil aspects of 419 fraud.

There is no official dollar-value threshold that automatically triggers an investigation. Each agency typically evaluates a case before accepting it. In addition to establishing a substantial loss, there must be a reasonable chance of conducting an investigation. Furthermore, even a victim losing millions of dollars with a clear paper trail to verifiable foreign interests may have no chance of recovering the money if the victim believed he or she was participating in an illegal act, such as bribing foreign officials. In fact, a victim seeking relief in U.S. courts was found to be in violation of the Foreign Corrupt Practices Act in the appellate case *James Adler v. The Federal Republic of Nigeria*.

Various self-help Web sites exist to retaliate against 419 scammers. These sites recognize that the expense of an investigation may quickly exceed the loss and ultimately achieve nothing without Nigerian cooperation. Self-help sites seek to impede the actions of 419 scammers, especially by wasting scammers' time and resources. Fans of the site also appreciate practical jokes played upon would-be scammers. For instance, site operators have been known to require ridiculous Turing tests to prove that the would-be scammer is a real person, such as requiring would-be scammers to hold signs with humorous content on video chats or sing during voice communications.

419 Scams in Popular Culture

Since there are many unconnected operators of this scam, a single root cause seems unlikely. In various incarnations of the root-cause story, university students or businesspeople were left without resources after the oil crash in Nigeria in the 1990s. Having been corrupted by foreigners bribing their way into Nigeria's oil market, these students or businesspeople applied technological or business knowledge to industrialize fraud. Such histories, while plausible, are examples of the specious stories used in the scam itself. The international perception of corruption and dishonesty in Nigeria actually serves to bolster the story of a corrupt government official or highly placed businessperson used in the scammers' stories. A further twist in the histories mirrors the form of folk tales surrounding the 419 scams in Nigeria, which describes how the corruption introduced by foreigners is turned against them. Popular songs like "I Go Chop [Eat] Your Dollar" celebrate 419 scams as harmless to anyone but a fool and present them as an anticolonial action.

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See Also: Advance Fee Scam; Foreign Corrupt Practices Act; Internet Fraud; Mail Fraud; Microsoft Corp.; Offshore Entities; Wire Fraud.

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Nixon, Richard M.

Richard Milhous Nixon was born in 1913 in Yorba Linda, California. After serving as a lieutenant commander in the U.S. Navy, he began a political career that would be wrought with scandal. He served as a member of Congress and spent eight years as vice president before becoming the nation's 37th president in 1969. He resigned on August 9, 1974, in order to avoid an impeachment trial stemming from the Watergate scandal.

Early Political Career

Nixon's political career began in 1946, when he was elected to the U.S. House of Representatives from the 12th District of California. In 1950, Nixon won a seat in the U.S. Senate. Nixon used the public's fear of communism to his advantage during his campaigns; this included accusing his Senate opponent of being a communist. Nixon further demonstrated his ardent anticommunism during the Alger Hiss hearings in the late 1940s. Hiss was a State Department official accused of distributing secret and sensitive documents to Whittaker Chambers, a communist spy. Hiss was found guilty of two counts of perjury in 1950.

In 1952, Nixon became the vice presidential nominee on Dwight Eisenhower's campaign ticket. During the campaign, Nixon arose as a source of controversy when several businessmen alleged that he had received illegal campaign contributions. Nixon successfully deflected the allegations in a televised speech; in the speech, he admitted to receiving a cocker spaniel as a gift from a supporter in Texas but stated but that he wouldn't return it because his kids loved the dog, named Checkers. The "Checkers Speech" led to a surge in public support for his candidacy, and Eisenhower chose to keep him on the ticket.

After eight years as vice president, Nixon ran for president in 1960 against Democrat John F. Kennedy, narrowly losing the popular vote by a margin of 49.72 percent to 49.55 percent. Nixon suffered another defeat in 1962, losing his bid to become California's governor. This prompted Nixon's announcement that he was ending his career in politics, famously telling reporters, "You won't have Dick Nixon to kick around anymore."

Despite these setbacks, in 1968 Nixon became the Republican Party's nominee for president. He won the election, defeating Democratic nominee Hubert H. Humphrey as well as George Wallace, the candidate of the American Independent Party.

Above the Law

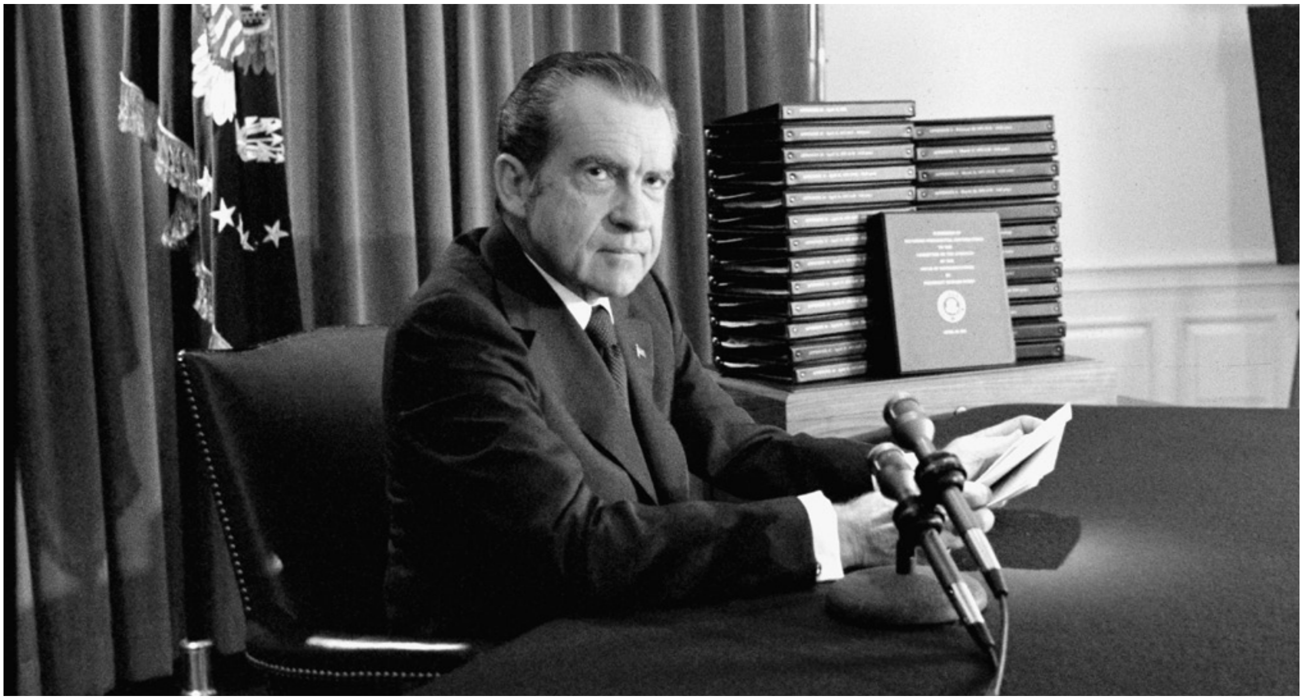
In an interview with journalist David Frost in 1976, Nixon stated, "When the president does it that means that it is not illegal." This quotation illustrates Nixon's expansive view of presidential power; his attempts to circumvent Congress caused his administration to become embroiled in several legal challenges to his policies.

First, in 1973, the president clashed with the National Treasury Employees Union (NTEU), a labor union representing federal workers. At issue was the legality of Nixon's 1971 decision to impose wage and price controls, designed to arrest inflation. The policy, which was implemented without congressional approval, included a freeze in the salaries of federal workers. The NTEU alleged that this action was in violation of the Federal Pay Comparability Act of 1970, which required the government to increase the salaries of federal employees to levels comparable with salaries of workers in the private sector. In 1974, a federal Court of Appeals sided with the NTEU, finding Nixon's actions illegal and requiring the government to award $533 million in back pay to federal employees.

The Nixon administration faced another legal challenge in 1973, stemming from the president's decision to appoint Howard Phillips as acting director of the Office for Economic Opportunity (OEO) without Senate confirmation, as required by Article II, Section 2 of the Constitution. Nixon was a foe of the agency, created under Lyndon Johnson; he declined to request further funding for the OEO and tasked Phillips with dismantling the agency. In *Williams v. Phillips*, the U.S. District Court for the District of Columbia ruled against the administration, finding that absent Senate confirmation, Phillips was serving illegally. Given this, the court enjoined Phillips from taking any additional policy actions as OEO director. In another case in the same year, *Local 2677, American Federation of Government Employees v. Phillips,* a federal District Court ruled that Nixon's attempts to override Congress and dismantle the OEO were illegal.

Political Warfare

As president, Nixon was obsessed with his political enemies; this was an obsession that would culminate in his resignation. Once in office, the president had his White House staff compile an "enemies" list, containing over 200 of his perceived political opponents, both in government and in the press. Moreover, under the direction



President Richard M. Nixon addresses the nation about the Watergate scandal, April 29, 1974. He holds his heavily edited transcripts of the subpoenaed White House tapes, on which he recorded all of his conversations since 1971, at times secretly. Nixon was eventually forced to release the full transcripts, which revealed his authorization of payoffs for the Democratic Party headquarters burglary in the Watergate building and his attempts to divert the investigation. Rather than face impeachment, Nixon resigned on August 9, 1974.

of Nixon, the Federal Bureau of Investigation (FBI) illegally wiretapped citizens; 17 of these wiretaps were eventually uncovered, with targets ranging from National Security Council staffers to news reporters. The administration also placed a wiretap on Vietnam War critic Daniel Ellsberg's psychiatrist, in an attempt to personally discredit Ellsberg's leaks on Vietnam to the *New York Times* (the "Pentagon Papers"). Other high-profile targets of Nixon's spying included Senator Edward Kennedy of Massachusetts and Democratic Speaker of the House Carl Albert.

The eventual discovery of the wiretaps prompted a series of legal challenges. First, in 1972, in *United States v. United States*, a District Court rejected the claim by the U.S. Department of Justice (DOJ) that wiretapping citizens was permissible when used in the realm of national security. Subsequently, in 1976, in *Halperin v. Kissinger,* a National Security Council staffer whose home phone was wiretapped successfully sued 10 members of the administration, claiming a violation of his Fourth Amendment rights.

In addition to the president's scandals, in April 1973, Vice President Spiro Agnew became a source of controversy when he came under investigation by the U.S. Attorney's Office in Baltimore. The investigation revealed that Agnew, a former governor of Maryland, had demanded kickbacks from businesses that had received state contracts and had also evaded taxes. A subsequent investigation by the DOJ revealed that Agnew continued to receive kickbacks while serving as vice president.

Nixon, eager to avoid the spectacle of a vice presidential impeachment trial, pressured Agnew to resign. Although Agnew initially refused, on October 9 he submitted his letter of resignation. In federal court, Agnew pleaded no contest to the charges of tax evasion; he avoided jail time but was ordered to pay the back taxes in addition to a paying a $10,000 fine and serving three years of probation. Nixon replaced Agnew with House Minority Leader Gerald Ford, who later assumed the presidency upon Nixon's own resignation.

Watergate Scandal

The Watergate scandal was the most notorious of Nixon's presidency and ultimately led to his resignation in 1974. The roots of the scandal were in a bungled attempt to cover up the 1972 burglary of the Democratic Party headquarters at the Watergate building. The five burglars, who were arrested and later convicted, were supported by the Committee to Re-Elect the President (widely shortened to CREEP), a group of clandestine Nixon campaign workers including E. Howard Hunt and G. Gordon Liddy. The burglars sought to steal information that could be useful to Nixon's reelection campaign.

The Nixon administration publicly disclaimed knowledge of the crime; the president, however, subsequently used the powers of his office in a series of attempts to cover up his connection to the break-in. This began when, on orders of the president, the Central Intelligence Agency (CIA) encouraged the FBI to stop the investigation because of alleged national security concerns.

The story first became public when two reporters from the *Washington Post*, Bob Woodward and Carl Bernstein, began investigating the break-in. Their investigation ultimately linked the crime and the cover-up to the highest levels of the Nixon administration. The reporters were helped by an anonymous source named Deep Throat. Thirty years later, Deep Throat was revealed as W. Mark Felt, the former FBI deputy director.

In April 1973, the Watergate scandal brought about the resignation or firing of top presidential aides H. R. Haldeman, John Ehrlichman, and John Dean, as well as Attorney General Richard Kleindienst. All of the men were linked to the attempted cover-up of the Watergate break-in, including paying the burglars to perjure themselves at trial. In May 1973, the Senate commenced hearings on the scandal and discovered the presence of a tape-recording device in the Oval Office. At this point, the Watergate special prosecutor, Archibald Cox, subpoenaed the tapes. On October 13, in an event know as the Saturday Night Massacre, Nixon refused to turn over the tapes and demanded that his attorney general, Eliot Richardson, fire Cox. Both Richardson and his deputy, William Ruckelshaus, refused and instead elected to resign.

Subsequently, Nixon released a heavily edited version of the tape transcripts. Finally, in July 1974, the Supreme Court ruled that the tapes could not be withheld under executive privilege. Nixon released the full transcripts, which revealed his involvement in multiple attempts to divert the investigation, including the authorization of payoffs to the burglars. The House Judiciary Committee recommended the impeachment of Nixon for his involvement in the scandal. Instead of facing trial, Nixon resigned on August 9, 1974. As a result of the scandal, 25 government officials were imprisoned.

After the resignation of Nixon, newly sworn in president Ford granted him an unconditional pardon for any and all crimes he may have committed while in the office of the president. Despite the looming presence of the Watergate scandal, Nixon sought to cultivate a legacy as a foreign policy success, writing a memoir and several books on foreign policy. Although Nixon could claim numerous foreign policy successes during his presidency, his legacy is a dark chapter in the history of the American presidency.

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See Also: ABSCAM; Agnew, Spiro; Anderson, Jack; Campaign Finance; Carter, Jimmy; Consumer Product Safety Commission Act; Daisy Chains; Endangered Species Act; Environmental Protection Agency, U.S.; Ford, Gerald R.; General Electric Co.; Gulf Oil Corp.; Keating, Charles; Legal Malpractice; Occupational Safety and Health Act; War on Drugs; Watergate.

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Nonprofit Organization Fraud

The missions of nonprofit organizations are dramatically different from those of their profit-making counterparts. A primary example of a nationally recognized organization is the Susan G. Komen (Foundation) for the Cure that has been a national leader with its ubiquitous pink symbols in the effort to raise funds to support education, research, and treatment for the cure of breast cancer. Tragically, over 200,000 women in the United States are diagnosed with breast cancer annually, with a mortality rate of 20 percent, or 40,000 deaths.

Despite their different orientations of services versus profit, both types of organizations are subject to the same issues with respect to fraudulent processes and lost funds. However, nonprofit fraud seems more insidious, as staff members make a commitment to assist in meeting the needs of the less fortunate members of society. Fraud not only reduces the resources intended to help the agencies' clients but also, as Janet Greenlee notes, may result in Gresham's Law taking effect, whereby the negative publicity associated with a fraud can result in donors generalizing the fraudulent behavior to all nonprofits, resulting in a concurrent reduction in donations.

Scope and Costs

The scope of nonprofit fraud and its associated costs are substantial. Association of Certified Fraud Examiners (ACFE) annual reports conclude that businesses and organizations are typically defrauded of approximately 5 to 6 percent of their yearly revenues. Further, estimates of the percentage of fraud in nonprofit agencies, of which there are more than 1.3 million in the United States, range from 9 percent by the ACFE to 12 to 13 percent according to Ron Matan and Darryl Neier. Assuming that 10 percent of frauds occur within nonprofit organizations, the losses have escalated from Kristy Holtfreter's estimate of $65 billion in 2006 to $75.4 billion in 2011, as calculated by Meehan's analysis of the ACFE Report and the 2011 U.S. gross domestic product (GDP). The most often cited cost of the average fraud is $100,000, but the ACFE's latest report suggests $140,000 is a more accurate estimate based upon its 2012 study.

Definition

According to the ACFE, "The formal definition of occupational fraud is the use of one's occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization's resources or assets." An earlier definition by Gary Gordon that is widely cited is as follows:

> Economic Crime is defined as an illegal act (or a constantly evolving set of acts) generally committed by deception or misrepresentation (fraud) by someone (or a group) who has special professional or technical skills for the purposes of personal or organizational financial gain or to gain (or attempt to gain) an unfair advantage over another individual or entity.

Types of Nonprofit Frauds

Occupational frauds and abuses are specifically classified as "asset misappropriation, corruption and fraudulent statements" according to Kristy Holtfreter. J. T. Wells described misappropriation as the misuse or theft of an organization's financial resources. A few examples from the ACFE are "larceny, skimming, shell companies, and ghost employees." Corruption involves a financial transaction that is improperly influenced, such as "conflicts of interest, bribery kickbacks, and bid rigging." Fraudulent statements are the deliberate fabrication or distortion of financial statements; "asset/revenue over or understatements," such as "fictitious revenues" or falsified "employment credentials," are examples in this area.

G. M. Zack has concluded that the typical fraud against nonprofit organizations is asset misappropriation. Holtfreter's study of frauds in nonprofit organizations concurred, as over 97 percent were asset misappropriation, followed by minimal levels of corruption, then fraudulent statements. More important, though, Matan and Neier reported that financial statement frauds resulted in losses that were 30 times greater ($3 million) than the average fraud of $100,000. However, the most recent data from the ACFE ranks asset misappropriations of billing, expense reimbursements, and skimming as almost 60 percent of cases but categorizes corruption in 25 percent of the cases, which radically departs from earlier research.

Victim Characteristics

Although larger nonprofits sustain the highest losses because of the sizes of their budgets and the ability of high-placed management employees to perpetrate large-scale fraud over a number of years, smaller nonprofits experienced the greatest median losses. The ACFE notes that over 30 percent of frauds occur in organizations with less than 100 employees. Holtfreter notes the significance of financial controls in preventing fraud. Because of their grassroots nature, as well as limited and declining funding in the current economic climate, smaller organizations simply don't have the financial resources or possibly the professional expertise to implement preventive measures including thorough background checks of new employees, ongoing training in fraud awareness and prevention, and both internal and external audits.

Fraudsters

Holtfreter concluded that "gender, age, education and workplace position" are germane attributes of those committing occupational fraud. Others have generally conceded that fraudsters are typically middle-aged (40) white males from the middle class.

An interesting dichotomy exists in nonprofit fraud. Although nonmanagement employees account for nearly two-thirds of fraud, females are frequently discovered committing larceny, forgery, or embezzlement, perhaps because of their greater presence, comprising approximately 60 percent of the workforce in the nonprofit sector. J. Greenlee et al., who reported the average loss of $100,000 per fraud, further elaborated, "The typical (median) fraud case resulted in a loss of less than $50,000 and was committed by a woman with no criminal record who earned less than $50,000 per year and had worked for the nonprofit for at least three years." These losses are also more easily detected through routine internal control mechanisms, such as internal auditing.

The ACFE supports the lower-level employee costs, with an estimate of $60,000 that escalates to $180,000 for managers and $573,000 for executives/owners. Middle-aged males with higher educations and positions within their organizations most often are responsible for these larger losses. Unfortunately, these losses are less likely to be detected through routine internal control mechanisms and require more sophisticated mechanisms.

Fraud and Loss Prevention

Targeted fraud awareness training for employees and managers is imperative because they are directly correlated with the most effective fraud detection method of tips (40 percent) from employees, often through employee-sponsored anonymous hotlines. It is hypothesized by Holtfreter that in nonprofits, this is an indirect result of the 2002 Sarbanes-Oxley Act, which requires "publically traded companies to establish confidential reporting mechanisms" and whistleblower protections. Though the same requirements do not apply to nonprofits, they are highly recommended for establishing fraud controls and protections in all nonprofits too.

Commencing with the interview process, continuing through new employee orientation and being institutionalized through ongoing training, an organizational culture that emphasizes honesty and integrity, as well as the legal and service ramifications of fraud, must be developed in nonprofit organizations. One agency reported establishing a written Standards of Employee Conduct form that was signed at hiring, re-signed annually, and discussed as agenda item one at every monthly staff meeting, to accomplish this goal.

Ongoing management reviews and internal audits constituted the other 30 percent of incidents of fraud detection in nonprofit organizations as detailed by the ACFE. Also, though external audits may not be as effective in the initial discovery of fraud, they are critical in detecting long-term, large-scale frauds and in preventing others.

Researchers have enumerated multiple behavioral red flags that, although not absolutely predictive, should alert nonprofit employers to the likely possibility that an employee may be at high risk to defraud the organization. Chief among these characteristics are living beyond one's means (33 percent), experiencing financial difficulties (30 percent), and divorce and family problems (17 percent). Matan and Neier also highlight an overpowering desire to achieve personal profit, serious problems with gambling and substance abuse, and stresses from peers and family members.

In Laguna Niguel, California, a lower-level Internal Revenue Service (IRS) employee volunteered simultaneously to serve as treasurer on the boards of directors of the local Little League and National Junior All-American Football programs. In an effort to achieve the financial status of the many affluent attorneys, business owners, and other professional board members and parents, he embezzled nearly $300,000, which he spent on lavish vacations, a new truck, and plastic surgery for his wife, who was also an IRS employee.

Directors of the boards, upon discovering the thefts of the organizations' assets, aggressively pursued prosecution for his crimes, which resulted in a negotiated plea. Although he was spared extensive time in custody, the thief was placed on probation and forced to resign from his job with the IRS, thus enabling premature access to his retirement funds, which were withdrawn to reimburse the two leagues for their entire losses.

This case study pinpoints a number of key elements in nonprofit fraud. First, although the boards of directors consisted of many successful professionals from various fields, including finance, they failed to establish some of the most basic financial controls in the nonprofits simply because they trusted an individual. For example, allowing the individual to serve as treasurer of both boards was imprudent. In addition, their check-signing and review policy was faulty. Finally, though the annual audit quickly disclosed the relatively obvious thefts, there was no effective internal monitoring to discover the losses earlier. Conversely, the agency did recover 100 percent of its losses, where typically 50 percent of agencies receive no reimbursement.

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See Also: Accounting Fraud; Better Business Bureaus; Charity Fraud; Direct-Mail Fraud; Embezzlement; Employee Crimes; Ethics; Forensic Auditing; Friedrichs, David; Money Laundering; National White Collar Crime Center; Predatory Practices; Terrorism.

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Northrop Grumman Corp.

Northrop Grumman Corp. (Northrop) remains a main U.S. defense contractor despite a series of various scandals in its corporate history. Northrop's questionable corporate practices date to the early 1970s, when the company faced a bribery scandal that forced its president, Thomas Jones, to resign over illegal payments to President Richard Nixon's secret campaign funds. Most notably, the company overbilled the federal government and knowingly provided false information. In 1990, Northrop gained negative publicity across the globe when it pleaded guilty to providing false information to the federal government related to production of its Harrier Jet and Air Launched Cruise Missiles. Ultimately, the company was able to point to issues regarding making false statements by both management and production. Further, Northrop has a history of environmental pollution that has led to its inclusion on international lists of top polluters.

Defense Contract Problems

In 1986, Northrop began showing problematic signs to government officials surrounding its production of parts for the MX missile. The first Internal Measurement Unit was successfully delivered in May, but the company had already managed to nearly fail a U.S. Air Force audit. A follow-up House of Representatives review of Northrop found a series of problems. The House accused the manufacturer of falsely certifying parts, billing for repairs to its own mistakes, permitting workers to alter time cards, and the creation of illegal shell corporations to make parts purchasing quicker. From an outsider perspective, there appeared to be a problem both with individual workers and the organizational culture. Northrop managers knew they could not fail to meet delivery dates and instead risked safety to deliver product almost six months past the contracted delivery time. In response, the Air Force withheld payment to the company while the U.S. Department of Justice pushed for a criminal investigation.

Only one year later, company whistleblowers emerged, alleging even greater degrees of company malfeasance with a government contract. These individuals claimed that Northrop knowingly defrauded the federal government of over $2 billion related to the development and production of Stealth bombers. Northrop was ultimately lucky, however, as the federal government chose to not participate in the anticipated lawsuit. In 1995, Northrop again faced public criticism over its handling of a government contract. Robert Ferro, who worked for TRW Inc. (now owned by Northrop), was involved in manufacturing components of satellites being built for the Air Force. After finding that the components were not made correctly and nearly guaranteed to fail, Ferro wrote a report and attempted to have the production changed. TRW, however, removed Ferro from the project and never informed the Air Force, despite the fact that the first satellite produced did not function properly. Knowing he was right, Ferro sued Northrop under the federal whistleblower law and won just under $50 million from a $325 million settlement in 2009. Northrop was largely saved from direct implication since TRW still operated as an independent company at the time of the events.

In the early 2000s, Northrop garnered a sizable, important contract to work on a nuclear aircraft carrier called the CVN 77 (the USNS *George H. W. Bush*). Although initially seen as the project that could help regain the government's and public's trust, it instead quickly turned into another string of mistakes. Worse yet, the company had relocated much of its operations, with its new shipyard in Newport News, Virginia, easily accessible to Washington, D.C., insiders. First, the company had to absorb almost $7 million in losses resulting from cost overruns in 2003. Then it was found that the previous tenants of the facility had sent invoices to the federal government for tanker research that had been originally completed for a commercial customer. Although the government was just as culpable for not catching the error, Northrop still had to pay $60 million in a settlement.

Cost overruns continued to plague the company. Northrop settled with the federal government for over $100 million in the summer of 2003 after acquiring TRW. TRW overcharged the government for a series of space-related contracts in previous years, which became Northrop's responsibility at the completion of its takeover of TRW in 2002. A few months later, Northrop had to pay another $20 million to the U.S. Navy for selling defective aerial drones. Northrop was paying the government back nearly as much as it was receiving in contracts during this time period.

Given how it started, the TRW episode garnered the most public interest. Richard Bagley—a former chief financial officer with the company—filed a lawsuit against the contractor for the federal government. Although an unusual maneuver, this method is actually legal under the False Claims Act under its qui tam provision. Persons who choose to file on behalf of the government under the act typically receive approximately 20 percent of any damages awarded. In the country's history, there have been other claims filed under the act related to government spending programs (most of them related to health care). Bagley ultimately received $27.2 million from his lawsuit against TRW, which he successfully demonstrated had billed the government over $50 million for research that never was conducted. The remainder of the lawsuit was attributable to treble damages.

Looking Forward

Upon being publicly discovered and put on warning by the federal government and military related to future contracts, Northrop acknowledged that it needed to improve external relations while also ensuring that its internal house was in order. Its ultimate success remains debatable. There have been elements of victory, as Northrop won a series of quality awards and was named *Forbes'* Company of the Year for 2002. Yet there have been continued drawbacks, including lawsuits for fraud and clear signs of inefficiencies in production. In all of these cases, Northrop has worked to avoid any admission of guilt, and the company has remained a highly functioning organization because of the continued need for its services by the American military, coupled with a lack of viable competitors.

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See Also: Accounting Fraud; Campaign Finance; Defense Industry Fraud; Government Contract Fraud; Negligence; Watergate; Whistleblowers.

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Obama, Barack

The first African American to be elected president of the United States, Barack Obama was born in Hawai'i in 1961; he was the first president to have been born in the state. Although his first four years in office were focused on reform of the U.S. health care system and the economic problems facing the country, Obama was involved in favoring several pieces of legislation and a series of judicial appointments that helped shape the identity of the federal courts.

Background

With the assistance of a scholarship, Obama attended the tony Punahou School from the fifth through the 12th grades, graduating in 1979. Obama completed his B.A. at Columbia University, studying political science and international relations. After graduating in 1985, Obama worked for two years in New York City before moving to Chicago to serve as director of the Developing Communities Project (DCP). The DCP began as a community-based organization comprising eight Catholic parishes on Chicago's south side. Enrolling in Harvard Law School in 1985, Obama served as the first African American editor of the *Harvard Law Review* before graduating magna cum laude in 1991. After graduation, Obama returned to Chicago, where he became involved in local politics and was elected to the Illinois State Senate in 1996. He was elected to the U.S. Senate in 2004, representing Illinois. Obama also taught law at the University of Chicago Law School as an adjunct instructor. After a historic presidential campaign in which he was the first African American nominee of either major party, Obama was elected president in a landslide over John McCain in 2008. Obama was reelected to a second term in office in 2012, defeating Republican challenger Mitt Romney.

Senate Anticrime Measures

After his election to the Illinois State Senate, Obama initially concentrated on reforming electoral campaign finance within the state. Proponents and beneficiaries of Illinois's historically corrupt political climate opposed this legislation, but Obama was successful in pushing through the first reform of political finance in that state in over a quarter of a century. Partnering with a Chicago machine politician, Senator Emil Jones, Obama was able to increase criminal penalties for making illegal contributions to candidates running in Illinois races.

Obama sponsored other legislation involving criminal acts, such as requiring that police interrogations of murder suspects be taped and requiring officers involved in traffic stops to note the race of the drivers they were pulling over so that racial profiling could be prevented.

President Barack Obama and Vice President Joe Biden ride from the White House to the Ronald Reagan Building in Washington, D.C., July 21, 2010, to sign the Dodd-Frank Wall Street Reform and Consumer Protection Act. The act made significant increases to the regulatory powers that monitor financial institutions. The previous year, Obama also signed the Fraud Enforcement and Recovery Act, which sought to tighten and enhance federal enforcement of fraud laws. It provided over $230 million in additional funds to combat fraud.

After his election to the U.S. Senate in 2004, Obama introduced several pieces of legislation dealing with white-collar crime. Obama was the sponsor of the Stopping Transactions which Operate to Promote Fraud, Risk, and Underdevelopment Act (STOP FRAUD Act), which sought to prevent acts by mortgage brokers or other professionals that deprived individuals of their property rights. The STOP FRAUD Act died in committee in 2006.

Obama also sponsored the Curtailing Lobbyist Effectiveness Through Advance Notification, Updates, and Posting Act (CLEAN UP Act), which sought to inhibit illegal behavior by lobbyists. The CLEAN UP Act also died in committee. With New York Senator Chuck Schumer, Obama also sponsored the Deceptive Practices and Voter Intimidation Prevention Act of 2007, which sought to make acts coercing voters illegal; this bill also died in committee. Obama was successful in obtaining passage of the Federal Funding Accountability and Transparency Act of 2006, which required full public disclosure of all individuals and organizations benefiting from federal funding.

Anticrime Measures as President

Upon taking presidential office, Obama immediately focused upon the economic problems facing the United States. During his first 30 days as president, for example, Obama helped usher the American Recovery and Reinvestment Act of 2009 through Congress, which provided an estimated $787 billion intended to help bring the American economy out of a recession. Even during this period, however, Obama worked to ensure passage of some legislation that focused on white-collar criminal behavior. In May 2009, Obama signed the Fraud Enforcement and Recovery Act (FERA), which sought to tighten and enhance federal enforcement of fraud laws, especially as these pertained to mortgage fraud, securities fraud, and illegal activity related to or perpetrated by financial institutions. The FERA also provided federal agencies with over $230 million in additional funds to combat fraud within the government.

Consumer Protection Act

In July 2010, Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Dodd-Frank Act made significant changes to the regulatory system that monitors and examines financial institutions in an effort to prevent a recurrence of the financial crisis that rocked the nation after the collapse of the subprime mortgage market. Dodd-Frank provided for the consolidation of federal regulatory agencies and established a new oversight panel to evaluate systemic risk. The act also increased the level of regulation directed at the financial markets, especially for derivative transactions brought into the financial exchanges. Next, a variety of consumer protections were strengthened, especially for those financial products that are often used by middle-class investors. Dodd-Frank also increased the tools available to the Federal Reserve and the Department of the Treasury to sell or wind down bankrupt financial firms. Finally, Dodd-Frank increased international cooperation that strengthened accounting standards and increased regulation of credit rating agencies, and prohibited banks from making certain types of investments that did not benefit the bank's customers.

As president, Obama had the opportunity to appoint two Supreme Court justices, Sonia Sotomayor in 2009 and Elena Kagan in 2010. Both Sotomayor and Kagan brought a more liberal perspective to the bench than some conservatives would have preferred, but both have also demonstrated a willingness to be tough on white-collar criminal defendants. Obama has been criticized for slowness in filling other vacancies on the federal bench—of the nearly 100 open seats that existed at the end of his first year in office, he had put forward fewer than 25 judges who were confirmed by the U.S. Senate. Others, however, have asserted that Republican intransigence has made more rapid approval of judicial nominees impossible.

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See Also: Bank Fraud; Dodd-Frank Wall Street Reform and Consumer Protection Act; Mortgage Fraud; Mortgage Reform and Anti-Predatory Lending Act; Mortgage-Backed Securities; Securities and Exchange Commission, U.S.; Subprime Loans.

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Occupational Carcinogens

Occupational carcinogens remain one of the key causes of cancer in the United States. According to the National Institute for Occupational Safety and Health (NIOSH), exposure to carcinogens on the job accounts for 20,000 deaths and 40,000 new cancer cases each year in the United States. These cancer-causing substances are encountered in a wide range of occupations and industries.

Historically, exposure to carcinogenic pesticides has been common among agricultural workers, producing leukemia, lymphoma, and many other cancers. Blue-collar workers employed in the production of tires, plastics, steel, paint, batteries, and many other manufactured goods have also long faced exposure to such widely recognized carcinogens as asbestos, coke oven emissions, benzene, arsenic, and vinyl chloride. Similarly, miners have faced dangerous exposure to carcinogens like silica, nickel, and cadmium, among other cancer-causing substances, all linked to lung cancer as well as to other cancers. Many white-collar workers also face exposure to carcinogenic agents like formaldehyde and ethylene oxide, which can cause blood-related cancers.

Since the 1700s, scientists have recognized that cancer could be caused by substances encountered in the workplace. Sir Percival Pott, a British surgeon, is widely credited with scientifically identifying a work-related carcinogen for the first time. In 1775, he published a report linking exposure to soot and squamous cell carcinoma that developed on the scrotum among chimney sweeps. In Britain, his work encouraged passage of the Chimney Sweepers Act in 1788, which was intended to limit the use of child labor in this occupation, given the risk of cancer. By the early 1900s, however, scrotal cancer remained a serious problem among chimney sweeps, accounting for nearly 30 percent of the deaths among these workers according to one study.

Since these early accounts, scientists have identified hundreds of other cancer-causing substances used in the workplace. In the 20th century, in particular, exposure to occupational carcinogens became more common as industrialization and mass production drew thousands of workers into factories and mines where they were routinely exposed to these hazards. The steel industry, which became a cornerstone of the American economy, provides one important example of the risks that workers faced. Many workers regularly inhaled emissions that were released from the ovens in which coal was heated and converted into a substance called "coke," which in turn was used to fuel steel plants.

As early as the 1950s, studies indicated that coke oven workers faced excessive rates of lung cancer. In subsequent epidemiological studies, scientists reported lung cancer mortality rates among coke oven workers that were 10 times higher than among other steelworkers. Coke oven emissions also caused higher rates of kidney cancer, prostate cancer, and digestive cancers. Hundreds of steelworkers died during the 20th century as a result of these occupational diseases.

Suppression of Evidence

In several cases, corporations in concert with medical experts have deliberately suppressed evidence that the substances to which workers have been exposed cause cancer. One of the best-documented such cases of corporate malfeasance involved asbestos. In the early 1900s, the production of insulation using asbestos became an important industry as industrialization and urbanization fueled growth of construction. Asbestos was also used widely in shipbuilding. Raybestos Manhattan and Johns Manville emerged as major companies producing insulation using asbestos.

In the post–World War II era, asbestos became more widely used in the production of bricks, roofing, flooring, and many other products as well as insulation. Thousands of workers who were exposed to this highly dangerous substance developed debilitating health problems, including lung cancer and a rarer form of cancer called mesothelioma. These typically fatal forms of cancer are caused by the inhalation of asbestos fibers by workers. Family members exposed to clothing covered in asbestos dust also sometimes developed these diseases.

Until the 1970s, most workers were neither adequately informed about the dangers of asbestos nor provided respirators or other protective equipment despite the fact that Raybestos Manhattan, Johns Manville, and other companies had long known that exposure to this substance could cause deadly health problems. These and other companies sponsored some of the earliest studies of the link between asbestos and cancer. As early as the 1940s, these studies indicated that exposure to asbestos could cause cancer. Scientists contracted to do this research, however, were explicitly barred from releasing their findings to the public. This evidence was eventually released largely because of the lawsuits filed by workers who had developed cancer and other health problems caused by exposure to asbestos on the job.

Identifying Occupational Carcinogens

Today, several governmental and nongovernmental organizations play a leading role in the identification of occupational carcinogens. NIOSH is perhaps the most important of these agencies. In 1970, Congress established NIOSH with the passage of the Occupational Safety and Health Act. This historic legislation stipulates that each employer "shall furnish . . . a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." NIOSH serves as the research arm for the Occupational Safety and Health Administration (OSHA), which regulates exposure to health and safety hazards. As such, NIOSH identifies substances and conditions that threaten the health and safety of workers based on a review of the best available scientific data. It also provides recommendations to protect workers from harmful exposure to occupational hazards. NIOSH has made several key recommendations regarding occupational carcinogens over the past four decades. In 1976, the agency published its first set of cancer guidelines for the workplace, recommending "no detectable exposure levels for proven carcinogenic substances." In 1995, NIOSH adopted a policy that reflected its commitment to offering more precise recommendations regarding occupational carcinogens. More specifically, the agency promised to provide "whenever possible" quantitative recommended exposure limits (RELs) "based on human and/or animal data as well as on the consideration of technological feasibility for controlling workplace exposures." These RELs are published in the *NIOSH Pocket Guide to Chemical Hazards*. This guide is updated as new information is available and RELs are revised.

The National Toxicology Program (NTP), established in 1978, also plays an important role in the identification of occupational carcinogens today. This is an interagency venture headquartered at the National Institute of Environmental Health Sciences, which, in turn, is part of the National Institutes of Health. The NTP is required by Congress to prepare annually its "Report on Carcinogens" for the secretary of health and human services. In this report, the agency identifies both those substances that are "known human carcinogens" and "reasonably anticipated human carcinogens." This report includes information about work-related sites where exposure may occur.

In its most recent report, the NTP identified 240 such substances or agents. Formaldehyde, one of two substances added to the list of known human carcinogens, poses a threat to workers in several industries and occupations. Individuals working in medical laboratories and mortuaries are among those exposed to this carcinogen on the job. Formaldehyde is also widely used to make resins for household items, such as composite wood products, paper product coatings, plastics, synthetic fibers, and textile finishes. Exposure to formaldehyde in these industries and occupations can cause nasopharyngeal cancer and sinonasal cancer, as well as a cancer of the white blood cells known as myeloid leukemia.

The International Agency for Research on Cancer (IARC) also plays an important role in the identification of occupational carcinogens. Established as a division of the World Health Organization (WHO), it provides information to an international audience. Experts working with this group have identified more than 400 substances as carcinogenic, "probably carcinogenic or possibly carcinogenic to humans." Many of these are substances to which workers are exposed on the job.

Regulation of Exposure

Several other agencies are responsible for regulating exposure to these substances once they are identified as carcinogens. In the United States, OSHA, the Environmental Protection Agency (EPA), and the Mine Health and Safety Administration (MHSA) are the three key agencies regulating occupational carcinogens.

OSHA has the broadest authority, as it covers most industries and workers. The agency has two key responsibilities: first, setting standards that specify the permissible exposure levels (PELs) for carcinogens and other hazardous substances, and second, enforcing these standards. In 1970, OSHA adopted a set of PELs that were largely based on limits recommended by the American Conference of Government Industrial Hygienists (ACGHI) to regulate hundreds of substances, including those identified as carcinogens. In the past four decades, the agency has lowered the PELs for several occupational carcinogens. The carcinogens targeted by these standards include asbestos; coke oven emissions; vinyl chloride; arsenic; lead; chromium; cadmium; benzene; 1,2 dibromo 3 chloropropane; acrylonitrile; ethylene oxide; formaldehyde; methylenedianline; butadiene; and methylene chloride.

These policies are credited with significantly reducing the risk of cancer tied to occupational exposures. However, many maintain that cancer-causing substances remain a significant threat in the workplace because standard setting is such a lengthy process and so limited in its scope. OSHA typically tackles only one substance at a time. In most cases, standard setting spans several years. The policy-making process setting the current PEL for asbestos, for example, spans more than a decade. OSHA has, at various points, tried to pursue more sweeping approaches to reducing exposure limits for hundreds of other carcinogens. These initiatives, however, have generated fierce corporate opposition and have not been implemented.

The EPA and MHSA have a more limited role than OSHA in the workplace but are nonetheless important. The EPA is responsible for regulating exposure to pesticides in agricultural work. The agency has banned or restricted the use of dozens of pesticides, many of which are known carcinogens. These include pesticides that were widely used in agriculture until the 1970s, including aldrin, captafol, and DDT. Despite these regulations, cancer rates remain higher among agricultural workers than among the general population. Several studies indicate that farming populations have higher rates of leukemia, lymphoma, myeloma, and cancers of the brain, prostate, and stomach. Carcinogens also remain a risk in mining, where the MHSA regulates work conditions. The agency has set standards for asbestos as well as several other substances identified as carcinogenic.

International studies of occupational carcinogens reveal that the problem facing workers in many developing countries remains even more serious. The World Health Organization (WHO) provides among the most reliable information on the "disease burden" resulting from exposure to occupational carcinogens across the world. Lung cancer, leukemia, and mesothelioma remain particularly pervasive forms of work-related cancers in Africa as well as in other less-developed regions. The WHO, along with many other governmental and nongovernmental agencies, urges that exposure limits for many cancer-causing agents be reduced as they have been in most developing countries and, in some cases, the use of these substances be banned.

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See Also: American Cyanamid Co.; Asbestos; Canadian Mining Scandals; Coal Mining; Environmental Protection Agency, U.S.; Employee Safety; Johns Manville Corp.; Kepone Scandal; Labor Crimes; Mine Safety and Health Act; Occupational Safety and Health Act; Polyvinyl Chlorides; Public Citizen Health Research Group; Research Fraud; Toxic Substances Control Act; Unsafe Working Conditions.

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Occupational Safety and Health Act

The Occupational Safety and Health Act became Public Law 91-596 in 1970 when it was signed by President Richard Nixon. The purpose of the act was to create a federal agency whose major responsibility was to oversee both health and safety in the workplace. According to the act, the defined roles of the Occupational Safety and Health Administration (OSHA) are limited to three areas: (1) the establishment of safety and health standards for industry, (2) their enforcement by federal and state inspectors, and (3) employee education and consultation related to health and safety in their occupations.

The agency began in April 1971 and became part of the Department of Labor. The agency is managed by the assistant secretary of labor for occupational safety and health plus up to three deputy secretaries. Offices in the organization include health standards, safety standards, enforcement, policy planning, and federal programs. The agency initially had 10 regional offices, with four to nine area offices reporting to each regional office. Employees include inspectors for both safety and health, making sure to keep both functions separate. OSHA has regulatory oversight in all 50 states and U.S. territories. Inspections are supposed to be without notice, and a business may be fined if a citation is issued.

Purpose of the Act

The primary purpose of the act was to make sure that employees who worked in an occupation for their lifetimes did not suffer health impairments from exposure to materials, chemicals, or other hazards. When the law was under debate, industry was granted two of its requests regarding agency operations: (1) states would assume the primary responsibility for implementation and enforcement of OSHA regulations among businesses in the states and (2) the first level of adjudication for violations would be a three-person panel of judges called the Occupational Safety and Health Review Commission, whose members are appointed by the president and approved by the Senate.

OSHA does not have complete jurisdiction over all businesses, as the act did contain some exemptions. Businesses with 10 or fewer employees did not have to comply with the regulations, but their employees still have the right to file complaints, and OSHA can still conduct investigations into their claims. Federal and state employers are also exempt. State employees come under the jurisdiction of the state occupational safety and health agency. Federal employees are under the health and safety regulations of their agency. Employees have the right to file a complaint with OSHA, but they must be current employees; the act provides protection for whistleblowers. This was proven in the Kepone tragedy in 1975, when an employee at Life Science Company was fired for complaining to the supervisor about the Kepone chemical being used as a pesticide. He filed a complaint with OSHA, but it was not investigated right away because he was no longer employed by the company.

Under the terms of the original Occupational Safety and Health Act, the agency was supposed to create a set of permanent standards within a reasonable time frame. For the short term, clause 6(a) contained a set of consensus standards, which after 40 years are still in use because the agency has found it difficult to establish new standards. As of 2012, the agency has 12 standards that address asbestos, carcinogens, lead, and other substances. For situations where no standard exists, the law has a general-duty clause found at 5(a)1, which allows for the citation of safety violations even though a specific standard does not exist.

Under the terms of the law, companies can write their own standards under the variances clause as long as the new standard is as, or more, effective than the existing standard. This section also contains temporary and permanent variances. Temporary variances cover situations in which the employer may not have enough staff or resources to enforce the existing code. A permanent variance is granted when employers prove that they can provide safe work conditions that equal compliance with the OSHA standard.

The act has been in force for over 40 years without major amendment, and the agency is still struggling to regulate workplace safety. Among the major OSHA successes are decisions regarding products such as asbestos, lead, and numerous carcinogens, as well as legal requirements to track employee medical histories.

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See Also: Asbestos; Brown Lung; Coal Mining; Employee Safety; Georgia Pacific LLC; Imperial Food Products Inc.; Johns Manville Corp.; Labor Crimes; Mine Safety and Health Act; Nixon, Richard M.; Occupational Carcinogens; Pesticides; Polyvinyl Chlorides; Public Citizen Health Research Group; Reform and Regulation; Toxic Substances Control Act; Unsafe Working Conditions; Whistleblowers.

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Ocean Ranger Disaster

The *Ocean Ranger* was a semisubmersible offshore drilling platform that sank off the coast of Newfoundland and Labrador during a storm on February 15, 1982. All 84 crew members died. Built by Mitsubishi Heavy Industries of Japan, the *Ocean Ranger* was the world's largest drilling rig at that time. It was said to be unsinkable. The rig was contracted by Mobil Oil and operated by the Ocean Drilling and Exploration Company Inc.

The storm that sank the vessel had winds up to 90 knots (103 mph) and waves over 100 feet. A wave struck the *Ocean Ranger* at about 7 P.M. on the evening of February 14 and broke a portal in the ballast control room. Water entered the control room and short-circuited the electronics systems used to control depth and ballast. The water also caused the platform to list forward. At approximately 1:30 A.M. on February 15, the crew abandoned ship. By 3:30 A.M., the *Ocean Ranger* had disappeared from radar. Nearby rescue ships were unable to save any of the crew, who could not launch the lifeboats because the platform was listing too severely for a successful launch.

The sinking led to three inquiries exploring its causes: one by the government of Canada, one by the province of Newfoundland and Labrador, and one by the U.S. Coast Guard. The various inquiries concluded that the *Ocean Ranger* sank primarily because the ballast control system was inadequate. They also concluded that there were design flaws in the *Ocean Ranger*. It had been designed for operation in the Gulf of Mexico and had not been tested for, and was not equipped for, operation in the North Atlantic. Other design faults included locating the ballast control room too close to the water, an unnecessarily complicated design for the ballast control system, a faulty launch control mechanism for the lifeboats, lifeboats that were ineffective in heavy seas, and the glass in the portals that was too thin and unable to withstand heavy seas. There were also no survival suits on the rig.

It was also concluded that there were problems with the inspection and regulation of all drilling rigs. The crews were not properly trained to operate either the safety equipment or the ballast control system. There was no regulation requiring standby vessels to maintain a minimum distance from drilling rigs, and search and rescue helicopters were stationed too far away, in central Newfoundland, to be of use.

The "Report of Royal Commission on the *Ocean Ranger* Marine Disaster" also concluded that the number of regulatory bodies contributed to the problem. Three government agencies were involved. The government of Canada, through Canada Oil and Gas Lands Administration; the government of Newfoundland and Labrador through the Newfoundland-Labrador Petroleum Directorate; and the U.S. Coast Guard all failed to ensure that inspections were being done and that the regulations were being followed. They each assumed that the other was conducting inspections, resulting in inadequate or nonexistent inspections and enforcement.

The Canadian federal government acted on 90 of the 136 recommendations of the Royal Commission report. Improvements were made to regulations governing rig design; the type of survival equipment to be kept on rigs; the testing of all equipment and improved training, including survival training programs for crew members; and the location of ballast control rooms. The three regulatory agencies were also combined into one agency called the Canada-Newfoundland Petroleum Board.

The incident also resulted in changes to the worker's compensation laws in both Canada and the United States. The provincial Workers Compensation Act specified that survivor benefits would be paid only if the survivors agreed not to sue Mobil Oil or the Ocean Drilling and Exploration Company. Under pressure from the public, the government of Newfoundland and Labrador agree to change regulations to allow anyone who accepted the worker's compensation survivor's benefits to also sue the companies involved. Suing the companies was complicated by issues related to deciding if the suits should be filed in U.S. or Canadian courts. Some sued in U.S. courts, and others sued in Canadian courts. Canadian court settlements ranged from $25,000 to $2 million. U.S. court settlements were not disclosed but are believed to be have been two to 10 times higher.

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See Also: Bureau of Ocean Energy Management, Regulation, and Enforcement, U.S.; Employee Safety; Regulatory Enforcement; Unsafe Working Conditions; Workplace Deaths.

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Office of Natural Resources Revenue, U.S.

Revenues from energy leasing constitute one of the U.S. government's largest source of nontax revenue, around $10 billion each year. As early as 1936, regulations from the U.S. Geological Survey allowed the U.S. Department of the Interior to value leases and assess royalties. Under President Ronald Reagan, the Minerals Management Service (MMS) was created to improve federal leasing revenue management. After the 2010 BP (formerly British Petroleum) oil spill in the Gulf of Mexico, existing criticism of MMS, the agency responsible for safety, regulation enforcement, and royalty payments, intensified. Detractors alleged that the competing missions of MMS undermined the agency's ability to effectively address safety and environmental concerns. In particular, they claimed that close ties between MMS employees and oil industry insiders prompted regulators to overlook many environmental and safety regulation infractions. According to *Businessweek*, even before the Deepwater Horizon tragedy, MMS suffered from mismanagement. Whistleblowers in the agency asserted that companies were allowed to "skim millions off royalty bills." One manager was caught as he purchased cocaine from an agency employee.

As a result, U.S. Department of the Interior Secretary Ken Salazar issued Secretarial Order No. 3299, which eliminated the MMS and created the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE). Separating the royalty function from leasing and regulatory

On September 30, 2010, in a speech in Washington, D.C., Secretary of the Interior Ken Salazar discusses the Obama administration's energy strategy, including the role of the newly formed Bureau of Ocean Energy Management.

responsibilities was a priority for Salazar, and in October 2010, the Office of Natural Resources Revenue (ONRR) was established. Two other agencies, the Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement, emerged from the MMS reorganization. These three agencies replaced BOEMRE in order to provide more efficient and effective management of the nation's energy and mineral resources. Together, they are intended to ensure that federal and Native American lands leased to individuals or companies for energy development are managed responsibly and that payments, or royalties, from leaseholders are accurately reported and collected. All funds received by the ONRR are dispersed to the U.S. Treasury, federal agencies (such as the Land and Water Conservation Fund and the Historic Preservation Fund), states, Native American tribes, and individual Native American mineral rights owners.

The ONRR, the agency charged with collecting any revenue generated throughout the leasing process, contains three program areas: Asset Management, Audit and Compliance Management, and Financial and Program Management. Asset Management works to ensure that the highest, fair value is assessed for activity on leased lands through regulations and rulemaking. Although leaseholders are responsible for reporting their government debts, much like individual taxpayers self-report taxes owed, the Audit and Compliance Management program produces compliance strategies and performs audits and compliance reviews. Auditing ensures that the self-reported data are accurate and truthful, and compliance confirms that leaseholders are following applicable laws and regulations as well as the terms of lease contracts.

Underscoring the importance of the auditing function, and perhaps signaling to leaseholders the end of an era in which self-reported data were taken for granted, the new ONRR was allocated 19 new auditing positions after the BOEMRE restructuring. During the 2012 fiscal year, the ONRR completed 325 audits and 891 compliance reviews. Along with the expertise of agency auditors, sophisticated software (modeled after that used by the Internal Revenue Service) reviews submitted reports for irregularities. An independent peer review of the auditing functions conducted by Williams, Adley & Co. gave the auditing program the highest mark possible. Finally, the Financial Management division of the ONRR collects all payments from leaseholders and disburses money to the appropriate entities. It also maintains a database and provides financial reporting for incoming and outgoing payments.

The ONRR has been working on simplifying regulations as well as consolidating the myriad rules governing royalties and asset valuation. Additionally, the office has promoted transparency through easier access to records, public meetings, and workshops. The nascent bureau has levied several fines against royalty holders for failure to report or for inaccuracies in the reporting process. For example, in conjunction with the U.S. Department of Justice, the ONRR accepted a settlement with BP Amoco Corp. for $20.5 million for violation of the False Claims Act.

Although the ONRR and associated agencies have eliminated many of the criticisms of the old MMS, members of the extractive industry worry that the ONRR has taken an overly antagonistic tone. That said, both internal and external stakeholders have expressed approbation of the agency.

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See Also: BP PLC; Bureau of Ocean Energy Management, Regulation, and Enforcement, U.S., Bureau of Safety and Environmental Enforcement, U.S.; Chevron Oil Co.; *Exxon Valdez* Oil Spill; Gulf of Mexico Oil Spill; Gulf Oil Corp.; Minerals Management Service, U.S.; Regulatory Enforcement; Standard Oil Co.

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Offshore Bank Accounts

The recording of business and financial transactions provides a written record of each event. As a result, certain governmental mandates have required these transactions to be recorded and open for inspection, and the collection of revenue in the form of taxes or other duties paid to approve and license those business transactions.

Overview

The total amount of monies deposited in offshore bank accounts—sometimes referred to as tax havens—is estimated at $21 to $32 trillion and perhaps more. These funds are not generally taxed. By comparison, the estimated debt of the United States is approximately $17 trillion. These combined monies are not all held by U.S. corporations but rather by global corporations and individuals, and not all these deposited assets were derived from illegal conduct.

This article focuses on offshore bank accounts; however, it is important to identify in rank order the top countries that provide tax havens: Delaware (United States), Luxembourg, Switzerland, the Cayman Islands, and the United Kingdom (inclusive of Guernsey and Isle of Mann).

The U.S. Argument

An argument proffered by U.S. corporations suggests that U.S. corporate tax rates and inequality in foreign trade have played a part in the increase in offshore banking. If the U.S. economy continues at its current pace, combined with high unemployment fused with a service-sector economy and offshore employment increasing, it is likely that offshore banking will continue to increase.

U.S. politicians could offer repatriation of global assets held in offshore bank accounts; however, many argue that the current "broken" tax system should be reconstructed first so as to secure these monetary transfers. Otherwise, more uncertainty will exist, as it did during the time of the Boston Tea Party.

Researchers find a plethora of wealth inequality at the core foundation of offshore bank accounts. Many economists have argued that intentional economic inequality schemes can become dangerous instruments to create wealth while avoiding taxes. Current estimates suggest that more than one-third of all personal financial wealth is attributed to 0.001 percent of the wealthiest. If no oversight or regulatory review of their activities occurs, one will likely continue to observe what has occurred in the past few years—an explosion in offshore banking.

Data from Transparency International and its global investigative work find corruption linked to offshore banking. This information supports much of the research data published by the World Bank and the Tax Justice Network, which suggests that these corrupted economic supply chains of offshore banks are drivers for corrupt leadership and oppressive governments, which affect poverty and impact global immigration policies.

Although it is important to identify the source of funds that end up in offshore banks, more important is an in-depth examination of the source of these monies. It is clearly suggested these clandestine banking systems are established to support offshore financing schemes and to clearly undermine a series of ethical and legal considerations for concealing these activities.

Moreover, it is far more commonplace to find offshore banks holding assets of wealthy depositors versus mom-and-pop deposits from vacationing tourists. Millions of electronic resources can be accessed from a simple Internet search on the topic. Many of these turn out to be fraudulent artifices to steal money from consumers.

In the United States, financial institutions are required by federal law to report all transactions, as set forth in provisions of the USA PATRIOT Act. Some argue that these reporting mandates are responsible for the use of offshore bank accounts; however, it is nearly impossible to escape tax and criminal liability via offshore bank accounts. One example is that any false or misleading statements or omissions with respect to creating an offshore bank account can, and frequently do, become a matter of the jurisdiction of the United States. Those misrepresentations generally attach felony criminal liability to the corporation and individuals associated with offshore bank accounts.

Conduct

Corruption, crime, and corporate abuse continue to be at the core of discussions about offshore banking. A simple economic analysis of tax consequences would be that a 3 percent return on $21 trillion would reflect an estimate of $630 billion in lost tax revenues. By comparison, corrupt dictators who raid local funds and foreign social elites use offshore banks to further conceal their own illegal schemes.

There is a common misconception that investigating offshore bank accounts and money laundering schemes is exclusively reserved to brand-named federal law enforcement organizations. However, there are many local law enforcement or regulatory agencies that develop investigative leads that can be shared among federal counterparts, and if a successful U.S. investigation results in the seizure of assets, a percentage of these forfeited monies can be shared with local law enforcement.

The distinction between legal and illegal monetary transactions is found to drive the worldwide entrepreneurial interest in concealing assets and monies from detection. This process can be creative, complex, or rogue. There are many well-versed and experienced legal advisors and accountants who have expertise in facilitating the transfer and movement of assets into various foreign offshore bank accounts for a fee.

Drug dealers are often the topic of conversation when money laundering and offshore banking is first examined. However, this group, although important, is no match for complex global schemes to defraud, which are estimated to earn annualized revenues exceeding $14 trillion, compared to $100 billion in drug money. There are legacy drug dealers who have turned to complex fraud crimes with less risk of detection than drug dealing.

It is commonplace to find illegal assets commingled with legitimate sources of income. Some experts suggest this practice is intentional and designed to frustrate and discourage investigations into the sources of these assets.

Enforcement

The penalties for ownership of and tax diversion from an offshore bank account to a U.S. corporation or individual engaged in illegal conduct can become somewhat complex. It can be difficult but not impossible to investigate and penalize those who violate U.S. federal laws, as demonstrated in a recent case involving an American who was the president of a Cayman Islands bank. Suppose that Corporation A desires to secure business in a foreign jurisdiction and in doing so is asked to pay a bribe to facilitate the business. Such bribery is generally a violation of the U.S. Foreign Corrupt Practices Act, a federal felony crime that in recent years has significantly increased using offshore bank accounts. Another popular method of using offshore bank accounts involves federal crimes that include violations of the U.S. False Claims Act. The commonly used federal statutes include money laundering, conspiracy, false statements, tax crimes, wire and mail fraud, and many others.

In addition to these criminal statutes, a series of civil remedies exist that can be brought in conjunction with violations of criminal laws. Generally, monetary penalties and debarment actions become the tools to enforce these civil laws.

Although one of the best methods to counter certain conduct generally involves voluntary compliance, there are certain instances in which the U.S. government must use the provisions of its authority and laws to hold accountable those who simply refuse to cooperate. However, considering the consequences of strong-arm tactics, a series of complex outcomes has arisen from the enactment of the new Foreign Account Tax Compliance Act (FATCA).

In simple terms, the FATCA requires foreign banks to disclose to the U.S. government their U.S. shareholders and depositors in order to do business in the United States. The FATCA has created some serious discussion among domestic and foreign financial institutions, accountants, lawyers, economists, corporations, and politicians. A consequence tied to FATCA would require banks to spend an estimated $250 billion to convert and develop software-computer applications and programs to track offshore depositors. Some argue that FATCA had become so intrusive that it has had a deleterious impact upon the economy, disincentivizing foreign banks from investing in America.

Conclusion

Regardless, there are still clever digital bandits and tax cheats no matter how restrictive the approach to collecting taxes. International banking and finance will continue to play a role in the economic stabilization of nations. If unfavorable tax policies and overspending continue along with corrupt practices at the current rates, it is likely that society will witness the collapse and bailout of various economies, which will have a negative effect on those taxpayers who fund these bailouts.

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See Also: Bank Fraud; Charity Fraud; Corruption; Daiwa Bank Ltd.; False Claims Act; Foreign Corrupt Practices Act; Internet Fraud; Mail Fraud; Money Laundering; Nigerian 419 Scams; Offshore Entities; Ponzi Schemes; Tax Evasion; Terrorism; Wire Fraud.

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Offshore Entities

There has been a significant increase in offshore entities over past years. The global proliferation of clever schemes that permit people and businesses to conceal assets and other items of value, hoping not to be discovered by the authorities, is well documented. The mere ownership or discussion of one's offshore business entity generally draws considerable suspicion among the public.

If one were to find a country or nation that offered nominal taxation, secrecy, lack of transparency in reporting requirements, no residency requirement, and self-promoting marketing as an offshore financial and legal center that is lawful with better than average rates of return, many individuals and businesses would likely entertain doing business with financial institutions there.

The term *offshore entities* refers to foreign corporations, foundations, limited liability corporations, and other offshore businesses. Some offer legal and accounting-banking-financial services and are commonly referred to as offshore financial centers. All share a similar theme: to provide asset protection and financial privacy (secrecy) of ownership, monies, and assets held in these offshore entities. A common practice shields offshore entities from liability and seizure of assets if a judgment is rendered against the person(s) with assets held in these offshore entities.

In many jurisdictions, these offshore entities are exempt from any local or other taxes. However, U.S. taxpayers are not authorized to evade or conspire to evade taxes by creating and using clever means to disguise their identities.

Based upon host country rules and laws, offshore entities may offer some tax advantages to their owners and can facilitate the flow of capital that generally is traceable to commodity and trade schemes. However, in the United States, every person or corporation is required by law to disclose ownership of a foreign bank account or be criminally liable for failure to disclose such information.

There are many examples of how illegal conduct fuels these offshore entities. If they are not regulated, the potential for significant increased use of these enterprises will continue to expand, as evidenced by the recent case of Mark A. Conner, an American who was the president of a Cayman Islands bank and was convicted in 2011 of his involvement in a multimillion dollar conspiracy to defraud the bank, hiding assets in the Cayman Islands, and presenting false testimony in his personal bankruptcy proceedings. The estimated monies that are held in offshore banks or financial institutions are reported to exceed $32 trillion and continue to increase.

Overview

A simple online search using various keywords for offshore entities will identify thousands of Web sites, many offering services to form an offshore business entity. No less than 40 countries market themselves as secure locations in which to establish offshore entities and transact business, but one should exercise caution. Citizens and residents of the United States are taxed on their worldwide income and must declare their ownership interest in any offshore financial institution.

In addition to means provided in the recent legislation and enactment of the U.S. Foreign

George Town, Cayman Islands, is a popular location for tax-sheltering offshore entities. For example, The Telegraph *reported in December 2012 that Facebook Ireland, according to its own filings, funneled £440 million into an Irish sister company in 2011, which then shifted the funds into a Cayman Islands subsidiary. However, for the first time, the monetary authority for the British overseas territory made plans to create a public database of funds that were located on the islands, ending a decades-long tradition of secrecy.*

Account Tax Compliance Act of 2010, whose provisions require the reporting of offshore financial accounts and business interests abroad, there are many means by which account and business secrecy can be penetrated by authorities.

There are find many legitimate businesses and corporations that utilize offshore bank accounts as a routine banking system, and it is not illegal to engage in this practice. However, the lack of transparency suggests, at times, sinister motives for having an offshore bank account. Depending upon the nationality of the business or corporation, certain reporting requirements mandate the disclosure of these offshore bank accounts. Absent disclosure, their use may leave the impression there is something nefarious about corporate or individual ownership in offshore bank accounts.

Today, upon inspection, there is a significant amount of fraud and deception in the private and public sectors in terms of accurately recording and reporting business income and balance sheets. This is no different from past times, except that today, with the poor global economy, the practice has become more common and is no longer considered a small business practice, as widespread corruption can be found throughout financial markets.

It is commonplace for people and businesses engaged in corrupt and illegal practices to launder financial proceeds by utilizing the services of offshore banks and financial institutions. Another popular option is to create an offshore corporation to further conceal the activities of the principals in these business transactions. Some would argue that it is not possible to pierce the veil of these offshore corporations or financial accounts; however, this is not entirely accurate. It is a widely accepted notion that governments, using a variety of overt and covert methods, can obtain access to this information.

It is a frequent practice to market schemes under the guise of bank secrecy protection. Law enforcement can infiltrate these entities and pay insiders for information on account holders. In turn, these data are shared among law enforcement and taxing authorities for action they deem in the best interest of their investigative goals and missions.

Conduct

Although it can be difficult to accurately assess the number of offshore entities that are corrupt, it is helpful to know about some of the tools and benefits associated with abusive offshore tax avoidance schemes, which can include the following:

- Create foreign corporations and trusts
- Create foreign partnerships
- Transfer family wealth
- Private annuities and insurance products
- Secret banking and credit cards
- Covert and mystery loans and related-party transactions
- Depreciate scheduled payments with personal payouts
- Dummy payments diverted to phony accounts with concealed ownership
- Sale of assets through front corporations
- Gifts and scholarships
- Conversion and laundering of nonprofit proceeds into for-profit investments
- Various income tax shelters for both U.S. and non-U.S. shareholders

Moreover, the variety of creative schemes is open to the imagination of professional offshore brokers, many of them lawyers and accountants with an eye on transactional loopholes. Often, the electronic ease of communicating is the preferred method to establish offshore entities; in some cases, a transnational face-to-face meeting among participants reduces the possibility that one or more parties is a covert law enforcement officer or informant.

Those who engage in creating an offshore entity may benefit from due diligence in regard to the various vendors offering their services. It is possible to be defrauded by clever digital bandits posing as offshore brokers looking for victims.

Legal Considerations

Considering the long-standing notion that people are envious of those with substantial wealth, many times investigative tips come from insiders who desire the law to be applied equally. They may opt to report the conduct of others without revealing their identity and/or could receive a monetary reward to report violations of U.S. law.

Generally, violations of the Internal Revenue Service tax laws, combined with any conspiracy to do anything in violation of any other federal law, open up a wide range of criminal prosecution options for the U.S. government. In addition, it is common to find violations of the U.S. Foreign Corrupt Practices Act, federal felony crimes that in recent years have significantly increased. Additional federal crimes include violations of the U.S. False Claims Act. The most commonly used federal statutes include those on money laundering, false statements, and wire and mail fraud.

U.S. authorities have established long-term working relationships among foreign host-country officials and frequently share considerable information related to offshore business entities and financial intelligence. It can be difficult to dodge combined electronic and other detective work among members of U.S. and international law enforcement agencies to conceal business practices when illegality is suspected, regardless of the temptation and efforts to conceal business and financial activities.

Conclusion

Clever business owners assisted by lawyers and accountants have various means to conceal business and personal finances. Some benefit from these schemes, while others find themselves in legal trouble trying to defend their actions. Needless to say, anytime an individual and/or business chooses to engage in conduct that is intended to conceal their interests to avoid the successful enforcement of U.S. laws can be applied to to hold violators accountable.

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See Also: Antitrust, Federal Trade Commission; Bank Fraud; Corruption; False Claims Act; Foreign Corrupt Practices Act; Money Laundering; Offshore Bank Accounts; Ponzi Schemes; Tax Evasion; Terrorism.

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Oligopoly

An oligopoly is an economic situation in which a small number of firms dominates the market for a product or service. Similar to a monopoly, where one firm dominates the economic market, and a duopoly, in which two firms dominate the market, an oligopoly occurs when a small group of companies collectively control a significant amount of the market share. Oligopolies often emerge in highly specialized industries where producing a product or providing a service requires considerable research and development. Oligopolies, like monopolies and duopolies, produce imperfect market competition. The strength of an oligopoly is that it can dictate the terms of trade to the consumer without fear of serious economic retaliation by the consumer or effective challenges from new entrants to the market. Because of an imperfect competitive environment, an oligopoly can set the market price and control the supply in order to maximize profits.

Oligopolies are lesser known, but most people are familiar with a monopoly domination of a market. One of the most notable monopolies was John D. Rockefeller's Standard Oil Company. Companies like Standard Oil engage in business strategies that aim to drive out competition in order to maximize market share and ultimately their profit. However, true monopolistic control of a market is rare. Much more common is the presence of an oligopoly, where a small number of companies drive out their competition and control the market among themselves. Some notable examples of modern-day oligopolies include airline corporations, automobile manufacturers, software firms, and telecommunication companies. In each of these industries, a small number of companies control a significant amount, if not all, of the market share.

Oligopoly control of a market has important implications for the consumer, who is often left with little economic recourse in an uncompetitive trade environment. The most significant protection for the consumer comes through regulatory oversight by the government. For instance, in the United States, the Sherman Antitrust Act attempts to protect the interest of consumers by prohibiting business practices that aim to reduce marketplace competition. Under such regulatory protections, oligopolies are less likely to emerge, and existing oligopolies have greater difficulty in further increases to their market share. However, in an environment of low regulation, oligopolies may emerge, and the companies that have oligopolistic control of the market sometimes engage in collusive practices that have a direct effect on the welfare of the consumer. The practices of existing oligopolies in the United States are monitored by the U.S. Department of Justice and the Federal Trade Commission.

Economic Crisis of 2008

A major culprit in the 2008 financial crisis was the American banking industry. A series of business decisions by the banking oligarchy can be blamed as the primary cause of the financial collapse. These financial institutions, or "megabanks," had near total control of the banking industry. A group of six major banks—Bank of America, Citigroup, Goldman Sachs, J. P. Morgan Chase, Morgan Stanley, and Wells Fargo—controlled over 60 percent of all American bank assets and upward of 90 percent of the American credit derivatives market. It is the banking oligarchy's actions involving the credit derivatives market in particular that many experts believe are the major cause for the financial collapse in 2008.

The years preceding the financial collapse in 2008 were marked by low levels of governmental regulations for the banking sector. Since the banking industry did not involve a total monopoly by a single firm, the small number of companies that dominated the market were expected to compete against each other. In a semicompetitive environment, the banking industry was expected to self-regulate. Rather than competing among themselves, members of the banking oligarchy engaged in risky practices that quickly became the norm among all the major banking institutions because of their potential for high profits.

Particularly consequential in this process was the rapid decline of the U.S. real estate market. The banking oligarchy invested substantial portions of their assists in housing loans, which consumers defaulted when the loan amounts exceeded the value of the real estate. The high payoff from real estate loans such as subprime lending led these banks to abandon standard risk assessment procedures and approve high-risk and unqualified loans. The frequent trading of financial derivatives such as credit default swaps without appropriate risk controls led to high initial payoffs but heavy losses for the major banks, which ultimately contributed to the financial crisis in 2008.

A number of factors impacted the banking oligopoly and the subsequent financial crisis. Low levels of regulation by the government, inflated credit ratings by agencies on the financial strength of the banks, and high-risk lending practices led to high losses and the failure of some of the smaller banks. Larger financial holding companies like Lehman Brothers, Bear Stearns, and Merrill Lynch also realized heavy losses and filed for bankruptcy protection or were acquired by one of the major banks.

The banking oligopoly created an environment that produced high profits with few checks from regulators or the competitive market. The lack of either of these checks ultimately resulted in overexposure to risk and heavy financial losses. The banking oligopoly is unique in that, unlike other oligopolies that dominate a specific market, the banking sector is significantly related to the overall economy. The collective assets of the major banks comprised more than 50 percent of American gross domestic product (GDP). The risky decisions of a small number of companies affected both the United States and the global economy and led to a severe financial crisis.

Conclusion

Oligopolies are a part of the capitalistic system. In a free enterprise system, companies are supposed to self-regulate through market competition. However, economic conditions sometimes facilitate the emergence of a very small number of firms that dominate a particular market. Often, such concentrated control of a market results in business practices that adversely affect the consumer. Oligopoly control of a market can at times have undesirable consequences for the economy more generally. In such a consolidated environment, a business decision by a single member of the oligopoly or multiple members of the oligopoly can have a significant economic impact. A series of risky business decisions by members of the banking oligopoly culminated in 2008 in the largest financial collapse in U.S. history since the Great Depression.

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See Also: Dodd-Frank Wall Street Reform and Consumer Protection Act; Federal Trade Commission; Financial Industry Regulatory Authority; Illegal Competition; Justice, U.S. Department of; Lehman Brothers Holdings Inc.; Market Manipulation; Merrill Lynch and Co. Inc.; Procter & Gamble Inc.; Sherman Antitrust Act.

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Operation Malicious Mortgage

Operation Malicious Mortgage refers to the actions of the Federal Bureau of Investigation (FBI), the U.S. Department Justice, and other agencies in the June 2008 arrest of approximately 400 people who had been involved in falsifying income statements and helping mislead homeowners to get them to buy houses with payments they could not or did not make. This allowed brokers, banks, and other lending agencies to issue loans to borrowers with low credit ratings and hide this fact from the lenders, who were not aware of the risks involved because of the good ratings given to the debt.

During the 1990s, prior to the onset of the global financial crisis, there had been a large number of people who were encouraged to take out mortgages to buy houses. To help them achieve this, a number of credit agencies persuaded people to inflate either their income or assets or both, and often changed other things that might adversely affect a person's credit status in order to allow them to seem more creditworthy, which then encouraged some mainstream lending agencies such as banks to loan money, unaware of the problems involved. Some of the agencies recognized the inherent problems with these loans, which became known as subprime mortgages, but many were unaware of this. There was an optimistic feeling that if property prices were to rise, then when borrowers failed to make repayments and the properties were foreclosed, the houses could be sold and the money that had been borrowed could be easily recouped.

With a significant number of borrowers unable to make even their first loan payment, others failing to make later payments, and property prices peaking in mid-2006, then remaining stagnant briefly before falling sharply, the owners had negative equity in their property and refinancing was not viable. Many people simply abandoned their homes, while others tried to work out what to do in the difficult circumstances in which they found themselves.

The government became aware of the magnitude of the problem in late 2006, and by March 2007 the mortgages were estimated to be as much as $1.3 trillion. This was having a massive negative effect not only on the housing market—many banks and other lending institutions that were left with the subprime debt suddenly found themselves with major difficulties, threatening the entire financial system in the United States. Deputy Attorney General Mark R. Filip reported that "mortgage fraud and related securities fraud pose a significant threat to our economy, to the stability of our nation's housing market and to the peace of mind of millions of American homeowners."

The FBI was already investigating 1,253 mortgage fraud cases by March 2008 when it was called upon to investigate the writing of subprime loans and launched Operation Malicious Mortgage. It was a mortgage fraud investigation, and more staff resources were placed at the disposal of the FBI—after the September 11, 2001, attacks, many of the FBI personnel involved in investigating fraud had been transferred to deal with antiterrorism. Some 26 of the 56 field offices of the FBI around the United States were ordered to focus on subprime mortgages, dropping other investigations.

The FBI was assisted in the investigation by the Internal Revenue Service and the Postal Inspection Service. The operation lasted from March 1 until mid-June 2008 and led to 406 people being charged for their involvement in 144 mortgage fraud cases. There were also separate criminal indictments brought against two Bear Stearns managers, Ralph Cioffi and Matthew Tannin, who managed a hedge fund that collapsed, losing $1 billion. They were charged with conspiracy, securities fraud, and wire fraud. It was claimed that both Cioffi and Tannin knew the hedge funds they were promoting to investors were inherently risky and in grave condition from the start, and they failed to disclose these facts to potential and actual investors. By the end of the operation, 173 convictions were secured for criminal activity that totaled some $1 billion in estimated losses. Another investigation in October 2009 saw the FBI raid offices in New York and arrest accountants, lawyers, and brokers, who were subsequently charged with mortgage fraud.

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See Also: Bank Fraud; Dream Homes Scam; False Foreclosures; Foreclosure Fraud and Rescue Schemes; House Stealing; Loan Origination Schemes; Mortgage Fraud; Mortgage Modification Fraud; Mortgage Reform and Anti-Predatory Lending Act; Predatory Lending; Reverse-Mortgage Fraud; Short-Sale Schemes; Subprime Loans; Truth in Lending Act.

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Oraflex Case

Oraflex was the brand name used in the United States for a nonsteroidal anti-inflammatory drug called benoxaprofen, which was manufactured by Eli Lilly and Company to treat people suffering from complaints associated with rheumatoid arthritis. Essentially, it was a painkiller. In Europe, it was sold under the name Opren. It was initially marketed in the United Kingdom, and then—even though there were clear problems including a number of deaths ascribed to its use in Britain—it was released in the United States.

Oraflex was discovered by chemists at Eli Lilly's laboratory in the United Kingdom and developed as an anti-arthritic compound. In 1973, applications were made for a patent, and permission was sought to begin tests on humans. It was initially tested on a small number of healthy people to show that it posed "no clear or immediate safety hazard." Subsequently, there were wider tests that included people with minor illnesses. Finally, in 1976, Oraflex was tested on 2,000 patients suffering from arthritis. Studies of Oraflex, using its chemical name benoxaprofen, started appearing in the *Journal of Chromatography* in March 1976.

Marketing of Oraflex started in January 1980, and it was released in Britain in October of that year. It was not sold in the United States until May 1982, after gaining approval on April 19, 1982.

Early Red Flags

There were queries about the use of Oraflex from the start. An article published in *The Lancet* on April 24, 1982, suggested that the use of Oraflex led to jaundice. However, much more damning was a study published in the *British Medical Journal* on May 8, 1982. It showed that some doctors in Britain felt that Oraflex was responsible for at least 12 deaths, mainly from kidney failure or liver failure. There were also a large number of articles published in the *European Journal of Rheumatology and Inflammation*.

As a result of this, on August 4, 1982, the British government temporarily suspended sales of the drug in Britain, later banning its use. The British Committee on the Safety of Medicines then began investigations and linked the use of Oraflex to the death of 61 predominantly elderly people, with adverse side effects in 3,500 patients. There were also reports of some 11 deaths in the United States. It was later shown that some 96 deaths of people in the United Kingdom came from its use.

Oraflex was marketed only from May 1982—the same month that concerns were raised in Britain—until August 1982, and according to information from the U.S. Food and Drug Administration, it was believed that 46 people died from its use.

Clarence Borom of Columbus, Georgia, then filed a legal suit against Eli Lilly, claiming that Oraflex was responsible for the death of his mother, Lola T. Jones, in July 1982 at Waverly Hall, Harris, Georgia, two months after her 81st birthday and only a month after taking Oraflex. She died at the Cobb Memorial Hospital in Phenix City, Alabama.

The claim—the first of 80 lawsuits against Eli Lilly—made by Clarence Borom was that his mother died from use of Oraflex and that Eli Lilly was responsible for this. He sought $100 million in compensation. One of the issues in the case was that Oraflex had been responsible for the deaths of 29 people in Europe, and this was known before the drug was approved for use in the United States. Lilly contended that it was not required to report foreign deaths to get the drug authorized for use in the United States. It was also contended in the court case that Oraflex had been marketed in a way to be "subtly suggesting" that it was a cure for arthritis. After hearing testimony over eight days, the jury took six hours to decide against Eli Lilly and on November 21, 1983, awarded Clarence Borom $6 million.

There was another legal suit in which Lilly pleaded guilty in 1985 to 25 criminal counts for failure to inform federal officers of four deaths and six illnesses of which it was aware. Oraflex was fined the maximum of $1,000 on every count. There was also a court case in Britain; Lilly settled the case in exchange for a payment of £7 million, although it consistently denied it had intentionally withheld any information. Some of the evidence from the British case was raised in a subsequent legal suit started against Lilly over the use of Prozac in connection with the shooting spree of Joseph Wesbecker.

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See Also: Eli Lilly and Company; Food and Drug Administration, U.S.; Pharmaceutical Industry.

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Organizational Compliance Programs

Organizational compliance programs are internal structural and procedural mechanisms within organizations to promote lawful behavior by avoiding criminal conduct and other legal wrongs, including regulatory violations, torts, and breaches of contract.

They are based on the "good corporate citizen" model that traces back to John Braithwaite's work in the late 1980s that suggested enforced self-regulation as an alternative to inefficient and expensive adversarial enforcement by governmental agencies. Although Braithwaite's original idea that there be individualized agreements between regulatory agencies and various organizations has not been put into general practice, his call for much more formalized compliance programming and independent compliance bodies internal to organizations have become the foundation for claiming good corporate citizenship.

Compliance programs are good for organizations in two important ways. First, they can reduce criminal and civil liabilities because such programs, when implemented with sincerity, reflect due diligence to avoid crimes and other legal violations. Second, they are simply the right thing to do. Meaningful compliance programming enhances employee commitment to legal behavior, creates a moral culture within the organization, and can be an organizational asset when looked upon by external entities such as consumers and business partners.

The legal requirement for the formality of compliance programs is in direct proportion to an organization's size, generally measured by the number of employees. This is significant because organizations had, prior to the 1990s, used their size as a defense to criminal behavior, stating that the sheer size of their organization precluded control and authority over the actions of its employees. The opposite has occurred since the idea of compliance programming came into being—the greater your size, the more effort and resources you are required to put toward organizational compliance, and blameworthiness increases to the extent an organization fails to do so.

The Seven Steps

Beginning in November 1991, compliance programming became legally formalized in the promulgation of federal organizational guidelines (Chapter 8 of the U.S. Sentencing Guidelines). The criteria for qualifying compliance programs have come to be known as the Seven Steps, and the government hallmark is whether the organization used "due diligence" to prevent, detect, and report legal violations. Guidelines assert that the failure to prevent or detect an offense will not, by itself, render a compliance program ineffective. However, guidelines also imply that the only real way to measure whether a program was designed, implemented, and enforced with due diligence is by the scarcity of violations.

The seven steps involve (1) the establishment of compliance standards and procedures; (2) the designation of high-level personnel as having responsibility to oversee the program; (3) the avoidance of delegating authority to persons known to have a propensity to engage in illegalities; (4) taking steps to communicate effectively the standards and procedures; (5) the establishment of monitoring and auditing systems to detect violations and of a reporting system by which employees can report criminal conduct of others within the organization without fear of reprisal; (6) consistent enforcement of standards through disciplinary mechanisms, including the discipline of individuals responsible for overseeing compliance structures when there is a failure to detect an offense; and (7) the organization taking all reasonable steps to respond appropriately to an offense that has occurred and to prevent further similar offenses, including any necessary modifications to its program.

Many larger corporations have set up formal compliance programs, committees, and other structures that appear to have addressed these seven steps. However, these are often merely cosmetic and do not seriously attempt to reduce violations. The most important thing to look at in a compliance program is how the company reacts to a known compliance breach, assuming it is using due diligence to ferret them out. Fewer than one in 20 federally convicted organizations has a compliance program at all, and among those that do, virtually none of them are deemed by the courts to be effective enough to warrant a reduction in penalty.

Truly meaningful compliance programs should utilize the ideas in the sociology of organizations. The following are only a few of the many concepts that can be applied to organizational process and structure that may help elucidate potential opportunities, motives, and errors that promote organizational noncompliance.

Liabilities of newness: Arthur Stinchcombe's suggestion that new lines of commerce, new products and services, and inexperienced employees are likely to encounter circumstances about which there is insufficient legal knowledge, thereby leading to potential compliance problems.

Structural secrecies: Diane Vaughan's concept, based on her work on the *Challenger* shuttle disaster, asserts that organizational hierarchical boundaries, high employee specialization, and other factors preclude important knowledge from being shared among those who require it, rendering some of the information inside organizations deficient. Risk of a compliance breach therefore increases as work and information cross intraorganizational boundaries with limited facts.

Error-amplifying decision traps: Paul Schulman posits that relatively simple errors within organization are exacerbated because efforts to structurally correct them or hide them from others will necessarily involve more individuals, who may inevitably increase the degree of noncompliance.

Tacit knowledge: Harry Collins has asserted that only those who carry out certain organizational tasks have intuitional knowledge that cannot be communicated to managers because it is intuitional. Managers then make ill-informed decisions based on their lack of tacit knowledge (inexperience associated with those tasks), thereby increasing the risk for a compliance problem. Meaningful feedback from those who are actually doing the work and who possess the intuitional knowledge is, therefore, essential before the need for modification can be identified and subsequent changes properly implemented.

There is also a "micropolitics of knowledge," Emmanuel Lazega's contention that managers and others who make decisions in organizations informally sift through large amounts of information and pick that which conforms to the expectations of others, thereby excluding certain knowledge that may be important in promoting compliance. Too much information, like too little, can lead to noncompliance. Organizational knowledge is much more complex than the mere "communication of standards and procedures," and compliance programs must examine systematically the ways in which organizational knowledge is handled by organizational actors.

The deterrence trap: John Coffee has observed that individuals and organizations can be dissuaded from wrongful activity only to the point they are able to meet the penalty that is threatened. Once a compliance breach is committed by an employee or an organization and the punishment reaches the maximum that the violator is able to pay (e.g., termination in the case of an employee or a criminal fine dollar amount in the case of an organization), there is no meaningful additional threat to stop further acts of noncompliance.

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See Also: Braithwaite, John; *Challenger* Disaster; Coal Mining; Negligence; Reform and Regulation; Regulatory Enforcement; Sentencing Guidelines; Vaughan, Diane.

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Organized Crime

Organized crime (OC) is an illegal enterprise in which groups of criminals work collectively to supply illicit goods and services to the public and pursue other criminal activities that benefit the organization as a whole. OC has been dominated by the traditional Italian American crime families, which have a well-defined organizational structure and sphere of influence and operations as well as a national commission of OC families that networks the leadership and provides a platform for major decisions affecting the business and standing of the groups.

OC has historically involved victimless crimes but has expanded greatly to take advantage of emerging technologies and more sophisticated opportunities for fraud and other white-collar criminal ventures. Since the 1980s, law enforcement agents and prosecutors have been very successful in combating OC families, resulting in the conviction of the most powerful bosses and hundreds of their members.

Origins and Explanations

Traditional organized crime in the United States was initially under the purview of groups of poor, second-generation immigrants—mostly of Italian, Jewish, or Irish heritage. These immigrants settled largely in urban enclaves (slums) and began their criminal activities in late childhood or early adolescence. Unlike typical street offenders, who usually desist from crime in their mid-20s, most members of OC groups continue their criminal endeavors throughout their lives. The only paths out of OC are death, imprisonment, or defection. Classic sociological theories can explain members' initiation into criminal organizations and their lifelong commitment to such entities, including differential association theory, differential opportunities theory, and subcultural deviance theory.

Differential association or social learning theory suggests that fledging criminals acquire and hone their trade by spending time with experienced offenders, who provide them with the skills, beliefs, experiences, and knowledge necessary to engage successfully in a criminal career. Differential opportunities theory postulates that crime is caused by the blockage of legitimate avenues for success, such as education, employment, and pro-social networking, which are less available to marginalized groups. Those excluded from mainstream opportunities are forced to attain wealth, power, and status through illegal means. Similarly, subcultural deviance theory posits that criminals live in pockets of communities that inculcate them with norms and values that encourage them to break the law as a vehicle to move up the socioeconomic ladder. Members of this subculture also employ cognitive strategies known as "neutralization techniques" that justify or rationalize their victimization of others. All these theories help explain involvement in OC groups, which groom potential members for a lifestyle that engulfs them in dissocial attitudes, beliefs, and perceptions and then rewards them for law-breaking behavior.

Traditional OC groups were based loosely on an Old World distrust of social institutions that was rampant among southern Italians and Sicilians. Their homeland being occupied by foreign invaders for centuries, Sicilians were resentful of transplanted governments and authorities and invested their trust in local leaders. Mafiosi (men of honor and respect) served as arbiters, protectors, and financiers. Mafiosi and their associates devolved into tightly knit criminal associations that expanded their coffers and enhanced their power and influence through government corruption and other illegal means. Organized crime groups in the United States built on this cultural legacy, creating an Americanized version of these criminal practices and social relationships. Alien conspiracy theory postulates that the Mafia was imported en bloc from Sicily to the United States by large waves of immigrants who simply continued their criminal activities after traveling to the New World. However, no evidence supports this theory. Hence, the use of the term *mafia* to describe the criminal groups that operated in the United States throughout the 20th century is a misnomer. The Mafia is endemic to Sicily only.

Organized crime was homespun on the streets of New York City, Chicago, Cleveland, Detroit, St. Louis, and other large urban areas with concentrations of Italian immigrants living in hardscrabble environments with little hope for economic or political success through legitimate channels. The young men who gravitated to crime and aspired to membership in OC groups were generally unsuccessful in school and unwilling or unable to engage in legitimate work; they grew up in neighborhoods in which they perceived few avenues for success in the mainstream workforce. In addition, those who sought membership in OC groups were predisposed to crime because of psychopathic tendencies (e.g., lack of empathy, callousness, and narcissism).

Prohibition was a significant impetus for organized crime. Without the decade-long ban on alcohol, OC leaders would never have amassed tremendous wealth, power, and political currency.

Prohibition was an unpopular law that was difficult to enforce in federal and local jurisdictions. Police officers and their superiors were willing to accept bribes to turn a blind eye to the shipment, distribution, and direct sales of illicit alcohol. The venality of public officials spread to judges, prosecutors, and politicians at every level. These corrupt relationships among gangsters and government officials lasted for decades and provided the infrastructure of protection needed for OC families to grow and prosper in terms of income and control. It also gave members the wealth with which to invest in legitimate businesses as a mechanism to launder illicit income and to declare an income for tax purposes. In competition over the illicit alcohol trade, thousands of gangsters were killed; the Thompson machine gun became one of the weapons of choice, and drive-by shootings a common occurrence.

OC families worked hand in glove with the political machines of the 20th century in cities such as Chicago, Boston, and New York. The gangsters contributed to campaigns, rigged elections through vote fraud, and installed members or associates in office at the local and state levels. At the pinnacle of its power, Chicago's organized crime family had under its control state legislators who could quash anticrime legislation and a band of "political fixers" who ensured that cases were dropped and mobsters were found not guilty. The "fixers" also placed judges on the bench and law enforcement officers in the Chicago Police Department and Cook County Sheriff's Office.

Business of Organized Crime

The basic business of OC relies heavily on victimless crimes. The sale of alcohol during Prohibition is one such example. Victimless crimes involve willing consumers of products and services that also include commercial sex (i.e., prostitution, strip clubs, and pornography) and illegal gambling in underground casinos, card games, and sports betting offices. Illegal gambling is coupled with usurious loans, known as "loan sharking" and "juice loans." Gambling and juice have long been the "bread and butter" of traditional OC groups and are inextricably linked. Members of organized crime groups are opportunistic criminals who engage in a variety of illegal activities to amass their profits, including extortion; labor and union racketeering; bid rigging; corporate, stock, and credit card fraud; counterfeiting; drug trafficking; cargo and jewelry theft; burglary; illegal disposal of toxic waste; commercial arson; and business monopolies (e.g., waste management, vending and poker machines, juke boxes, and adult book stores). For several decades, one of the most profitable sources of income for OC families stemmed from the skimming of billions of dollars from Las Vegas casinos before the gambling profits reached the heavily secured casino counting rooms.

Organized Crime Families

During the peak of organized crime's dominance of the underworld, the Federal Bureau of Investigation (FBI) identified approximately 25 major crime families *(*Borgatas) in the United States. New York City was home to five such crime families. Many families were eponymous with their founders or most prominent leaders. Examples include the Bonanno, Colombo, Gambino, Genovese, and Lucchese families of New York City; the Decalvalcante crime family of New Jersey; the Magaddino crime family of Buffalo; the Patriarca crime family of New England; the Licavoli crime family of Cleveland; the Trafficanti crime family of Miami; and the Marcello crime family of New Orleans. The eastern families are referred to as La Cosa Nostra (Our Thing). Organized crime families are also labeled as the "mob" and the "crime syndicate." Chicago's crime family is called the Outfit; in Buffalo, it is called the Arm; and in New England, it is called the Office.

Organized crime families are structured in terms of leadership as well as operational, logistical, and territorial parameters. At the top of the family hierarchy is the boss (the chief executive officer). The underboss (the chief operational officer) runs the day-to-day business of the family to guarantee that the organization is disciplined and productive throughout. Discipline is maintained through violence and the threat of violence. The family's advisor is known as the consigliere (counselor or advisor), who helps the boss settle disputes within and between families.

At the street level, the captain (capo or caporegime) monitors the activities of his crew, which consists of soldiers (soldato) and associates. The former are considered core members of the crew who must spend many years proving their criminal mettle and their willingness to devote their entire lives to the organization, putting the crime family's needs above their own and those of others outside the criminal organization, including parents, wives, children, and siblings. Illegal profits always move up the hierarchy. A specified percentage of earnings (tribute) must be paid to immediate superiors. Thus, associates pay tribute to made (bona fide or official) members, members pay tribute to capos, capos to underbosses, and underbosses to bosses. Taking more than the fair share of a predetermined allotment (holding back or skimming) is a very serious infraction that is punishable by summary execution.

Organized Crime Membership

The members of traditional OC families are predominantly of Italian or Sicilian descent. The late Henry Hill (portrayed in the film *Goodfellas*) is an example of an OC associate who could never become a made member of the Lucchese crime family because of his mixed ethnic heritage (Italian

A game of faro at the Louvre, a casino in Reno, Nevada, on the last night of open gaming before the state's gambling ban took effect at midnight on October 1, 1910. The ban succeeded mainly in driving dice games, card games, and other activities into back rooms and basements, creating a wide-open door to the criminal element. For decades, mob members, including Pretty Boy Floyd and John Dillinger, used speakeasies, floating craps games, and prostitution operations as perfect venues for acquiring and laundering cash.

and Irish). In the eastern crime families, the FBI has identified, through eavesdropping and informants' reports, the ritual that elevates an associate to a made member of the organization ("making one's bones" or "getting straightened out"). This ritual involves the reciting of an oath of loyalty, the spilling of blood, and the burning of a holy card.

Especially important is the oath of silence, or omerta, which promises to never reveal one's or others' membership in the family to those outside organized crime, to never discuss the family business with outsiders, and to never betray other members or associates to law enforcement. A loyal family member never rats (testifies) on a criminal compatriot. Other rules include never committing a nonsanctioned murder of another member and never having an affair with another made member's wife. Membership also can require aspirants to commit murder in order to advance the interests of the organization. Indeed, murder or the threat of murder is the chief tool for maintaining order and discipline within each family and for intimidating any persons or business owners who interact with its members. The willingness to commit violence without compunction or hesitation sets members of OC families apart from other street criminals. In the Chicago Outfit, membership could be attained through sponsorship and performance alone (mostly the ability to earn a lot of illegal income or to commit extreme acts of violence), sans a swearing-in process. Associates are affiliated with crews and tied to made members, who vouch for the associates and delegate jobs to them. Associates can become made members or remain associates for their entire criminal careers. Fear of law enforcement infiltration has forced families to "keep the books closed" (i.e., prohibit the investiture of new members).

The transition in the leadership of organized crime families has often been deadly. For example, in 1985, Gambino crime family boss Paul Castellano and his bodyguard were gunned down on a busy Manhattan street by John Gotti and his allies. Gotti immediately ascended to power but soon became the target of assassination because he failed to obtain the approval of the National Commission of OC Families to "whack" the boss of a family. He escaped death and led the family for approximately six years before being sentenced to prison for life based on the testimony of his underboss Sammy (the Bull) Gravano.

Revealing and Combating Organized Crime

During the 1950s, two U.S. Senate hearings brought national attention to organized crime. The first, known as the Kefauver Hearings (Special Committee to Investigate Crime in Interstate Commerce, 1950–52), focused on OC's role in criminal conspiracies and endeavors that traversed state lines. Chaired by Senator and vice presidential candidate Estes Kefauver (D-Tennessee), the committee subpoenaed the testimony of 600 witnesses in 14 major cities, including bosses and underbosses of the largest crime families in the United States. The hearings riveted television audiences for several weeks and put a stark face on a heretofore hidden and mysterious group of criminals who exerted power and control over the politics and economies of large cities. The Special Committee's 11,000-page report issued numerous recommendations for combating organized crime activities.

The second, known as the McClelland Committee hearings (Senate Select Committee on Improper Activities in Labor and Management, 1957–63), focused on OC's role in labor unions. The committee convened for 270 days and produced 150,000 pages of testimony from more than 1,500 witnesses. The committee's chief counsel, Robert F. Kennedy, led the questioning and set the tone for heated exchanges between himself and prominent witnesses, most notably Sam Giancana (boss of the Chicago crime family) and James Riddle Hoffa (president of the Teamsters Union). During the McClelland hearings, Joe Valachi was the first made member of organized crime to testify publicly about the organization's hierarchy, leadership, and membership ritual. The committee's report was published as a book titled *The Enemy Within*, by Robert F. Kennedy.

On November 14, 1957, a summit meeting of the Commission met in Apalachin, New York, at the home of Joseph Barbara, boss of the Bufalino crime family of northeastern Pennsylvania. The Commission consisted of the bosses and underbosses of the major crime families in the country. The Commission's role was to establish major policies, decide on questions of leadership, and sanction the murders of current bosses. The alleged purpose of the 1957 conclave was to rule on the families' involvement in the narcotics trade and to oversee a smooth transition in the leadership of the Mangano crime family in the aftermath of its boss's (Albert Anastasia) murder in 1957 in a New York City barbershop. The crime family became known as the Gambino family after Anastasia's assassination.

Nearly 100 leaders of organized crime groups attended the summit; 60 were taken into custody by the New York State Police after officers became suspicious about the large number of out-of-state license plates attached to vehicles parked in and around the Barbara estate. The meeting in Apalachin was a watershed event because it forced FBI director J. Edgar Hoover to acknowledge the existence of a nationwide network of criminal organizations in the United States, which functioned in a semi-coordinated fashion and consisted of powerful men who engaged in criminal conspiracies. Following Apalachin, Hoover established the Top Hoodlums Program, in which FBI agents collected intelligence, through legal and illegal methods, concerning the movements and activities of crime family bosses.

Three major law enforcement strategies led to the downfall of organized crime families. The first is the implementation of the Racketeer Influenced and Corrupt Organizations (RICO) Act, which gave the federal government more power to prosecute and convict bosses, capos, and members of entire OC crews for predicate crimes (e.g., murder, kidnapping, extortion, arson, and drug trafficking). RICO also allows the federal government to pursue civil cases (e.g., the confiscation of money and property gained through illegal activity) against those convicted criminally under the statute.

The second was the use of the provisions of Title III of the Omnibus Crime Act of 1968, which permitted electronic surveillance and wiretapping with warrant approval. Listening devices have generated incontrovertible evidence against organized crime bosses and members, essentially producing highly incriminating evidence in the mobster's own voice. The third is the Witness Protection/Relocation Program, administered by the U.S. Department of Justice and operated by the U.S. Marshal's Service. The program exchanges testimony from gangsters for immunity from prosecution, a lesser sentence, an untraceable identity, and a new home. In addition, the government pays for basic living expenses, medical care, and job training. Informants have been instrumental in the conviction of bosses and hundreds of members of organized crime families and have emerged from the highest ranks of such families (e.g., Sammy Gravano, underboss of the Gambino crime family; Sal Vitale, underboss of the Bonanno crime family; Joe Messino, boss of the Bonanno crime family). In 1992 alone, 23 organized crime bosses were convicted, and the rank and file of New York City's OC families were decimated. The mob is aging dramatically, and few young people are interested in joining the crime syndicate because of the risk of arrest and prosecution.

A more difficult, dangerous, and dramatic law enforcement tactic is the infiltration of FBI undercover agents into the crews OC families. The best-known and most successful undercover operation against organized crime involved FBI agent Joe Dominick Pistone, alias Donnie Brasco, who infiltrated the Bonanno family for six years. During this time, he ingratiated himself into the family by posing as an associate ex-jewel thief under the sponsorship of made man Benjamin (Lefty Guns) Ruggiero. Agent Pistone's surreptitious tape recordings (he wore a wire) and detailed testimony led to approximately 100 convictions of OC members. So convincing was his portrayal as a mobster that Agent Pistone was on the verge of becoming a made man of the Bonanno crime family. The FBI terminated the operation because Agent Pistone's supervisors believed that his life was in danger. A $500,000 open contract was offered for the murder of Agent Pistone, who travels armed and in disguise.

Other Organized Crime Groups

Other organized crime groups have been more prominent, both at home and abroad, while the power and prestige of traditional OC families have been waning. These other groups include outlaw motorcycle gangs (Hells Angels, the Pagans), the Yakuza (Japan-based organized crime group with 80,000 members), and the Russian Mafia, which has a strong presence in the United States and other countries. They are similar to traditional OC families in their organizational structures as well as in their collective, eclectic, and opportunistic criminal pursuits. For example, they also are involved in illegal gambling, drug trafficking, extortion, prostitution, and burglary. However, the successors of traditional OC families have never garnered the political clout or neighborhood "respectability" of their predecessors. Traditional organized crime members were often entrenched in legitimate businesses and cultivated an image of successful entrepreneurs and generous neighbors while ordering or committing murders and orchestrating elaborate criminal schemes. In reality, they used their nefarious reputations to promote their business interests and frequently laundered illegal monies to disguise them as legitimate profits.

Popular Culture and Myths

Organized crime groups have been popularized and glorified in novels, television programs, movies, and video games. Gangster films are their own genre. The earliest depictions of mobsters in the cinema include full-length features such as *Public Enemy* (1931), *Little Caesar* (1933), and *Scarface* (1932). By far, the most popular and critically acclaimed gangster movies are the *Godfather* Trilogy (1972, 1974, 1990). Other well-known mobster movies are *Once Upon a Time in America* (1984), *Goodfellas* (1990), *A Bronx Tale* (1993), and *Casino* (1995). Dramatized television programming on organized crime includes HBO's award-winning series the *Sopranos* and *Boardwalk Empire*.

Even video games have been based on organized crime, for example, the *Godfather* game, *Grand Theft Auto*, and the Mafia Series. Myths about organized crime have been perpetuated by these films and programs. One such myth is that crime families regard the sales of illicit drugs as anathema. In fact, nearly every OC family has been heavily involved in drug trafficking. For example, the Bonanno crime family, in conjunction with the Mafia, was one of the leading drug-trafficking organizations in the country, selling vast quantities of heroin and cocaine out of independently owned pizza parlors in the 1970s and

1980s. Another is the unending loyalty of members to one another. This myth is dispelled by the large number of turncoat mobsters who testified against their cohorts in exchange for reduced prison sentences.

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See Also: Banco Ambrosiano; Contractor Fraud; Corruption; Cresse, Donald; Extortion; Federal Gambling Regulation; Financial Crimes Enforcement Network, U.S.; Financial Crime Kingpin Statute; Gambling and Lotteries; Giuliani, Rudy; Hobbs Act; Human Trafficking; Kickbacks; Knapp Commission; Legal Malpractice; Political Assassinations; Prostitution; Public Corruption; Racketeering; Racketeer Influenced and Corrupt Organizations Act; Spitzer, Eliot; Teamsters Pension Fund; Tobacco Industry; Unions; United States; Vatican Bank; Victim and Witness Protection Act.

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Outside Directors

The typical corporate board consists of both "inside" and "outside" directors. Inside directors may include the company's chief executive officer or other members of its executive management team. Outside (or nonexecutive) directors are individuals who serve on the board but who have no employment relationship with the company. The inclusion of these individuals may offer both advantages and disadvantages for the firm's governance. However, the practice has become increasingly important in recent years as a result of changes in corporate norms and regulations.

Most Fortune 500 companies now include only one or two inside directors on their boards. Many observers believe that while it is necessary to have some executives in the body to better assess the firm's challenges, risks, and opportunities, including too many can lead to ineffectual or inefficient governance. To start, because insiders often align with the chief executive officer (either out of personal interest or shared perspective), they are unlikely to be effective monitors or critical advisors when reviewing the management's progress or the corporation's development. Likewise, because they have clear professional interests in the firm, their presence in the boardroom may stifle or taint discussion of important issues like succession plans and long-term strategy. Also, inside directors already offer their expertise, perspective, and connections as employees of the firm; they are unlikely to provide any great additional value in those areas as directors.

Advantages of Outside Directors

Although outside directors usually have less depth and breadth of knowledge on the inner workings of the firm or its industry, they offer certain other advantages. First, because they are not employees of the corporation or subordinates of the chief executive officer, they can be more objective, active stewards for the corporation. They are better suited to ask important questions of the management and make difficult decisions. Their interests are more likely to be aligned with those of the shareholders they represent, especially because many companies provide stock grants (in addition to fees) as annual compensation. Because they come to the board from other organizations or fields, they can offer useful information, resources, or connections that were previously unavailable to the corporation. Indeed, in some cases, a corporation might gain a great (but less expensive) de facto consultant by recruiting the right kind of new director. Additionally, the mere presence of certain outside directors can bolster a corporation's reputation or legitimacy in the market.

However, not all outside directors are the same in practice or under the law. Among outside directors, there can be "affiliated" (or "gray") directors as well as "independent" directors. Affiliated outside directors are tied to the corporation in some way beyond their board service. They may include the company's founders or its other former executives. Many are part of organizations with which the corporation has ongoing business relations. For instance, members of the corporation's external legal, audit, or consultancy service providers may serve on its board, as might executives from its most significant business partners, suppliers, or customers. In some cases, a union member or other representative of the corporation's labor force may serve as an affiliated outside director. Also, the corporation's founders or executives might recruit family members to serve in this capacity.

Regardless of their background, all affiliated outside directors join the board with some special base perspective on the corporation and its operations, which can be helpful in their role as monitors and advisors. But this perspective, along with the individuals' accompanying unique interests, may also prevent them from being fully objective and active shareholder representatives.

By contrast, independent outside directors have no direct relationship with the corporation they serve. These individuals are most likely to be executives at companies in separate industries. (Antitrust laws prohibit directors from affiliating with competing companies.) However, they can also include government officials, community leaders, academics, and public figures. Independent outside directors may still have preexisting social or professional relationships with the corporation's executives. Many business elites are linked together in so-called interlocking directorates, as they serve together on the boards of other corporations and organizations. Some independent outside directors may be first recruited to a corporation's board through these existing connections. Thus, they too might be prone to cronyism or lax oversight, but in general, because they have fewer direct, significant ties to the corporation and its management, independent outside directors are expected to be more disinterested, effective board members.

Market regulators have favored independent outside directors since the Enron collapse and other governance failures of the early 2000s. Since 2002, the New York Stock Exchange (NYSE) and NASDAQ listing standards have required that a company's board be majority independent. The NYSE further requires that a company's audit, nominating/corporate governance, and compensation committees include only independent directors. Similarly, the Sarbanes-Oxley Act, passed that same year, requires that all nationally listed companies have fully independent audit committees. In these instances, the regulatory bodies define "independent" directors in different ways but generally find that such individuals cannot have material relationships with the corporation or close family ties to any individual who does.

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See Also: Board of Directors; Interlocking Directorates; NASDAQ.

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Owens Corning Corp.

From the 1990s, Owens Corning, an Ohio-based glass manufacturer that had been involved in selling an asbestos product from the late 1940s, was involved in some 243,000 asbestos-related claims, which drove the company to bankruptcy.

The Owens Corning Corporation was established in 1935 as a partnership with the merger of two local companies, Owens-Illinois and Corning Glass Works. The latter company had been founded as the Bay State Glass Company in 1851 at Somerville, Massachusetts, but moved to Corning, New York, in 1868. Both companies were involved in the manufacture of glass products; the Owens Corning Corporation became a legal entity on November 1, 1938, with its base in Toledo, Ohio.

After World War II, the company boomed as more and more people started building houses across the United States. Owens Corning also became involved in Kaylo, a fiberglass pipe insulation that made up only about 1 percent of its total sales. Kaylo was a high-temperature calcium silicate pipe insulation that contained some asbestos, and it had managed to sell in some parts of the United States but never became a very successful product. It was originally made at Sayreville, New Jersey, but this factory was closed on April 1, 1953, and Owens Corning took over sales of the product, which it had started to market from 1947. On April 30, 1958, for $6.9 million, Owens Corning purchased all the assets of Kaylo and started manufacturing the pipe insulation itself using its factory at Berlin, New Jersey. Kaylo was also used in roof tiles, and it was not long before a new product called Kaylo-20 was sold for use with very high temperatures.

This chest radiograph shows a patient with pleural mesothelioma. Class-action and individual lawsuits against Owens Corning, which manufactured asbestos products from the late 1940s through the 1970s, drove the company to bankruptcy in 2000.

Owens Corning had become a public company in 1952 with its expansion into new markets. In 1986, there was a hostile takeover bid, and the company managed to fight it off successfully but ended with taking on a $2.5 billion debt. This was to undermine the strength of the company just before it became involved in a large number of court cases.

Asbestos Warning

By the late 1960s, there were warnings that Kaylo was dangerous, and warning labels were placed on Kaylo, which, from 1972, was manufactured solely from calcium silicate. It was never a major product carried by Owens Corning, but in 1978 two shipyard workers who had developed asbestosis, a lung disease resulting from the inhaling of asbestos particles, began a class action against Owens Corning on behalf of some 5,000 other workers. The claim, which was also brought against 14 other companies, alleged that asbestos was discovered to be harmful as early as 1938 but the company had done little to protect its workers.

In 1995, Owens Corning was sued for its use of asbestos as a fireproofing agent. In the case, *Galotti v. Owens Corning Fiberglass*, it was found that the asbestos contributed to asbestos-induced pleural mesothelioma after Robert Galotti was exposed to asbestos-containing products from 1966 until 1972, and the company was ordered to pay $6.25 million in damages, the most ever awarded in Florida for a case involving mesothelioma.

The next major case saw a jury in Florida hear the case involving Deward Holloway Ballard, Jr., a former U.S. Marine from Aberdeen, Monroe, Mississippi, who was suffering from asbestos-related problems and sued Owens Corning, claiming that he had contracted mesothelioma from his exposure to Kaylo insulation when he worked on large construction sites. In 1997, he was awarded some $1.8 million in compensation and $31 million in punitive damages. Evidence produced in court alleged the following:

> . . . for more than 30 years Owens-Corning concealed what it knew about the dangers of

> asbestos. In fact, Owens-Corning's conduct was even worse than concealment, it also included intentional and knowing misrepresentations concerning the danger of its asbestos containing product, Kaylo. For instance, in 1956, Owens-Corning, after having been told by the Saranac Laboratory that Kaylo dust was "toxic," and that asbestos was a carcinogen, advertised Kaylo as being "non-toxic."

Deward Ballard died on December 23, 1998, in Tupelo, Mississippi, at the age of 61.

Owens Corning started to accrue money to pay for future claims. Losing more and more court cases, in 2000 Owens Corning filed for Chapter 11 bankruptcy protection, having to deal with some 243,000 asbestos-related claims. The company had to be totally reorganized, and the Owens Corning Fibreboard Asbestos Personal Injury Trust was established in 2006. Two years later, the fund had paid out some $361 million. The company finally emerged from bankruptcy protection in October 2006 and now employs 18,000 people in the production of general building materials.

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See Also: Asbestos; Hazardous Waste; Occupational Carcinogens; Occupational Safety and Health Act; Toxic Substances Control Act.

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Patent Infringement

A patent is a legal protection for any new, useful, and nonobvious process, machine, manufactured object, or composition of matter (chemical) or any new and useful improvements to them. Potentially, almost anything made by human beings is patentable subject matter. A patent is granted by the U.S. Patent and Trademark Office (USPTO) after a thorough examination, and a patent grants the inventor or the inventor's successor the right to exclude others from making, using, selling, importing, or offering for sale anything that infringes on the patent in the United States for a period of 20 years. Patent rights are national rights and are territorial in nature. Therefore, a U.S. patent protects the invention only in the United States.

A patent does not give the inventor the affirmative right to practice the invention—only the right to exclude others from practicing the invention without the patent owner's consent. Patent infringement can be either direct or indirect. A direct infringer violates the inventor's right to exclude others from practicing the patent invention in the United States. An indirect or contributory infringer induces the direct infringement of the patent by a direct infringer or sells a product that has no substantial noninfringing use and that is made for or especially adapted for infringing the patent. If a court finds that a patent has been infringed, the court may grant an injunction, monetary damages, award-increased damages for willful infringement, and, in exceptional cases, award attorney fees to the prevailing party. Patent infringement is not a criminal offense in the United States.

In 2012, Congress passed the Leahy-Smith America Invents Act (AIA); this was the first major overhaul of patent law since 1952. Practitioners are waiting for USPTO regulations and guidance on the implementation of the AIA and for the federal courts to authoritatively interpret the AIA. Accordingly, patent law in the United States is in a state of flux, and, depending on when an invention was created and when the application was filed, different bodies of law may govern the patent prosecution and patent infringement litigation.

Patent Prosecution

In order to obtain a patent, the inventor or the inventor's assignee must file an application with USPTO. The application must be filed in the name of the inventor even if the invention is actually owned by another party such as the inventor's employer. The AIA now permits the application to be filed by an assignee as long as the inventor is properly named in the patent application. The claimed invention must also be useful in that it conveys some benefit to society. The invention is defined by the patent application, which contains a description of the invention, if necessary a drawing(s) that explains the invention or assists in understanding the invention, and one or more claims that legally define the invention.

At the USPTO, the patent examiner will review the application to verify that the claimed invention is new, useful, and nonobvious. The subject matter of patent law is potentially anything made by humans. Patents are not available for laws of nature, physical phenomena, or abstract ideas. However, inventions that incorporate these and result in some tangible result are patentable. Consequently, lightning is not patentable as a natural phenomenon, but a lightning rod is patentable. Recently, the patent act was amended to exclude so-called tax patents, which are patents that claim methods of avoiding taxes, and patents encompassing the human organism. However, animals remain patentable subject matter.

Each claim, regardless of how complex an invention, consists of one grammatically correct English-language sentence that starts with a capital letter and ends with a period. In the application, the inventor must disclose sufficient information so that a person of ordinary skill in the subject matter of the invention could replicate the invention without undue or excessive experimentation. Until recently, the applicant also had to disclose the best mode of practicing the invention. The inventor may claim many possible versions of the same invention, for example, a chair with one leg, three legs, four legs, etc. However, if the inventor had a preferred embodiment of the invention at the time that the inventor filed the patent application, for example, a chair with four legs, the inventor had to disclose this in the patent application. The America Invents Act eliminated the requirement to disclose the best mode in the patent application.

Patents are awarded only to new or novel inventions, so the invention must be one that would not be obvious to a person of ordinary skill in the art who is aware of all the prior research and information that is publicly available in the field of the claimed invention. Patent professionals call the information "prior art." Public disclosure of the claim prior to filing a patent application may result in a loss of novelty and a loss of patent rights in the United States and in almost every other country. The invention must also be new, so evidence that the invention was disclosed publicly may render the patent invalid; this may happen under some circumstances even if the inventor him- or herself is the one who disclosed the invention. The AIA changed the contours of the law governing novelty and when the inventor's own disclosures would bar registering a patent.

Historically, the United States was a first-to-invent system. The general rule was that the first person to come up with the invention had a right to the patent. Since the passage of the Leahy-Smith America Invents Act (AIA), the United States has moved to a first-to-file system, so in the future, there will be a race to the USPTO to claim new inventions.

The patent application is published after about 18 months. Throughout the process, if the patent examiner has any questions, he/she issues what is known as an "office action." This is a letter directed to the inventor or his/her attorney requesting further information or clarification regarding the patent application. Statements made in response to an office action may limit the scope of the patent claims in any subsequent litigation, so the response to an office action must be carefully drafted. If the examiner approves the patent, then the applicant pays the appropriate fees and then the USPTO issues the patent. If the examiner disallows the application, then the applicant may appeal to the Patent Trial and Appeal Board (PTAB).

Patent Infringement

The inventor has no right to exclude others from making, using, selling, offering for sale, or importing the patented invention until after the USPTO issues the patent. One cannot infringe a patent until after the patent issues. If the patent is being infringed, the patent owner may send a cease and desist letter, which warns the alleged infringer that it is violating the sender's patent rights. Cease and desist letters usually state which patents are being infringed and which products are infringing, and often demand the payment of royalties or damages for the infringement. The cease and desist letter is very important because if the patent owner did not mark its products with its patent number, then the patent owner is only entitled to damages commencing after the infringer was placed on notice regarding the existence of the patent. The danger of sending a

Samsung's Galaxy S II Smartphone, along with several other models, was the focus of a trademark infringement suit brought against Samsung Electronics Co. Ltd. by Apple Inc. in April 2011.

cease and desist letter is that the recipient may use the letter as a basis to file a declaratory judgment action asking a court to decide the question of infringement, and the alleged infringer is likely to choose a court that either is more convenient for the alleged infringer or whose interpretation of the patent act may favor the infringer. For either party, patent infringement litigation is extremely expensive. The litigation costs range from hundreds of thousands of dollars for a relatively small, simple infringement action to millions of dollars in more complex patent litigation.

The patent owner, an assignee, or an exclusive licensee may file suit in any U.S. District Court with jurisdiction over the defendant. A court has jurisdiction over a defendant where the defendant resides, has a regular place of business, or committed an act of patent infringement. Some courts, such as the U.S. District Court for the Eastern District of Texas, have specialized in patent litigation. Some plaintiffs and defendants believe that the U.S. District Court for the Eastern District of Texas is more sympathetic to the claims of patent owners. The process of patent ligation is comparable to that of ordinary litigation: the plaintiff files a complaint, the defendant answers it, and the parties engage in pretrial discovery and file various motions to dismiss or end the case at some point prior to trial.

The unique part of patent litigation is the so-called *Markman* hearing, named after a 1996 U.S. Supreme Court case, *Markman v. Westview Instruments, Inc.*, which established a requirement for a hearing on claim construction in a patent infringement case. In a *Markman* hearing, the court considers the scope of the relevant patent claims. Even in the usually precise world of patent law, language by its very nature is very imprecise, so the judge must decide what the terms used in the patent claims mean. Therefore, if a patent claim states "A device comprising (1) a metallic substance . . ." the judge has to determine whether the term *metallic substance* means a metal and if so, which metal(s) are included; or whether it merely means an object having a metallic appearance that could be composed of anything. If the judge interprets the language broadly, the litigation may continue; however, if the judge interprets the claim language narrowly, the alleged infringing device may not infringe the narrowly interpreted patent claims. Many patent cases are terminated at the close of the *Markman* hearing by dismissal or settlement.

If the patent infringement case continues to trial, the parties may try the case in a bench trial before a judge or they may ask for a jury trial. The judge or jury will determine whether the patent is valid. A valid patent is one that complies with all the statutory formalities of the patent laws and regulatory formalities for prosecuting a patent before the USPTO. The fact finder determines whether the patent has been infringed and whether the accused infringing device contains the invention as described in the patent and as interpreted by the judge at the *Markman* hearing. If the defendant has no valid defense, the appropriate remedy is awarded to the plaintiff.

Defenses to Patent Infringement

Commonly, a defendant in a patent infringement suit immediately asserts a defense challenging the validity of the patent. The defendant may claim that the invention is not patentable subject matter, that the invention is not new based on existing public prior art, that the inventor abandoned the invention, that the inventor was not really the inventor of the claimed invention, that the invention was obvious to one of ordinary school in the art, or that the application does not fully enable the invention or comply with the requirement for a written description of the invention that clearly states what the inventor is claiming as the invention. These defenses are difficult to prove because once the USPTO issues a patent, the patent enjoys a presumption of validity, and the defendant must prove to the court that the patent is invalid by the highest standard of proof in civil litigation—clear and convincing evidence. The following are several types of defenses.

Prior commercial use: The AIA added a new defense based on prior commercial use of the claimed invention by the alleged infringer in the United States a least one year prior to the effective date of the patent application or the date that the invention was disclosed to the public. For the purposes of the prior commercial use defense, the filing of an application for premarketing regulatory review, or nonprofit laboratory uses if the public is the ultimate intended beneficiary, is a commercial use.

Duty of candor: There is a duty of candor and good faith in the prosecution of a patent before the USPTO. An intentional failure to meet the duty of candor and good faith is called inequitable conduct. For example, intentionally failing to reveal a material fact in the prosecution of the patent application is a breach of this duty. Inequitable conduct makes the patent unenforceable.

License or implied license: The defendant may also assert that the patent owner consented to the use through either a license or an implied license. The defendant will also try to limit damages to the six years preceding the filing of the complaint or since the USPTO issued the patent, whichever is less. If the patented product is sold and is not properly marked with the patent number, then the defendant's damages are limited to the period after the defendant has notice of the patent.

Delay in bringing suit: The defendant may also claim that the plaintiff's delay in bringing suit was unreasonable and inexcusable and resulted in prejudice to the defendant (laches); or that the patent owner misled the defendant regarding its intent to enforce the patent, the defendant relied on this, and because of this reliance will be materially prejudiced by the infringement suit (equitable estoppel). For equitable estoppel to exist, there must be some communication, if only though conduct, between the patent owner and the alleged infringer.

Patent misuse: Finally, the defendant may assert the defense of patent misuse. Patent misuse is an abusive use of patent rights to obtain an unfair commercial advantage that is in excess of that granted to the patentee under patent law. Patent misuse is an equitable defense and does not invalidate the patent. However, courts will not enforce the patent while the patentee is engaging in patent misuse.

Counterclaims: In addition, it is not unusual for the defendant to file counterclaims, for example, claiming violations of antitrust laws, unfair competition law, or tortious interference with contracts or business relationships. These claims are outside the scope of this discussion.

Pretrial Remedies for Patent Infringement

The first remedy that most patent owners seek even before a trial is a court order called a preliminary injunction to stop the continued patent infringement during patent litigation. A court may grant a preliminary injunction if there is a likelihood of success on the merits. The patent owner must show that the patent is valid, enforceable, and infringed. The judge engages in an abbreviated construction of the patent claims and compares the claims to the alleged infringing device. If the accused infringer asserts an invalidity defense, then the patent owner must establish a clear case that the patent is valid. The patent owner must show that permitting the continued infringement during the litigation will result in irreparable harm. The patent owner must also show that the balance of the hardships weighs in favor of granting the preliminary injunction and that granting the injunction is in the public interest. The granting or denial of a preliminary injunction may be immediately appealed. The position taken by the appellate court regarding the district court's grant or denial of a preliminary injunction often affects how the parties view the litigation and may affect the chances for the litigation to settle prior to trial.

Post-Trial Remedies for Patent Infringement

After the trial, the court may order a permanent injunction to stop future infringement of the patent. However, permanent injunctions are not automatic and require that the trial court exercise sound discretion. The judge or jury may also award damages. However, the damages may not be less than a reasonable royalty. A "reasonable royalty" is the amount that the patent owner had licensed the patent for in previous transactions or the amount that the parties would have agreed to in a hypothetical arms-length transaction between a willing licensor and licensee. Damages may consist of lost profits because of sales going to the infringer rather than the patent owner or through price erosion (caused if the infringer's competition in the marketplace lowered the price for the patented product).

If the patent infringement is willful or culpable, the court may then award enhanced damages (up to treble damages), depending on the egregiousness of the defendant's conduct. If the defendant acted reasonably, for example, seeking an opinion letter from outside counsel, prior to infringing the patent, this would mitigate the enhancement of damages. Enhanced damages are not considered punitive damages. Finally, the court has the discretion to award attorney's fees in exceptional cases. The patent act does not define exceptional circumstances. However, courts have awarded attorney's fees if the court finds that it would be unfair to make the prevailing party pay its own attorney's fees or in order to discourage bad-faith litigation or trial tactics.

Criminal Patent Infringement

There is no criminal law prohibiting patent infringement in the United States. The remedies are solely civil. However, violation of a court order, for example a preliminary or permanent injunction, could result in criminal penalties.

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See Also: Copyright Infringement; Counterfeiting; Economic Espionage; Industrial Espionage; Illegal Competition; Trademark Infringement; Unfair Trade Practices.

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Paterson, David

When Eliot Spitzer resigned as a direct result of an embarrassing prostitution scandal in 2008, David Paterson (1954–) became governor of New York. Paterson briefly considered running for a full term in 2010, but announced in February that he would not be a candidate, as serious allegations of both professional and personal wrongdoing surrounded his administration.

During his short time in office, Paterson was accused of witness tampering by shielding a close administrative aide from allegations of physically abusing his girlfriend. He then complicated matters by lying during an investigation (while under oath) about his intentions to repay the New York Yankees for World Series tickets he received. Given how closely together the two scandals occurred, there were many calls for his immediate resignation—especially given the scandal-ridden administration he replaced. Spitzer was guilty of personal transgressions and serious lapses in moral judgment, but Paterson was committing ethically questionable acts that involved misusing the power of his office.

Legacy of New York Corruption Continues

Around Halloween 2009, Sherr-una Booker told city police that she had been hit by David W. Johnson (a Paterson staffer), but she later decided not to press charges. About four months later, however, it came to light that state police and Paterson staffers had met with Booker in her home and convinced her to not pursue the matter legally. Making the connection even worse for himself, Paterson was identified as having met with Booker in the days leading up to her decision to drop the charges. State Attorney General Andrew Cuomo investigated whether anyone from the Paterson administration was directly involved. Throughout the investigation, Paterson maintained his innocence, claiming that he never attempted to influence or coerce Booker into doing anything she didn't want to do. He instead claimed to be merely assisting her in making a sound legal decision. He also regularly referred back to his oath of office and the importance of maintaining it in the wake of the Spitzer resignation.

In March 2010, Paterson was forced to face the seriousness of his actions when he was charged with lying under oath. The governor and his aides, including Johnson, were accused of soliciting free tickets from the Yankees for the previous year's World Series. In their defense, the group submitted a letter from Paterson's attorney showing that payment for the tickets was not required. As a result of the charges, Paterson faced penalties totaling almost $100,000—$80,000 for violating New York's ban on gifts to elected officials, $10,000 for seeking unwarranted privileges due to his position, and $2,125 for the value of the tickets. The case ended up in the Albany County prosecutor's office and with the state attorney general for possible criminal investigation. To be decided was if Paterson (or anyone on his staff) had willingly provided false information to the Public Integrity Commission regarding the tickets or had intentionally backdated a check as payment after the ethical lapse was made public. Paterson continually defended that he had planned to pay $850 for two of the tickets. Unfortunately, he did so later with a postdated check (and only after being confronted by a reporter for the *New York Post*).

In the end, Paterson was fined $62,125 by the Public Integrity Commission after a months-long investigation. The panel found that Paterson had in fact violated state ethics laws by asking the Yankees, who at the time had numerous actions pending before the state of New York, for a gift. This left the impression that the team could exert improper influence over Paterson and his office.

Michael Cherkasky, the chairman of the Public Integrity Commission panel, discussed the decision and said that Paterson was fined in part because of his position. If the top of the organization is not willing or able to follow the rules, how can anyone expect those at lower levels to do so? Luckily for Paterson, the Albany County district attorney decided not pursue a perjury prosecution against the governor, a move that likely would have been successful. It became clear that Paterson was ill prepared to be governor. He attempted to exert undue influence on a citizen who had been the victim of a crime and then did the same with a professional sports franchise. He only attempted to make amends for his actions when he was caught by a reporter and forced to answer to the charges. He opted to not run for reelection, largely in order to avoid the negative attention of the scandal and likely punishment. The commission's decision came less than two weeks before he left office, a stark reminder of how an ethics misstep can quickly grow into a damning scandal.

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See Also: Corruption; Ethics; Kickbacks; Legal Malpractice; Perjury; Prostitution; Public Corruption; Spitzer, Eliot.

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Paulson & Co. Inc.

Paulson & Co. Inc. (PCI) is the hedge fund John Paulson founded in 1994. It is now an employee-owned company with headquarters in New York City. Like other hedge funds, PCI supports investment-vehicle pools and manages accounts for a diverse clientele, including pension funds, corporations, banks, and profit-sharing plans. Paulson was a Harvard MBA, formerly a top finance student at New York University as an undergraduate. Paulson was an investment banker at Bear Stearns when he opened his hedge fund. In the early 1990s, Paulson was relatively unknown, specializing in merger arbitrage with mediocre results. His hedge fund record was not, however, stellar.

After founding Paulson & Co. in 1994, Paulson became noted for betting against subprime mortgages, and his fund made $15 billion in a single year, 2007. Before the housing market collapsed, Paulson was already worth $100 million. The subprime gamble put him into the upper levels of the *Forbes* 500 and made him a reputation as an investment genius on a level with Warren Buffett and George Soros. In 2008, PCI made $5 billion more, betting against banks and other financial institutions stuck in the mortgage meltdown. In May 2008, PCI aided Carl Icahn's effort to replace the Yahoo! board by buying 50 million shares of Yahoo!.

In September 2008, PCI bet against four of Britain's five largest banks; among the bets were £350 million against Barclays, £292 million against Royal Bank of Scotland, and £260 million against Lloyd's TSB. It earned £280 million after reducing its short position in Royal Bank of Scotland in January 2009. Most notably, in December 2009, the *New York Times* reported that PCI had profited from the 2007 financial crisis by betting against synthetic collateralized debt obligations. One method of protecting the bets, a technique used by PCI and others, was to block efforts to limit foreclosures and rework mortgages.

In 2008, PCI sought to exploit the financial crisis by establishing a fund to provide loans to investment banks and hedge funds suffering from the capital crisis on Wall Street resulting from the housing market collapse and related poor-performing assets that forced writedowns of $345 billion. PCI's bets on an upturn included a 2009 purchase of 2 million Goldman Sachs shares and 35 million shares of Regions Financial. PCI also bought stock in Bank of America, anticipating a recovery. Its bet on the recovery of Citigroup after the 2007–09 stock market crash gained it $1 billion.

PCI also established a fund for gold mining and gold-related investments in November 2009. In 2010, this betting on gold garnered $5 billion.

When the Securities and Exchange Commission (SEC) sued Goldman Sachs and one of Goldman's collateralized debt obligation (CDO) traders in April 2010 for misrepresentation, PCI was mentioned but was not a subject of the complaint.

PCI was involved in the restructuring and recapitalization of Houghton Mifflin Harcourt in February 2010. By 2011, PCI was the largest hedge fund in the world, managing investor assets of $35.8 billion and holding 1.22 percent of Bank of America.

Bets Begin to Fail

Paulson rode the wave of a bad economy until 2011, when his bets on banks began tanking and his funds were dropping 40 percent—billions of dollars disappearing. In 2011, the flagship hedge fund bled 35 percent, but investors stood firm. The flagship fund was Paulson Advantage, down 13 percent by August 2012. Another blue chip, Paulson Advantage Plus, was down 18 percent. Investors were more willing than usual to give Paulson time to recover because of his long-term successes.

Because the funds were so far off the high-water mark, investors didn't have to pay fees.

Paulson made a bet on a strong recovery in financials, but that did not happen. Further, he had moved from there to gold and gold mining, another iffy gamble that wasn't paying off in 2012.

When losses continued into 2012 even as the equities market was rising, investors began looking elsewhere. Citigroup took Paulson off its platform and announced plans to recapture $410 million it had with Paulson. At the beginning of 2012, PCI was manager of $36 billion. By August, PCI losses put the fund at $19.5 billion. Citigroup's private bank decided to stop using Paulson for investing and was expected to take out $410 million in 2013 and 2014. Citigroup had a platform of 60 hedge funds for its $2 billion in investments, and it put four Paulson funds on the watch list in April 2012, indicating that it was through allocating money to them. In August, it dropped the four funds entirely.

Paulson said he was disappointed that Citigroup was leaving but noted that it was less than 2 percent of the fund's business. A Paulson representative said that the firm was used to inflows and outflows as investors' needs changed; other investors looking to Paulson would take up the slack. Paulson downplayed the Citigroup action, noting that other Paulson clients, including Deutsche Bank AG, UBS AG, Morgan Stanley, and Bank of America Merrill Lynch, were not following the Citibank redemption request. Morgan Stanley's brokerage unit had the fund company on watch for several months, and other fund and bank officials were indicating that they might be redeeming soon.

However, for investors with nerves of steel and deep pockets, Paulson was "a good horse to ride," at least for the occasional big win. At his peak, he had $38 billion to invest; in 2012, he was down to $19.5 billion. Even though some funds, including mergers, and recovery were up, the flagship funds continued to suffer. So did gold, but Paulson remained bullish that European problems would keep gold hot for five years.

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See Also: Bank of America Corp.; Goldman Sachs Group Inc.; Hedge Fund Fraud; Merrill Lynch and Co. Inc.; Mortgage Fraud; Subprime Loans; UBS.

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Pay It Back Act

The Pay it Back Act became law on July 21, 2011, as Title XXIII of Public Law 111-203, more commonly known as the Dodd-Frank Wall Street Reform and Consumer Protection Act. The act came in response to the 2010 Troubled Asset Relief Program (TARP) and the subsequent reform of the financial regulatory system pursued by the Barack Obama administration.

Senator Robert F. Bennett introduced SB 1683, An Act to Apply Recaptured Taxpayer Investments Toward the National Debt, in the U.S. Senate on September 17, 2009, and Representative Leonard Lance introduced HR 4482 in the House of Representatives on January 20, 2010, both with the intent that Congress authorize the monies recouped from the Troubled Asset Relief Program and others be paid toward the national debt. The impetus of the bill was to use funds borrowed from the taxpayers to help the financial institutions to pay down the national debt instead of leaving it for future generations.

The bills sought to amend the Emergency Economic Stabilization Act of 2008 to indicate that any outstanding debt owed by those helped under TARP at the time of the enactment of the proposed Pay It Back Act would be used to pay down the national debt. In addition, the act would require the secretary of the Treasury to report to Congress on the amounts applied toward the debt.

Pay It Back also had stipulations related to the Housing and Economic Recovery Act of 2008 and the Fannie Mae and Freddie Mac obligations and securities. Proposed amendments called for any amounts received from the sale of obligations or securities to be earmarked to reduce the national debt. The director of the Federal Housing Administration also was required to report on plans to aid the housing industry while looking after American housing investments. The act included a section addressing funds provided to states under the American Recovery and Reinvestment Act of 2008 (ARRA). In some cases, states refused monies offered under the ARRA and the act sought to ensure that these monies went to the national debt and not to other government programs.

Both bills were later amended in both houses under HR 4173 Engrossed Senate Amendment included Title XIII detailing the Pay it Back Act in sections 1301–05. In this version, the amount of monies issued under TARP was reduced to $550 billion, the secretary of the treasury could purchase troubled assets if determined necessary, and the secretary of the Treasury was required to issue reports every six months on the status of the national debt, including both payments received and those posted. Other requirements in the original bills were kept.

Ultimately, the Pay It Back Act became part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, signed into law on July 21, 2010, found under Title XIII of the act. The final version cut the monies for TARP from the original $700 billion to $475 billion and stipulated that unused funds could not be used for new programs. The 2008 Housing and Economic Recovery Act amendments limited the use of monies raised by selling off securities purchased to help stabilize the economy. These monies could be applied only to the national debt and could not be used to offset spending elsewhere. States that refused funds from the ARRA or did not use monies before December 31, 2012, had to 747return the difference so that it could be applied to the deficit. A clause is included allowing the president to extend the deadline if the economy requires.

The purpose of this legislation was to make sure that monies earmarked to help improve and stabilize the economy were used properly when returned or not needed. The reduction of the TARP monies came from the decision of some companies that opted not to use the funds offered. Some members of Congress wanted to make sure that monies used and repaid and monies refused did not get routed to a new federal program during a time when efforts were made to reduce spending. Congress wanted to assure the public that their investment in stabilizing the economy was used to pay down the national debt.

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See Also: Dodd-Frank Wall Street Reform and Consumer Protection Act; Housing and Urban Development, U.S. Department of; Obama, Barack; Troubled Asset Relief Program.

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Perjury

Perjury is a crime against the administration of justice in both federal and state statutes. It is difficult for prosecutors to obtain perjury convictions because of substantive and procedural requirements imposed by the law's definition and courts' interpretations. Because of these requirements, prosecutors instead use the federal crime of "false declarations before grand jury or court" where appropriate, speaking of "perjury" in its ordinary meaning. For the crimes of perjury, subornation of perjury, or false declarations, the maximum penalty per offense is five years' imprisonment or a fine or both. Federal courts use the U.S. Sentencing Guidelines to find the presumptive prison sentence to impose.

The crime of perjury is centuries old. The 1948 revision of the U.S. Crimes Code defines perjury as taking an oath before a competent tribunal, officer, or person, that the oath-taker will testify, declare, depose, or certify truly, and willfully states any material matter, not believing it to be true. A 1976 addition to the perjury section provides another way to commit perjury, referring to the new law allowing a person, without taking an oath, to make an "unsworn declaration, certificate, verification, or statement, in writing [and] subscribed by him, as true under penalty of perjury, and dated." A person who "willfully subscribes as true any material matter which he does not believe to be true" in the signed and dated statement is guilty of perjury. A 1964 addition makes explicit that the crime of perjury applies to statements made inside and outside U.S. territory. Subornation of perjury is having another person testify falsely, which is a separate crime.

The legal system depends on truthful testimony and statements to achieve proper outcomes. A typical oath requires the swearer "to tell the truth, the whole truth, and nothing but the truth" in testimony before a grand jury or a trial (petit) jury. A witness who willfully (i.e., intentionally or purposely) lies under oath, or under the penalty of perjury, deprives the court of his or her true knowledge. As a result, law enforcement investigations may be prolonged, sometimes at great expense, or people who committed crimes may escape detection or conviction.

A witness who lies under oath may be "not guilty" of perjury because of substantive and procedural requirements to be convicted. If a federal court's grand jury is investigating a crime that took place outside its geographic jurisdiction, then it is not a "competent tribunal" under the law and the lying witness has not committed perjury. A congressional committee is not a "competent tribunal" unless a quorum is present. A prosecutor may not call a grand jury witness for the sole purpose of securing testimony in order to charge the witness with perjury, a ploy called the "perjury trap" that may lead to a perjury indictment's dismissal.

A literally true answer is a perjury defense, even if the answer was unresponsive to the question asked. The U.S. Supreme Court stated that unresponsiveness prevents a statement's truth from being tested. In *Bronston v. United States,* the witness answered a question about whether he personally ever had a Swiss bank account with a statement regarding his corporation. The solution in that case should have been a follow-up question, not a perjury prosecution.

Perjury follows the "two-witness rule," requiring either two testifying witnesses or one testifying witness and independent corroboration of the materially false statement. The defendant's admission of falsity may satisfy the corroboration

Roger Clemens pitching for the New York Yankees, June 27, 2007. Clemens, along with other Major League Baseball (MLB) players, was charged with perjury for his testimony in a 2008 congressional hearing over MLB steroid use.

requirement. The government must prove the accused knew his or her statement was false and the statement was material to the case. Under current law, the jury decides these issues; formerly, the judge decided materiality. To aid the government in combating perjury, Congress passed Title IV, Organized Crime Control Act of 1970 as the false declarations crime. It eliminates the "two-witness rule" and does not require proof of which of two inconsistent statements is false; however, it is limited to grand jury and court proceedings and provides a limited recantation defense.

Congress's jurisdiction includes requiring sworn testimony to investigate matters that may lead to legislation. For example, in 2005, the U.S. House of Representatives Committee on Government Reform held a hearing on steroid use in Major League Baseball. Longtime player Rafael Palmeiro "appeared before the Committee and testified under oath that he had never used anabolic steroids." Palmeiro tested positive for a steroid six weeks later. After a congressional investigation, the committee decided not to make "a perjury referral to the Department of Justice" because it is "a serious step" and the evidence was insufficient. The committee did not decide whether Palmeiro had testified truthfully.

Pitcher Roger Clemens was charged with two counts of perjury and three counts of false statements in 2010 for his 2008 congressional testimony, and home run leader Barry Bonds was charged with three perjury counts for his grand jury testimony. In June 2012, a federal jury found Clemens not guilty of all charges. Bonds's jury could not reach a verdict on the perjury counts but found him guilty of obstruction of justice for making an evasive or misleading (e.g., unresponsive) answer to a question about steroids (which is on appeal); the government later dismissed the perjury charges.

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See Also: Clinton, William J.; Conspiracy; Investigation Techniques; Iran-Contra Affair; Legal Malpractice; Nixon, Richard M.; Plame Affair; Police Corruption; Porteus, Judge G. Thomas; Sentencing Guidelines; State Crime Theory; Tax Evasion; Whitewater Scandal.

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Pesticides

Pesticides are chemical agents designed to kill pests, be they weeds, insects, rodents, or other inconvenient or destructive agents. The term *pesticide* includes fungicides, herbicides, insecticides, and rodenticides, among others, depending on the type of pest they are designed to eradicate. Although pesticides are deadly to their intended target, their architects attempt to minimize harm to humans, the environment, and animals not targeted by the chemical while maximizing the destruction to the pest.

Before the availability of pesticides, farmers relied on labor-intensive techniques such as the use of hoes or tractors to disrupt weed growth by tilling the soil. They rotated and selected crops for resistance to disease and pest damage. While these techniques are still in use today, since the mid-20th century, when synthetic pesticides were developed, application of pesticides has become ubiquitous. Their use has enabled better control of damaging insects and weeds, increased crop production, and decreased labor in the agricultural sector. In the United States alone, over 1 billion pounds of pesticides are used annually, with over 20,000 different pesticide products available on the market. Worldwide sales of pesticides in 2007 approached $40 billion. The variety of products available is vast, and they are used in private homes as well as multimillion-dollar commercial operations.

In 1910, the Federal Insecticide Act was passed by Congress based on concern by the U.S.

Department of Agriculture (USDA) that manufacturers were selling fraudulent or inferior pesticide products. Once synthetic pesticides became available, the Federal Insecticide Act was insufficient. As a result, in 1947, Congress passed the Federal Insecticide, Fungicide, and Rodenticide Act (FIRFA), which was strengthened by a series of amendments. The 1972 Federal Environmental Pesticide Control Act (FEPCA) fundamentally rewrote the FIRFA, providing a focus on the protection and preservation of human and environmental health.

Regulation and Enforcement of Pesticide Use

These federal laws enable the Environmental Protection Agency (EPA) to regulate pesticides and provide enforcement. The EPA requires that all manufacturers register pesticides before they can be sold in the United States. The agency evaluates the ingredients of each pesticide as well as its expected use and determines the potential effects on humans, the environment, and nontarget species. Once analyzed, pesticides are classified as general or restricted, the latter category requiring worker certification. The EPA also issues Workplace Protection Standards to minimize the harm to workers at farms, orchards, greenhouses, nurseries, and forests by providing safety standards, outlining training and notification requirements, and specifying protective clothing, equipment, and emergency procedures. On the ground, its National Pesticide Program field outreach trains and certifies workers in more hazardous pesticide use, helps promote water safety, and monitors endangered species.

However, other governmental agencies have a stake in pesticide development, production, and use. The USDA and the Food and Drug Administration track pesticide residue on commercially sold products and collaborate with the EPA. The Occupational Safety and Health Administration oversees the health and safety of employees working in manufacturing facilities that produce pesticides. The Centers for Disease Control's (CDC) National Institute for Occupational Safety and Health assists the EPA in surveying occupational pesticide exposure to determine the causes and consequences of overexposure.

Though the United States was the first to regulate pesticides, most countries have a mechanism to monitor and regulate pesticides. Internationally, the EPA is part of a North American Free Trade Agreement (NAFTA) working group to coordinate the activities of the pesticide-regulating agencies of the United States, Canada, and Mexico. The United Nations, concerned about the extensive use of pesticides in the developing world, has instituted programs to reduce farmers' reliance on chemicals in the agricultural process and has published a watch list of dangerous pesticides.

Dangers of Pesticides

Rachel Carson's 1962 book *Silent Spring* highlighted the environmental dangers of DDT, a synthetic pesticide used frequently since 1939 until it was banned in the United States in 1972. Although her contention that DDT was carcinogenic to humans has not been upheld, Carson's concerns about the effects of DDT on migratory birds and other wildlife have been supported, and her caution that the widespread use of synthetic chemicals without sufficient understanding of the health and environmental consequences remains relevant.

Human health concerns related to pesticide exposure persist today. Depending on the strength of the pesticide and the length and type of exposure, individuals might suffer from eye and skin irritations, develop cancer or neurological issues, or experience disruptions of the endocrine or nervous systems. Farmworkers both in the United States and abroad have reported headaches, cough, nausea, dizziness, skin irritation, and weakness resulting from pesticide exposure, as well as birth defects. Some workers in pesticide manufacturing facilities experience similar symptoms. The CDC reports that in just 11 states, 5,200 employees experienced occupation-related pesticide illness between 1998 and 2002. Students and school employees have also had pesticide-related illnesses as a result of pest-control efforts in school buildings. The United Nations estimates one to five million pesticide poisonings each year, with 20,000 resulting in death, many of these in developing nations.

Pesticides can damage the environment and wildlife, especially endangered species. Through pesticide drift, these chemicals can contaminate surface water and groundwater, soil, land, and animal habitats. Many bodies of water in the United States are polluted with pesticide residue, and the extensive use of pesticides reduces soil biodiversity and diminishes its quality.

The Union of Concerned Scientists asserts that overreliance on Monsanto's Roundup has promoted the development of superweeds, or weeds resistant to the company's popular herbicide. As a result, farmers are using even more of the chemical to try to combat the invasive plant species. Several environmental groups, led by the Center for Biological Diversity, have filed a lawsuit against the EPA to require it to consider the effect of almost 400 pesticides on the wildlife listed per the Endangered Species Act in order to reduce the harm to those animals. The lawsuit, filed with the U.S. District Court for the Northern District of California, was in settlement talks as of 2012.

Industry groups claim that restrictions on pesticides will have detrimental economic effects on American agriculture. Other groups have entreated the EPA to enact stricter restrictions on pesticides because of their association with the alarming decrease in the population of bees, bats, and butterflies. Widespread pesticide use can also make some pests resistant to synthetic chemicals, or, in killing nontarget species, disrupt the prey-predator balance in an area. Extensive pesticide use is also associated with monoculture crops, which can lead to reduced biodiversity and increased pest resistance to chemical control.

When pesticides are applied, droplets, dust, or vapors may drift because of either wind activity, poor equipment, or irresponsible application. As a result of this pesticide drift, in addition to water, soil, and habitat contamination, equipment in areas around schools, playgrounds, and parks can become coated with pesticide residue. Environmental justice advocates note that often the populations most affected by pesticide drift are marginalized groups. For example, in 1999, hundreds of Earlimart, California, residents became violently ill with vomiting, dizziness, shortness of breath, and eye and lung irritation. Many of those who were sick could speak only Spanish and were unable to communicate with emergency response crews. An investigation revealed the residents had been exposed to the pesticide metam sodium, which had traveled from a potato field outside town.

The drawbacks of extensive pesticide use have promulgated an interest in organic farming. With a few exceptions approved by the EPA or National Organic Standards Board, only biological pesticides are permitted when growing certified organic crops. Without synthetic chemicals, human, animal, and environmental health is preserved. Integrated pest control is another alternative. Using this system, individual households and businesses monitor the pest level, reduce the conditions favorable to the pest, and implement the least risky interventions. Instead of relying on chemical control of pests, integrated pest management utilizes many of the techniques pioneered before the days of synthetic pesticides, such as crop rotation and selecting pest-resistant varieties.

Although it is unlikely that pesticide use will cease, the health and environmental effects of pesticides warrant increased attention by regulators, manufacturers, industry, and consumers alike.

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See Also: Allied Chemical Corp.; American Cyanamid Co.; BASF Corp.; Brown Lung; Carson, Rachel; Corporate Dumping; Dow Chemical; Employee Safety; Endangered Species Act; Environmental Protection Agency, U.S.; Food and Drug Administration, U.S.; Greenpeace; Hazardous Waste; Kepone Scandal; Labor Crimes; Occupational Carcinogens; Occupational Safety and Health Act; Pollution, Air; Pollution, Water; Toxic Substances Control Act.

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Pharmaceutical Industry

The pharmaceutical industry is one of the most profitable U.S. industries. It also maintains one of the most powerful lobbies in Washington. From cozy relationships with the Food and Drug Administration (FDA) to its stunning marriage with academia, "Big Pharma" continues to develop innovative means to ensure big profits, all at the physical, mental, and economic expense of its consumers. Ironically, the industry has largely ceased to produce new and innovative drugs. Current manufacturing has been mostly limited to "me too" drugs—variants of existing medications. Despite the lack of both innovation and adherence to laws aimed at protecting consumers, drug prices continue to soar, and patients continue to suffer.

Off-Label Use, Fraud, and Lawsuits

Pharmaceutical companies profit immeasurably from illness, whether real or manufactured, and most of the complaints and lawsuits brought against these companies involve off-label marketing, meaning that a drug is marketed, prescribed, and billed for physical conditions not intended to be treated by that drug. For example, one of the most profitable lines of drugs for the pharmaceutical industry is psychiatric medications. Seroquel, an antipsychotic intended for schizophrenics, has been prescribed by physicians at alarming rates for relatively minor maladies such as insomnia, nausea, and generalized anxiety. It has also been implicated in numerous patient deaths, and its administration to children for supposed psychiatric disorders has been questioned. In 2009, AstraZeneca agreed to pay $520 million for the improper sale and promotion of Seroquel, yet it still tops the list of most prescribed psychiatric medications.

In 2004, Pfizer, the world's largest pharmaceutical company, pleaded guilty to two felony counts of marketing a drug for unapproved uses after encouraging physicians to prescribe its epilepsy drug, Neurontin, for complaints such as aches and pains. The FDA received hundreds of reports of adverse side effects, including sudden death, suffered by patients prescribed Neurontin for everything but epilepsy. After the plea deal, Pfizer promised not to promote drugs for unauthorized illnesses anymore. Five years later, in 2009, Pfizer was charged with felony off-label marketing resulting in the payment of one of the largest criminal fines in U.S. history, $1.19 billion, for pushing its drug Bextra for off-label use. The drug was approved by the FDA solely for the treatment of arthritis and menstrual pain, but Pfizer marketed the drug for acute pain relief of any sort, despite clinical trials that indicated the medication could cause heart damage and death. After an FDA investigation, it was concluded that cardiac surgery patients were at an increased risk of chest infections, heart attacks, and strokes resulting from the use of Bextra.

As a result of the ensuing criminal charges, Mary Holloway, a Pfizer regional manager, reported that sales representatives deliberately deceived hospital physicians by withholding information regarding side effects, instead telling them that the effects were no worse than that of a sugar pill. A study conducted by researchers at the University of Pennsylvania found that patients taking Bextra were more than twice as likely to suffer a heart attack compared to those taking a placebo. During a conference and in a report to the American Heart Association, Dr. Garret Fitzgerald, a cardiologist and pharmacologist from the University of Pennsylvania, stated that "Bextra was a time bomb waiting to go off." Additionally, it was discovered that the use of Bextra led to numerous cases involving a potentially fatal skin disease (Stevens-Johnson syndrome), blood clots, blistering, intestinal bleeding, and angina. By the time the drug was pulled from the market in 2005, millions of patients had been prescribed Bextra, and the number of resulting deaths is unknown. What is known is that by the end of 2004, the drug had earned Pfizer annual sales of $1.29 billion.

Estimates of the damage caused by another popular drug, Vioxx, are available thanks to a study conducted by FDA safety reviewer David Graham. During his testimony before the Senate Finance Committee in 2004, Graham reported that Merck's painkiller Vioxx may have been responsible for as many as 140,000 heart attacks in the United States. Over one million patients were included in the study, and Graham stated that many of the cases may have been fatal. He also reported that his bosses at the FDA threatened to fire him if he published the findings. The drug was withdrawn from the market the year after Merck conducted a company study. In 2012, Merck paid out $321.6 million to settle criminal charges in addition to $628.3 million in civil claims paid out in 2011.

Not only has the pharmaceutical industry deliberately harmed consumers, consumers of generic drug equivalents but also are unable to seek recourse in the event of problems. In 2011, the U.S. Supreme Court ruled in *Pliva v. Messing* that generic drug companies cannot be sued in state courts over labels that do not warn against potential side effects because the generic manufacturers are required by federal law to use the same labels as the brand-name manufacturers. The decision, by a vote of 5–4 that ran along ideological lines, dramatically changed the legal standing of the industry. Considering that more than 75 percent of all prescriptions involve generics, most consumers of the products of pharmaceutical industry are without legal recourse. Henry Waxman, who cowrote the federal legislation, said: "Congress did not intend for consumers' rights to be categorically eliminated simply because they purchased a generic rather than a brand name drug."

In addition to being one of the most profitable industries in the world, Big Pharma is also one of the biggest criminal offenders. Its crimes range from bribery and fraud to recent accusations of crimes against humanity with regard to nonconsensual research conducted in Africa and its "business with disease." Over the past decade, civil suits have been filed against some of the largest and most profitable pharmaceutical companies, including Pfizer, Bristol-Myers Squibb Co., and Eli Lilly and Company. The settlements, although quite large, were a small fraction of the companies' annual revenues. Pharmaceutical companies typically set aside large amounts of money in anticipation of having to pay out in civil suits. In 2007, for example, Bristol-Myers Squibb paid out $515 million to federal and state governments in a civil suit brought by the U.S. Department of Justice with no admission of any wrongdoing.

Profits From Illness

The pharmaceutical industry ranks in the top three, along with the oil and auto industries, of worst corporate criminal recidivists. The pharmaceutical industry, in fact, had three times as many serious and moderately serious violations as did firms in other industries. Based on U.S. Security and Exchange Commission data, John Braithwaite argued that they have a "worse record of international bribery and corruption than any other industry." Monetary fines apparently do not serve as an effective deterrent, and drug companies continue to violate laws, resulting in extreme economic and health costs to patients.

Capitalizing on common ailments that are a normal part of the aging process is a common practice. "Overactive bladder" is an example of a manufactured "disease." Drug companies aggressively advertised drugs such as Detrol and their ability to "cure" widespread, debilitating ailments such as overactive bladder. In 2005, it was discovered that these bladder drugs were responsible for inducing dementia, among other things. Elderly patients who hoped to need fewer trips to the bathroom were stricken with impaired memory and cognition, with countless numbers probably never realizing that the medication was causing it.

Psychiatric medications provide pharmaceutical companies with tremendous revenue. Psychotropic drug prescriptions in America increased 73 percent among adults and 50 percent among children between 1996 and 2006. Worldwide sales of psychiatric medication account for over $82 billion in revenue for the pharmaceutical industry. The *Diagnostic and Statistical Manual of Mental Disorders* (DSM), widely used by professionals in the health care industry for diagnosing mental disorders, was first published in 1952. It contained 106 diagnoses, with only one that pertained to children. The latest edition, DSM-IV, was published in 1994; it included 365 diagnoses with 22 applying specifically to children. The DSM has been widely criticized by professionals from various fields because of the broadness and vagueness of criteria, validity and reliability issues, and the lack of sound scientific backing, including little to no empirical support for the existence of and recommended treatment for various conditions. It has been discovered that the majority of individuals on the DSM panel who are in charge of authoring the manual have financial ties to the pharmaceutical industry. The DSM is a registered trademark of the American Psychiatric Association (APA) and brings in over $5 million per year in addition to the financial compensation received from drug companies. The next edition, DSM-V, is scheduled for publication in May 2013. Sixty-eight percent of the DSM-V's panel reported ties to the pharmaceutical industry, a 20 percent increase over the number of DSM-IV panel members with ties to the industry.

Influence in the Medical Field

Physicians and academics have been willing participants in some of the unethical practices of pharmaceutical companies. In some cases, physicians are unaware of potential adverse effects of certain medications because pharmaceutical representatives withhold findings. In other cases, however, they knowingly prescribe suspect drugs with promises of kickbacks and other perks. The Office of Inspector General (OIG) issued a Compliance Program Guidance for Pharmaceutical Manufacturers in an attempt to curb these conflicts of interest. Additionally, the American Medical Association (AMA), the American College of Physicians (ACP), and the pharmaceutical industry itself issued ethical and compliance standards regarding gift giving. As the recent spate of lawsuits indicates, the issuance of these industry standards has not served its purpose.

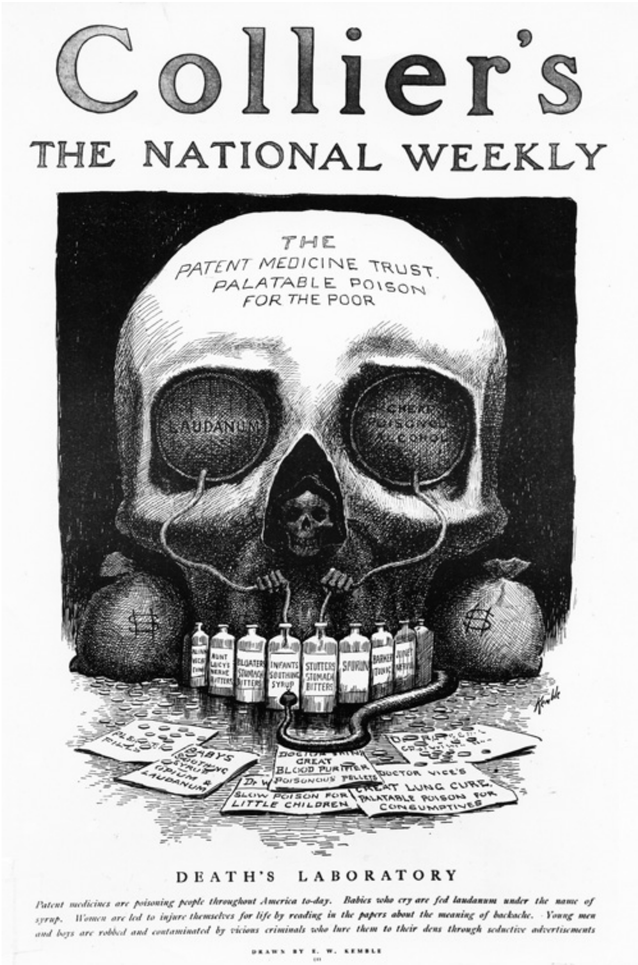
In a stark example of conflict of interest, an investigation prompted by Senator Charles Grassley in 2008 uncovered a disturbing violation. Harvard psychiatrist Joseph Biederman and two of his colleagues failed to disclose millions of dollars in kickbacks they received from drug companies for promoting antipsychotics for the treatment of psychiatric illness in children. These highly influential Harvard physicians were found to have produced scientifically corrupt and commercially driven research that served as guidelines for physicians across the country, in exchange for monetary compensation.

The nonprofit corporation ProPublica conducted an investigation of physicians on Big Pharma's payroll from 2009 to 2010. It discovered that seven pharmaceutical companies paid out $257.8 million to 17,700 medical professionals who promoted their drugs. ProPublica then conducted a review of licensing records of these individuals in the 15 most populous states and discovered that many of them had disciplinary records, lacked appropriate credentials, and/or had been convicted of crimes.

Ghostwriting

In 2008, Senator Charles Grassley initiated an investigation of the publication of articles denoting the benefits of pharmaceuticals in major medical journals without any disclosure regarding development and authorship of the literature. It had been discovered that Merck used ghostwriters, or writers whose work is credited to another, in this case a medical professional, to manipulate scientific information contained in an article published in the *Journal of the American Medical Association* (*JAMA*). This particular article promoted the painkiller Vioxx.

Wyeth was also guilty of engaging in the practice of ghostwriting and had been doing so for quite some time with regard to its hormone-therapy drugs. In this case, Wyeth hired a company (DesignWrite) to write articles and then solicited academic researchers to submit these articles posing as the primary authors of literature that downplayed the dangerous side effects of these drugs. Wyeth also hired another company, Excerpta Medica, to ghostwrite articles touting the benefits of its diet pill, Redux. It paid a professor from the University of Wisconsin $1,500 to serve as the author. The following year, Wyeth pulled the drug from the market under pressure from the FDA because of physician reports of damage caused to patients' heart valves. It was later discovered that Redux was responsible for dozens of deaths.



The cover of the June 3, 1905, issue of Collier's *(left) heralded Samuel Hopkins Adams's 1905 exposé of the persuasive patent medicine industry, which targeted an uninformed American public. Although this nostrum menace preyed on pregnant mothers, the aged, the poor, and the like more than a century ago, the pharmaceutical industry today still has its dark corners, as evidenced by research fraud, collusions with government agencies and academia, and dangerous medications such as Vioxx (right).*

Direct-to-Consumer Advertising

In 1997, the FDA eased regulations on direct-to-consumer (DTC) advertising, which ostensibly led to millions of American television viewers being exposed to nightly advertisements, especially during prime-time hours. A tremendous increase in patient-requested prescriptions resulted; eight out of 10 surveyed physicians reported a desire for a moratorium on DTC advertising in 2006. Despite criticisms, DTC advertising has increased, and it remains illegal in every country in the world except the United States and New Zealand. The influence these advertisements have on consumers is second to none, as the pharmaceutical industry is well aware; millions of dollars annually are poured into DTC advertising. The ads are often creative, urgent, and appealing, leading many viewers to believe the advertised products are safe and necessary.

Patents and Price Fixing

U.S. drug patents last 20 years. This essentially grants the drug manufacturer a monopoly on its product because the patent prohibits anyone else from selling the same drug and allows the drug companies to raise the costs of the drugs as they become popular. When the patent expires, generics typically hit the market, often saving consumers a notable amount of money. Pharmaceutical companies have devised innovative means to extend patent protection on their products, a practice known as "evergreening." Methods for maintaining an exclusive hold on drugs include claiming new uses for the medication, filing a new patent based on inactive ingredients or a method of manufacture, and developing the drug in a new form, such as extended release capsules. In the event the patent is allowed to expire, drug companies have been known to pressure or bribe physicians to continue prescribing the brand-name drugs over the generics. In some cases, they deliberately withhold ingredient information from companies trying to manufacture generic versions. An example of this can be seen in the case *Federal Trade Commission v. Mylan Laboratories*. In 2000, the Federal Trade Commission (FTC) approved a $100 million settlement with Mylan Laboratories regarding the deliberate act of withholding information from generic manufacturers pertaining to an ingredient used in the manufacture of popular antianxiety medications. After preventing the generic companies from producing the drugs, Mylan then raised the wholesale price of one drug from $7.30 per 500-count bottle of 1-mg pills to $190. As part of the settlement, consumers who paid the inflated prices were entitled to reimbursement.

Price Gouging

Price gouging, the practice of placing tremendous markups on drugs in short supply, has come under the radar of the U.S. Congress, and a bill proposed by Senator Charles Schumer in 2011 would make the act a federal crime. Pharmaceutical price gouging entered the spotlight recently after numerous hospital patient deaths across the country were reported as resulting directly from the inability to obtain life-saving medications because of price gouging.

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See Also: A. H. Robins Inc.; Baycol Case; Bendectin Case; Breast Implants; Consumer Deaths; Counterfeiting; Dalkon Shield Case; Economic Espionage; Eli Lilly and Company; Food and Drug Administration, U.S.; G. D. Searle & Company; Hazardous Waste; Health Care Fraud; ICN Pharmaceuticals Inc.; Industrial Espionage; Medical Malpractice; Oraflex Case; Pollution, Water; Public Citizen Health Research Group; Pure Food and Drug Act; Tampons and Toxic Shock; Thalidomide Case; Times Beach Contamination; Toxic Substances Control Act; Trademark Infringement; World War II.

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Picard, Irving

Irving H. Picard (1941–) is a prominent figure who has made a successful career assisting the victims of white-collar crimes, in particular, securities and investment fraud. His undergraduate degree is from the Wharton School of Business at the University of Pennsylvania. He earned his Juris Doctor degree from Boston University School of Law in 1966, then completed a master's in law from New York University School of Law. In addition to his experience in corporate law, he has a number of publications in the fields of asset liquidation, bankruptcy and business law, and investor protection.

Picard is most famous for his role assisting victims of the Bernard L. Madoff Ponzi scheme that was uncovered in 2008. Picard's work on the Madoff case is in keeping with the provisions of the Security Investor Protection Act (SIPA). Picard was appointed as the trustee responsible for seeking civil damages for these victims on December 15, 2008, by the District Court for the Southern District of New York. The court's expectations were that Picard, as trustee, would liquidate Madoff's assets for the sole purpose of recovering monies for clients of Bernard L. Madoff Investment Securities LLC, which had 5,000 active accounts. As of August 2012, Picard had recovered an estimated $2.6 billion, to be shared among investors. Previously, he had disbursed to them $335 million. The disbursement process has since been a slow one, as some victims of the scheme are also suing to gain interest on their principal. Other unhappy victims resent Picard's "clawback" approach, which means that persons who had received "profits" on their investments with Madoff could be subject to having everything above their principal seized by Picard. Many victims claimed that all they withdrew were necessary sums such as money to pay taxes on what were actually phony profits and modest living expenses.

Picard expects to recover about $9 billion out of more than $17 billion invested with Madoff. However, Picard's actions in the Madoff case are under a cloud, as accusations swirl that he is somehow a schemer himself, given that his legal fees in the case have earned Picard and his law firm more than what has been disseminated to victims—$554 million. New York's *Daily News* newspaper reported in May 2012 that Picard's law firm, Baker and Hostetler, charges $850 an hour and that by the time its involvement ends, it expects to make about $1 billion from the Madoff case. Some even allege that the Securities Investor Protection Corporation (SPIC) is fraudulent. SPIC was created by Congress in 1970. Picard serves this group in the Madoff case through his efforts to enforce SIPA's mission of restoring funds lost as a result of the closure of a brokerage firm for impropriety. The protection is up to half a million dollars per investor.

Picard's efforts to get damages ($60 billion) using the Racketeer Influenced and Corrupt Organizations Act (RICO) from overseas banks such as UniCredit, Deutsche Bank, EFG Bank SA, and Banque Degroof SA, which appear to have aided Madoff's schemes, have been unsuccessful. The judge in these Madoff asset recovery efforts, a RICO expert named Jed Rakoff, concluded that the connection of the foreign banks to the schemes was not evident. Nevertheless, Picard has been successful in his lawsuit against the owners of the New York Mets, who agreed to pay $162 million to settle the lawsuit, based on Picard's assertion that they should have known that the return on their investments with Madoff were too good to be true. Picard was also able to retrieve millions in ill-gotten gains from Madoff's fellow schemer David Kugel. The story is similar for financier J. Ezra Merkin, who was involved in directing $2.4 billion of his investors' funds to Madoff after lying about the management of the funds. Merkin agreed to settle with Picard.

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See Also: Bank Fraud; Bernard L. Madoff Investment Securities LLC; Madoff, Bernard L.; Madoff Ponzi Scheme; Maxwell, Robert; Picower, Jeffrey; Ponzi Schemes; Sorkin, Ira; Wilpon, Fred.

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Picower, Jeffrey

Throughout the scandal involving Bernie Madoff's Ponzi scheme, philanthropist and investor Jeffrey Picower (1942–) continued to protest his innocence of criminal activity. Picower insisted that his only crime lay in trusting his longtime friend. Picower's critics argued that he and his wife, Barbara, were the largest beneficiaries of Madoff's Ponzi scheme. Federal officials insisted that Picower, who was also an attorney and a Certified Public Accountant, was too astute an investor not to realize that his massive profits, which ranged from 120 percent to 950 percent annually between 1996 and 1999, were being generated from illegal sources. According to Madoff bankruptcy trustee Irving H. Picard, red flags would have gone up for Picower when he asked for funds from his Madoff account but received only a fraction of the requested funds.

Maddoff Insider

Various media accounts also suggest that Picower knew that Madoff was engaged in illegal activities. *New York Times* reporter Diana Henriques, an expert on Madoff, has said that Madoff believes that Picower had to know that his friend was involved in a scam of some sort. *Forbes* reporter Nathan Vardi wrote that Picower should have been aware of the signs of a Ponzi scheme because he had been the victim of a smaller-scale Ponzi scheme carried out in the 1970s by Adela Holzer, in which Picower received only $67,000 on a $616,000 investment. Ultimately, Picower's estate paid $7.2 billion to settle claims against him, which is considered the largest forfeiture ever recorded in American history. In 2006, Picower opened a $125 million account with Madoff. After Madoff's downfall, bankruptcy officials reported that Picower's account expanded to $164 million in only two weeks. As his profits continued to expand, Picower invested $620 million with Madoff, withdrawing $3.4 billion from the Madoff account between 2000 and 2003. In hindsight, it became clear that Picower had become the client who was "too big to lose" because Madoff would have been unable to cover his losses if he had closed the account.

Jeffrey Picower was born on May 5, 1942. After earning a bachelor's degree at Penn State, he entered Brooklyn Law School. Picower also received a master's in business administration from Columbia University. In 1989, the Picowers established the Jeffrey M. and Barbara Picower Foundation. Picower trusted his friend Bernie Madoff to manage the foundation's $1 billion in assets. Major beneficiaries of the foundation included the Picower Institute for Learning and Memory at the Massachusetts Institute of Technology; Human Rights First, a research consortium on Parkinson's disease at the Feinberg School of Medicine of Northwestern University; and the New Public Library. Madoff was arrested in December 2008, and the foundation was forced to close, a major setback for medical research.

Jeffrey Picower had also been involved in other scandals. In the 1980s, while employed as an accountant at Laventhol and Horworth, Picower was accused of setting up illegal tax shelters but settled a $90 million claim out of court. The U.S. Securities and Exchange Commission (SEC) took Picower to task for late disclosure of the fact that he owned more than 5 percent of Fidata, a financial services firm, during a 1983 merger. In 2000, Picower was accused of falsifying records during bankruptcy proceedings involving the Physician Computer Network. The following year, he was accused of playing both sides of the table during the merger of Cytokine with PharmaSciences. Picower had interests in both companies, and after the merger, he owned 76 percent of Cytokine PharmaSciences.

In 2009, for the first time, *Forbes* placed Jeffrey Picower on its list of 400 richest Americans in 371st place, assessing his wealth at $1 billion but concluding that he was probably worth billions more. On October 25, Barbara Picower found her husband at the bottom of the swimming pool at their Palm Beach home. An autopsy revealed that he had suffered a massive heart attack while swimming. After his death, his estate paid $7.2 billion to settle claims related to the Madoff scandal. Picower left $200 million to his wife, Barbara; $25 million to his daughter Gabrielle; and $10 million to his longtime assistant April Freilich. The rest of his estate was earmarked for setting up a new foundation to be headed by his wife.

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See Also: Bernard L. Madoff Investment Securities LLC; Madoff, Bernard L; Madoff Ponzi Scheme; Ponzi Schemes.

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Plame Affair

Valerie Plame Wilson worked as a covert operative for the U.S. Central Intelligence Agency (CIA) between 1986 and 2003. Her covert status came to an end when her identity as a CIA agent was revealed publicly on July 14, 2003, in a *Washington Post* column by Robert Novak. Three years later, in 2006, she left the agency entirely.

The events surrounding Plame Wilson's exposure, which became known as the Plame Affair, began with the buildup to war in Iraq. In President George W. Bush's 2003 State of the Union address, he included what was called the famous 16 words: "The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa." After the speech, Joseph Wilson—a career foreign service officer and former ambassador—wrote an opinion piece for the *New York Times* disputing the president's statement. In 2002, a year before the State of the Union speech, Wilson had traveled to Niger at the request of the Bush administration to investigate a document that purported to memorialize the sale of yellow-cake uranium by Niger to Iraq. After investigating the matter, Wilson concluded that the allegation was false and that the document had been forged. When Wilson heard the claim reiterated in the State of the Union speech, he countered it publicly and criticized what he perceived as an attempt to publicize discredited intelligence in an attempt to justify the war in Iraq. Wilson stated that he believed the vice president's office had been told of his findings in Niger, and he criticized the decision to nevertheless include the allegation in the president's State of the Union address.

In response to Wilson's criticism of the administration's use of intelligence, Lewis (Scooter) Libby and other employees in the Office of the Vice President sought to learn more about Wilson's Niger trip. Libby was subsequently informed that Wilson's wife, Valerie Plame Wilson, worked at the CIA, which verified her employment. Although her employment status was classified information, sharing it with qualified administration employees did not violate secrecy laws. Libby was also told that Plame Wilson had been responsible for sending Mr. Wilson on the trip, though that information later turned out to be false. Although there is some question about who revealed Plame Wilson's identity to the press, a civil suit filed by both Wilsons accused Libby, Karl Rove, Richard Armitage, and Vice President Richard Cheney of leaking Plame Wilson's identity to various reporters. It is undisputed that a number of reporters were told about Plame Wilson's employment with the CIA, and Novak's column made Plame Wilson's employment with the CIA public knowledge.

Shortly after Novak's article was published, the CIA asked the U.S. Department of Justice to investigate the possible violation of federal law, including potential violations of the Intelligence Identities Protection Act. After U.S. Attorney General John Ashcroft recused himself from the matter, Patrick Fitzgerald, the U.S. attorney for the Northern District of Illinois, was named in December 2003 as Special Counsel to lead the investigation. Ultimately, no one was charged for the original leak of Wilson's identity to the press.

Valerie Plame Wilson, a former covert operative for the Central Intelligence Agency, speaks at Moravian College in Bethlehem, Pennsylvania, on October 29, 2008, about how her secret status was leaked to the national media by senior federal officials.

However, Libby, a foreign policy advisor in the vice president's office, was charged with obstructing Fitzgerald's subsequent investigation. When the case against Libby went to trial in June 2007, Libby was convicted of four counts of obstruction of justice, perjury, and making false statements to federal investigators. Libby was acquitted of one additional count of making false statements. The court sentenced Libby to 30 months imprisonment; President George W. Bush commuted Libby's sentence of imprisonment but left the underlying conviction intact. As a result of the felony conviction, Libby lost his license to practice law in both Pennsylvania and the District of Columbia.

The disclosure of Plame Wilson's status within the CIA had a significant effect on her professional life, and it placed other CIA personnel and programs in jeopardy. Plame Wilson had worked as a nuclear nonproliferation specialist within the CIA and had worked in a number of different countries, attempting to limit the spread of black-market nuclear weapons and materials. According to Fitzgerald's investigative report, Plame Wilson's status was both classified and not well known outside the intelligence community; her friends and neighbors believed her to be an energy consultant and had no idea she was a covert agent. After losing her cover, Plame Wilson could no longer perform the same work she had done before. Furthermore, the leak of her name also compromised the status of Brewster Jennings & Associates, the CIA front company for which she purportedly worked. As a result, agents and informants who dealt either with Plame Wilson or with Brewster Jennings were put at risk. The CIA has conducted a damage assessment; however, because the results of that report are not public, the extent of the harm to other individuals is not known.

Plame Wilson also suffered personally from the disclosure of her identity. In her book *Fair Game: My Life as a Spy, My Betrayal by the White House*, she recounts the intense emotional stress caused by the public disclosure of her identity. Her book subsequently served as the basis for the 2010 movie *Fair Game*. The Wilsons's civil lawsuit against members of the administration allegedly involved in the leaking was dismissed in 2007. The Wilson family has moved to New Mexico, where Plame Wilson now works as a consultant to a nonprofit research institute that engages in multidisciplinary research. She is also working on a series of spy novels.

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See Also: Iraq War; Legal Malpractice; Libby, Lewis (Scooter); Rove, Karl; War on Terror; Yellow-Cake Forgery.

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Police Brutality

Police brutality is a catch-all term that includes police violence directed against citizens along with—in the minds of many—a number of other forms of police behavior directed toward the public that do not rise to physical violence. Studies have found, for example, that what citizens mean by police brutality is substantially different, and broader than what the term suggests to the police.

Members of the public tend to believe that any behavior that treats them with less than full respect for the rights and dignity owed to every human being constitutes police brutality. This often includes, in addition to the actual use of physical violence, the use of profane and abusive language, short and directive commands to move, a brief stop followed by direct questioning, prodding with a nightstick or other object, and threats to use force if not obeyed.

In order to understand properly the nature of the relationship between police and the use of force, it is important to grasp the essential nature of policing. The police officer's job, when it finally comes down to it, is to use force, when necessary, in a lawful manner on behalf of the state to achieve broad public objectives of public safety. (Some conflict sociologists would go so far as argue that the role is to use force—and the threat of force—to maintain existing power, status, and resource allocation arrangements in society, but this is an altogether different discussion.) All sworn police officers are authorized to use force. The questions become whether the use of any force was necessary under a given set of circumstances and whether an "appropriate" amount of force was used. Consequently, the terms *abuse of force* and *excessive use of force* may be preferable to the term *police brutality*.

Discussions of police brutality revolve around several interrelated issues: whether there is a reliable profile of the "violence-prone officer"; whether the combined elements of "police culture" lend themselves to support police violence; whether situational factors—especially including the race or ethnicity of the subject of police violence—are determinative or controlling; the question of the prevalence of police violence; whether the "code blue" effect of group cohesion—or other organizational factors—effectively insulate many violence-prone officers from discipline; and the issue of whether there are preventive measures that may be employed by police management to reduce or eliminate unlawful use of force or excessive force against the public.

Psychological Profiling

The question of whether a psychological profile of officers who may be predisposed toward using violence can be developed has been the subject of substantial research. For example, a number of studies have developed instruments to try to identify whether there exists among police officers some who exhibit an "authoritarian" personality that might support aggressively violent responses where inappropriate. The results of these studies have been consistently negative at showing a causal link between authoritarian attitudes and the proclivity to act out those attitudes in unwarranted violence against the public.

This is not to say that officers' attitudes have no bearing on their propensity to abuse force. At least one study has suggested, for example, that officers who define their roles narrowly are more violence prone. Thus, officers who believe police should not "handle cases involving public nuisances, such as barking dogs or burning trash" or that "police should not have to handle people's social or personal problems" were more likely to use force. In short, although there is no basis for suggesting there is a "violence-prone personality," there is substantial room for further research regarding what can be characterized as a cluster of attitudes that may be conducive to violent response by officers when other factors coincide.

Contributing Factors

The attitudes police develop arise from several key features of policing. First, theirs is an occupation with low visibility because officers largely work alone and what they do is not accessible to the public. Second, it is an extremely isolating experience. The modern police officer is, in most cities, chained to his or her police vehicle and police radio—50 years after community policing was first envisioned. Third, theirs is a profession that depends to a large degree on apprenticeship, even though training academies and advanced training have become common. Fourth, there is the potential for violent conflict and—perhaps more important—a historically shared culture of male aggressiveness that police agencies have embodied.

The consequence is that officers learn to trust fellow officers and distrust the public. One of the pioneering sociological examinations of a big city police department conducted right after World War II has a chapter titled "The Public as Enemy." Thus, the subculture of policing supports attitudes of suspicion, fear, and hostility toward the public, perhaps especially those members of the public, like the poor and racial and ethnic minorities, whom the police most routinely encounter.

Given the mandate to use force when necessary, along with the combination of attitudes toward some features of the policing task and group attitudes toward the public, it is not unexpected that under certain situational conditions some officers may overuse force as a response. For example, some studies have suggested that police are more likely to use force in encounters that involve (1) violent crimes; (2) automobile pursuits; (3) four or more bystanders; and (4) more than one officer, especially increasing with at least five officers. Use of excessive force or improper force is also more likely where the subject (1) is black, male, or over 18 years of age; (2) exhibits drunkenness or mental disorder; (3) has a weapon; and/or (4) is hostile, especially if the citizen fights or resists.

The importance of these situational factors can be observed in perhaps the most notorious example of modern American police brutality—the Rodney King beating—videotaped by a bystander. King, a 26-year-old black man, was being pursued by a group of officers from the Los Angeles Police Department (LAPD) and the California Highway Patrol on March 3, 1991. Officers witnessed King speeding; when they pursued him, he refused to pull over. King and two passengers had been drinking that evening, and King knew an arrest would jeopardize his parole status from an earlier conviction. When police apprehended King, he acted bizarrely, would not follow directions, and resisted. Sgt. Stacey Koon shot him with a taser. King fell but tried to rise; Koon then ordered officers to strike power blows with their batons. Ultimately, King was stuck 56 times with batons, kicked five or six times, cuffed and bound with cords, and dragged on his stomach to transport. Five officers were directly involved, but as many as 12 other officers stood and watched.

The question of prevalence is an important one but not easily resolved. Rates of excessive use of force likely vary widely. It is well known, for example, that individual units or departments historically have become incubators of various forms of misconduct, including abuse of force. The LAPD's Rampart Division was such a unit in the 1990s. Cincinnati experienced a series of civilians killed, tasered, and beaten by police over a decade in the late 1990s/early 2000s. However, geographic rates may be less important than demographic rates, as the situational and suspect/subject factors above suggest.

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See Also: Corruption; Knapp Commission; Mollen Commission; Police Corruption; Racial Discrimination.

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Police Corruption

Police corruption in this discussion refers primarily to U.S.-based issues of police corruption and/or misconduct, sometimes also discussed as police deviance. In the course of day-to-day police work, law enforcement officers are given reasonable leeway in matters of coercion and deception used in order to keep the peace. There exists no absolute bright line for violations, although general standards for actions deemed unjustifiable have been established over time, often determined on a case-by-case basis. There are other measures of malfeasance by law enforcement officers to consider. Specifically, police corruption is defined as action on the part of a law enforcement agent that is criminal, dishonest, or unethical and involves the use (or misuse) of professional position and/or authority in whole or in part for personal or professional gain. Additionally, corruption includes actions or omissions by an individual or groups of law enforcement officials, whether promised and intended, attempted or completed by one or more officials.

Before exploring police corruption in greater detail, it is important to have a clear conception of police integrity and ethics. In democratic societies, policing is of utmost importance in the maintenance of the rule of law. Therefore, it is imperative that law enforcement agents live within the confines of the laws and policies that they have been entrusted to enforce. Police integrity is conceptualized as the tendency, among these officials, to stand firm against enticements to misuse the public trust. Upon swearing in to public service, recruits become rookies as they make a solemn pledge to honor the badge, profession, or country s/he will serve, as honest and morally upright servants of the public trust. Officers commit to courageously serve and hold one another responsible to the integrity of the profession, upholding the laws of the jurisdiction served.

Corruption can be the violation of an established criminal code or simply the violation of agency policy. Systemic practices breaching citizens' civil rights fall under the category of police corruption when said violations are committed by officers in the line of duty. This also constitutes an abuse of authority, which is defined as having three general types: physical abuse (i.e., excessive force and brutality), psychological abuse (i.e., harassment), and legal abuse (i.e., violating citizens' rights).

The myriad commissions that have investigated police-specific corruption essentially identified four groupings of behavior: organizational, predatory, subversive to justice, and small gain through gifts and discounts. The most common forms of corruption were making false reports and committing perjury, protecting illegal gambling, theft of drugs on the street, theft of seized property, receiving discounts on purchases, and selling information about police operations. Although these types of corruption are seemingly most prevalent, there appears to be no one type of corruption that is consistently found among *all* types of police agencies.

Not included in the survey of corruption by known commissions is the internal corruption of nepotism and exploitation of cracks in the administrative processes that allow for promotions, overtime, increases in pay, or the personal use of criminal evidence or police agency property. Examples of corruption include the following:

- Free or discounted meals or services
- Theft, larceny, and missing property
- Extortion
- Shakedowns
- Kickbacks
- Private security
- False arrest
- Fraud
- Bias and civil rights violations
- Protection of organized criminal enterprises and vice
- Excessive force
- Patronage
- Bribery
- Perjury
- Planting or padding evidence
- Domestic violence
- Driving under the influence or driving while intoxicated (DUI/DWI)
- Sexual misconduct and rape
- Criminal association
- Disclosure of confidential information

Notable Corruption Scandals

The following are some notable police corruption scandals.

Rampart Scandal, late 1990s: The Community Resources Against Street Hoodlums (CRASH) antigang unit of the Los Angeles Police Department (LAPD) Rampart Division was riddled with widespread corruption. Over 70 police officers directly assigned or tangentially connected with the Rampart CRASH unit were implicated in some form of misconduct. The convicted offenses range from unprovoked shootings and beatings to planting evidence and framing suspects, stealing and selling narcotics, bank robbery, perjury, and the covering up of evidence of these crimes. This is one of the most enveloping cases of documented police misconduct in U.S. history.

Chicago Special Operations Scandal, late 1990s–early 2000s: A number of Chicago police officers, members of the Special Operations Sections (SOS) of the Chicago Police Department, were alleged to have stolen money, drugs, and firearms from both drug dealers and noncriminal citizens alike. This was said to have occurred over a number of years but was not brought to light for investigation until 2004. The group members were accused of making false arrests, committing robberies and home invasions, acting under the guise of busting street gangs, and rounding up guns. A number of officers pleaded guilty to a range of charges related to the scandal, and the SOS has since been disbanded.

Baltimore Police Towing Scandal, 2008–11: This bribery racket involved payment in the form of kickbacks to dozens of officers for diverting cars damaged in traffic incidents to a specific body shop for repairs. The operation ended with a federal indictment in 2011. Although approximately 60 police officers were implicated in the scheme, only 15 were eventually convicted on charges ranging from insurance fraud and theft to taking kickbacks.

U.S. Corruption Commissions and Reports

The following are some notable commissions that investigated alleged police corruption and a brief statement of their findings.

Lexow Committee, New York City, 1895: This committee resulted from a legislative inquiry prompted by a series of investigations by private citizen reformers resulting in media portrayals of rampant vice and city corruption. This committee criticized interference by political leaders and payoffs in personnel decisions, and it recommended a better civil service. The Lexow Committee also proposed that the police department should be managed by one appointed police official, a proposal that was adopted and prevails to this day in American policing institutions.

Curran Committee, New York City, 1912: This committee was led by a New York City alderman and was triggered by the murder of a well-known gambler. It was widely believed that a New York Police Department lieutenant was the architect of the murder. One notable finding was that police took bribes to overlook evasion of taxes on liquor. Similar to the Lexow Committee, the end report by the Curran Committee criticized political interference and cronyism, as well as noting abysmal pay and low-quality recruits. The recommendations were to change these practices.

Knapp Commission, New York City, 1972: Once again, public outcry over media reports of corruption led to an investigation and report by the Knapp Commission. The Knapp Commission reported that police were taking payoffs from bars, and the commission recommended that gambling should be legalized and that Sunday liquor laws be abandoned, as these were an additional source of payoffs. The report was also mildly critical of the manner in which drug and prostitution laws were enforced.

Mollen Commission, New York City, 1994: This report was called for after the arrest of a New York City police officer for selling drugs. The Mollen Commission found examples of rogue officers engaged in various types of corruption and brutality. This panel recommended an external oversight board as well as a revamping of internal affairs practices.

Current Statistics

Annually, the National Police Misconduct Statistics and Reporting Project (NPMSRP) releases its "Police Misconduct Report." The NPMSRP is a project of the Cato Institute, a nonprofit, nonpartisan public policy research organization that focuses its research efforts around doctrines of individual liberty, limited government, free markets, and peace.

Statistics available for 2010 present an analysis of data compiled from a variety of media outlets available in the United States. Just over 4,800 reports of police misconduct were collected, involving approximately 6,800 victims alleging misconduct by approximately 6,600 sworn law enforcement officers (5 percent of whom were chiefs, sheriffs, or other law agency leaders). These reports include 247 fatalities. Of those reports of criminal conduct made public in the media, police were convicted and incarcerated for criminal offenses at half the rate of the general population. That is, of those law enforcement officers who were arrested, about one-third were convicted and one-third were incarcerated, for an average of approximately 35 months (compared to 50 months for the general population convicted for comparable offenses).

These reports of criminal conduct include the following areas.

Excessive force: Tracked allegations of excessive force for calendar year 2010 range from one to 171 officers involved for each state (Hawaii and South Dakota were not included in the analysis). Four states had a total of over 500 state officers accused in order as follows: California (171), Texas (123), New York (117), and Florida (110). Less than 200 cases were alleged each in Pennsylvania (96) and Illinois (92). The remaining 43 states—North Dakota (Fargo) and Nebraska (Omaha)—each had one claim of excessive force. New York City ranks number one for local allegations of excessive force with 58 officers accused, distantly followed by Los Angeles with 23. Interestingly, the cities with the largest number of local allegations do not all fall in high-ranking states. The following three cities actually outrank Los Angeles: Denver (31), Atlanta (30), and New Orleans (24).

Of all excessive force cases, over half (57 percent) involved physical force limited to body or baton contact. Less than 10 percent of excessive force cases yielded a fatality, but of the fatalities recorded, about half were related to claims of excessive force. Approximately 70 percent of these fatality incidents involved firearms.

Notable cases of excessive force include the Rodney King beating case in 1991, the Abner Louima beating case in 1997, and the Amadou Diallo shooting case in 1999.

In 1991, Rodney King was beaten by Los Angeles police officers after a high-speed car chase. A bystander recorded the incident on video, and the media presented this as a case of racial brutality. The four officers involved were charged and were granted a change of venue for trial. In 1992, three were acquitted; the fourth trial ended in a hung jury. The results of the trials are believed to have sparked the 1992 Los Angeles Riots. Additionally, the integrity of the Los Angeles Police Department was sullied, in spite of the acquittals.

After being arrested outside a nightclub in 1997, Abner Louima was taken in for booking. In the station house, he was brutally assaulted and forcibly sodomized with the handle of a bathroom plunger by three New York City police officers. In March 2000, the three officers involved were convicted of various counts of use of force, as well as conspiracy to cover up the event.

Amadou Diallo was a 23-year-old immigrant in New York City who was shot and killed by four plainclothes New York City police officers in 1999. The officers shot Diallo as he was reaching inside his jacket. It was later discovered that he did not have a weapon but was attempting to retrieve his wallet for identification. In February 2000, just one month prior to the verdict in the Louima case, these four officers were acquitted. This incident again raised questions about biased use of force, similar to the tone of the Rodney King incident.

Sexual misconduct: This subset of behaviors involving law enforcement officers ranges from noncriminal complaints of consensual sexual activity while an officer is on duty to sexual harassment, felonious sexual assault, and child sexual abuse. Using the NPMSRP data for the 2010 calendar year, sexual misconduct was the second most commonly reported type of police misconduct. Just under 9 percent of the officers accused of misconduct in public reports were involved in sexual misconduct complaints. Of those, well over half (57 percent) were involved in forcible nonconsensual sexual activity defined as sexual assault or battery. Additionally, over half (55 percent) of the complaints of sexual misconduct were with minors, although the minimum age is not included in the NPMSRP Police Misconduct Report.

Drug-related misconduct: In the mid-1990s, a number of cities experienced drug-related corruption scandals, including Atlanta, Chicago, Cleveland, Detroit, Los Angeles, Miami, New Orleans, New York City, Philadelphia, Savannah, and Washington, D.C. The primary charges involved aiding in trafficking and distribution, extortion and protection of dealers, stealing and selling drug evidence, and skimming confiscated drug money.

The Law Enforcement Against Prohibition (LEAP) group, comprising law enforcement officers who consider current U.S. drug policies to be ineffective and even harmful, requested that the NPMSRP examine the relationship between officer misconduct and the War on Drugs. The analysis included only data from public reports directly and clearly tied to specific drug policies. The analysis revealed the following drug-related patterns of police misconduct for the 2010 calendar year: about 10 percent of law enforcement agents were accused of misconduct that involved drugs in some way; and half of those officers were charged, convicted, or sentenced for those incidents.

The Price of Police Corruption

There are a number of costs tied to the variety of behaviors falling under the rubric of police corruption. First and foremost, it diminishes the capacity for public trust, particularly in communities that have been traditionally excluded or systematically targeted for abuse by the state. This is particularly evident in some of the more notable cases alleging police use of excessive or lethal force against men of color (see notorious cases listed above). Police integrity becomes tarnished. Corruption limits the ability of fellow law enforcement officials to engage in their own positions effectively. Additionally, police corruption endangers the lives of ethical officers and the general public alike, as deviant officers divert attention and resources from the protection of the public good.

Combating Police Corruption

Whether it is called police deviance, misconduct, or corruption, this is still largely an unstudied and underresearched phenomenon. The dearth of available data impedes the ability to understand current statistical trends that could aid in combating corruption. This absence of data inhibits the capacity to analyze the nature, scope, and degree of police misconduct in the United States.

Although the eradication of corruption may be preferred, significant reduction is more likely. The following are general recommendations gleaned from the various reports to aid in this endeavor: create panels, committees, or agencies for external oversight; change practices of recruitment and training; hold chain of command responsible for subordinate misconduct; redefine and reiterate the meaning of integrity in policing; and decriminalize "victimless" crimes most often correlated with police corruption (drugs, gambling, and prostitution).

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See Also: Bribery; Corruption; Ethics; Extortion; Gambling and Lotteries; Kickbacks; Knapp Commission; Mollen Commission; Organized Crime; Perjury; Police Brutality; Prostitution; Public Corruption; War on Drugs.

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Political Assassinations

Political assassinations, which result in the murder of the intended victim, are often motivated by political, ideological, or financial gain; fame or notoriety; and/or serious mental illness. Although political assassinations take place in democracies, they are more common in dictatorships, yet they may not receive the same volume of media coverage by the Western press.

When considering political, ideological, or financial gain, the political assassin intends to alter an unpopular belief or the course of action of the victim. President Abraham Lincoln opposed slavery, Mahatma Gandhi protested discrimination and supported independence for India, and Martin Luther King, Jr., advocated racial equality, all of which were socially advanced positions the assassin hoped to derail. Sirhan Sirhan's assassination of Robert F. Kennedy provides another example of political motivation; the assassin admitted he was motivated by Senator Kennedy's support of Israel, as evidenced by approval of the sale of military aircraft to Israel. There are many who theorize that Senator Kennedy's assassination may also have been motivated by his zealous efforts to legally prosecute the Mafia.

The assassination of President John F. Kennedy left an indelible impression on the landscape of American politics. Congressional commissions and law enforcement investigations plus countless books and articles have explored the circumstances surrounding his assassination. It seems safe to suggest the assassination was motivated by political, ideological, and/or financial gain.

Interesting considerations are in the exploration of political assassinations is the effectiveness of the act itself and what becomes of the movement or cause after the leader is murdered. In some instances, such an extreme measure of repression does neutralize the forward momentum that the leader embodied. However, at other times, a backlash to the assassination itself and/or the loss of the beloved and inspiring individual propels the movement onward with fervor.

Power and Ideological Motivations

It is not uncommon for a political assassination to be motivated by an unremitting and merciless goal to maintain existing power, perhaps in the form of a dictatorship or authoritarian government. Leon Trotsky, a Russian revolutionary and Soviet politician, opposed Joseph Stalin, the premier of the Soviet Union, and was assassinated. Trotsky was living in exile at the time yet was still perceived as a threat by Stalin, so most likely the assassination was retribution to silence the adversary as well as quell future resistance. Ahmad Shah Massoud led the rebel movement against both the Taliban and al Qaeda in Afghanistan and was assassinated. The most common theory is that Osama bin Laden was behind the assassination, intending to curry favor with the Taliban.

There have been a number of political assassinations fueled by ideological causes. Archbishop Oscar Romero of El Salvador was assassinated to silence his support for social justice and opposition to violence. Thirty years later, the Salvadoran president apologized for the government-sanctioned murder of Archbishop Romero. The assassination of Archbishop Romero was one in which the social movement rallied and then surged following the murder of its most vocal leader. Archbishop Romero had predicted that he would be killed and accepted it as the price of social change. The movement achieved greater international attention and support following the attempt to silence this voice for social equality.

Several assassinations have ideological roots that lie in the existence and/or maintenance of Israel. The assassination of Egyptian president Anwar Sadat is a notable example in that it was directly connected to his controversial support for a peace treaty with Israel. However, the ideological fervor may lie on both sides of a particular issue. To note, Israeli prime minister Yitzhak Rabin, who was dedicated to the cause of peace in the Middle East, was assassinated by an Orthodox Jew after signing a peace treaty with Arabs involving Israeli land.

An additional but related form of political gain lies in the attempt to destroy political power altogether. The political assassination of President William McKinley was motivated by an anarchist who did not believe in government leaders having such absolute power, especially in the face of the vast majority of citizens being so powerless.

Political assassinations that seek fame, notoriety, and media attention often attempt to counter their sense of and frustration with anonymity.

Many make the calculated decision to target political figures specifically to garner notoriety. Their primary motivation is not political at all, despite the political figure. The media may think the political issues espoused by the target dictated the act and so an attribute ideological motive to the assassin, but the reality is more often a search for the high-profile attention that accompanies political assassinations.

Mental Illness Motivations

Political assassinations involving serious mental illness may be motivated by a command hallucination, persecutory delusion, serious depression, and/or substance abuse. Often, the perpetrator not only has a significant mental illness but also has recently discontinued psychiatric treatment while simultaneously experiencing a loss or failure, whether actual or perceived as such, in the period of time leading to the attack.

A notable example of serious mental illness driving a political assassination is that of Charles Guitteau, who killed President James A. Garfield. He credited himself with the president's success and so felt entitled to a presidential appointment, which did not materialize. His feelings shifted dramatically from admiration to hatred. Psychosis also drove John Hinckley to attempt to assassinate a sitting president of the United States. Obsessed with and unsuccessful in his attempts to romantically connect with Jodie Foster, Hinckley decided to impress her by assassinating President Ronald Reagan.

It is important to note that political assassinations perpetrated by seriously mentally ill offenders may also be motivated by some other form of gain. For example, although Sirhan Sirhan's assassination of Robert F. Kennedy was politically motivated, all psychiatric experts who testified at trial diagnosed him with schizophrenia, though they differed as to specific type.

Suspicious Cases

A subset of political assassinations has reputed connections to white-collar crime and corporate fraud. These murders are not always cleanly proven as to be assassinations, yet they have subsequent theories that gain considerable traction in reputable sources. The death of Pope John Paul I, who died just over a month after assuming the papal role, is widely believed to be such an example. Pope John Paul I was investigating allegations of financial wrongdoing at the Vatican Bank, advocating reassignment of numerous powerful church figures, and proposing major changes in church doctrine when he suddenly died. During that time, the Vatican was implicated in the scandal involving the financial ruin of Banco Ambrosiano, which has endured as one of Italy's largest cases of fraud. There were discrepancies and contradictions in the accounts of the pope's death, key items disappeared, the body was never autopsied, and several people investigating the situation were subsequently murdered. Deep-seated suspicions of foul play in the death of Pope John Paul I persist, with the association to the Vatican Bank scandal credited as perhaps the most popular motivation for his untimely demise.

Character Assassinations

Another form of assassination occurs when the reputation of a person is destroyed via character assassination. Character assassination is the deliberate effort to render a person ineffective in the public domain by virtue of spreading known untruths to damage his or her credibility. A striking example in recent political history is the persistent rumor that President Barack Obama was not born in the United States, despite proof of U.S. citizenship. Increasingly, character assassination has become commonplace in American politics, rendering the political landscape more negative, unforgiving, and harsh.

A smear campaign is related to character assassination in that half-truths, unverified gossip, and/or information taken out of context are presented as authentic and accurate in order to hurt the target's reputation. In this age of instant communication, 24-hour news cycles, and ease of Internet accessibility, such information spreads with lightning speed, placing the targeted party on the defensive and needing to prove the negative, which is exceedingly difficult.

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See Also: Banco Ambrosiano; Bank Fraud; Corruption; Kennedy, John F.; Obama, Barack; Organized Crime; Public Corruption; Reagan, Ronald; State Crime Theory; Vatican Bank.

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Pollution, Air

Air pollution can be described as any substance that, when released into the air, threatens the health and well-being of living organisms and/or ecosystems. Air quality is a topic of relevance for everyone: The Environmental Protection Agency (EPA) estimates that the average adult breathes 3,000 gallons of air per day. Environmental crime researchers estimated in 2008 that nearly 60 percent of the U.S. population resides in areas with unhealthy levels of air pollution. Estimates from the World Health Organization suggest that air pollution is the chief cause behind nearly 2 million annual premature deaths annually worldwide. As such, air pollution has drawn attention from green criminologists and other crime researchers interested in the regulation and enforcement of laws that protect clean air.

Air Pollution Cases

One of the earliest accounts of severe air pollution occurred in 1948 in the city of Donora, Pennsylvania. In late October 1948, a thick fog settled over the city, which at the time was populated by approximately 14,000 residents. An influx of warm air trapped masses of pollutants and generated thick yellow smog that stagnated over Donora for five days. Impacts were felt instantaneously, resulting in hundreds of hospitalizations, at least 20 deaths, and thousands of injuries/illnesses before rain came and dissipated the smog. Similar incidents occurred through the 1950s in Los Angeles, New York City, and Poza Rica, Mexico. In 1952, smog settled for four days over the city of London, where it was reported to have decreased visibility to one foot, and is estimated to have caused over 4,000 deaths.

In 1962, conservationist Rachel Carson published the landmark book *Silent Spring*. It is one of the most widely read and critically acclaimed works on industrial pollution and public health. Carson focused on the deleterious effects of airborne pesticides, especially DDT, on ecosystems, associating pesticide use with dwindling populations of bird species and illness in humans. She further went on to criticize the chemical industry for misleading consumers about hazards associated with pesticide spraying. Public outcry over *Silent Spring* contributed to the environmental movement in the 1970s, and the first Earth Day was celebrated on April 22, 1970. Although the U.S. environmental movement marked many gains for public health, air pollution was far from eliminated.

On December 3, 1984, just after midnight, Union Carbide's pesticide plant located in India leaked several tons of methyl isocyanate, a highly toxic chemical gas, into the air of the densely populated city of Bhopal. Most residents were asleep at this time and awoke to acute effects of methyl isocyanate exposure, including coughing, convulsions, and burning eyes and throat. Chaos and panic ensued, with death and serious illnesses occurring instantaneously. Estimates on the final death toll of Bhopal vary greatly, from low estimates of 3,000 lives lost to counts as high as 20,000. Thousands of other victims endured long-term effects, including blindness, cancers, and birth deformities. Two years later, the Chernobyl nuclear power plant in Soviet Ukraine would endure a core meltdown, releasing lethal levels of radiation into the air. The entire city was evacuated, with sections remaining uninhabitable even today.

More recently, a winter weather inversion, comparable to that which occurred in London in 1952, immobilized the city of Tehran, Iran. In December 2005, smog caused city officials to cease operations, including closing schools and government offices, as well as banning city traffic to lift the pollution. Approximately 1,600 people were hospitalized. Today, major metropolitan areas of China endure particularly severe smog problems, with air pollution at times becoming so intense that government officials encourage citizens to stay indoors or wear masks if they are outside.

Impact on Human Health and Behavior

A majority of air pollution remains relatively unnoticed by the public at large. A unique facet of environmental crimes, including air pollution, is that the harms they impose may go undetected for several years before they have caused enough damage to become visible. Far more common than weather inversions or industrial failures are the background levels of toxic air pollutants that people are exposed to every day. These toxins may not cause immediate death, but long-term exposure at low levels is linked to sickness, suffering, terminal illnesses, and diseases that compromise human health and behavior.

Air pollutants can be classified into one of four categories: gaseous pollutants, persistent organic pollutants, heavy metals, and particulate matter. Each of these pollutants is associated with different types of consequences when absorbed by humans.

Gaseous pollutants include sulfur dioxide (SO_2), nitrogen oxides (NO_x), carbon monoxide (CO), ozone (O_3), and volatile organic compounds (VOCs). Humans enduring exposure to increased levels of sulfur dioxide and nitrogen oxides have been observed to suffer respiratory impairments, including nose and throat irritation, constriction of airways, and shortness of breath. These symptoms are exacerbated in individuals with asthma. Exposure to moderate levels of atmospheric sulfur dioxide has been associated with lung dysfunction. Carbon monoxide has been found to reduce blood circulation to major organs by attaching to red blood cells and limiting their ability to transport oxygen. This is particularly damaging to the heart and brain; a reduced oxygen level in the brain is associated with concentration problems and delayed reflexes. Ozone and volatile organic compounds have been associated with asthma and lung disease.

Persistent organic pollutants include pesticides, dioxins, and polychlorinated biphenyls (PCBs). This group of pollutants is insoluble and is able

Shanghai, China, at sunset on May 19, 2008, as seen from the observation deck of the Jin Mao tower. The sun is not dropping below the horizon—rather, it has reached the smog line. Major metropolitan areas of China experience particularly severe smog problems. At times, the air pollution becomes so intense that the government encourages citizens to stay indoors or wear masks if they are outside.

to bond to lipids (fat), which allows them to resist biodegradation and accumulate in food chains. In the United States, there are currently thousands of pesticides in use. Humans come into contact with pesticides by inhaling them or consuming foods treated with them. Acute effects of pesticide exposure include nausea, vomiting, and headaches, whereas long-term exposure to pesticides has been associated with reproductive and neurological damage as well as formation of cancers. Dioxin exposure has been linked to heart disease as well as damage to the central nervous system, including impaired brain development in children. PCBs are synthetic compounds with dioxin-like properties. They have been identified as a probable carcinogen by the EPA and have been linked to reproductive damages (low birth weight and low conception rate), neurobehavioral problems, and endocrine disruption.

Heavy metals are identified on the periodic table of elements and include lead (Pb), mercury (Hg), manganese (Mn), chromium (Cr), and cadmium (Cd). Heavy metals cannot be broken down; can remain in soil, air, and water; and, once in the human body, are absorbed at a faster rate than they are metabolized. Heavy metal pollution has been linked to heart problems in humans, including tachycardia. Heavy metal pollution has also been linked to a variety of nervous system impairments, including learning problems, memory problems, IQ reduction, and emotional behavioral disorders, with the most widely studied heavy metal pollutant being lead. Lead exposure in particular has been linked to increased criminal and delinquent behavior, especially violent crime.

Finally, *particulate matter* (PM) is an umbrella term referencing complex mixtures of air pollutants. These mixtures are identified by size and can be further categorized into ultrafine particles (less than 0.1μm in aerodynamic diameter) and coarse particles (greater than 0.1μm in aerodynamic diameter). Because of their respective sizes, coarse particles are able to concentrate in the upper respiratory system, whereas ultrafine particles are able to infiltrate lung alveoli. Particulate matter causes inflammation and irritation in the lung, with ultrafine particles generally posing more serious human health threats than coarse particles. Inflammation induced by particulate matter has been linked to angina, hindrances in blood coagulation, and obstruction of blood vessels.

Climate Change and Global Warming

In addition to air pollution's direct threat to human health, air pollution also contributes to global warming and, in turn, climate change. The EPA identifies six air pollutants in particular—carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6)—as contributors to global warming. When these compounds are released into the atmosphere, they prevent the sun's rays from deflecting back into space. Instead, heat energy becomes trapped in the atmosphere, thereby increasing the temperature of the Earth. This process, also known as the greenhouse effect, threatens the stability of climates. The Earth's ecosystems depend on the historical consistencies in climate to maintain a homeostasis that organisms, including humans, rely on for survival. If the greenhouse effect continues at the current rate, rising sea levels, floods, and other "natural" disasters can be expected to occur with increasing frequency and severity.

What all of these pollutants share is that their dispersion and concentration in the air are largely attributable to the activities of humans, especially industrialization. Sources of air pollution can be divided into two categories: stationary and mobile.

Stationary sources of air pollution include industrial centers and factories. They encompass both singular point sources (e.g., a smokestack) and area sources—a collection of point sources emitting small amounts of pollution singularly, but a considerable amount cumulatively. Factories that burn coal, oil, or natural gas (fossil fuels) or that manufacture chemicals are major contributors to air pollution. The EPA reports that approximately 40 percent of the electricity generated in the United States comes from burning coal, a process associated with the release of gaseous pollutants and greenhouse gases, particularly sulfur dioxide. In China, 80 percent of the country's energy comes from burning coal; in 2007, China mined over two billion metric tons of coal. The petroleum industry is the largest industrial producer of volatile organic compounds in the United States, although it also releases high quantities of greenhouse gases. In 2011, the American Lung Association estimated that particle pollution from power plants, especially coal plants, kills 13,000 people annually.

Mobile sources of air pollution consist of nonstationary, moving sources of air pollution. These include automobiles, though other means of transportation (airplanes and buses) fall into this category as well. Fuel combustion in vehicles acts as a major source of nitrogen oxides, carbon monoxide, and sulfur dioxide. In 2002, the EPA estimated that combined mobile sources of air pollution accounted for 48 percent of all national air toxin releases. In 2002, the EPA also reported that between both mobile and stationary sources of air pollution, over four million tons of air toxins were released in the United States.

Laws to Protect the Air

For much of history, these sources of air pollution operated without government regulation. It was not until the problems with smog became undeniable in the 1950s that lawmakers first responded to air pollution. The first federal law in the United States devoted toward regulating air pollution was the Air Pollution Control Act of 1955. This act allocated federal funds toward research initiatives seeking to better understand air pollution. Subsequent legislation relating to air quality includes the Clean Air Act of 1963, the Motor Vehicle Control Act of 1960, the Motor Vehicle Air Pollution Control Act of 1965, and the Air Quality Act of 1967. The most sweeping set of reforms pertaining to air pollution, however, are contained in the Clean Air Act of 1970.

Among the most significant contributions of the Clean Air Act (amended most recently in 1990) were the establishment of a national set of uniform air quality standard, and the extension of authority to the government to monitor and clean the air. The Clean Air Act established seven criteria air pollutants that are monitored and regulated nationally. These seven criteria air pollutants include sulfur dioxide (SO_2), nitrogen oxides (NO_x), carbon monoxide (CO), lead (Pb), hydrocarbons (HC), ozone (O_3), and particulate matter (PM). Furthermore, the act established vehicle emission standards, and regulates vehicle tailpipe emissions of hydrocarbons (HC), carbon monoxide (CO), and nitrogen oxides (NO_x). In addition, the act required new industrial facilities to register for permits, disclosing the type and quantity of pollutants released. Finally, the act required states to disclose to the EPA their plans for monitoring and controlling air pollution, known as state implementation plans (SIP).

The EPA (also established in 1970) was designated as the chief regulating authority of the Clean Air Act. When companies are found in violation of the act, the EPA has a range of criminal and civil sanctions available to enforce compliance. These sanctions include fines but also in some cases can include incarceration. States may also be subject to sanctioning. The EPA may also sue corporations in civil court over noncompliance.

Rather than react to violations after they occur, the EPA demonstrates a preference for working with corporations to achieve voluntary compliance. To help industries meet air quality standards, the EPA establishes allowances for air pollutant releases per region and divides pollution credits among polluting industries.

Industries are permitted to save their pollution credits (banking), trade credits across facilities (bubble), close a facility for a specified time period (offset), or buy/sell credits to/from other companies (netting). Additionally, the EPA has adopted a corporate self-policing policy, arguing that such a policy incentivizes corporations to voluntarily disclose violations by reducing or waiving penalties. Empirical assessment of this self-policing program, however, suggests this initiative does not appear to increase corporate responsibility.

In 1986, Congress passed the Emergency Planning and Right-to-Know Act (EPCRA). Pursuant to this act, among other reforms, the EPA became required to make information on pollution a matter of public record. As a result, data on Clean Air Act violations, locations of air pollution sources, details on Clean Air Act offenders, and various air quality indices is accessible on the EPA's Web site.

In spite of the ubiquity and seriousness of harms associated with air pollution, environmental crime remains an area of criminology relatively under-represented in comparison to acts of interpersonal victimization (e.g., homicide and robbery). An exception to this is the work of green criminologists, who liken the severity of harms imposed by pollution to acts of interpersonal violence. As such, green criminologists interpret pollution as inherently criminal, even outside legal definitions.

However, criminologists working with traditional definitions of crime may also elucidate environmental offenses, offenders, and victims. The enforcement of environmental laws and efficacy of environmental policy in terms of offending remain areas of criminology in need of further study. Further, air pollution has been linked to correlates of index offending (low IQ and impulsivity) and may set into motion behavioral conditions conducive to offending. Thus, air pollution may be an important facet of offending that has yet to be integrated into mainstream crime theory frameworks.

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See Also: Automobiles; BASF Corp; Carson, Rachel; Clean Air Act; Coal Mining; Corporate Dumping; Environmental Protection Agency, U.S.; Global Warming; Hazardous Waste; Kepone Scandal; Pollution, Water; Reform and Regulation.

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Pollution, Water

Tap water in the United States is remarkably safe compared to that in many countries, even other first world nations, yet fear of tap water quality drives Americans to spend $21 billion on bottled water each year. The quality of bottled water is not regulated and therefore cannot be assumed to be of higher quality than tap water. This is not to say that there are not legitimate concerns about the quality of tap water. The Safe Drinking Water Act of 1974 has been updated only moderately since its enactment. Many large water utilities throughout the country find unregulated pollutants in their water supplies. This is because water systems and municipalities haven't matched modern technologies, particularly those employed by the pharmaceutical and mining industries. Most water utilities do not possess the capacity to capture and scientifically detect all pollutants or understand their impact on the environment, human health, or long-term consequences.

In the United States, tens of millions of people consume maintenance pharmaceuticals such as oral contraceptives, cardiac medications, benzodiazepines (psychoactive drugs used to treat anxiety), antidepressants, and drugs to treat metabolic processes, such as cholesterol-lowering compounds. These pharmaceutical products are routinely found in water systems because of concentrations and buildup in municipal wastewater. Metabolites from the medications are present in the urine of those who consume the medications. These compounds then persist and become concentrated in wastewater. They cannot be filtered out by antiquated wastewater facilities.

"Fracking" and the Mining Industry

Mining and gas-drilling operations leave significant deposits in freshwater systems. Hydraulic fracturing, a process commonly known as "fracking," involves the injection of proprietary chemical mixtures into the ground, customarily into impermeable layers of rock in order to force the release of gas. To accomplish this, millions of gallons of unpublished chemicals, water, and sand are injected into a well along with thousands of pounds of pressure to force the release of natural gas. Atop the Marcellus Shale, an area between New York and Pennsylvania, four million gallons of chemicals and water were injected with the use of 10,000 pounds of pressure. Recent studies publicized that "salty, mineral-rich fluids deep beneath Pennsylvania's natural gas fields are likely seeping upward thousands of feet into drinking water supplies." Although the fluids did not contain chemicals from fracking, studies revealed that fluids and chemicals could migrate in ways that the mining companies claimed were impossible.

Gas and mining experts have declared the recent studies as "scientifically flawed" and repeated their position that fracking is relatively harmless. Nine out of 10 gas wells in the United States employ fracking as the primary method of drilling. The problem created by the injection of a proprietary chemical mixture accompanied by the application of immense pressure is that the chemicals under pressure migrate in unpredictable patterns. Specifically, chemicals have moved upward 1,400 feet when it was thought that if they were to move, they would do so at a gradual pace that would take more than 1,000 years. Further, it's been discovered that they often travel into aquifers and other groundwater storage areas.

Natural movement of chemicals takes tens of thousands of years to travel through rock layers. Under the pressure of fracking, this process takes place in less than 100 years. If the rock layers are semipermeable, the process of transferring the chemicals from the rock to the water table can take 10 years. Finally, the impact of the fracking destabilizes the geologic processes for decades after the fracking is completed. This factor indicates that water quality can be impacted in a volatile fashion years after the drilling has ceased.

In 2011, the Fracturing Responsibility and Awareness of Chemicals Act (also known as the FRAC Act) was proposed by several Democratic senators from New York, Pennsylvania, and Colorado. This act would repeal the gas and oil industry's exemption from having to disclose its chemical compounds. The reasoning is that water system regulators cannot test for chemicals unless they know which chemicals are used. Banishing the protection of "trade secrets" would enable the regulators to more effectively monitor the water supply. Republicans in Congress prevented the act from passing.

The gas and oil industries' potential damage to water systems isn't just from mining activitiesl it can also arise from oil spills. The Ogallala Aquifer, one of the largest freshwater aquifers in the world, provides irrigation to 27 percent of the nation's crops and provides water to 82 percent of the population in the states of South Dakota, Texas, Nebraska, New Mexico, Colorado, Wyoming, Kansas, and Oklahoma. This aquifer could easily be compromised by the Keystone XL pipeline, which would route crude oil from Alberta, Canada, to Houston, Texas. The proposed pipeline would run directly over the aquifer. Any oil spill would compromise the aquifer and thereby compromise freshwater availability to crops, livestock, and people.

Privatization

When water is limited or polluted, the value of potable water goes up. This stimulates water markets and privatization of public water systems. If water shortages exist or can be created, water companies can garner huge sums, which buy them greater influence to purchase public utility contracts. This scenario has repeatedly occurred in the American West. There are multitudes of incidents where those in possession of water rights sell their land and rights at exorbitant rates or threaten to pump out the water to a private entity, thereby depleting in a short time a long-standing public benefit. Alternatively, they threaten ecological damage and pollution to the water source through permitting of mining and/or development atop aquifer recharge zones (surface water input sources to groundwater storage areas). Privatization of water sources has led to conflict between ranchers and farmers against developers and miners. The financial resources of the miners and developers yield considerable political influence, which means that they receive greater allocations of water. As a result, small to medium-size ranches and farms shut down operations. This occurs with regularity throughout western states such as Colorado, Nevada, New Mexico, California, and Arizona.

The large-scale corporate-owned farms such as those in the Central and Imperial Valleys of California use 80 percent of California's water while contributing 10 percent to California's economy. The wealth and prominence of these farms have enabled them to not only inefficiently use a rare commodity in a desert environment but also heavily pollute both fresh and ocean water through discharge of significant loads of fertilizers and pesticides through runoff.

Algae blooms and dead zones are endemic to waterways that are downstream from agricultural fields. Both are created by the presence of nitrogen from chemical fertilizers. This is particularly true in the Gulf of Mexico, the terminus of the Mississippi River. The Mississippi River collects agricultural pollutants and pushes them toward the gulf.

A cycle is generated whereby pollution and fear of contamination cause more people to buy bottled water. Those who pollute the available water systems (e.g., large-scale agriculture, mining, and developers) create water deficits, and consumers are forced to pay for either an antiquated water system with unregulated pollutants or a privatized system that does little to improve quality, as standards do not change. Those who have the largest financial resources deny the environmental impact of their industries' activities. Those who regulate public systems, such as municipal boards, are under constant financial pressure and therefore create private contracts, which have not proven to be better for consumers. This is most prominent in developing countries whose governments are often exploited by large corporations and agencies like the International Monetary Fund to sell rights of public utilities. According to Maude Barlow, United Nations senior advisor on water issues, "when the poor cannot afford private companies' rates they are forced to make a Hobson's choice: either drink contaminated water or face death by dehydration."

The net result is that clean freshwater is becoming rare, fish and aquatic wildlife are becoming toxic and inedible, and diminished productivity of these water systems creates economic hardship for those who are dependent upon them. Freshwater is a finite resource—its accessibility is limited and its distribution unequal.

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See Also: Allied Chemical Corp.; American Cyanamid Co.; BASF Corp; BP PLC; Buffalo Creek Disaster; Canadian Mining Scandals; Carson, Rachel; Clean Water Act; Coal Mining; Corporate

Dumping; Creative Compliance; Dow Chemical Co.; Endangered Species Act; Environmental Protection Agency, U.S.; *Exxon Valdez* Oil Spill; Georgia Pacific LLC; Global Warming; Grassy Narrows First Nations Reserve; Gulf of Mexico Oil Spill; Hazardous Waste; Industrial Revolution; Love Canal; Nader, Ralph; National Environmental Policy Act; Polyvinyl Chlorides; Reform and Regulation; Teledyne Industries Inc.; Three Mile Island Disaster; Times Beach Contamination; Toxic Substances Control Act; Waste Management Inc.; Whistleblowers.

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Polyvinyl Chlorides

Polyvinyl chloride (PVC), a synthetic compound commonly known as vinyl, has myriad applications because of its favorable properties and low production costs. Since B. F. Goodrich Company began mass-producing PVC in the 1930s, PVC has become the third most widely produced plastic, with 34 million tons manufactured each year. However, the plastic is increasingly criticized for its detrimental health and environmental effects. This article describes the PVC manufacturing process, outlines the industrial and commercial applications of PVC, discusses the health and environmental risks associated with the resin compound, and examines options for its disposal.

PVC Manufacturing and Commercial Use

In its basic form, PVC, a combination of chlorine, hydrogen, and oxygen, takes a rigid structure that is resistant to water and chemicals and provides electrical insulation. However, PVC is vulnerable to light and heat exposure. To stabilize PVC, additives are introduced into the material during the production process. Though the particular stabilizers vary depending on the application, lead, cadmium, and other mixed metal solutions are commonly utilized. For flexible PVC, plasticizers, typically phthalates or adipates, are added to pure PVC to soften it.

Because PVC can be manipulated to fit almost any mold and because it has such auspicious properties but still can be manufactured at a relatively low cost, it has been used across industries in vast numbers of products. PVC is used to create pipes, flooring, siding, and other products in the construction sector. In the automotive industry, PVC is used for dashboards, door panels, upholstery, and wire coating, among other applications. In the clothing and apparel industry, PVC has been used for bags, backpacks, rain gear, shoes, and watchbands. The medical industry uses bed liners, blood bags, catheters, gloves, tubing, and mattress liners made from PVC. Garden hoses, outdoor furniture, tarps, and shelving often use PVC, as do toys, baby bibs and diaper covers, children's swimming pools, strollers, and shower curtains. Packaging for personal care items such as shampoo, lotion, and soap; small electronics; and other consumer goods relies on PVC as well; as does commercial packaging for transport.

Health and Environmental Risks

While PVC has provided innumerable cost-effective solutions for commercial applications, the health and environmental implications of the material are alarming. As early as 1969, studies indicated that vinyl chloride, a building block of PVC, contained carcinogenic properties. Additional studies linked exposure to vinyl chloride to liver, brain, and respiratory system cancers. Subsequently, the Environmental Protection Agency (EPA) has identified vinyl chloride as a human carcinogen. Exposure to vinyl chloride as well as other chemicals in the manufacturing process has been linked to health issues including cancer, respiratory damage, birth defects, and liver and kidney problems.

Other health concerns derive from the lead additive for stabilizing PVC as well as the phthalate softening agents. Some scientists claim that as softened PVC ages, the phthalates leach into the air and can be inhaled. Individuals can be exposed by touching the aging items. Alternatively, children who have toys made with PVC may ingest chemicals if they put the toys in their mouths. Studies have found phthalates to disrupt the endocrine system. Dr. Earl Gray identified a cluster of male symptoms, including reduced testosterone levels, lower sperm counts, and abnormal testes growth, as the "phthalate syndrome," results that have been replicated in a human study by Dr. Shanna Swan. High contact with softening agents has also been linked to increased incidence of asthma and allergies. On the basis of these scientific findings, the European Union has banned the use of PVC in the manufacture of toys for children, and many companies in the United States have voluntarily eliminated the material from their children's products.

Options for Disposal

Additional challenges arise in the disposal of products containing PVC. Because PVC includes high levels of chlorine, it cannot be mixed with other plastics in the recycling process. The wide range of additives in PVC diminishes quality control for recyclers, so when PVC is recycled, it is usually used for low-quality products. Together, these issues reduce the economic incentives for recycling PVC products. As a result, they often end up in landfills or incinerators in the waste disposal process. In landfills, PVC products can release lead and other chemicals. If burned, PVC releases dioxin, a carcinogen, as well as toxic ash. The EPA announced new rules regarding dioxin emissions in the manufacture of PVC, but industry groups have filed a lawsuit claiming the rules are too harsh and economically burdensome; nevertheless, environmental groups have filed a lawsuit seeking greater restrictions on emissions.

Despite the dangers of PVC production and use, analysts expect that by 2017, PVC will be produced at the rate of 45 million tons per annum. At the same time, given the increased attention to the negative health and environmental implications of PVC, new alternatives enter the market at a rapid pace. In the building industry, bamboo, ceramic tiles, and other natural materials offer substitutes for PVC. Polypropylene and polyethylenes as well as natural rubber have been used for soft toys and baby products. Instead of PVC packaging, reusable options or cardboard have been utilized. With industry trade groups and environmental activists pitted against each other, however, consensus about the use and disposal of PVC remains elusive.

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See Also: Employee Safety; Environmental Protection Agency, U.S.; Hazardous Waste; Pollution, Air; Pollution, Water; Unsafe Working Conditions.

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Pontell, Henry

Henry N. Pontell, a renowned scholar of white-collar and corporate crime, social deviance, and social control, has introduced the concepts of system capacity and collective embezzlement to criminologists. He and his coauthors, Stephen Rosoff and Robert Tillman, are widely known for their book *Profit Without Honor: White-Collar Crime and the Looting of America* (2010), which is in its fifth edition. Although he is best known for his research on financial and economic crimes—the savings and loan scandal, mortgage fraud, and stock frauds—and health care frauds, he has also written on identity fraud, cyber and computer crimes, Internet gambling, white-collar crime's relationship to organized crime, and the control and punishment of white-collar and corporate crime.

Pontell's scholarship is valued not only for its accessibility but also for its policy implications. He has worked with numerous organizations and law enforcement agencies including the Federal Bureau of Investigation (FBI) and the U.S. Secret Service, and he has testified before Congress on financial fraud and before the Financial Crisis Inquiry Commission on mortgage fraud.

Before arriving at the University of California, Irvine, in 1979, he received B.A., M.A., and Ph.D. degrees in sociology from the State University of New York, Stony Brook. His dissertation served as the basis for his first book, *A Capacity to Punish: The Ecology of Crime and Punishment* (1984), which introduced the term *system capacity* to help explain the failure of the criminal justice system to deter crime.

Health Care Fraud

At Irvine, he continued to write about social control and deviance and published the first of many editions of *Social Deviance: Readings in Theory and Research*. His attention turned to the study of white-collar crime when he collaborated with Paul Jesilow and Gilbert Geis on a National Institute of Justice–funded study of medical fraud. The trio's research on fraud in government medical benefits programs lasted for over a decade, producing over a dozen articles and chapters and the book *Prescription for Profit: How Doctors Defraud Medicaid* (1993)—the first major scholarly work on health care fraud.

Savings and Loan Fraud

When the saving and loan crisis came to light in the late 1980s, Pontell teamed with Kitty Calavita to study the unfolding events. Their seminal three-year investigation, funded primarily by the National Institute of Justice, generated 13 articles and a book, *Big Money Crime* (1997), which meticulously documents the role of a complicated network of savings and loan insiders and outsiders in creating the crisis, delaying prosecutions, and increasing costs for taxpayers. During this study, they created the now widely accepted term *collective embezzlement* to describe the phenomenon in which an institution, in this study a savings and loan, is both the weapon used to perpetrate the crime and the victim of the crime. Robert Tillman shared authorship of the book and four of the articles. William K. Black, a former regulator whom Pontell and Calavita met while conducting the study, coauthored an article with them.

International Focus and Service

Coauthoring "International Financial Fraud: Emerging Trends and Issues" with student Alexander Frid in 1999 signaled Pontell's interest in an international perspective on white-collar and corporate crime. Since then, a significant portion of his work has focused on white-collar crime in Asia. He has written several articles and, with Gilbert Geis, coedited a special issue of the *Asian Journal of Criminology* (2010) on white-collar and corporate crime, as well as the well-received *International Handbook of White-Collar and Corporate Crime* (2007). He has held visiting and honorary appointments at the Australian National University, the University of Macau, the Macau University of Science and Technology, Waseda University in Tokyo, the University of Melbourne, and the University of Hong Kong.

Pontell has served as vice president of the American Society of Criminology and president of the Western Society of Criminology, and he is a fellow of both organizations. He is a recipient of the Donald R. Cressey Award from the Association of Certified Fraud Examiners, the Albert J. Reiss, Jr., Distinguished Scholarship Award from the American Sociological Association, the Paul Tappan Award from the Western Society of Criminology, and the Herbert Bloch Award from the American Society of Criminology.

He is known as a generous man. In addition to writing with scholars and students previously mentioned, he has coauthored with Miho Akada, Duncan Chappell, John Dombrink, Erich Goode, Tokikazu Konishi, James Meeker, Mary Jane O'Brien, David Shichor, and Paul Wilson. Pontell has also coauthored numerous articles with former students, including Susan Will, William K. Black, Gregory C. Brown, Daniel Granite, Constance Keenan, Patrick Kinkade, Matthew Leone, Andrew Peterson, Tomson Nguyen, Stephen Rosoff, Lawrence Salinger, John Song, Anastasia Tosouni, and Wayne Welsh.

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See Also: Computer Hacking; Embezzlement; Gambling and Lotteries; Geis, Gilbert; Health Care Fraud; Identity Fraud or Theft; Internet Fraud; Investigation Techniques; Medicare and Medicaid Fraud; Mortgage Fraud; Multinational Corporations; Organized Crime; Savings and Loan Fraud; Stock and Securities Fraud.

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Ponzi Schemes

In the early 20th century, Charles Ponzi was able to convince people to give him money with a promise of high returns in a short time period, with little risk. This practice is now known as a Ponzi scheme. These schemes, which are different from pyramid scams, convince people to invest money (which is secretly never invested) in order to continue a cycle whereupon new investors provide the profits for the previous clients and the scammer. Eventually, the investors continue providing money to the scam because it delivered as promised, but the majority of people never see their money again. These crimes are still committed today, with Bernard L. (Bernie) Madoff as one of the most notorious scammers, ensnaring potentially billions of dollars for his Ponzi scheme.

Carlos (Charles) Ponzi

Although there is a question whether he was the originator of these acts, Ponzi is the namesake of these scams. Ponzi arrived in Boston in 1903 from his home country, Italy. He was college educated and characterized as a very confident and charismatic young man. After his arrival in the United States, he had little money, so he worked, various odd jobs. In 1907, he moved to Montreal, Canada, and found a position as a bank teller. This financial institution gave high-interest loans to recent Italian immigrants, which eventually bankrupted the bank and caused it to close. Ponzi would later be charged with forging bad checks, which sent him to a Canadian prison for three years. After his release, he became involved in smuggling Italian immigrants into the United States, which earned him two years in a U.S. prison. In 1918, he moved back to Boston and married Rose Gnecco. He continued working various jobs, and in the next two years, convinced thousands of people to give him money to invest, which he never did.

While working in the United States, Ponzi developed his idea of a scheme that would earn him a lot of money—and give him a historical legacy. He received a letter from a company in Spain that happened to contain an international reply coupon, which was used as a means for sending return postage internationally. The coupons could be purchased in one country and then redeemed in another for the equivalent value of that nation's stamps. Ponzi figured, based on postwar exchange rates, that coupons bought in Europe were worth more in America than what they cost to purchase at their point of origin. He would have people buy these coupons in large quantities in other countries and send them to him. He would then exchange the stamps for more than he paid for them and then sell them, making a speculated 400 percent profit. He gathered investors, promising them a 50 percent profit in a short amount of time. However, the scheme did not pay off as intended, so he continually needed new investors to pay the promised monies to past investors. He continued this scam for many years. He was able to purchase a mansion with a heated pool in Lexington, Kentucky. It was reported that he made approximately $250,000 a day or $2 million a week.

In 1920, the *Boston Post* investigated his business practices, which led to investors wanting their money back, only to find it was gone. He eventually was charged with 88 counts of mail fraud. Pleading guilty to one count, Ponzi received a five-year federal prison sentence. Massachusetts filed larceny charges against him, which led to a guilty verdict and a maximum of nine years in prison. He was deported in 1934 to Italy, where he committed more crimes. When he died in 1949, he had no money.

How It Works

The Ponzi scheme has a simple but prevailing process. The facilitator or scammer manipulates and convinces people to invest money with him/her through several promises. Their investment will receive a higher-than-average return rate, which is typically specified to further entice people into the scam. The facilitator provides viable explanations for the high returns in such a short amount of time. Some of the beginning investors are paid what was promised, with the expectation that they will invest their money again and tell others to invest. In order for the scheme to work, a continuous flow of money must exist. The process begins to fall apart when the number of investors decreases and people want to cash out their investments. By the time the investors determine what has happened, the facilitator typically cannot be found and/or the money is gone.

Ponzi schemes are sometimes compared to or thought to be the same as pyramid scams. Although both are criminal activities that promise high rates of return for investments, they are different in several practices. Ponzi scams promise a high rate of return on monies in a short time. Pyramid schemes require an initial payment and recruitment of others to help distribute a fake product. Returns come from the recruitment of others into the program, and the profits vary by how many people join the pyramid and when in the process they join. Ponzi schemes provide initial promised returns to investors in order to have them reinvest, as well as to tell others about the great profits they received.

Prevalence of Ponzi Schemes

Because these scams are fairly easy to run and the potential profits so great, they can be mimicked easily and accomplished successfully. There are cases found around the world involving the practices of a Ponzi scheme. Besides having scammers who are likable and convincing to get people to invest with him/her, there is concern that in certain economic times when maximizing profits is the focus, it is easier to conduct these scams.

Charles Ponzi, circa 1920. Ponzi emigrated to Boston from Italy in 1903. Educated and charismatic, by 1920 he had developed a money-making scheme using international reply coupons. He was eventually charged with 88 counts of mail fraud.

One of the most notorious Ponzi scammers is Bernard L. (Bernie) Madoff. In 1960, he founded his own advisory investment firm in New York City. Over the years, he perpetrated a Ponzi scam on thousands of clients. He was unique in that he did not pay out profits but provided fraudulent account statements showing moderate, but positively growing, returns. He was a multibillionaire when he was arrested in 2008 and charged with securities fraud. He is currently serving a 150-year federal prison sentence.

Although Madoff was prosecuted and is serving significant prison time, this has not stopped people from engaging in this type of fraud. In 2009, Vance Moore II and Walter Netschi were charged with wire fraud and conspiracy for their Ponzi scheme involving automated teller machines (ATMs). Individuals were told they were investing in high-traffic retail-area ATMs. Investors were promised their initial monies, plus a 20 to 24 percent return through fees. They raised $80 million. In 2010, Nevin Shapiro, a businessman from Florida, was arrested for operating a multimillion-dollar Ponzi scheme involving 60 investors throughout the United States. The victims were told they were investing in his wholesale grocery distribution business, of which he was the owner and chief executive officer. The business did not exist. He used new investors to pay other clients, while keeping millions for himself. The Federal Bureau of Investigation (FBI) in 2012 prosecuted R. Allen Stanford for 13 counts of fraud for a Ponzi scheme he orchestrated. He was selling investors the practice of buying certificates of deposit in an offshore bank in Antigua. Such scams will likely continue and flourish in the future.

Fighting Ponzi Schemes

In the United States, the Securities and Exchange Commission, the FBI, and other federal agencies are responsible for the prosecution of Ponzi schemes as fraud. When these schemes cross national borders, the likelihood of prosecution varies, depending on existing laws and jurisdiction. These cases require investors to come forward with information, retrieval of necessary evidentiary documents, and lengthy time spent developing a criminal case in order to file charges and prosecute the offender.

Because of the individuals involved, as with most white-collar crimes, there may be fear of reporting these crimes because of their own illegal participation and fear of diminishing their reputations. Many of the offenders may be acquainted with persons in powerful positions that may provide a protective barrier for the scheme. The costs of these crimes are significant for the legal system, as well as for the victims. With such investments, there is no federal deposit insurance protection. Seizing of the scammer's assets, restitution payments, and civil lawsuits are the only recourses for victims to possibly retrieve their money. Currently, the Internal Revenue Service provides guidance for victims of Ponzi schemes in regard to taxation.

Numerous Web sites provide investment information to individuals in order to protect against these scams. Taking note of licensing, registrations, and investment information are key to protecting one's money. Ponzi schemes will remain a criminal enterprise as rewards of a high return on money continually entice people, but being "too good to be true" still holds true.

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See Also: Bernard L. Madoff Investment Securities LLC; Hedge Fund Fraud; Investment Trust Fraud; Investors Overseas Services Ltd.; Madoff, Bernard L.; Madoff Ponzi Scheme; Marketing Fraud; NASDAQ; Picard, Irving; Picower, Jeffrey; Securities and Exchange Commission, U.S.; Sorkin, Ira; Stock and Securities Fraud; Wilpon, Fred.

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Pornography

Although pornography is notoriously difficult to define in a universally agreed-upon manner, it can generally be described as the deliberate depiction of actions and events of a sexual nature for purposes relating to pleasure of a variably sexual or aesthetic nature. Etymologically derived from the Greek *porne* (prostitute), pornography is essentially a cultural issue revealing important societal values related to sex, gender, sexuality, and procreation. Pornography can be articulated by any means of human expression, such as paintings, photographs, multiple kinds of print media and literature such as books and magazines, movies, audio tapes, live performances, and online systems of publication and communication. In its various forms, pornography can connect with the aesthetic aspirations of some recognized form of artistic expression.

Pornography can also be, and usually is, perceived more distinctly in connection with objectives related to sexual satisfaction on the part of the consumer of pornography, on one hand, and monetary profit on the part of its producer, on the other. Throughout human history, a wide range of types of more subtle and more explicit kinds of pornography can be found across diverse cultural settings.

Culture, Law, and Crime

Within any given sociohistorical context, pornography exists in legitimate and illegitimate forms, the demarcation of which is variable across time and space. The multiple cultural meanings attributed to pornography relate to some extent to the more or less explicit nature of the depicted sexual content. Additionally, the legitimacy of pornography is affected by its social location, extending from mainstream culture, such as in the contemporary form of so-called soft-core pornographic movies and celebrity sex tapes, to the most remote margins of society, such as underground video recordings of forced sexual acts involving children.

Normative frameworks that define and respond to pornography can include various cultural systems of morality as well as more specific and formalized systems of law. Moral perspectives on pornography may both condemn (certain kinds of) pornography or formulate more positive judgments. Condemnations of pornography that are moralistic in tone are often justified on the basis of religious principles, but they can also be humanistic in kind, for instance, as formulated on the basis of concerns surrounding the equal treatment of the sexes. In the history of feminist thought in the West, for example, certain currents sought to outlaw all forms of pornography because they were considered degrading to women and to contribute to sustaining unequal relationships between the sexes. Besides calling for a change in mentality, such efforts have also extended into the legal arena, such as in the United States during the 1980s when some feminist groups sought to ban pornography as a civil rights issue for women. Other feminists have since then taken on a so-called sex-positive perspective to argue for the possibility and desirability of female-friendly pornography.

From a legal viewpoint, it is to be observed that pornography exists to some extent legitimately within any culture (as erotic art), but it is also approached as a form of criminality in some of its manifestations (pornographic crimes). In the context of the United States (and similarly in other modern nations in the world), an important distinction in this respect exists between pornography and obscenity. Whereas pornography can be lawful under certain circumstances, obscenity is a legal category that criminalizes certain kinds of conduct. Under constitutional provisions specified by the U.S. Supreme Court, statements or behaviors are considered obscene when they appeal to a prurient interest as defined by contemporary community standards, when depictions of sexual conduct are patently offensive by the same standard, and when they lack serious literary, artistic, political, or scientific value. Whereas a finding of obscenity legally outlaws certain pornographic (as well as nonpornographic) materials, other regulations can regulate access to and distribution of certain materials. Ratings of movies, for example, are based on judgments that certain representations of a sexual, violent, or otherwise objectionable kind are suitable only for people of a certain age.

From a criminological perspective, pornography has been investigated in its relationship to criminal behavior or as a form of crime itself. Research on the relation between pornography and crime has primarily focused on the impact that the exposure to pornographic materials has on criminal behavior, especially sexual aggression, rape, and violent attitudes or conduct. Some evidence has been presented, since at least the 1960s, that pornography could be harmful to its consumers and, more broadly, to social relations, for instance, by leading to higher levels of aggressive attitudes and behavior and by contributing to decreased respect for healthy romantic relationships. In the present era, the existence of such criminal effects, if valid, could take place at an unprecedented level as the Internet has enabled many forms of pornography to be readily available to a very wide audience, including many young people. The Internet has indeed re-affirmed the role played in pornography by the appearance and development of media of expression, from print to the digital age, and has also qualitatively changed societal views on pornography.

Although a considerable amount of research has been done on the relationship between pornography and crime, it has not produced any conclusive results. To some extent, such research is hampered by the absence of a universally valid definition of pornography. Additionally, research limitations can be attributed to the problem of determining the causal order and mechanisms involved in observed correlations, for instance, between the likelihood of watching pornography involving simulations of violent acts and having a criminal record for violent crimes. Moreover, because of the various meanings attributed to pornography across cultural settings, research in any specific location cannot be readily generalized.

Research on criminologically relevant effects of pornography has at times also suffered from not being conducted independently on the basis of scientific interests but as part of government projects seeking to establish certain links that could serve specified policy needs. In the United States, for instance, President Richard Nixon and a majority in the U.S. Senate rejected the 1970 Report of the Commission on Obscenity and Pornography, which found that harmful effects of pornography could not be conclusively established. In 1986, a Commission on Pornography mandated by then attorney general Ed Meese published a report that argued that pornography would be harmful to society and, specifically, that there was a link between exposure to violent pornography and aggression toward women. However, the evidence was largely based on testimony from antipornography crusaders, without much consultation from social scientists.

In recent decades, the dominant values of modern societies tend to draw more distinct demarcation between acceptable forms of pornography, on one hand, and certain problematic and deviant or criminal aspects of pornography, on the other. There exists an ever-growing industry of pornography that is commercially very successful, culturally widely accepted or at least tolerated, and also legally allowed. Examples include pornographic magazines and adult videos that can be bought and sold in the open marketplace. The problems that might exist in these cases are typically approached from a medical point of view, rather than from a legal framework, to address the potential to contract and spread the human immunodeficiency virus (HIV) and other health-related concerns.

Culturally tolerated forms of pornography are not within the specific province of criminology. The sheer availability of pornography on the Internet today can be argued to have contributed to its decriminalization and normalization, yet it will also sharpen the distinction with unacceptable forms of pornography. As a result, recent criminological attention has gone to pornography as a crime by examining criminal behavior involved in the production and distribution of pornography. In this respect, special attention has gone to various forms of coercion involved with pornography, including victims who are forced to participate in pornographic conduct against their will. Moreover, an ever-growing sex industry at times also relies on the coerced trafficking of sex workers. In that sense, pornography can be one aspect of organized crime and also relate to a broader set of white-collar crimes, such as fraud, money laundering, and corruption. In most recent years, the use of children in pornography has been especially alarming and has served to stimulate renewed criminological research.

Criminal Aspects of Child Pornography

Research and policy on the criminal aspects of pornography has in recent years focused almost all of its attention on child pornography, especially as a result of the important role played therein by the Internet as the medium that has greatly eased the distribution of such materials. In modern times, child pornography had become relatively confined in scope, if not in gravity, until the advent of the Internet, since when it has become an increasingly growing problem. Estimates now suggest that at least 14 million Web sites exist that specifically include child pornography. Aided by the nearly global range of the Internet, online child pornography generates huge profits for its producers to form a genuine and global industry.

Besides the impact of the Internet and other factors that facilitate the desire and possibility to watch child pornography, criminologists have done research on various relevant dimensions. In terms of the production and consumption of child pornography, attention has gone to the organization of child trafficking for pornographic and other sexual purposes. The consumers of child pornography have been studied in terms of their personality characteristics and sexual dispositions, as well as prior involvement with sexual crimes such as child molestation and pedophilia. Other research has concentrated on legal efforts to ban child pornography, the effects of arrests and other police actions, and prosecution and punishment practices. The results in these various criminological areas are at the present time too tentative to draw any general conclusions.

The burgeoning scholarship on child pornography as a crime parallels recent legal developments to criminalize and police child pornography. In the United States, for example, various laws have been passed at the federal and state levels to criminalize child pornography and to develop appropriate enforcement and punitive measures. Dating back to the federally enacted Protection of Children Against Sexual Exploitation Act of 1977, more recent legislative efforts include the Child Protection and Obscenity Enforcement Act of 1988, which was the first federal child pornography law to explicitly refer to the use of computers. In 1990, the Child Protection Restoration and Penalties Enhancement Act was passed by the U.S. Congress to criminalize the mere possession of child pornography and to strengthen penalties for its distribution.

Since the rapid development of the Internet during the 1990s, several new legislative efforts have been undertaken. Among them, the Child Pornography Prevention Act of 1996 criminalizes pornography that involves persons made to appear to be minors, even when they actually involve adults. The 2003 Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act (or PROTECT Act), which is primarily involved with sex offenses, has further broadened the types of conduct recognized as child pornography by criminalizing computer-generated images that either are, or appear as indistinguishable from, a minor engaging in sexual conduct. Along with broadening the scope of anti–child pornography laws, the related sanctions have become more punitive, with federal sentences in the United States now ranging from five to 20 years imprisonment. As such, the consumption and production of child pornography is treated more closely to offenses of illicit sexual acts against children involving physical conduct (so-called contact-sex offenses).

Legal Efforts Against Child Pornography

Accompanying legal efforts against child pornography, law enforcement agencies are today more than ever involved in investigating relevant cases and developing appropriate investigative measures. Enforcement strategies range from using traditional policing tools in response to reported crimes to novel techniques involving digital evidence seized on computers, posing as a potential child victim in Internet chat rooms, and the tracking of Internet Protocol (IP) addresses to catch consumers and producers and to locate servers that host pornographic materials.

In the United States, many federal as well as state and local police forces have formed specialized units to deal with child pornography. For instance, the Federal Bureau of Investigation (FBI) in the U.S. Department of Justice (DOJ) oversees an Innocent Images National Initiative program and a Child Pornography Victim Assistance Program. In the Department of Homeland Security, Immigration and Customs Enforcement (ICE) has established a Child Exploitation Section to police the sexual exploitation of children, child sex tourism, and child pornography itself. Within the DOJ, special efforts are made to coordinate various enforcement activities by conducting investigations in the Child Exploitation and

Obscenity Section and by overseeing some 61 Internet Crimes Against Children Task Forces located throughout the United States to enable cooperation among some 3,000 federal, state, and local police and prosecutorial agencies.

In terms of both legislative efforts and police measures, many countries around the world have developed instruments to criminalize child pornography. Although surely not attained on a complete global level, this harmonization of anti–child pornography measures across countries enables cooperation at an international level. Such international cooperation is necessary because the distribution of materials involving child pornography is today, more than ever, of a cross-national character. The major national and federal police agencies have therefore also developed efforts to cooperate with one another across national borders. The Department of Homeland Security agency ICE, for example, participates in a Virtual Global Taskforce against child exploitation and abuse, with the cooperation of law enforcement from Australia, the United Kingdom, Canada, Italy, and the international police organization Interpol.

International cooperation against child pornography is vital because of the decentralized nature of Internet providers as well as their private ownership, with companies not always readily willing to relinquish authority over their servers. An appropriate regulation of private enterprise and the development of public-private cooperation efforts are therefore needed as well. Especially in view of the ever-growing presence of the Internet in all facets of social life, the problem of child pornography must be expected to remain of considerable concern and should lead criminologists to continue and expand relevant research.

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See Also: Ethics; Human Trafficking; Keating, Charles; Nixon, Richard M.; Organized Crime; Prostitution; Sexual Harassment.

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Porteous, Judge G. Thomas

In December 2010, Gabriel Thomas Porteous, Jr., became the eighth federal judge in the history of the United States Congress to be found guilty in impeachment proceedings and removed from the bench. Following the House of Representatives' impeachment of Porteous in March 2010, the Senate ruled that Porteous was guilty on four counts of impeachment and, therefore, corrupt and unfit to serve on the bench. Porteous's acts while serving as a federal district judge violated the trust and respect that are believed to be implicit in the role of a federal judge. The Senate found him guilty of abusing his judicial office through his involvement in a kickback and bribery scheme that included lavish gifts, meals, and thousands of dollars in cash as well as committing perjury during his personal bankruptcy filing.

These actions classify Porteous as a white-collar criminal; he committed deviant actions that were assisted, in part, by his high social status and respectable position associated with his occupation. Additionally, Porteous's story is one of how the legislative branch of the U.S. government investigates, charges, and convicts white-collar criminals.

G. Thomas Porteous was born in New Orleans, Louisiana, in 1946. After earning his Juris Doctorate in 1971, he held several positions within the state, including special counsel to the state attorney general, city attorney, and district judge. In 1994, Porteous was appointed to a seat on the U.S. District Court for the Eastern District of Louisiana by President Bill Clinton. During his tenure as a federal judge, Porteous ruled on several high-profile and controversial cases in the state of Louisiana. In 2001, his own legal troubles came to light, and he was soon being investigated by a federal grand jury.

The Judge Is Judged

Shortly after Porteous filed for bankruptcy in 2001, without using his own name, revelations regarding his supposed unethical behavior on the bench with bondsmen and lawyers came to light. He was subsequently placed under investigation by the Federal Bureau of Investigation (FBI) and the Department of Justice (DOJ). Although these two organizations did not offer an indictment, the Judicial Conference of the United States notified the Speaker of the U.S. House of Representatives that the House should consider an investigation into Porteous's behavior. The conference claimed that Porteous abused his position as a federal judge and therefore failed to serve the people of Louisiana.

Following the conference's recommendation, the House Judiciary Committee voted unanimously to conduct an investigation into bribery and perjury allegations against Porteous. The perjury allegations were a direct result of his bankruptcy filing, which he initially filed under the name G. T. Ortous. Following this, he supposedly then signed false financial disclosure forms under oath. At this time, Porteous was also suspended without pay on alleged misconduct charges. The committee created a subcommittee—the House Impeachment Task Force—that consisted of six Democrats and six Republicans to investigate Porteous. Throughout its investigation, the task force used the information collected previously by the FBI and the DOJ and also heard the testimony of witnesses. Officially, the Impeachment Task Force's investigation of Porteous began on September 17, 2008, and lasted 533 days—the longest in U.S. history.

In January 2010, the task force unanimously decided to recommend charging Porteous with four articles of impeachment to the Judiciary Committee. Later that month, the committee voted to send the articles of impeachment to all members of the House of Representatives. On March 11, 2010, the House unanimously passed each article of impeachment against Porteous. These articles included engaging in a pattern of conduct unbecoming of a federal judge (Article I); engaging in a long-standing pattern of corruption, including taking gifts, trips, and home and car repairs in exchange for beneficial rulings (Article II); knowingly and intentionally making false statements regarding his personal bankruptcy (Article III); and knowingly making false statements about his past to the Senate and the FBI (Article IV).

Although Porteous had been impeached by the House, the Senate would conduct Porteous's impeachment trial and determine if he should be removed from the bench. If two-thirds of the 100-member Senate voted in favor of one or more of the articles presented, Porteous would be stripped of his federal judgeship and lose his federal pension. On December 8, 2011, the Senate convicted Porteous on all four articles, although only Article I was unanimous. Additionally, the Senate disqualified Porteous from holding office in the future, a move considered rare.

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See Also: Bankruptcy Fraud; Bribery; Investigation Techniques; Legal Malpractice; Perjury.

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Predatory Lending

Predatory lending is a form of subprime lending resulting from discriminatory, fraudulent, or high-pressure practices on the part of institutions that provide loans to individual consumers. Predatory lending is not isolated to the mortgage market—it may occur in consumer lending of various sorts, including but not limited to payday loans, tax refund loans, auto title pawning, rent-to-owning, student loans, debt consolidation loans, and reverse mortgages. Predatory lending is associated strongly with the subprime market, aggressive marketing practices to vulnerable populations, and pressure to close. Predatory lending typically extends credit on a collateral basis without an independent assessment of the individual's ability to repay. Traits common in predatory lending are excessive fees and costs paid by the borrower and efforts to obtain outright the equity in the borrower's home. The focus on extracting the collateral through a combination of aggressive marketing practices, high-pressure sales tactics, and punitive loan terms, such as high prepayment penalties, generates the notion of such lending as predatory. Another common feature is the failure to provide essential information on the terms and costs of the loan, as well as the possible surrender of the collateral in the event of consumer default.

Hunter and Prey

Predatory lenders seek out individuals who have an immediate need for cash or who may have large equity positions in their homes, but who typically cannot qualify for conventional forms of credit or financing. The pool of subprime borrowers is the primary market for much predatory lending activity. Individuals in such a position are unlikely to challenge the terms of a loan at closing, may be unable to understand the details of the loan product, and may be susceptible to sales pressure to close quickly without time for proper review. Vulnerable consumers may be afraid that the offer of financing will be rescinded if they do not accept it, whatever the terms. Specific populations that have been targeted by predatory lenders include the elderly, members of the military, students, residents of low-income neighborhoods, individuals with poor credit, members of racial or ethnic minority groups, and immigrants.

There are a variety of specific practices that are linked to predatory lending, including but not limited to flipping, whereby a lender repeatedly refinances a loan, especially with additional cash out or fees, increasing the principal outstanding; equity-stripping or asset-based lending without regard for income or ability to pay, which results in a high likelihood of forfeiture; excessive loan prepayment penalties; "packing" or adding credit insurance or other products designed to increase a lender's profit onto a loan and pressuring consumers to accept them, often without proper disclosure; end-of-term balloon payments; high origination or servicing fees; and high interest rates.

Predatory lenders employ targeted marketing to populations identified through publicaly available documents as lower income, less educated, or less able to access prime lending opportunities, or who may have less access to traditional banks. Direct marketing, television and Internet advertising, and cold calls are common techniques for promoting their products. Not all recipients of predatory loans are subprime borrowers, but these subprime products are promoted by predatory lenders even though individuals may be able to secure funding under more preferable terms elsewhere.

Regulatory Focus

The liquidity available to subprime lenders resulting from the development of collaterized debt obligations may have contributed to predatory lending activity. When economic contraction occurs, more individuals may find themselves pushed into the subprime credit market or find conventional sources of lending becoming more difficult to secure, even those with good credit histories. In the 1970s and 1980s, legislative interest in predatory lending practices was focused primarily on loans where the consumer's home acted as collateral, which provoked a regulatory response. More recently, concerns have arisen in conjunction with reverse mortgages, payday loans, debt consolidation loans, and private student loans. An area of particular interest during the period of active military engagement after September 11, 2001, has been unsecured consumer credit extended to active-duty service personnel.

Regulatory oversight of predatory lending falls to multiple agencies; however, the Dodd-Frank

Wall Street Reform and Consumer Protection Act of 2010 established the Consumer Finance Protection Bureau, which attempts to unite federal regulatory actions related to enforcing laws regarding consumer finance and credit, as well as to educate consumers and study the consumer finance market. The U.S. Department of Housing and Urban Development also focuses resources on the prevention of predatory lending. The Federal Trade Commission has historically been a primary regulator of nonmortgage loans.

Federal legislation related to discriminatory practices in housing, including financing, started with the Fair Housing Act and Equal Credit Opportunity Act, Title VIII of the Civil Rights Act of 1968. Additional legislation that was provoked at least in part by predatory lending practices includes the Truth in Lending Act 15 U.S.C. §§ 1601 *et seq*. (TILA 1968) and the Home Ownership and Equity Protection Act of 1994 (HOEPA), 15 U.S.C. § 1639, which was an addition to TILA. This legislation, as well as other laws governing lending practices, is enforced by the Federal Trade Commission (FTC). The FTC also enforces the Federal Trade Commission Act, 15 U.S.C. § 41, *et seq*., which prohibits unfair or deceptive acts or practices related to commerce. The Home Mortgage Disclosure Act (HMDA) allows the federal government to collect data that can reveal discriminatory mortgage lending practices. The Military Lending Act of 2007 (MLA) covers consumer credit extended to active-duty service personnel.

TILA mandates accurate and complete disclosure of loan terms to a consumer before the loan documents are finalized. HOEPA governs personal loans that are secured by the consumer's home and has extra protections that are triggered when such loans have excessively high interest rates or fees. Some of the prohibitions in HOEPA include asset-based lending, balloon payments for loan terms of less than five years, prepayment penalties, and default interest rates that exceed the original rates of the loan. In an effort to limit the pressure that lenders can bring to bear on vulnerable consumers, HOEPA has also mandated disclosures to clarify that a signature on the application does not require accepting a loan and that the home could be forfeited if loan terms are not met. The MLA regulates short-term payday loans, auto title loan, and tax refund anticipation loans, capping interest rates at 36 percent.

In legal actions brought by the FTC, a common violation includes a failure of the lending agent to fully disclose the terms of the loan. In one significant case in 1999 against Fleet Finance Inc., failure to disclose was the primary violation. It was specifically concern about practices at Fleet Finance in the early 1990s that provoked the 1994 congressional hearings that led to HOEPA. Other commonly cited violations include providing different loan products to similarly situated applicants on the basis of membership in a particular category. In the Delta Funding decision of 2000, the FTC found that African American women were charged higher rates than were white men with similar income and credit profiles. In 2002, the FTC settled a case against Illinois mortgage broker Mark Diamond and his company, OSI Financial Services, Inc., in which elderly and low-income persons were targeted for predatory loan products.

Many states have specific legislation against predatory lending practices in a variety of areas of consumer credit, but these statutes are not consistent in the definitions they provide of predatory lending. Predatory practices may be illegal on a variety of grounds, but the federal entities charged with regulating lending institutions also charge consumers with a responsibility to be informed and to act upon their own behalf by reading loan documentation and refusing loans with abusive practices or inadequate documentation. However, by definition, predatory lending seeks out consumers who have a significant financial need as well as limited access to conventional sources of credit.

Taking Advantage of Consumers

Although subprime lenders may expand access to credit for individuals who otherwise would be shut out of the market, unethical lenders may take advantage of consumers in the weakest bargaining position. Furthermore, creditworthy consumers may opt for subprime and predatory products because of aggressive marketing and lack of information on, or access to, alternative financing sources. The recent establishment of the Consumer Finance and Protection Bureau is intended to rein in some of the worst abuses of predatory lending and extend regulatory action into those sectors of consumer credit that appear to have been growing in the early 2000s, such as debt consolidation loans and private student loans. Additionally, the focus on consumer education and a continual expansion of the groups recognized as vulnerable to predatory practices indicate a growing awareness of the significance of consumer credit in the wider economic system.

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See Also: Bank of America Corp.; Collateralized Debt Obligations; Fair Housing Act; False Foreclosures; Federal Trade Commission; Foreclosure Fraud and Rescue Schemes; Housing and Urban Development, U.S. Department of; Liar Loans; Loan Origination Schemes; Merrill Lynch and Co. Inc.; Mortgage Fraud; Mortgage Modification Fraud; Mortgage Reform and Anti-Predatory Lending Act; Predatory Practices; Real Estate Investments; Reform and Regulation; Reverse-Mortgage Fraud; Robo-Signing; Savings and Loan Fraud; Subprime Loans; Troubled Asset Relief Program; Truth in Lending Act.

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Predatory Practices

Predatory practices are business practices that exploit the consumer, particularly in circumstances where either the exploitation is industry-wide or the consumer is unable for some reason to seek services from less exploitative alternatives. Those reasons may include proximity (as in the higher prices charged by a corner store whose customers may lack the means to travel to a store with lower prices), lack of information, or lack of eligibility (as in the case of usurious credit cards offered to high-risk customers ineligible for other forms of credit).

Such practices include predatory lending, which generally involve extending loans to borrowers who do not have the means to repay them and thus constructing other means for the lender to make a profit—including exorbitant interest rates; asset and equity stripping; loan terms that harm the debtor's credit; rapid refinancing (flipping); additional fees, such as credit insurance that bleed the borrower; and the practice of selling off debt in the form of collateralized debt obligations, which distances the lender from the risk inherent in the loan.

Student Loans

Increasingly, as the cost of a four-year college education grows steadily without a similar increase in the job market value of a bachelor's degree—which in many fields has ceased to be an advantage and instead is an expectation—the student loan industry has been accused of predatory practices. This is perhaps most clear in the case of law schools. For most of the 21st century, and arguably longer, the legal industry has enjoyed a surfeit of labor, especially the labor of young associates. There are too many law school graduates and not enough jobs for lawyers. This promises to become even more true as outsourcing of legal services becomes more common, with foreign workers and paralegals doing the work junior associates once did, at a fraction of the cost to the firm. Despite this, law school enrollment has climbed steadily.

After the 2008 global financial crisis, law school enrollment noticeably increased, due to the number of students electing to attend law school for a variety of reasons related to the crisis: remaining in school would postpone their need to begin making payments on their student loans, an extra three years of school would postpone their need to enter the labor pool and find a job at a time when the job market had sharply contracted, and there is a perception that the legal industry is a prosperous and healthy one and that a law degree would therefore provide a competitive advantage.

Certainly, law schools do nothing to dissuade this view, and because their operating expenses are so low relative to their revenue—unlike broader-interest graduate schools that need expensive equipment for their science departments, law schools can be run with sufficient human capital and a few lecture halls—state university systems have opened new law schools despite the clear trend of further job contraction in the legal industry. Lenders of law school student loans—which max have maximums at a much higher threshold than undergraduate loans and result in most law school graduates exiting school with a significant debt load and few prospects to pay it off in a timely fashion—have similarly continued to extend loans to their customers, despite the diminished expectation that these loans can be paid off.

As with many predatory practices, the matter of making law school student loans often falls into a gray area in which laws are not being broken, but the right of a consumer to make poor decisions and that consumer's lack of adequate information are being exploited for profit by well-informed entities who know exactly how poor those decisions are. In this case, the middle class make up a significant portion of the targeted group, even more so than in the case of student loans in general. Wealthier students may not need to take out loans, and poorer students may not be able to afford their living and schooling expenses during law school even with the loans.

Other predatory practices often target vulnerable groups like the elderly, immigrants and migrant workers whose command of English may be insufficient to understand the legal terms to which they're agreeing, military families, and the poor.

Targeting the Military

On Veterans Day 2012, veterans' groups launched a public information campaign about the predatory practices of for-profit colleges, which have significantly increased their targeting of veterans in the decade since the war in Afghanistan began, offering expensive programs that veterans pay for with their G.I. Bill education benefits but that offer little to no real value.

The for-profit college industry was a $30 billion industry in 2012, with $4 billion earned from Pell grants, $20 billion from student loans, and most of the remainder from the G.I. Bill—in other words, it is an industry paid for principally by federal loans and grants. Although for-profit college students account for 12 percent of college students, they have 26 percent of the student-loan debt and 46 percent of the student-loan debt in default. While for-profit colleges offer degrees widely agreed to be worth less than those of public or private nonprofit colleges—indeed, often considered almost completely worthless—the average cost of attendance is much higher, roughly twice the cost of attending a public college. Far fewer students graduate (less than half), and their credits are rarely transferable to other institutions, so about half of the students attending these colleges have nothing to show for their loan debt.

Targeting the Poor

The poverty industry in toto is often accused of being supported by predatory practices. The poverty industry consists of those for-profit ventures that depend, in whole or in part, on the poor and the working class for their customer base: payday loan and title loan centers, many of which are banned in some states because of usurious interest rates; rent-to-own stores; check-cashing centers, which take a large cut of the value of the check and cater principally to the working-class poor without traditional bank accounts; many debt consolidation and credit repair services, as well as some credit cards; and subprime mortgage lenders.

Pawn shops ostensibly provide short-term loans, with the debtor turning over goods as collateral. In practice, few loans are repaid, and the goods, worth considerably more than the amoung of the loan, are kept and resold. Common to all of these industries is the making of profit off a cash-poor populace made willing by circumstance, to pay far more for basic services like check cashing than is considered normal (and, in the case of the multigenerational poor, they may not be informed as to the normal value of many services), or to sacrifice value for short-term cash flow gains. Some people

President Barack Obama greets students in the White House before delivering a statement on college affordability and interest rates on student loans, June 21, 2012. Law schools are a prominent example of the predatory nature of the student loan industry. Despite a clear overabundance of law school graduates and a shrinking job market, lenders of law school student loans—which max out at a very high threshold—continue to pursue new students, saddling them with heavy debt loads that will be increasingly difficult to pay off.

include, as part of the poverty industry, gambling establishments (and state lotteries), tobacconists, and liquor stores, especially in poor areas. In urban neighborhoods, sometimes referred to as food deserts, corner stores that sell goods for much more than their normal retail price to a population unable to travel to the suburban supermarkets and the practice of selling single cigarettes (widely illegal but still practiced in some neighborhoods throughout the country) or single bottles of beer at a considerable markup are examples of businesses that make the poor pay more than the middle class for the same goods and services. Perhaps the most predatory of all are those businesses in the medical debt recovery industry, which charge hospitals and doctors nothing for their services in recovering unpaid medical debts from the uninsured and underinsured, instead charging fees and exorbitant interest rates to the patients from whom they recover those debts.

Credit Card Companies

When the Center for Responsible Lending (CRL) was founded in Washington, D.C., in 2002, it was with a focus on predatory businesses aimed at the poor and the working poor. This was a broad enough field that priorities soon had to be established. The top priorities were predatory lenders—subprime mortgage lenders and payday loan centers. The next-highest priority was predatory practices in the credit card industry, especially the growing practice of "fee harvesting." Credit card companies normally earn their consumer-end profits from the interest charged on balances (additional profit is made from the merchant end). For those interest payments to constitute profit, that balance has to either be paid off or carried long enough that the total amount of interest paid exceeds, in inflation-adjusted dollars, the original debt. In a sense, American Express (AmEx) is the best-known fee harvester, in that it requires its cardholders to pay their balances off in each billing cycle and thus must charge an annual fee in order to earn money off its credit. AmEx isn't considered predatory in light of the activities of others in the industry, who have no such requirements and charge high card activation fees, processing fees, and monthly account maintenance fees. The amount of credit offered is low relative to the total amount of the fees—often a few hundred dollars, half of which is eaten up by the fees—and the cards are offered to consumers who don't qualify for traditional credit cards, which means the card issuer has no reasonable expectation that the consumer will be able to repay his or her debt. Often, these cards are advertised as means of rebuilding credit, a last lifeline offered to someone with no other credit options.

Predatory Banks

Other targets of the CRL include predatory nonlending practices by banks, such as exorbitant overdraft fees and practices that increase the likelihood of overdrafting. For instance, when faced with seven checks written from an account, many banks, as a matter of policy, post them in order from largest to smallest. If the total amount of the checks is greater than the amount in the account, processing them in this order maximizes the number of bounced checks and the amount of overdraft fees (which attach to each transaction) charged to the customer, rather than minimizing the damage. Overdraft charges are pure profit; a bounced check causes no difficulty or additional expense for the bank. The larger banks are estimated to profit to the tune of several billion dollars a year from overdraft fees alone. As with many predatory practices, the practice takes advantage of the customers' limited power, in this case because they know they are in error. Some practices, furthermore, may process charges to an account before posting deposits to that account, so that a paycheck deposited the same day that bills are paid may result in bounced check and overdraft fees even when the deposit is enough to cover the charges.

Going on the Offensive

Predatory businesses have, of course, defended themselves. After losing a legal battle in Georgia, where larger loan stores supported the effort to cap the interest rates charged by smaller payday lenders, payday lenders went on the offensive and hired a public relations team. From 2000 to 2004, the number of payday lenders in the United States increased from 10,000 to 21,000. The defense offered for the rates they charged was that the cost of a payday loan was still less than the consequences of a missed credit card or rent payment, or of bouncing an important check. That, in a nutshell, is the nature of many predatory practices in the poverty industry: Even an informed consumer will often choose them because they have no better alternative; knowing this, the predatory business can charge exorbitant amounts for the service rendered. A comparison often drawn is to the responsibility of bartenders to their clientele: Ethically, and in many states legally, a bartender cannot serve a customer who is too drunk, regardless of the customer's "right to be wrong." So, too, with preying upon the finances of the poor.

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See Also: Bank of America Corp.; Fair Housing Act; False Foreclosures; Foreclosure Fraud and Rescue Schemes; Gambling and Lotteries; Housing and Urban Development, U.S. Department of; Loan Origination Schemes; Market Manipulation; Merrill Lynch and Co. Inc.; Mortgage Fraud; Mortgage Modification Fraud; Mortgage Reform and Anti-Predatory Lending Act; Nader, Ralph; Predatory Lending; Real Estate Investments; Reform and Regulation; Robinson-Patman Act; Robo-Signing; Subprime Loans; Troubled Asset Relief Program; Truth in Lending Act; United States.

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Price Discrimination

Price discrimination is the practice of setting different prices for the same goods or services, based on who the customer is rather than on traditional supply and demand or competitive market forces. These variations in pricing occur for a number of reasons. In many forms of price discrimination, the pricing is perceived as a benefit to the consumer, and it is accepted, or even sought, in the form of discounted prices. In other cases, the price adjustments are perceived as disadvantaging the buyers who are not offered the lower price. Price discrimination is related to, but not identical to, adjusting prices for unfair competitive advantages in the form of price fixing or profiteering.

Discounted Price Discrimination

A seller may choose to set his/her pricing lower for certain categories of purchasers. These may include buyers who are purchasing items in larger amounts or who place early bids for time-sensitive products such as airline tickets and hotel reservations. Other discount practices that benefit the business to the extent that sellers are willing to offer price reductions can include favoring customers who are buying outside peak seasonal demand or who are buying through membership in a larger group, such as senior citizens, students, and military or emergency personnel. Retail sellers often will create price reductions for people who provide demographic feedback in the form of coupon redemption or survey completion.

In all of these examples, those who are selected just for being in the targeted category ultimately pay less for their purchase than an individual who is not a member of the group chosen for discounted prices. The ability to obtain the lower price is directly affected by the purchaser meeting the broader group characteristic. This is considered a traditional form of marketing and of stimulating sales.

Discounts that directly create subsets in the pool of customers that are based on characteristics such as age or occupation are referred to as direct price discrimination. Discounts that indirectly influence the customer to seek out inclusion in the targeted groups, such as coupon clipping, are called indirect price discrimination. Both are intended to increase the profit margin, and both depend on the buyer's willingness to make the transaction.

Economists have suggested that there is an overall social benefit from direct price discrimination, in that it allows goods and services to be acquired by some segments of the customer base that might not choose to make premium purchases if the prices were inflexible.

History of Price Discrimination

The concept that merchants have a fundamental flexibility in charging whatever the market will bear is a very old one dating back to the barter system. In America, arbitrary price discrimination was the standard practice from colonial times onward, unless it was mitigated by the government in the case of wartime economic policies. The 20th century brought three such wars, and in World Wars I and II and the Korean War, government authority to ration under emergency war powers legislation replaced the pricing autonomy of sellers. Speculative buying and the hoarding of inventory were criminalized and government-prescribed pricing was set in place, complete with enforcement agencies across the country to check for compliance.

After the Korean War, the rapid growth of the American economy focused attention on rising incomes and standards of living, so prices affected by a modest rate of inflation were seen as a stable factor in the economy. Even when the wartime regulations were dismantled, equitable pricing remained business as usual.

Regulation of Price Discrimination

Areas of concern to the government regarding pricing, in addition to war rationing, are monopolistic pricing, profiteering, and other forms of price manipulation seen as predatory or as unfair business practices. The Sherman Antitrust Act of 1890 was passed as a means of discouraging businesses from lowering prices below reasonable levels in order to cause competitors to fail by absorbing losses that they could not sustain. This became the basis for many federal tort actions in the name of preventing monopolies from dominating any given market. An early landmark case was the U.S. Supreme Court ruling in *Standard Oil v. United States* in 1909. Standard Oil, which was owned by John D. Rockefeller, was ordered dissolved, and the legal concept of reasonableness was applied to American business practices.

The inverse behavior, of raising prices to an unreasonable level during natural disasters, shortages, and other unforeseen occurrences, is criminalized under state laws against price gouging or profiteering. When it is carried out as part of a conspiracy to artificially raise prices beyond a reasonable level, federal laws may be brought to bear against the companies involved. The constitutional authority for such enforcement actions is derived from the powers granted to regulate interstate commerce.

A clearly proscribed type of noneconomically motivated price discrimination would be basing prices on the customer's membership in any group deemed a protected class. Such groups could be based on race, age, gender, and disability, as well as religious and ethnic identities. Should a business engage in price discrimination while leaving the appearance that the reason is purely discriminatory, then civil rights prosecutions would be quite possible.

On an international level, price discrimination is sometimes seen as a means to obtain political objectives, particularly in global commodities such as petroleum and other natural resources, electronics, and information, including intellectual property. Rapidly developing nations have lodged and received complaints in international legal venues that prices were being artificially determined based on agendas not related to the actual costs and values relevant to manufacturing and distribution.

Dynamic Pricing

Dynamic pricing is a form of price discrimination sometimes included under the older category of third-degree price discrimination. It differs from direct price discrimination as given in the form of general discounts in that it is based on the customer's buying behaviors over time. In a simple form, it can be a loyalty reward, such as earning discount points when monthly or annual purchases rise to a predetermined level.

Because of the new capabilities offered to sellers by the Internet, the face of retail selling has been dramatically altered by the rise of online shopping, and more sophisticated forms of dynamic pricing have evolved. The tracking of a customer's behavior online is not limited to actual purchases but can include other personal characteristics such as searches, wish lists, the reading of online product reviews, and price comparisons conducted by the individual customers. At the point of sale, prices may be adjusted to reflect these very precise and specific factors, as well as other historical data such as credit and employment records.

As businesses continue the prevailing trend of compiling and storing more complete profiles of each customer, pricing can be tailored to narrow parameters that allow the seller to maximize profit margin while allowing the customer to perceive that he/she has benefited from a reduced price.

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See Also: Age Discrimination; Antitrust, Federal Trade Commission; Clayton Antitrust Act; Federal Trade Commission; Internet Fraud; Predatory Practices; Price Fixing; Racial Discrimination; Redlining; Robinson-Patman Act; Sherman Antitrust Act; Standard Oil Co.

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Price Fixing

Price fixing refers to any usually unlawful practice by which two or more competing corporations collaborate together and agree to set or maintain an artificially high price, for commodities or services, to maximize profits. There are generally two basic categories of price fixing: horizontal and vertical. Horizontal price fixing is a conspiracy by competing manufacturers within an industry to fix the price of the same product. Vertical involves agreements between manufacturers and wholesalers or retailers to control the resale price. It is widely accepted that horizontal collusion causes more damage than vertical practices quantitatively. In the United States and Europe, most horizontal agreements are deemed by courts to be per se illegal while most vertical agreements are no longer considered illegal, thanks to the SCOTUS case *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, No. 06-480, decided June 28, 2007. According to the Antitrust Division of the U.S. Department of Justice, there are many different forms of price fixing, such as eliminating price discounts or establishing uniform discounts, stabilizing published prices, using a standard formula by which to compute prices, maintaining a fixed ratio with the prices of different competing products, or extending credit terms to customers.

A number of price-fixing cases, however, do not involve explicit agreements but rather take the form of "parallel pricing" in which there is a tacit understanding that if one or a few companies raise their prices, the others will adjust their own prices accordingly. It is normally difficult for a court to successfully identify agreements in parallel pricing cases just by applying the common judicial definitions of "agreement." Some economists estimate that parallel pricing, which is mostly beyond the reach of the law, may cost consumers over $100 million annually.

There has been an academic debate on whether price-fixing agreements should be outlawed. Some economists in the libertarian tradition argue that price-fixing cartels are inherently unstable and unlikely to be effective in maintaining artificially high prices. Successful price collusion would be of negligible proportions even without antitrust legislation. They also employ a "natural rights" theory of property and defend a right to fix prices as part of a person's natural right to freely use his or her property. They argue that any interference in the freedom to contract is a violation of people's rights. The benefit most often claimed for price fixing is as a method for firms to reduce uncertainty and thereby to reduce the cost of investment and marketing mistakes.

Economists and law professors, however, remain almost unanimous in condemning all price fixing as harmful practice. They provide empirical evidence that suggests that price-fixing agreements can, in fact, be quite long-lived. They note that it is always possible that the members of an industry might succeed in getting together and fixing a price. By raising prices and restricting supply, price fixing makes commodities and services unavailable to some consumers and unnecessarily expensive for others. A price-fixing agreement, therefore, distorts the functioning of the marketplace by causing resources to be switched from production of the affected product to other, less highly valued uses. Elimination of pricing uncertainty, as claimed by the libertarian economists, can easily be achieved by the use of legally permissible information-sharing among members of an industry. In this view, an effective way to deter price fixing is to have strong legislative and enforcement systems with severe penalties for price fixing.

Much evidence suggests that price fixing has been extremely common across a broad range of industries. Edwin H. Sutherland identified at least six different methods for fixing prices and found evidence of numerous suits alleging this activity. One recent study concludes that the illegal activity of price fixing was costing U.S. consumers an estimated $60 billion annually during the 1980s. Over the years, price-fixing conspiracies have been uncovered for virtually every imaginable product or service, including oil, sugar, beer, infant formula, steel wheels, cardboard cartons, industrial chemicals, long-distance phone companies, and airlines. One of the most celebrated price-fixing cases involved heavy electrical equipment manufacturers, including General Electric and Westinghouse, who conspired over a period of decades to fix prices on their products. Fairly substantial fines were imposed on the companies, and a number of middle-level executives, who denied the charges, went to jail briefly.

Price-fixing conspiracies are, in fact, not limited to industrial sales. They also frequently occur in real estate fees, doctors' fees, lawyers' fees, tax accountants' fees, and even universities' tuition fees and financial aids packages. Until recently, it was common practice for local bar associations to publish schedules of minimum fees and to punish attorneys who charged less. Because they have the authority to control admission to the practice of law, such associations actually have much greater power to fix their price schedules than do business associations. The American Bar Association used to hold that the "habitual charging of fees less than those established in suggested or recommended minimum fee schedules, or the charging of such a fee without proper justification, may be evidence of unethical conduct." A lawyer, therefore, could be disciplined or disbarred for failing to charge clients a high-enough price. This situation finally brought the application of the antitrust laws to the legal profession.

In the United States, the Sherman Antitrust Act of 1890 prohibits explicit price fixing that happens via communication and specific agreement between corporations. Congress increased the penalties from the original act in the Antitrust Criminal Penalty Enhancement and Reform Act of 2004. This act increases the maximum Sherman Act corporate fine to $100 million, the maximum individual fine to $1 million, and the maximum Sherman Act jail term to 10 years. Price fixing is subject to civil and criminal actions by the Antitrust Division of the DOJ, with the assistance of the Federal Bureau of Investigation (FBI) in some criminal cases. Many state attorneys general also have antitrust offices to deal with price-fixing cases, such as in New York, California, and Virginia. In addition to receiving a criminal sentence, a corporation or individual convicted of a Sherman Act violation may be ordered to make restitution to the victims for all overcharges. The Federal Trade Commission (FTC) and private parties (e.g., consumers, resellers, etc.) may initiate civil cases. Victims of price-fixing conspiracies may seek civil recovery of up to three times the amount of damages suffered.

As a weapon against price fixing, however, the Sherman Antitrust Act was rarely used to crack down on price-fixing conspiracies in history. Until recent decades, a takeoff approach had been found in investigations and prosecutions of price-fixing cases. Throughout the world, broad deregulation based on laissez-faire capitalism had begun to make many governments care little about price fixing. In 1990, in recognition of the widespread violation of the price-fixing prohibition, Congress moved to reform the law to make the practice more difficult. For example, vertical price fixing, in which a manufacturer attempts to control the price of its product at the retail level, became a target of lawsuits as a result of this reform. Maximum fines for price fixing grew from $50,000 in 1955 to $10 million for corporations and $350,000 for individuals in 1990. Despite this reform, the DOJ had lost many battles in its war on price-fixing cartels. Although more than 90 percent of the cases wind up with plea agreements, the department has only a mixed record in cases that are tried. Among the antitrust indictments filed from 1992 to 1997 that went to trial, for example, there were four convictions and 15 acquittals. At the Antitrust Division, meanwhile, a new corporate leniency program, granting significant incentives for early cooperation, was adopted in August 1993. The new policy made amnesty automatic if the company came in before an investigation began and permitted broad amnesty afterward to the first company to offer assistance.

Price-fixing cases pursued by the DOJ represent only a small portion of the actual amount of price fixing in U.S. industry. The potential profits are too attractive for many business executives, and the chances of getting caught are slim. Price-fixing cases have proved difficult to establish in court. The likelihood of escaping conviction, if caught, is great because of two factors: (1) the deals are made in secret and masked by apparently legal activity, and (2) the government's antitrust budget is very small. Those few convictions were typically resolved with fines rather than prison sentences.

Similar examples of lenience toward price fixing can be found in many other countries. Unlike other criminal defendants, executives in price-fixing cases are often respected by the community. Executives in most price-fixing cases are compensated by their companies and thus can afford to hire the best criminal lawyers. Some jurors have trouble understanding why price fixing should be a crime.

Since price fixing is posing a broad threat to U.S. business and consumers, the U.S. government has been developing a more vigorous approach to price-fixing enforcement since the late 1990s. In recent years, the Justice Department has successfully prosecuted regional, national, and international price-fixing conspiracies affecting construction, agricultural products, manufacturing, service industries, consumer products, and many other sectors of the economy. Many of these prosecutions resulted from information uncovered by members of the general public who reported the information to the Antitrust Division. During four fiscal years, from 1997 to 2000, the Antitrust Division collected $1.7 billion in fines for price fixing. In the same period, more than 75 years of imprisonment were imposed on price fixing and other antitrust offenders, with more than 30 defendants receiving jail sentences of one year or longer.

Global Price Fixing and Regulation

The Antitrust Division has also substantially expanded investigations into global price-fixing matters since the late 1990s. The lysine cartel, which caused tremendous harm, was the first successful prosecution of an international cartel by the Antitrust Division in more than 40 years. Five American and international corporations, including the politically connected Archer Daniels Midland Company (ADM), pleaded guilty to participating in a three-year cartel (1992–95) in the lysine market worldwide. A criminal investigation resulted in a $100 million fine against ADM along with $1 million fines and three-year prison sentences for three senior executives of ADM. In addition, a settlement was reached under which ADM paid $400 million in 2004 to settle a class action antitrust suit. Since then, the Antitrust Division has discovered and prosecuted scores of international cartels, several of which have resulted in corporate fines greater than $100 million. The largest corporate fine against international price fixing to date was collected in 1999, when Hoffman LaRoche agreed to pay the United States $500 million for its participation in vitamin price fixing. The European Commission fined Hoffman LaRoche 462 million euros for the same violation in 2001.

Furthermore, new technologies have given rise to new forms of national and international price-fixing conspiracies and new challenges to enforcement agencies. In April 2012, the U.S. Department of Justice brought a civil antitrust action against Apple and five major e-book publishers for allegedly fixing the price of e-books, which are read by millions of consumers on their iPads and other devices. In May 2012, the U.S. District Court in New York allowed a class-action case to proceed against Apple and its partner publishing houses, citing ample indications of a price-fixing conspiracy. In the meantime, Apple and its publishing partners are also subject to multiple Canadian class-action suits filed recently in courts in Ontario, Quebec, and British Columbia.

Following the United States, governments in Canada, Australia, New Zealand, and many European and Asian countries are beginning to combat price fixing more seriously than before. For example, in Canada, under the Competition Act 2010, every person who commits a price-fixing offense is liable upon conviction to imprisonment for up to 14 years or a fine up to CAD$25 million or both. The Australian Competition and Consumer Act of 2010 has introduced criminal sanctions for price-fixing behavior, including jail terms of up to 10 years and fines up to $220,000 Australian for individuals. The maximum penalty for corporations has increased to the greater of $10 million Australian or, three times the gain from the contravention, or where the gain cannot be readily ascertained, 10 percent of the group's annual Australian turnover. More and more countries that historically have not been troubled by price fixing are toughening their laws. With the increased focus on multinational cartels, competition authorities are also cooperating more closely than ever in investigating and prosecuting transnational price-fixing conspiracies.

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See Also: Antitrust, Federal Trade Commission; Antitrust, U.S. Department of Justice; Archer Daniels Midland Co.; Automobiles; Bid Rigging; Globalization; Great Electrical Equipment Conspiracy; Illegal Competition; Oligopoly; Pharmaceutical Industry; Predatory Practices; Price Discrimination; Procter & Gamble Inc.; Sherman Antitrust Act; Unfair Trade Practices.

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Procter & Gamble Inc.

Procter & Gamble Inc., a major U.S. multinational consumer goods company well known for the production of cleaning agents as well as food, beverage, and personal care products, was found to be involved in price fixing with its rivals Unilever and Henkel in 2011, whereby the three companies had agreed, nine years earlier, to raise their prices simultaneously. The company was established by William Procter (1801–84), a candle maker from England, and James Gamble (1803–91), a soap maker from Northern Ireland. The two men both immigrated to the United States and moved to Cincinnati, Ohio, where they married sisters; they established their business in 1837. Its sales were more than $1 million in 1858–59, and it won a major contract to supply the Union forces with soap and candles during the American Civil War. The company then expanded, and Procter & Gamble started constructing factories around the United States. During the 1930s, the company began to expand its operations to Britain and then to a number of other countries.

In the third quarter of 1993, Procter & Gamble lost some $102 million to Bankers Trust in two interest rate swap contracts with leveraged positions in interest rate derivatives, which, according to Edwin Artzt, the chairman and chief executive officer, “were based on highly complex formulas that multiplied the effect of interest rate increases.” One of these contracts was tied to the U.S. Treasury rates, and the other involved German marks. The losses led to Procter & Gamble suing Bankers Trust; on October 27, 1994, the company filed a suit to rescind its contracts with Bankers Trust and asked for $130 million in compensatory damages, as well as unspecified punitive damages.

After the intervention of the Federal Reserve, Bankers Trust New York Corporation agreed to take extra steps so that clients could understand contracts but continued to defend a case in which Procter & Gamble claimed “systematic deception.” Bankers Trust launched a counterclaim that Procter & Gamble was “simply naïve in its derivatives dealings.” This was at the height of problems over derivatives, with Bankers Trust having made 42 percent of its profits in 1994 from derivatives but then losing $171 million in the first half of 1995. Procter & Gamble won the case, but only after some of its executives admitted signing contracts they did not understand, much to the embarrassment of the company.

In a totally unrelated case, in 2011 Procter & Gamble found itself before the European Commission, accused of entering into a price-fixing agreement with Unilever and Henkel. The European Commission was to find that in January 2002, representatives of Procter & Gamble, Unilever, and the German company Henkel met to discuss plans to improve the environmental performance of their detergents. At the same time, the three companies agreed to reduce the size of their packages of laundry detergent but keep their prices unchanged, then gradually all three would raise their prices at the same time. This involved products sold in Belgium, Germany, Greece, Italy, the Netherlands, Portugal, and Spain, with the agreement lasting until March 2005.

Henkel informed on the cartel arrangements in 2008 in exchange for being granted full immunity and avoiding any fines. The European Commission, which oversees the competition policies in the European Union, then started its investigations, raiding the offices of the three companies in June 2008 and also seeking information from the U.S.-based company Sara Lee. Joaquín Almunia, vice president of the commission, stated that “Companies should be under no illusion that the commission will pursue its relentless fight against cartels, which extract higher prices from consumers than if companies compete fairly and on their merits." The investigation was called Purity.

The result of the case saw Procter & Gamble fined on April 13, 2011, by the European Commission and required to pay 211.2 million euros for establishing a price-fixing cartel; Unilever was fined 104 million euros. Both fines were reduced—Procter & Gamble's by 50 percent and Unilever's by 25 percent—for their cooperation and also for agreeing to settle. Both Procter & Gamble and Unilever agreed to train their managers more fully in European competition rules. Henkel escaped punishment in return for its help. Both Procter & Gamble and Unilever had already made provision by putting aside money to pay the fines.

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See Also: Bankers Trust Co.; Oligopoly; Pharmaceutical Industry; Price Fixing.

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Prostitution

Prostitution is one type of sex work in the grander schema of the sex industry. The sex industry encompasses several forms of work in the sex market, including both legal and illegal entities, such as prostitution, stripping, pornography, exotic shows, and telephone sex. The sex industry refers not only to different forms of sex work, but also to the workers, organizations, and businesses involved in the sex market.

From colonial times to the western frontier to the building of America's large metropolitan cities, prostitution has a long-standing history in America. Frequently deemed the world's oldest profession, prostitution is defined not only by periods of time but also by culture and legal regulation. Prostitution is part of a multibillion-dollar industry and has been linked to human sex trafficking, both domestically and internationally. In addition to the potential for third-party exploitation, the criminality of prostitution within the United States provides a foundation for highly organized prostitution rings to exist and function in the clandestine nature of the sex industry.

Definition and History

By definition, prostitution refers to the exchange of sexual services for material or monetary compensation. Prostitution is generally divided into two subcategories: indoor prostitution and street prostitution. Street prostitution refers to prostitutes who solicit sexual transactions in a public environment. Indoor prostitution refers to the more clandestine roles of sex workers, in which prostitutes may work as call girls, escorts, masseuses, and/or brothel workers. Although most people think of street prostitution when discussing prostitution, research has shown some areas are experiencing a decline in street prostitution and an increase in indoor-venue work, with the assistance and accessibility of the Internet.

A glance at American history with regard to prostitution illustrates the deeply rooted viewpoint that prostitution is morally wrong. In colonial times, the United States was predominantly rural, with men disproportionately outnumbering women. From the time of settlement, there were individuals seeking to make a profit from sexual promiscuity. During the 17th century in New England, many were charged with prostitution or for keeping a house of ill repute. Although laws against prostitution existed, enforcement of the laws was intermittent, and as progression of the 18th century continued, the punishment of prostitutes became less of a focus. As a result, prostitution in America at the end of the 18th century was largely unorganized.

The western frontier of America presented a similar disproportionate ratio of men to women, and prostitution was generally viewed as necessary in order to preserve eligible women with honor. Frontier prostitutes were predominantly white, young, and unmarried. The women typically worked in brothels run by madams and were generally referred to by first names only. Local saloons often had side rooms dedicated for the use of prostitutes. With a primary focus on finances, brothels often used brass checks or coins to ensure payment of the house take. Western mining towns provided new economies that offered work and leisurely activities, especially in the state of Nevada. Leisure activities such as prostitution, drinking, and gambling became the foundation for Nevada's economy and ultimately assisted in obtaining its statehood.

With industrialization, urban areas provided ample opportunities for prostitution, as working-class men opted to postpone marriage and the influx of immigrant women working as prostitutes made sex more readily available. In a study by W. W. Sanger in 1855, it was reported that a significant number of the prostitutes working in New York City were immigrant women. Larger metropolitan areas such as Chicago, Philadelphia, and San Francisco began to see a push toward regulation; however, movement in the direction of regulation failed, because in large part of organized women's groups. Without regulation, urban areas began creating red-light districts. Despite many of the segregated districts being illegal, law enforcement officials supported their use, as the districts allowed for less debauchery to influence the remaining community. Remnants of the red-light districts can still be seen today in places such as the French Quarter in New Orleans and the Barbary Coast in San Francisco. By the turn of the 20th century, the segregated districts began to disappear as politicians began to feel pressure to end zoned areas of prostitution, and vice units began forming in largely urban areas.

Regulation

Formal regulation of prostitution in the United States began on June 25, 1910, when Congress passed the White Slave Traffic Act, also known as the Mann Act, named after Rep. James Robert Mann (R-Illinois). The intention of the Mann Act was to address an international treaty obligation regarding the trade of white women. Aimed at the act of transporting women over state lines for an "immoral purpose," the Mann Act clearly states "That any person who shall knowingly transport or cause to be transported . . . for the purpose of prostitution or debauchery, or for any other immoral purpose . . . shall be deemed guilty of a felony . . ." The Mann Act came at a time when the topic of prostitution received much attention, as it was seen as a manifestation of several social issues, such as urbanization and immigration. Furthermore, the general wording of the statute enabled law enforcement officials to apply it not only to enslaved women but also to the movement of prostitutes voluntarily working in the sex industry.

During the years following passage of the Mann Act, the U.S. Supreme Court oversaw several cases that helped outline the perimeters of the statute. In 1913, the Supreme Court decided *Hoke v. United States* (227 U.S. 308), holding that although Congress was able to regulate interstate travel for purposes of immorality and prostitution, the regulation of prostitution is left to each state's discretion. Also in 1913, the Supreme Court further defined the Mann Act, as it addressed the intent a person has in leading one into debauchery by way of temptation, in *Athanasaw v. United States* (227 U.S. 326). Once again addressing intention, the Supreme Court upheld the decision that voluntary abandonment of the intended immoral act is not a defense in *Wilson v. United States* (232 U.S. 563, 1914), ultimately indicating that the actual interstate transportation is a violation of the Mann Act.

Soon thereafter, in 1917, the Supreme Court decided in *Caminetti v. United States* (242 U.S. 470) that the Mann Act's phrase ". . . or for any other immoral purpose . . ." pertained to noncommercial relationship travel between consenting adults. In 1944, the Supreme Court revisited the notion of intention, as it ruled in *Mortensen v. United States* (322 U.S. 369, 1944) that traveling between state lines would not be considered a violation of the Mann Act if the prostitute was not engaging in prostitution activities but simply traveling "from beginning to end" with intent of "innocent recreation."

As decided in *Hoke*, states hold regulatory power with regard to prostitution. With the exception of 11 counties in Nevada where prostitution is legal in brothels, prostitution (in all forms) is criminalized in the United States. Nevada state law restricts legalized brothels to counties that maintain a population of less than 400,000 residents and limits brothels on the location within those counties. Beyond state law, most regulations on brothels are controlled at the local level.

On an international level, the ways in which prostitution is regulated vary from country to country. Recent trends in the regulation of prostitution on a global scale have indicated a movement toward legalization and decriminalization. In 2000, the Netherlands legalized brothels, and Germany followed suit in 2002. In addition, areas in Austria, Australia, Denmark, Greece, Hungary, Senegal, and Turkey have some regulation of legalized brothels. The British Commonwealth, Europe, France, and Japan do not view the act of exchanging money for sex as criminal; however, the activities surrounding prostitution, such as third-party exploitation, procuring, pandering, and public solicitation are legally handled in a variety of ways. Currently, Sweden penalizes the buyers of prostitution yet decriminalizes the women involved in sex work. Furthermore, prostitution became decriminalized in New South Wales in Australia in 1995 and in New Zealand in 2003.

Prostitutes and Clients

Sex workers operating within the realm of prostitution are divided among different categories, with the biggest division being between indoor and street. The key difference between street and indoor is the location in which the transaction is completed. In street prostitution, the soliciting transaction occurs in a public space and the sex act itself may take place in either a public or private environment, such as an alley, park, or motel room. In indoor prostitution, the soliciting transaction and the sex act both occur in a private environment, such as a brothel or a hotel room.

Based on monetary compensation for services, an informal hierarchy emerges among prostitute workers. Street-level prostitutes make little money for their acts of service when compared to indoor prostitutes, and research indicates that street sex workers experience the highest levels of victimization and exploitation. The upper echelon of the hierarchy includes escorts and call girls, where monetary compensation is the highest and the potential for victimization is low. The middle tier of the hierarchy consists of women who work as prostitutes in bars, massage parlors, and brothels, with moderate pay and very low levels of potential victimization. Although street prostitution is given the vast majority of attention in research, it is indoor prostitution that is most frequently occurring.

Research indicates that prostitutes who work as call girls and escorts frequently come from privileged backgrounds and have some higher education. Women working as call girls and escorts spend longer periods of time with their clients, earn more compensation for their work than street prostitutes, and have more control and say in their lives than other sex workers. Additionally, in some instances, calls girls and escorts must place heavier emphasis on the intimacy and romance feelings given by the women to their clients, which is known as the "girlfriend experience," or GFE for short.

Within the United States, disproportionate amounts of criminal sanctions are placed on the prostitutes, and the arrest and sanctioning of clients is much less prevalent. Research on the clients of prostitutes reveals that the majority are male and that the men have different motivations for hiring a prostitute, such as traveling away from a partner or sexual requests that are not provided for in their current traditional relationship. Results of research studies have shown that the men obtaining the services of prostitute women are representative of the general population in which they are located; however, research suggests that using the services of a prostitute is not part of the typical, masculine sexual experience.

Human Sex Trafficking and Prostitution

Although prostitutes willingly work in the sex industry, sexual commerce and prostitution is subject to organized crime. It is difficult to assess the number of humans who are trafficked across borders for the sex industry versus those who are trafficked for other forms of labor. Additionally, it is unknown how many of those trafficked do so with full understanding and full consent, compared to those who are unwilling and ill informed.

Because of the clandestine nature and criminalization of prostitution, human trafficking (specifically sex trafficking) is present in the sex industry at both the domestic and international levels. Whereas prostitution refers to the willing exchange of sexual services for material or monetary compensation, human trafficking refers to situations where coercion, force, and slavery are present. Organized human trafficking in support of prostitution is prevalent at a global level and has recently gained more attention from researchers and media networks. The transportation and exploitation of humans against their will or without fully informed consent provides traffickers with ample opportunities for criminal activities and provides a large profit margin.

Recent Cases of Organized Crime

An elaborate call girl ring known as the Emperors Club VIP was discovered when Governor Eliot Spitzer's (D-New York) bank, Capital One's North Fork bank, routinely flagged a transaction for the Treasury Department. After some investigation, it was discovered that the transactions were being sent to shell corporations associated with the New York–based escort business Emperors Club VIP. The business boasted availability of escorts on an international scale, with locations in New York City, Paris, London, Miami, and Los Angeles. The business catered to wealthy, male clients through a Web site that presented available escorts with a diamond rating scale linked to the pricing fees and packages. Appointments were made through online booking and/or telephone arrangements. Federal wiretapping caught Spitzer arranging a meeting with an escort named Kristen in which he

This sign, outside a Hong Kong club, reads: "Young, fresh Hong Kong girls; White, clean Malaysian girls; Beijing women; Luxurious ghost girls from Russia." According to U.S. Government statistics, the majority of victims (65 percent) of human trafficking moved across international borders are trafficked for the purpose of sexual exploitation. The U.S. government considers prostitution to be "inherently demeaning and dehumanizing" and opposes efforts to legalize it.

agreed to pay for expenses incurred for her travel and time to meet him at a Washington, D.C., hotel. Prosecutors charged four people who ran the escort business with violations of the Mann Act. Through further investigation, it was discovered that Spitzer had utilized the services of another escort agency known as Wicked Models. As a result, Spitzer announced his resignation of the governorship in March 2008. Following the resignation, criminal prosecutors opted not to press charges relating to violations of the Mann Act against Spitzer.

Heidi Fleiss, also known as the Hollywood Madam, ran a highly organized escort agency that catered to the stars of Hollywood in the early 1990s. Tipped off by some of Fleiss's competitors, the Los Angeles County Sheriff's Department conducted an undercover sting operation to catch Fleiss in the act of pandering. After the successful arrangement and delivery of four escorts and cocaine to a hotel room filled with undercover officers, Fleiss was arrested and faced five counts of pandering and one count of narcotics possession. The state of California found her guilty on three counts of pandering; however, Fleiss appealed the decision based on voting misconduct by the jury. The state overturned Fleiss's pandering conviction. During the state trial, the federal government charged Fleiss with 14 counts of conspiracy, income tax evasion, and money laundering. A federal grand jury convicted her of eight counts of conspiracy, income tax evasion, and money laundering, and she was sentenced to 37 months in federal prison, of which she served 20 months. Fleiss accepted a plea bargain from the state and received an additional 18 months on the pandering charges.

After November 2012, suburban mother Anna Gristina (also known as the Millionaire Madam and Manhattan Madam) was accused of running an elaborate, upscale, urban escort service, and was charged with one count of promoting prostitution after an alleged July 2011 assignation with an undercover officer. Gristina's codefendant, Jaynie Baker was charged with assisting in the operation of the escort business. Gristina was sentenced to six months in prison following a guilty plea and released for time served.

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See Also: Civil Forfeiture; Conspiracy; Corruption; Ethics; Gambling and Lotteries; Globalization; Hoover, Herbert; Human Trafficking; Industrial Revolution; Keating, Charles; Kilpatrick, Kwame; Labor Crimes; Money Laundering; Nixon, Richard M.; Organized Crime; Paterson, David; Police Corruption; Pornography; Public Corruption; Sexual Harassment; Spitzer, Eliot; Tax Evasion; War Crimes; War on Drugs.

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Public Citizen Health Research Group

The Public Citizen Health Research Group is one of five major policy groups constituting the larger Public Citizen watchdog nonprofit founded by Ralph Nader in 1971 to ensure the public interest in health, safety, and the environment. The Health Research Group (HRG), in particular, aims to limit corporate influence on regulatory policy and practice related to chemical exposure, pharmaceuticals, and auto safety. The HRG pressures federal regulatory agencies to enforce regulations and respond to harmful and ineffective products through labeling, product recalls, or removal of harmful elements from public consumption. The HRG has no financial ties to corporations, making it more independent than regulatory agencies that receive corporate funding.

Collaboration With Ralph Nader

Dr. Sidney Wolfe, founder and director of HRG, is a National Institutes of Health (NIH) researcher who, with Ralph Nader, began this health advocacy work with a successful 1968 effort, convincing the Food and Drug Administration (FDA) to recall contaminated intravenous fluid bottles instead of the FDA's proposed solution of continuing to allow the bottles to be used with warnings. This initial collaboration with Nader led Dr. Wolfe to start the HRG and to focus on federal agencies that were slow and inadequate in responding to public health problems. The HRG shed light on corporate influence of the seemingly independent regulation of consumer products and the resulting mass public harms. In these early years, the HRG was influential in achieving government action on many suspected or proven cancer-causing chemicals, such as the 1976 ban on red food dye #2 and the ban on carcinogens found in aerosols.

The HRG, interestingly, both supports and challenges government administrative agencies. For example, it supports FDA authority to regulate tobacco and state efforts to limit tobacco advertising, yet it fights the FDA's approval of drugs or medical devices that have known public harms. The HRG ensures compliance with federal laws related to public health and safety and pressures the government for further safety enhancements.

Another important emphasis of HRG involves making the public aware that their health and safety concerns may not be represented through congressional action or administrative agency practices. The HRG pushes for greater transparency of regulatory procedures and financial ties to corporations and issues numerous publications that provide information about health products, such as prescriptions and over-the-counter drugs, with an alternative view on the efficacy and safety of these drugs. For instance, the HRG analyzes the same data used by the FDA, has issued *Worst Pills, Best Pills* publications over the years, and now compiles a Web site: www.worstpills.org.

In the 1980s, the Ronald Reagan administration successfully promoted widespread deregulation, leading the HRG to renew its efforts for government accountability and the curbing of corporate influence on policies impacting public health and safety. For example, the HRG informed the public that many regulations were being written from industry reports rather than with the public interest in mind. Continuing today, the HRG opposes claims that lawsuits are a costly public problem, reminding consumers of corporate harms and doctors or companies deserving attention. The HRG opposes efforts by companies to use federal regulations to shield them from lawsuits by patients injured by product liability or by deceptive labeling and advertising. The HRG argues that corporate abuses of regulations and deregulatory trends are creating bigger public health problems.

The HRG has played an important role in raising awareness and forcing action in a range of public health issues. For instance, the HRG is behind recent public attention to cell phone usage in cars (suing the government for documents about its safety); banning certain chemicals in plastic bottles and children's toys; challenging the marketing of infant formula in hospitals; supporting regulations posting calories in fast food restaurants (2008, New York City); challenging the safety of breast implants; influencing the redesign of an acquired immune deficiency syndrome (AIDS) study in Africa that denied the effective AZT drug to pregnant human immunodeficiency virus infection (HIV)–positive women (1997); influencing Occupational Safety and Health Administration (OSHA) standards protecting workers from chemical exposure; pressuring the

FDA to require labeling on tampon packages about toxic shock syndrome (1989); influencing auto safety regulations, such as requiring airbags and setting the length of working hours of truckers; and securing numerous legal successes that would limit corporate liability for dangerous products. Public Citizen Health Research Group balances corporate influence in Washington as the voice of public health and safety.

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See Also: Breast Implants; Cigarette Advertising; Consumer Deaths; Consumer Product Safety Commission, U.S.; Dalkon Shield Case; Food and Drug Administration, U.S.; Infant Formula; Medical Malpractice; Nader, Ralph; Occupational Carcinogens; Occupational Safety and Health Act; Polyvinyl Chlorides; Tampons and Toxic Shock; Tobacco Industry; Unnecessary Surgery; Unsafe Working Conditions; Workplace Deaths.

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Public Corruption

According to most of the legal instruments, public corruption is the violation of a public official's duty of faith toward his or her community. Its root is found in the Latin verb *corrumpere*, which means to spoil. It usually occurs when an official is offered an item of value or a favorable transaction in exchange for a favorable decision that would not otherwise be made in terms of form and/or speed. Potential perpetrators include federal, state, and local elected officials, and anyone who can affect a ruling, through an appointed or elected post. Potentially, a legislator's vote, a judge's ruling, or a contract for work can all be susceptible to incidents of public corruption. In order for an act to be considered an incident of public corruption, the illegality must be observed within the official duties of the person in question. Various forms of corruption exist, depending on the state, the jurisdiction, and the governmental function, but the most widely known include bribery, extortion, cronyism, nepotism, patronage, and embezzlement.

Some actions may be legal in one country and illegal in another, as the boundaries between legality and illegality can be very thin and open to interpretation; what may be considered bribery in one state may be perceived as a legitimate gift exchange to facilitate a transaction in another. It is therefore important to note that, apart from the strict governmental functions, variables of societal perception and cultural structure may mold the actions considered to be corruption.

It is remarkable that according to estimates, bribery alone involves over $1 trillion annually. Possible explanations for corruption include government size, its decentralization, democratization, and the lack of freedom of the press and protection of civil rights. Even though every nation on Earth has criminal laws to regulate public corruption, it is still a widespread crime. In addition to criminal sanctions, which usually require time to be implemented, many nations have adopted ethical guidelines for public administration and regulations on campaign finance to limit the opportunity to misuse, or improperly influence, public authority.

Primary Consequences

Public corruption jeopardizes healthy development, undermines democratic principles and the relationship between the state and citizens, and dilutes the public will and the principle of socially beneficial actions. What is more, it leads to inefficient public administration services and erodes the overall interaction between state and society. Finally, it promotes the lack of respect, trust, and tolerance in the entire country. It is easily observed that the effects of such crime are multiple and span all aspects of the economy, society, culture, and democratic values. If public corruption occurs systematically, it might threaten the overall well-being and the stability of the nation.

Public corruption generates economic distortions by diverting public investment that was destined for the social good to projects that require bribery in order to guarantee the commission of a work. Corruption may also lead to environmental and construction violations. Inefficient solutions may be chosen that will harm the society both economically and in terms of development. Economists even claim that different levels of economic development in Africa and Asia may be justified through the extent of corruption that has taken the form of rent extraction, with the resulting financial capital moved overseas rather than invested at home.

Public corruption endorses environmental destruction as incidents of bribery overpower the environmental legislation in place. Social rights, pension schemes, and children's rights are unavoidably affected by this development. Even incidents of food being stolen from humanitarian aid missions, due to the highly extensive corruption, have been recorded. The scale of humanitarian aid to the poor and unstable regions of the world grows and is highly vulnerable to corruption, with food aid, construction, and other highly valued assistance as the most at risk. Public corruption does not discriminate in terms of poor and developing, as it may occur at any given instance.

Bribery, Extortion, and Patronage

The major categories of public corruption are found in the fields of legislation, judicial body, regulatory, contractual, and law enforcement. Legislation corruption and judicial corruption both refer to specific incentives offered to judges and legislators in order to guarantee a favorable ruling. Regulatory corruption deals with government investigators, whereas contractual corruption embraces the illegal forms of persuasion connected to the distribution of government contracts. Finally, law enforcement corruption refers to an illegal attempt to bribe police officers, discouraging them from pursuing their duties in full. In the great majority of public corruption events, the gratuities that are asked for are not of extraordinary value; indicatively, they include tips, expensive watches, cash, meals and entertainment, jobs for family members, free home improvements, and having bills paid directly.

To begin with, bribery is considered the best-known type of corruption. A bribe is a payment given personally to a governmental official in exchange for his or her use of official powers in relation to a case. At least two actors are required in order to establish a bribe, these being the person who gives the bribe and the person who receives the bribe. For purposes of definition, it does not matter which party initiates this illegitimate exchange. It is sometimes the case that bribes are so widespread that a job cannot be executed efficiently without delays; the public service system is organized so bureaucratically that it indirectly obliges the interested party to indulge in corruption. A bribe may be taken to fulfill numerous requests, primarily in the form of ignoring a legal requirement, facilitating a formal process, or bypassing a regulation.

Bribery is further subcategorized as active or passive; the rationale for this discrimination is obviously to render any such incidents as illegal from the first steps in order to prevent, more efficiently, their occurrence in the future. Furthermore, it is easier to prosecute and collect valid court evidence given that bribery is, overall a difficult crime to prove, especially if, instead of a clear deal, there is a mutual understanding that both parties honor. Furthermore, such dissociation makes the prosecution of bribery offenses easier, because it can be very difficult to prove that two parties (the bribe giver and the bribe taker) have formally agreed upon a corrupt deal.

Another form of corruption is extortion, which is usually associated with organized criminals who impose their influence on government officials or businesses through threats and intimidation. Mafia groups often use extortion in order to guarantee tax benefits or legal prosecution of their opponents. In these cases, the weaker the country is, the more often this type of incident occurs. Corruption is not always associated with money; it can also take the form of favoritism and promote the interests of one person or persons to the disregard of others having similar requests.

Trading in influence is defined as a situation wherein a person offers his or her influence/power as a tradable good to a third party to help him or her in a situation that he or she desires to resolve. From a legal point of view, however, the role of the third party does not really matter, although he or she can be an accessory in some instances. It may be difficult to distinguish between cases of trading in influence and some cases of lobbying. It is impossible to control whether a vote is traded for a positive treatment of a person in power.

Patronage is another well-known type of public corruption. It refers to favoring supporters via means of employment, social benefits, pensions, and similar material. It is legal up to a point, as it is a sine qua non that a newly elected government will choose the administrative staff it wants to employ in top positions. However, if the government selects incompetent staff without meritocratic criteria in exchange for prior support, it is supported that it is illegitimate. It is also observed that in various cases, the public administration is staffed based on criteria of loyalty instead of ability or specific characteristics of desirability for the government in office. Closely related to the previous subject is the practice of favoring relatives (through nepotism) or personal friends (through cronyism) for various posts of public administration. This may range from some cases of employment to even the entire state being inherited by descendants. Seeking to harm enemies becomes corruption when official powers are illegitimately used as means to this end.

Why Public Corruption Is So Widespread

Corruption grows mainly in vulnerable areas that cannot effectively control their public administrative structures and systems. There is a lack of investigative reporting in the local media and contempt for or negligence of reporting in the local media. What is more, a bureaucratic structure with weak accounting practices includes lack of timely financial management. Lack of measurement of corruption is another factor that allows this type of crime to occur extensively; very few quantitative

U.S. Ambassador to the Republic of the Philippines Thomas Hubbard (left) and Secretary of Defense William S. Cohen (center) meet at the Malacanang Palace with Philippine President Joseph E. Estrada (right) on August 3, 1998, soon after he was elected by the Philippines' biggest-ever margin. Soon, however, Estrada would be accused of running the Philippines "like a gangland boss," and in 2000, political opponents had him hauled in for impeachment on allegations of rampant corruption. Estrada was found guilty of plunder and given a life sentence in October 2007, from which he was later pardoned by President Gloria Macapagal-Arroyo.

studies exist, with limited data collection and questionable reliability and generalizability.

Because the characteristics and the nature of public corruption have not been examined scientifically, it is very difficult to predict and prevent it efficiently. An interrelated matter is the lack of awareness observed in the public. When the public is not informed regarding this dangerous type of crime that involved the equivalent of trillions of U.S. dollars annually, it is unlikely that it will prevent it in their daily lives. Finally, some countries have purposely targeted investors from abroad, providing very low tax rates as incentives for them to bring their money. Even though these countries normally impose taxes on their citizens, they may offer low rates to international investors. This tactic is, of course, legal; however, it might encourage incidents of public corruption up to a point, since the violators know that they can profit by depositing their money safely in the country.

The absence of governmental control is of paramount importance as well, given that there is a lack of civic society and nongovernmental organizations that monitor the government as a whole. Because most of these aspects of public life are interconnected, of equal importance are the weak rule of law, the weak judicial independence, the lack of protection to whistleblowers, and the lack of benchmarking that would allow a proportionate comparison among different countries' policies and successes. Furthermore, poorly paid government officials and government licensees need to conduct business. Permanent positions in the public sector without any rotation in assignments may also create dependent relationships inside and outside the government, which encourage and help conceal corruption and favoritism. This can easily be controlled through placing rotating government officials into different positions and geographic areas.

Prevention

Experts are not satisfied overall with the strategies being applied so far by governments worldwide. An international strategy to combat public corruption and fraud should take into account the differences as well as the similarities between countries. Overall, integrity and trust must be cultivated across countries to prevent such incidents from happening too often. There have been a variety of suggestions on how to fight corruption. The most common one suggests different combinations of "sticks" and "carrots." Some advocate that public service wages should be raised, on the grounds that well-paid civil servants would resist the temptation of bribes. However, wages have to be increased significantly before they have any effect on corruption. In other words, although corruption may potentially be mitigated by raising civil servant's wages, the costs may outweigh the benefits. Increasing public sector wages places a heavy burden on budgets. Others suggest that bonuses be offered to those who uncover corrupt activities. Moreover, job rotation could serve to prevent incidents of corruption. Finally, the use of new technology that requires less interaction to file a claim is an interesting method that can help reduce corruption. Using e-mail and electronic forms instead of interpersonal interaction limits substantially any incident of corruption. This is more easily represented through the e-government that takes care of these processes.

There are various agencies that actively combat corruption worldwide. Certain criteria apply, as different methods of communication are dominant across countries and different cultural structures exist. Various international instruments are in place to actively prevent incidents of corruption that occur very often; however, they have not been as fruitful as initially anticipated. These include an initiative by the European Community, the Council of Europe, and the Organisation for Economic Co-operation and Development (OECD) in 1996 through a Programme of Action against Corruption and the issuance of various directives. The outcome led to the Criminal Law Convention on Corruption (ETS 173), the Civil Law Convention on Corruption (ETS 174), the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), the Twenty Guiding Principles for the Fight against Corruption (Resolution (97) 24), the Recommendation on Codes of Conduct for Public Officials (Recommendation No. R (2000) 10), and the Recommendation on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (Rec(2003)4).

Transparency International is probably the best-known anticorruption nongovernmental organization (NGO) that analyzes the Corruption Perceptions Index, which was first issued in 1995. This index follows the indications of the publics regarding the extent and the type of corruption in their respective countries. This has also changed political agendas, pressuring policy-making agencies to further regulate and combat public corruption. Three measures are used for this purpose annually: the Corruption Perceptions Index (CPI), which is based on aggregating third-party polling of public perceptions of how corrupt different countries are; a Global Corruption Barometer, based on a survey of general public attitudes toward and experience of corruption; and a Bribe Payers Index, which analyzes the willingness of foreign firms to pay bribes in order to facilitate their transactions.

The World Bank is also an international organization that analyzes a range of data on corruption, including a survey organized among over 100,000 firms worldwide and a set of indicators of governance and institutional quality. Worldwide Governance Indicators include the control of corruption, which is defined as the extent to which power is exercised for private gain. As expected, answers vary across countries, whereas the global coverage of these data sets has led to their widespread adoption, most notably by the Millennium Challenge Corporation.

Overall, public corruption is a unique and widespread form of misuse of public power; even though it is executed through the public sector, it is usually initiated through the private sector, the society itself.

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See Also: ABSCAM; Agnew, Spiro; Bribery; Campaign Finance; Corruption; Edwards, John; Embezzlement; Employee Crimes; Ethics; Ethics Reform Act; Extortion; Foreign Corrupt Practices Act; Gambling and Lotteries; Government Contract Fraud; Government Procurement Fraud; Kickbacks; Kilpatrick, Kwame; Knapp Commission; Mollen Commission; Nixon, Richard M.; Organized Crime; Police Brutality; Police Corruption; Political Assassinations; Porteus, Judge G. Thomas; Revolving Door; State Crime Theory; Watergate; Whitewater Scandal; Young, Andrew.

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Pure Food and Drug Act

Beginning in the last quarter of the 19th century, support for federal legislation regulating food and drug products accelerated, and some 200 proposals were introduced in Congress. However, lobbies for the patent medicine and whiskey industries managed to prevent their passage. During the Spanish-American War, a number of soldiers died as a result of eating so-called embalmed meat that had been improperly preserved.

In the first years of the 20th century, several children died in Missouri and New Jersey after being given tainted vaccines. The major force behind the pure food and drug movement was

Dr. Harvey W. Wiley, the chief chemist for the Department of Agriculture. Using 12 volunteers known as the Poison Squad, Wiley found that in the absence of government regulation, consumers were regularly being exposed to a variety of harmful products. Senators Porter McCumber and Weldon Heyburn introduced a 1904 bill, which failed to pass despite considerable support. That bill formed the basis of the Pure Food and Drug Act of 1906, also known as the Wiley Act. Once President Theodore Roosevelt became committed to the cause, events moved rapidly. Roosevelt sent a pure food and drug bill to Congress on December 5, 1905. The Senate passed the bill on February 21, 1906, by a vote of 63 to 4. After making substantial changes, the House passed the bill on June 23 by a vote of 241 to 17. Roosevelt signed the bill into law a week later. Along with a companion piece of legislation, the Meat Inspection Act, it became effective on January 1, 1907.

Progressive reformers were instrumental in pure food and drug efforts, led by muckraking journalists such as Samuel Hopkins Adams and social activists such as Florence Kelley. At the time, alcohol, cocaine, heroin, morphine, and cannabis were all available without a prescription and many patent medicines were simply alcoholic drinks designed to bypass liquor taxes. In February 1906, Upton Sinclair published *The Jungle,* which vilified Chicago's meatpacking industry and aroused public outrage.

The Pure Food and Drug Act banned both the manufacture and transportation of food and drug items that had been tainted or misbranded or which contained poisonous substances. It applied to products designed for internal and external use by either humans or animals. In addition to the seizure of products in question, a misdemeanor conviction on a first offense for manufacturing such products was punishable by fines of up to $500 and a year in prison. Subsequent offenses carried fines up to $1,000 and a year in prison. If convicted of transporting tainted food and drugs into any state, territory, or Washington, D.C., offenders could face fines of up to $200. Subsequent offenses carried fines of up to $300 and a year in prison. Responsibilities for implementing the Pure Food and Drug Act were distributed among the Departments of Treasury, Agriculture, Commerce, and Labor, according to their assigned authority over various aspects of manufacturing and distributing food and drug products.

As the head of the Bureau of Chemistry, Wiley was charged with conducting tests to determine whether or not the Pure Food and Drug law had been violated. Drugs that differed from standards established by the United States Pharmacopeia and the National Formulary in strength, quality, or purity were considered adulterated. That determination was based on whether or not other ingredients had been substituted or left out and whether or not the product was inferior, damaged, or harmful. Results of those tests were reported to the secretary of agriculture, who contacted particular district attorneys about filing charges. In 1907, Secretary of Agriculture James Wilson established the Board of Food and Drug Inspection and charged it with establishing departmental policies for enforcing the pure food and drug law. The following year, he created the Referee Board of Consulting Scientific Experts to serve as an advisory panel to the department. Thus, Wiley's role in protecting public health was sidelined. He resigned his position in 1912.

In 1911, the Supreme Court held in *United States v. Johnson* that the Pure Food and Drug Act of 1906 did not prohibit false therapeutic claims. As a result, the act was amended in 1912 to ban such claims. The act was again amended in 1919 to ensure that food and drug packages clearly displayed the weight, measure, and number of its contents. In 1923, the Filled Milk Act banned the manufacture and distribution of adulterated milk products.

In the 1930s, the pure food and drug movement gained new momentum with the publication of *One Hundred Million Guinea Pigs: Dangers in Everyday Foods, Drugs, and Cosmetics* by Arthur Kallet and F. J. Schlink, which detailed the dangers in unregulated consumer products. Then in 1937, S. E. Massengil began manufacturing an over-the-counter tonic that caused the deaths of over 100 people because it contained ethylene glycol, a substance used in antifreeze. The public response to these events led to the passage of the Federal Food, Drug, and Cosmetic Act in 1938. The act greatly strengthened the 1906 act by mandating scientific testing before products were released to the public, banning false therapeutic claims, and prohibiting the addition of substances deemed poisonous in most food products.

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See Also: Food and Drug Administration; Food Fraud; Meat Inspection Act.

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Racial Discrimination

The racial categorizations placed on human creatures contain both myth and reality. The myth of race lies in its lack of sound biological basis. Despite external variations among individual physical features and characteristics, there lies minimal genetic difference. Determining race based on DNA tests would result in an underinformed guess because genetics alone remains insufficient to draw a conclusion regarding the socially constructed racial category. For example, the majority of Caucasians or white Americans in the 21st century would not have been classified as such during the 19th century.

During much of the 19th century and in some cases during the early 20th century, "white" in the United States meant English or of English descent and Protestant, resulting in the exclusion of recent European immigrants such as Italians, Germans, Irish, Bohemians, and Poles. However, the English are predominantly a combination of Anglos, Saxons, and Jutes, which ironically are Germanic tribes, implying that the English who were white were direct descendants of Germans, who were considered nonwhite. Italians were also lynched in the southern United States.

The construction of race has led to overt and hidden social benefits and consequences, depending on the individual's racial classification and the social context. The effects of race have manifested in clearly defined prejudices, discriminatory action, mass suffering, and even death.

Institutional Racism

Institutional racism manifests itself in the normal operations of society, including business environments, such that policies and practices disregard the present impact of past discrimination. Because racism has a cumulative effect, it can linger and appear externally inconspicuous. Institutional racism encompasses hiring practices; governmental practices, such as legislative exclusion, gerrymandering, and color-blind racism; racial profiling; and environmental discrimination.

Previous discriminatory hiring practices produce several long-term results. First, the person discriminated against will remain at a disadvantage in terms of seeking promotions or advanced positions that require experience. Second, the worker will lack the privileges that accompany seniority. The practice of tokenism, or "window dressing," occurs when a racial minority has been hired in a setting that is racially homogeneous or nearly so. When the practice is deliberate, their presence further serves as a means of public display to demonstrate conspicuous but minimum diversity. When tokenism serves the purpose of masking racial prejudice, the discriminatory institution becomes increasingly reluctant to hire additional

A fair housing protest in Seattle, Washington, in 1964 confronts racial discrimination in housing sales. Until 1968, it was legal to discriminate against minorities in Seattle in the rental and housing markets. The fight to prohibit discrimination began in the 1950s.

qualified minorities of the same race. Such practices become further justified through the ideology that considers one token minority hire as sufficient, making two or more unnecessary. Through criminal background check forms, employers have sufficient leverage to request demographic information from prospective applicants, such as race and age, as a prescreening device. Without directly asking for such demographic information on the application, the employer has a provision to avoid processing the application in the absence of a completed criminal background check form.

Legislation can act as a form of institutional racism. The Chinese Exclusion Act of 1882 accomplished more than preventing Chinese immigrant workers from becoming naturalized U.S. citizens; it also functioned as the beginning of overt differential treatment by race or nationality in terms of the immigration process.

Some U.S. states have laws to permanently prohibit convicted felons from voting. Such laws pertain to those who have completed their sentences and disproportionately disenfranchise African American males by the millions on a national level.

After the September 11, 2001, terrorist attacks in the United States, the U.S. government initiated the Transportation Security Administration (TSA) as a swift response. The TSA aimed to increase security screening, especially at airport checkpoints. Prior security screeners received low to modest wages; however, the federal government enacted a law that restricted employment solely to U.S. citizens. The legislation impacted experienced screeners with legal immigrant status.

Gerrymandering entails manipulating congressional district lines to create a political advantage or disadvantage for given voting blocs. Such tactics have functioned as a means of giving underrepresented populations a degree of political representation. A dysfunction of gerrymandering can likewise eliminate underrepresented groups by dividing voting blocs, such that they can become numerical minorities in another district.

Color-blind racism embraces race neutrality in principle for the purpose of perpetuating disguised discriminatory action against a targeted racial or ethnic group. Without referencing race, public policies tend to have disproportionate effects on the various racial groups who face subjection to those policies

Racial profiling occurs when law enforcement either formaly or informally uses external characteristics such as presumed race as the basis for identifying traffic law violators or criminal suspects. Such practices have become justified through emphasis on the utilitarian goal of crime reduction.

Environmental justice addresses the problem of the disproportionate number of racial and ethnic minority residents exposed to landfills, industrial wastes, and pollutants. Oil residue from huge, unlined storage pits previously owned by Gulf Oil and drained in 1927 lies below the residents of the Houston community of Kennedy Heights, which was developed in the 1960s and consisted predominantly of African Americans. Such pollutants and solvents have contributed to the contamination of local soil, groundwater, and air. However, this housing development predates the mandates of right-to-know legislation as it applied to neighborhoods. Urban planners and local legislators had prior knowledge of the biohazards below the surface of this proposed community, and such factors led to cheapened property values for investors.

Antidiscrimination Actions in History

There are numerous events, organizations, and movements that have created historical antidiscrimination landmarks, including the Hull House in Chicago, the founding of the National Association for the Advancement of Colored People, the establishment of the Fair Employment Practices Commission (FEPC), the desegregation of the military, and the desegregation of public schools.

On September 18, 1889, Jane Addams founded the Hull House in Chicago, Illinois, with the intention of hosting a variety of social programs to serve women, immigrants, the poor, and the broad host of needs of these groups. Rather than focusing on a single specialization, their other community services could continuously remain relevant. Establishing the Hull House was significant in providing a physical base for the larger community organizing movement. During the 1880s, recent European immigrants who were considered nonwhite at the time were subject to dangerously low-wage labor and relatively substandard lodging. In 1909, Jane Addams and W. E. B. Du Bois were among the cofounders of the National Association for the Advancement of Colored People (NAACP).

In 1943, President Franklin D. Roosevelt created the Fair Employment Practices Commission (FEPC), which sought to eliminate employment discrimination. The FEPC received insufficient funding and lacked sanctions to prevent employers from discrimination; therefore, it relied solely on employers to take the initiative to comply. Additionally, the FEPC could only handle complaints from federal employees, federal contractors, and labor unions.

During World War II's Battle of the Bulge in 1944, General Dwight Eisenhower—the Supreme Allied Commander—authorized African American soldiers to join Caucasians in combat for the first time because of shortages in the fighting force. A few years later, President Harry Truman's Executive Order 9981 produced the landmark legislation of military desegregation. President Truman deliberately bypassed Congress because he anticipated that such a bill would probably not receive enough votes to pass. At the time, southern Democrats collectively opposed nearly all forms of institutional desegregation legislation, which included the military. July 26, 1948, marks the date on which President Truman signed a two-part executive order.

The ruling on *Brown v. Board of Education of Topeka* in 1954 declared that the legal doctrine of "separate but equal" in the context of public education is unconstitutional. However, there was minimal desegregation of public schools despite the federal decision. School districts collectively ignored such laws, and it took some districts up to 20 years to begin the integration process. The necessary sanctions that enforced the *Brown* decision occurred when school districts were on the brink of losing federal funding. The effects of defunding would have forced sudden, draconian budget cuts; significant increases in state expenditures; and noticeable school tax increases on the local level.

Because of racially homogeneous residential patterns, partially caused by redlining and racial steering, de facto segregation became an increasing norm in terms of public school demographics. Mandatory busing of children belonging to racial ethnic minorities to schools whose students were predominantly members of "majority" groups became a viable response, as schools had an economic incentive to follow suit. School districts that were reluctant to adhere to integration mandates found clever alternatives, such as classifying Mexican Americans as Caucasian, then combining them with African American students to demonstrate integration. Such demographic manipulation functioned as a means for schools to legally comply with federal laws.

Affirmative Action

President John F. Kennedy initiated affirmative action as an executive order in 1961, and the policies became legislatively enacted under President Lyndon B. Johnson's administration. Affirmative action attempts to address the issue of institutional discriminatory practices and implicit biases that tend to be overlooked under the paradigm of fairness without necessarily justice. However, affirmative action has accompanied fierce opposition and has been labeled as "preferential treatment" or "reverse discrimination." The meritocracy ideal assumes that no racial or ethnic group collectively has any ascribed advantages or disadvantages. Affirmative action stressed that racial and ethnic minorities collectively face exclusion from informal networks and tend to be subject to negative biases, which contribute to the reluctance of hiring and promotion. Additionally, past discrimination reduces the likelihood of cumulating economic resources over time while lacking the benefits of intergenerational inherited wealth.

Furthermore, affirmative action is designed to address the hidden biases of employee seniority policies. Without such initiatives, recently hired racial and ethnic minorities would face increased vulnerability to layoffs in the case of economic or production declines.

Although prospective employers have been discouraged from making direct references to overt, racially sensitive rhetoric while interviewing applicants, affirmative action does not eliminate interviewer bias. Interviewer bias refers to the idea that the characteristics of the interviewer, such as his or her race, affect the applicant's responses and create a tendency to avoid "race entrapment statements."

The Civil Rights Movement functioned as a countercultural phenomenon because it threatened the conventions of Jim Crow laws and their accompanying ideologies. Martin Luther King, Jr., was one of the movement's most notable leaders and advocated the use of civil disobedience and nonviolence in efforts toward increased inclusiveness in employment opportunities, economic justice, and desegregation of public facilities. Despite the movement's widespread support, its opposition came from a variety of directions, ranging from the White Citizens Council to sectors of the Black Power Movement and areluctant conventional society that deemed actions such as the freedom rides and marches as subversive at the expense of law and order.

Under the Johnson administration, the Civil Rights Act of 1964 directly led to the formation of the Equal Employment Opportunity Commission (EEOC), with the aim to empower the U.S. Department of Justice to investigate, and administer monetary sanctions against, labor unions or employers with 25 or more workers in cases where discrimination surfaced. The act prohibited discrimination in facilities that accommodate the public even if such facilities have private ownerships, such as the hospitality industry or publicly owned or supported parks, hospitals, and colleges. Furthermore, President Johnson's signing of the act marked the advent of the modern era of racially polarized partisanship, as political parties had undergone political realignment. In reaction to the civil rights legislation, Caucasian southerners made a mass exodus from the Democratic Party to the Republican Party. Beginning with the Lyndon Johnson and Barry Goldwater presidential contest of 1964, racial and ethnic minorities begcame increasingly more supportive of the Democratic Party.

President Johnson's successor, Richard Nixon, became the architect of the "southern strategy" in terms of electoral politics. The southern strategy entailed appealing to the sensibilities and nostalgia of traditional southern culture, the "Jim Crow" way of life, and hegemonic structures in order to ensure support from a significant portion of the U.S. electoral map.

In 1972, the Nixon administration further expanded the EEOC by including small businesses with 15 or more workers. Workers' rights, safeguards against discrimination in the workplace, and laws against retaliation served as significant issues that correlated with Nixon's reelection and retention of a significant portion of the African American vote despite the southern strategy.

Housing

The Fair Housing Act (FHA) declared racial discriminatory practices in the housing market as unlawful. As a result of the FHA, bank and mortgage company lending has become subject to external monitoring, with the goal of preventing discrimination. Redlining as a form of discrimination becomes suspected when banks and mortgage companies display patterns in which lending does not occur in designated neighborhoods. Without the FHA, banks and mortgage companies would have the unyielding power to set the demographics of any neighborhood or housing development.

Information derived from fair housing forms does disclose race and can function as a means of influencing decisions regarding lending. Even when a prospective home buyer has a reasonable suspicion of racial discrimination as the reason for a loan denial, there is difficulty in legally proving it. High legal fees serve as an additional deterrence to filing suit. Although the FHA functions as a form of consumer protection against unfair lending practices, banks and mortgage companies have the ability to use the term *economic risk* as a means of justification for what would be considered discrimination.

Racial discrimination also manifests itself by means of differential treatment "behind closed doors," measurable by such means as comparing callback rates for appointments, housing or rental application obstruction, or higher charges quoted for leases or rentals based on presumed racial backgrounds (as detected through the dialect of the telephone voice, caller identification technology, or the probable ethnicity through the name). The practice of deliberately using race as a basis for selecting neighborhoods to show to prospective home buyers has been common, yet difficult to detect. Such "racial steering" practices entail the deliberate avoidance of showing selected racial and ethnic minorities houses for sale in predominantly Caucasian neighborhoods despite their having sufficient credit ratios and debt-to-income ratios, and overall low economic risk status.

In the aftermath of Hurricane Katrina—which devastated New Orleans, Louisiana, in 2005—St. Bernard Parish adopted sweeping zoning ordinance changes in 2009, including a ban on mixed-income, multifamily dwellings. These housing restrictions repeatedly violated federal civil rights law and, some argued, created a housing crisis for the parish's rising population of African American residents, many of them Katrina survivors. On October 17, 2012, the U.S. District Court for the Eastern District of Louisiana granted a judgment against the parish in a housing discrimination case over its denials of mixed-income and multifamily housing developments.

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See Also: Age Discrimination; Fair Housing Act; Kennedy, John F.; Housing and Urban Development, U.S. Department of; Johnson, Lyndon B.; Justice, U.S. Department of; Mortgage Fraud; National Environmental Policy Act; Pollution, Air; Pollution, Water; Redlining; Subprime Loans.

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Racketeer Influenced and Corrupt Organizations Act

The Racketeer Influenced and Corrupt Organizations Act (RICO) was enacted on October 15, 1970, as part of Title IX of the Organized Crime Control Act. RICO is codified under the federal penal code, 18 U.S.C., and contains eight sections (§§ 1961–68). RICO was created to combat organized crime, organized criminal enterprises, and organized crime families operating within the United States. Specifically, RICO is a legal weapon utilized to undermine and dismantle organized crime by attacking the heart of organized criminal enterprise: the operation of illegal businesses and engagement in illegal financial activities. RICO is generally considered a success. Proponents of RICO note its efficacy in weakening organized crime within the United States. Critics of RICO, however, argue that the statute's broad language renders it susceptible to exploitation, especially in the arena of civil prosecutions.

Origins of RICO

RICO's origins can be traced to Senate hearings on the topic of organized crime led by Senator Estes Kefauver in 1951. Interest in the problem of organized crime, widely seen as a growing threat to government, legitimate business, and law and order, continued to build throughout the 1950s and 1960s. Passage of the Omnibus Crime Control and Safe Streets Act in 1968 significantly expanded the federal government's role in combating organized crime. In 1970, the Organized Crime Control Act (OCCA) bolstered previous federal efforts to thwart organized crime by making it easier to prosecute multijurisdiction organized crime cases. Moreover, the 1970 OCCA codified the RICO statute into law.

RICO: Intent and Legal Requirements

From the 1950s through the 1980s, organized crime in the United States was synonymous with Italian Mafia families like the Bonannos and Gambinos. The federal government sought to destroy these groups. Congress, however, is constitutionally restrained from creating laws that target specific individuals. Thus, while the intent of the OCCA and RICO was to dismantle Italian organized crime families, the statutory language of RICO was made general enough to apply to any organized criminal enterprise. As a result, RICO effectively targets any group engaging in illegal commerce, receiving or investing money derived from an illegal business, or having any ownership or participation in an illegal enterprise.

In order to make a RICO charge, prosecutors must demonstrate that a separate offense, known as a predicate crime, was committed. The list of potential predicate offenses—derived from federal or state crimes—is intentionally large, so as to enable RICO to be widely applied, and includes murder, theft, kidnapping, bribery, money laundering, gambling, narcotics trafficking, fraud, obstruction of justice, and the transportation of stolen goods. In establishing a RICO case, prosecutors must also demonstrate a (1) pattern of (2) criminal activity (3) conducted by an (4) enterprise. Under RICO, a pattern of criminal conduct is proven when the defendant is shown to have committed at least two RICO-related offenses within 10 years.

RICO Penalties

RICO carries both criminal and civil penalties. Civil penalties allow citizens, organizations, or corporations to file lawsuits against those charged with RICO offenses. However, RICO's criminal penalties have most substantially altered the landscape of organized crime. RICO's criminal penalties include fines, imprisonment, or both, as well as the forfeiture of all assets associated with or in any way derived from engagement in unlawful criminal enterprise. Fines can reach twice the gross proceeds of the illegal acts, and prison sentences are set at 20 years for each RICO violation.

RICO Successes and Criticism

RICO has successfully helped dismantle organized criminal enterprises. Notable RICO cases include the 1979 Sonny Black/Lefty Guns Luggiero case made famous in the novel *Donnie Brasco*, the imprisonment of the upper echelon of New York's Bonanno crime family in the early 1980s, and the conviction of the "Teflon don," John Gotti, in 1992. Supporters of RICO point to these successes as indicative of RICO's merit and necessity.

Critics of RICO do not deny its prominent role in enabling successful prosecutions of organized criminal enterprises and individuals. However, they note that the broad statutory language of RICO, as well as the opportunity for individuals to bring civil penalties against those charged with RICO violations, undermines the intention of the law and makes it more prone to exploitation. Critics cite instances where young street gang members have been convicted and imprisoned for RICO Act violations as indicative of how RICO has been unfairly applied to a host of crimes falling outside the scope of RICO's original intent as a weapon to combat organized crime. Others note that the civil component of RICO has the potential to be exploited to serve political rather than legal goals.

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See Also: Extortion; Federal Gambling Regulation; Financial Crime Kingpin Statute; Foreign Corrupt Practices Act; Frankel, Martin; Gambling and Lotteries; Giuliani, Rudy; Hobbs Act; Hoover, Herbert; Human Trafficking; Keating, Charles; Keating Five; Legacy Lending; Organized Crime; Prostitution; Racketeering; Rich, Marc; Unions; War on Drugs.

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Racketeering

Racketeering refers to ongoing criminal activities or schemes that typically involve long-established groups of criminals who engage in crime for their own individual, or their group's, benefit. Such activities consist of a pattern of illegal pursuits that are controlled by a criminal enterprise such as an organized crime (OC) family. These families can also own or operate legitimate businesses (e.g., garbage collection, restaurants) to disguise their illegitimate pursuits and to launder their illegitimate profits. The term *racketeering* is usually associated with a corrupt business or with criminal activities that are undertaken to victimize businesses for monetary gain, political influence, or other rewards that further the status, wealth, and power of the criminal organization. A racket is the enterprise or scheme; a racketeer is the criminal who engages in the enterprise or scheme. Rackets can take several forms, the most common of which are protection, labor, and numbers schemes.

Protection Racket

The protection racket extorts money from businesses under the guise of an effort to ensure that the businesses will be immune from acts of vandalism, arson, and property loss and that the businesses' employees will be safeguarded from imminent acts of violence, including severe beatings and murder. In reality, the victims are paying to be "protected" from their "protectors" (i.e., the racketeers). However, if the businesses or businesses' owners are threatened by a third party, racketeers will intervene as actual protectors in order to preserve the steady stream of extortion money by shielding victims from harm at the hands of another criminal or criminal entity. The extorted money is collected by the rackets' "bagmen" on a prearranged schedule of payments.

The protection racket can range in location and scope from small-scale neighborhood rackets (e.g., a shop owner paying a monthly fee to keep his or her windows from being broken) to national, large-scale rackets (e.g., entire industries being extorted throughout the country). An example of the latter includes the Outfit's (Chicago's OC family) extortion of the motion picture industry during the 1930s and 1940s (the Hollywood Extortion Case). The major movie studios of the day (MGM, Twentieth Century-Fox, Paramount, RKO, Columbia, and Warner Bros.) also owned and operated local movie theaters. The protection racket in this instance was implemented along two fronts. First, the Outfit assumed control of movie-industry unions, such as the International Alliance of Theatrical Stage Employees. For a heavy price ($25,000 to $50,000 paid annually by each of the studios), the Outfit guaranteed that the industry's workforce would stay on the job, thereby saving millions of dollars of lost revenue that would result from labor unrest. Second, the Outfit threatened to bomb or to incinerate crowded movie houses, which would also cost the studios millions of dollars in profits if moviegoers became fearful of patronizing this highly popular form of entertainment. The Outfit's front men in the racket testified against the mob's leadership in the Hollywood Extortion Case, who were subsequently sentenced to prison; the key witnesses in the case were subsequently murdered.

The New York crime families (La Cosa Nostra) engaged in a variety of protection rackets, for example, in the garment, waste management, and shipping industries. In each one, the basic tactics were similar to those employed in the Hollywood Extortion Case. The racketeers first gained control of the unions in the industries themselves or in related industries that were critical to the success of the businesses. For example, OC families controlled the trucking union locals, whose drivers transported the thousands of garments manufactured each day in the city, or they forced the business owners to use only select trucking companies owned or controlled by La Cosa Nostra. If the truckers called a strike, the garments would lie in the shops, production would grind to a halt, and sales would plummet, costing the industry untold amounts in revenue.

The racketeers also demanded money to ensure that the clothing produced would be safe from fire, smoke bombs, or shredding. In the waste management rackets, mobsters forced restaurant owners to hire their trucks (a mob-controlled trucking cartel) to haul away garbage or face the prospect of piled-up refuse ruining their food business. On the New York City docks, shippers were "protected" from product loss or longshoremen union strikes spawned by the crime bosses who controlled the waterfronts. In every protection racket in New York City and elsewhere, criminals extort considerable sums of money from businesses on a continual basis. These extortionate "operating" expenses are passed on to consumers in a so-called Mafia tax, which increases the costs of goods and services within big cities and beyond.

Labor Racket

The labor rackets involved a wide range of illegal acts that coincided with the growth of labor unions in the United States. They were formed to enhance workers' benefits and shield them against employer abuse, workplace hazards, environmental toxins, and other dangers. Labor racketeers started their careers working for both management and unions. For management, they used their "muscle" (violence and threats of violence) by terrorizing and beating strikers as well as assassinating union organizers and leaders. They also bombed and incinerated union headquarters and sites for union rallies. For the unions, they prevented "scabs" (nonunion workers) from crossing picket lines, vandalized factories and businesses, and forced management to comply with union demands. They gained a significant foothold in the unions by ascending to positions of leadership in the unions' local chapters and their regional and national offices. Racketeers also insinuated themselves into the structures of the legitimate businesses that fought against organized labor. From both sides, the racketeers earned considerable money for their services

One of the most corrupt labor unions was the International Brotherhood of Teamsters. Racketeers raided the Teamsters' prodigious pension fund to provide OC families with significant loans that were spent on building hotel–casinos in Las Vegas. From these hotel/casinos, mobsters skimmed millions of dollars in untraceable and untaxable revenue that went straight from the gambling tables into mobsters' pockets. Other labor racketeers looted union pension funds and forced construction companies to pay corrupt union local officials "fees" in order to avert work stoppages or strikes. The extortion increased the costs of building and materials. These hidden costs were borne by taxpayers and government agencies.

Anthony (Tony Pro) Provenzano was a powerful labor racketeer, captain in the Genovese crime family, former vice president of the Teamsters

Union, and leader of the Northern New Jersey chapter of the Teamsters Union (Local 560). Although Tony Pro was a lifelong union activist, his labor racketeering activities were often antithetical to the interests of union members.

For example, he launched a labor-leasing scheme in which his companies provided to manufacturers nonunion (cheaper) drivers under the Teamsters National Master Freight Agreement. This arrangement profited Tony Pro's firms (and the Genovese crime family) at the expense of union employees. Tony Pro was suspected of involvement in the disappearance of the Teamsters Union's former president, James Riddle (Jimmy) Hoffa, and he was convicted of murdering a union rival in 1978 and of labor racketeering charges in 1979. He died in prison in 1988.

Numbers Racket

The numbers racket, the most widespread and popular gambling racket in history, is an illegal lottery that operates mostly in poor neighborhoods and dates back to the 1860s in the United States and the 1500s in Italy. Also known as the Italian lottery and the policy rackets, "the numbers" enable people in lower-class communities to obtain immediate financial reward for a minimal price. Bets could be as little as a penny; payoff ratios were as high as 1,000:1. The numbers racket has been controlled by OC groups and implemented at the local level. Gamblers place their bets with a "bookie," who usually collects bets at a well-known location (e.g., a tavern, barbershop, or restaurant), typically a semi-private setting that served as betting parlors. The bookie hands off the bets and betting slips to a "runner," who carries the day's books (the betting records) and wagers to the betting headquarters, known as the policy or numbers bank.

The numbers racket was enormously popular in the African American slums of New York City (Harlem) and Chicago (Bronzeville). Several methods were adopted to select the daily winning number, usually a three-digit number between 000 and 999. One method used the "mutual" number from the daily horse races by selecting the last digit of the total payouts for the horses that won (first place), placed (second place), and showed (third place) at the track that day. Using presumably random processes, other methods (sometimes rigged) consisted of drawing numbers from a barrel or rendering them from the spinning "policy wheel." Once controlled by local African American gangsters, the numbers rackets were eventually and forcefully co-opted (through wholesale beatings and murder) by OC families (the Genovese family in New York City and the Outfit in Chicago).

Racketeering Legislation

To combat racketeering, the federal government passed the Racketeer Influenced and Corrupt Organizations (RICO) Act as a component of the Omnibus Crime Control Act of 1970. The RICO statute prohibits the acquisition, establishment, and operation of an enterprise with the support of illegal income as well as the acquisition, control, or maintenance of an enterprise directly through illegal activity. According to the RICO Act, racketeering consists of a broad array of state and federal crimes, including gambling, murder for hire, kidnapping, robbery, extortion, obstruction of a criminal investigation, bribery, theft from interstate shipments, and interstate transportation of stolen property. The penalties for violations of the RICO statute are quite severe. The act requires that defendants be convicted of two or more of the predicate crimes defined by the act—some of which are listed above. Each RICO violation is punishable by a 20-year term of imprisonment, often accompanied by a fine and the forfeiture of money and property through a civil litigation process.

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See Also: Civil Forfeiture; Conspiracy; Corporate Raiding; Daisy Chains; Federal Gambling Regulation; Financial Crime Kingpin Statute; Frankel, Martin; Gambling and Lotteries; Giuliani, Rudy; Hobbs Act; Hoover, Herbert; Human Trafficking; Keating, Charles; Keating Five; Legacy Lending; Organized Crime; Prostitution; Racketeer Influenced and Corrupt Organizations Act; Rich, Marc; Teamsters Pension Fraud; Unions; War on Drugs.

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Rangel, Charles

The re-election of Charles Rangel to the U.S. Congress in 2010 despite his censure by the House Ethics Committee for ethics violations shows the extent to which the general public is indifferent to white-collar crimes. It also shows how lenient government is toward white-collar offenders.

Rangel is a member of the U.S. House of Representatives, representing New York's 13th Congressional District. He is a member of the Democratic Party. Charlie, as he is popularly known, was born on June 11, 1930, in Harlem, New York. His father, Ralph Rangel, was from Puerto Rico and moved to New York in 1914. Rangel's mother, Blanche Mary Wharton Rangel, was an African American from Virginia. Congressman Rangel was raised a Roman Catholic. He served honorably in the U.S. Army during the Korean War. He distinguished himself in the Army and was awarded a Purple Heart and a Bronze Star with valor device. Upon leaving the Army, he enrolled at New York University; he graduated in 1957. In 1960, he graduated from the St. John's University School of Law. He went into private law practice and later became an assistant U.S. attorney and legal counsel.

Political Career

Congressman Rangel's elective political career can be said to have started in 1963, when he unsuccessfully ran for party district leader. Rangel was also an active participant in the 1965 civil rights four-day walk from Selma to Montgomery, Alabama, with Dr. Martin Luther King, Jr. Rangel was first elected to the New York state assembly in 1966. He served two two-year terms in the assembly, then was elected to the U.S. House of Representatives in 1970. He is currently the third-longest-serving member of Congress—he sought and won reelection every two years since 1970. Many perceive Rangel as a champion of justice, which accounts for his popularity at the polls, where he sometimes won more than 95 percent of the votes cast in an election.

He was a pioneer member of the Congressional Black Caucus when it was formed in 1971 and was chairman of the caucus from 1974 to 1976. He has been a member of the powerful Congressional Committee on Ways and Means since 1975 and served as chair of the committee from 2007 to 2010. Rangel has served on several other congressional committees, including the Joint Committee on Taxation, the Select Committee on Narcotics Abuse and Control, the Select Committee on Crime, and the Committee on the Judiciary. He has also been a member of the House Democratic Caucus, the International Conservation Caucus, and Congressional Arts Caucus.

Ethics Violations and Censure

Rangel came under attack by the media and political opponents in the 2000s for ethics violations. Some of the allegations have been investigated by the U.S. House Committee on Standards of Official Conduct. Rules governing the conduct of members of Congress are very clear. As public servants, he or she must conduct themselves at all times in a manner reflective of the trustees of the government and in a manner that does not jeopardize the credibility of the House. Specifically, congressmen must not use their offices to pursue private interests. Rangel has been accused, investigated, and censured with regard to some of these rules of conduct, as follows:

Use of office letterhead in fund-raising for the Rangel Center: In 2008, the *Washington Post* reported that Rangel used the letterhead of his exalted office to solicit donations from individuals and corporations toward the Charles B. Rangel Center for Public Service at City College of New York. However, because some of these donors were contractors for the Ways and Means Committee, some government watchdog groups argued that Rangel's action crossed the ethics line.

Defense of tax shelter: 2008 was certainly a tough year for Congressman Rangel with regard to ethical conduct. The *New York Times,* in a report, alleged that Rangel's defense of the tax shelter was self-serving, as some of the companies that donated generously to the Rangel Center benefited handsomely from the tax shelter. The House Ethics Committee investigated the allegations. Although the House Ethics Committee did not find him guilty of any wrongdoing as it relates to the defense of the tax shelter, it found him blameworthy of using his office to solicit and accept donations for a private project.

Not fully reporting assets and income: In 2008, it was also reported that Rangel had failed to give a full account of his financial standing. For example, he failed to include in his financial report the sale of a home he owned in Washington, D.C. There were also discrepancies in the values of the property he owns in Suny Isles, Florida, and significant inconsistencies in the amounts of his investment reporting. In 2009, Rangel submitted an amended report showing more than $500,000 that he had not disclosed in the previous report (which triggered the investigation). In addition, it was discovered that Rangel failed to pay property taxes on two of his New Jersey properties. Again, his investments in stocks in several companies were also not reported. As a result, the government watchdog group Citizens for Responsibility and Ethics in Washington described him as one of the most corrupt congressmen in recent times. The Adjudicatory Subcommittee of the House Ethics Committee found him guilty on 11 of the 12 charges brought against him. Rangel was censured by his colleagues for ethical misconduct and forced to step down as chair of the House Ways and Means Committee.

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See Also: Campaign Finance; Corruption; Ethics; Public Corruption; Tax Evasion.

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Reagan, Ronald

Konstantin Stanislavski, Author and founder of the Moscow Art Theatre once proclaimed, "When an actor is completely absorbed by some profoundly moving objective so that he throws his whole being passionately into its execution, he reaches a state we call inspiration." One of the most inspiring political figures in modern history was Ronald Reagan.

At 69 in 1980, Ronald Reagan was the oldest man ever elected president. However, that is hardly the most intriguing twist in Reagan's epic success story. Unlike some modern presidents, Reagan was not born into wealth or privilege. Rather, Reagan's father was a salesman who battled alcoholism. Ronald Reagan was not educated at an Ivy League university, and his career trajectory was far from conventional. He was divorced in the 1940s, switched political parties in the 1960s, watched his career as a film actor die a slow death, beat down the political powerhouses of the Republican Party to obtain the Republican nomination, survived an assassin's bullet, resuscitated the conservative movement, and, according to some, ended the Cold War.

Reagan was born on February 6, 1911, and grew up in Illinois. After graduating with a degree in sociology from Eureka College in 1932, Reagan worked as a sports announcer for several years. In 1937, he started his second career, as an actor, which would span three decades. During Reagan's acting career, he appeared in various Academy Award–nominated films and played opposite such leading ladies as Bette Davis. During World War II, Reagan served in the military by appearing in and assisting in the production of training films. Between 1947 and 1959, Reagan served several one-year terms as president of the Screen Actors Guild. In 1962, he formally switched his political affiliation from Democrat to Republican. Late in the 1964 presidential campaign, Reagan delivered a speech titled “A Time for Choosing” that endorsed Republican candidate Barry Goldwater—and launched Reagan’s political career.

By 1967, Reagan had been elected governor of California. During this time, Reagan laid the foundation for his uniquely powerful political brand. In 1968, Reagan attempted but failed to secure the Republican presidential nomination. The “upstart” former actor struggled to be considered a serious presidential candidate. However, both the Vietnam War and the Nixon scandal rocked American optimism, as well as the public’s belief in government. This provided Reagan with an opportunity.

Reagan almost secured the Republican presidential nomination in 1976; Gerald Ford won the nomination but lost the election. By 1980, both the economic decline and the ongoing Iran hostage saga were hindering President Jimmy Carter’s reelection campaign. After securing the nomination by beating out several other contenders, Reagan pummeled Carter in the November 1980 election by carrying all but six states. Reagan’s platform encompassed a hawkish foreign policy, limited government, and conservative social policies. Reagan earned 489 electoral votes; in contrast, Carter earned only 49 electoral votes. In terms of the popular vote, Reagan decisively secured the presidency by an almost 10 percent margin. During Reagan’s inaugural address, Iran released 52 U.S. hostages who been held in captivity for over a year.

Just a few months into his term, Reagan became the first and only U.S. president to survive an attempted assassination in March 1981. The assassin’s bullet stopped only inches from his heart. In true Reagan fashion, he walked from the limo that transported him to the hospital into the facility without assistance and, within a month, had returned to the Oval Office.

In early August 1981, the Professional Air Traffic Controllers Organization (PATCO) went on strike. This act allegedly violated a law that banned government unions from striking. Reagan labeled the strike a threat to national security and ordered the striking workers back to work. Specifically, Reagan demanded that the striking workers return to work within 48 hours or forfeit their jobs and be banned from federal service for life. Only a small percentage of the controllers returned to work. Over 11,000 PATCO workers who refused to return to work were fired by Reagan and banned from federal service for life. PATCO was one of the few unions that had backed Reagan in his 1980 election campaign.

This move sent a clear message that the new president would not compromise his free market principles. During his first term, Reagan also worked to ensure the financial stability of Social Security by cutting disability and survivor benefits and increasing the Federal Insurance Contributions Act tax (FICA). Additionally, during this time period, the economy improved. By the 1984 election, the economy had recovered and Reagan earned the most electoral votes in American history with 525. Reagan’s opponent earned only 13 electoral votes. At 73, Reagan was the oldest man ever elected president.

Scholars disagree about how pivotal Reagan was in ending the Cold War. However, some facts are indisputable. During Reagan’s first term as president, he adopted defense initiatives that applied pressure on an already weak Soviet economy. Between 1947 and 1980, the United States had channeled both financial resources and American lives into defeating the Soviet Union and winning the Cold War. Reagan utilized strong rhetoric that put the Soviet Union on notice that the United States was fully committed to winning the Cold War.

By Reagan’s second term, Mikhail Gorbachev had become General Secretary of the Soviet Union. Reagan saw this shift in leadership as an opportunity to explore other tactics, including diplomatic engagement. Between 1985 and 1988, the leaders met at four summits. Prior to the third summit in 1987, Gorbachev publicly announced his desire to reach significant arms agreements with the United States. Thus, Reagan and Gorbachev entered into the Intermediate-Range Nuclear Forces (INF) Treaty. As a result, an entire class of nuclear weapons was eliminated. Additionally,

President Ronald Reagan gestures to advisor Ed Meese during a White House press briefing on Iran-Contra, November 25, 1986. What began as a covert operation to secure the release of seven U.S. hostages in Iran devolved into an arms-for-hostages scheme, with the arms sale proceeds funding anti-Sandinista and anticommunist rebels, or Contras, in Nicaragua. There was no evidence that President Reagan himself had knowledge of the affair as it unfolded, but 13 administration officials were indicted and 11 were convicted.

the two leaders laid the framework for the Strategic Arms Reduction Treaty, or START I.

Reagan's foreign policy was also plagued by a scandal that came to light in the fall of 1986. Specifically, it was revealed that Reagan administration officials had violated an arms embargo, as well as a congressional prohibition. Specifically, these officials secretly facilitated the sale of arms to Iran in violation of an arms embargo while attempting to secure the release of U.S. hostages. Some of the proceeds from the weapons sales were funneled via U.S. intelligence agencies to the Nicaraguan Contras. However, Congress had prohibited additional funding for the Contras. Reagan claimed that he had no knowledge of the illicit arrangement. Neither a Reagan-appointed commission nor a congressional investigation located any explicit evidence contradicting the president's claim. However, the Iran-Contra scandal damaged Reagan's popularity and, arguably, his legacy as a leader. Specifically, Reagan was criticized for not adequately monitoring his staff. Moreover, the scandal resulted in over a dozen indictments, which arguably tarnished the legacy of the Reagan administration. However, all convictions were either vacated on appeal or were pardoned by President George H. W. Bush. Some allege that the investigation was hindered by the purposeful destruction of relevant documentation by members of the Reagan administration.

During his eight years as president, Reagan appointed three Supreme Court justices, including the first female justice, Sandra Day O'Connor, as well as the consistently conservative Antonin Scalia, and the often swing vote, Anthony Kennedy. His legacy on the court in regard to economic regulation is complex and nuanced.

In 1994, Reagan, then 83, was diagnosed with the incurable neurological disorder known as Alzheimer's disease. Over the next decade, Reagan battled the disease privately with the support of his wife and caregiver Nancy. At 93 years of age, Reagan died on June 5, 2004.

In sum, Reagan's belief in capitalism, smaller government, and the power of the individual was reflected in both his successes and his failures. Reagan reinvigorated the conservative movement because he both personified and humanized the conservative message. He was not born to a pedigree; rather, he created one. He did not simply recite the party platform; rather, Ronald Reagan lived it and inspired others to embrace it for better or worse.

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See Also: Antitrust, U.S. Department of Justice; Boland Amendments; Bush, George H. W.; *Challenger* Disaster; Minerals Management Service, U.S.; Office of Natural Resources Revenue, U.S.; Political Assassinations; Reform and Regulation; Robinson-Patman Act; Savings and Loan Fraud; Victim and Witness Protection Act; Volcker Plan; War on Drugs.

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Real Estate Investments

English philosopher John Locke once said, "The reason why men enter into society is the preservation of their property." Owning the right real estate in the right neighborhood is synonymous with power and class in society, and real estate investing can produce both income and profits. From storage units to luxury lofts, real estate investments are an expansive asset class that provides individual investors the opportunity to select the size and type of property that meets their needs and desires. Real estate investing can involve both residential and/or commercial properties. Investing in either category of real estate can be a lucrative endeavor when undertaken with the requisite knowledge and skill. However, every real estate investment comes with its own unique set of risks. Additionally, real estate investing is often a vehicle for various white-collar crimes. To understand this phenomenon, one must have a general understanding of real estate investing.

Any given investment portfolio may include commodities, stocks, bonds, and/or real estate investments. However, investing in real estate opens the door for numerous tax advantages, including tax credits for upgrading low-income housing or historic property, the ability to roll over profits from one real estate sale into another real estate investment, and the ability to deduct the depreciation of a structure over a set number of years. A property's compounded appreciation in value incurs no taxes until the property is sold, which completely escapes taxation when rolled over into another real estate investment. Additionally, there are separate and distinct tax benefits from purchasing property that is used as a primary residence. More precisely, single taxpayers may realize up to $250,000 as a tax-free capital gain exemption and married couples filing jointly may realize up to $500,000. However, an investor or their spouse must have owned the home and used it as a primary residence for at least 24 of the past 60 months.

Market values of real estate investments do not tend to fluctuate as rapidly as other investments such as stocks; thus, there is less risk in that regard. However, real estate does not tend to increase in value as steeply as some other investments. Hence, rapid increases in the market value of property are less likely to occur compared to increases in value of other investment vehicles such as stocks. Carefully selected real estate investments can produce a consistent stream of income. Real estate can be purchased with just a down payment, depending on the credit of the investor, but in such cases, any gains or losses are magnified. Additionally, real estate investments are less likely to earn negative annual returns and, if properly insured, an investor is unlikely to ever experience a complete loss.

Real estate investing allows an individual investor to determine and change his or her level of participation in the investment property. For example, some investors may elect to manage investment properties themselves, while others may choose to hire a property management firm. Real estate may also act as a hedge against inflation.

However, there are some negatives associated with real estate investing. For example, real estate investments are not as liquid as other assets; it may be more difficult to sell a parcel of real estate and realize a return on investment compared to selling stock. Also, the transactional costs in real estate investing tend to be higher compared to the transactional costs associated with investing in stocks or bonds. However, a skilled real estate investor can earn consistent returns with relatively manageable risks. Finally, owning real estate may subject the investor to civil liability for injuries that occur on the property.

Categories of Real Estate Investing

Residential real estate investments include properties used primarily for housing and may involve single or multiple units. Commercial real estate is land or buildings typically used for business endeavors and intended to generate a profit. Investment in either category brings unique challenges and obligations. Ensuring profits via investing in either commercial or residential properties typically depends on a multitude of both macro and micro factors. Although there may be some correlations between trends in residential and commercial markets for a given geographical area, each particular market must be analyzed individually. In addition, the amount of an investor's down payment may be greatly influenced by initial profits. Real estate investing in either property type may be greatly influenced by such factors as a long economic recession, significant alterations to the federal tax code, or additional governmental regulations that make it more difficult to secure financing. On a micro level, neighborhood development or decay may also influence real estate investment strategies and tactics. In residential real estate investing, profits may be generated by investing in single or multiunit residential property by "flipping" it. A property is flipped when it is purchased, renovated, and resold for a higher price than originally purchased, typically within the shortest possible length of time. In order to generate a profit, the property must be flipped for more than the sum of the purchase price and the cost of renovations. In order to maximize profits, some investors attempt to complete the renovations on their own and as fast as possible. Moreover, investors with a flip want to unload the property relatively quickly because of the costs associated with owning the property, such as maintenance and mortgage payments.

Flipping property may also manifest itself in the commercial market but this is far less common because commercial buyers and/or tenants typically have very specific needs. Some residential investors purchase property with the intention of keeping it for an extended period of time, even years. This type of investment carries a unique set of risks related to more long-term trends in the market. Additionally, the investor must evaluate contingencies that will affect profit over an extended period of time, which may be difficult to predict.

Vacation homes or second homes are another type of real estate investment involving residential property. The downside involves the consistent stream of short-term renters as well as an off season when it may be difficult to rent the property. Residential vacation home investments may include single-family homes, condominiums, apartments, or townhomes. Single-family homes are typically sold at a higher price relative to the rental income that they will produce. Additionally, an investor pays for the land that goes along with a detached, single-family home. Finally, if this type of property is vacant, there is no income. In markets that are not overpriced, multiunit residential properties tend to produce income faster than single-family homes. If an investor has a mortgage payment that remains constant and rental fees continue to increase faster than expenses, the investment will begin to show profits.

In general, commercial real estate investments tend to be more complex than residential real estate investments. Specifically, commercial real estate investments often require major renovations when a tenant moves out in order to adapt the property to the needs of the new tenant. Negotiating the cost of these renovations can be complex and, to some degree, based on the norms within a particular market. When evaluating the commercial real estate market in a particular area, one must critically analyze how the amount of commercial space has changed over a period of years. Whether the amount of available commercial properties on the market has increased, decreased, or remained constant, one should determine how much of the total commercial space available is vacant, as well as whether the number of vacant spaces has increased or decreased over the past several years. Ideally, an investor wants a commercial property in an area with high demand for and low supply of commercial space. Both the local economy and local unemployment rate impact the commercial market in a particular area. Additionally, local zoning ordinances may be of particular importance in this type of investment.

Since commercial real estate is usually built after a residential boom, trends in the commercial sector are considered lagging indicators. Therefore, an investor analyzing a commercial market should also review trends in the residential market. An investor must consider whether a particular market has the demographics to support a particular commercial endeavor. In a recession, residential real estate tends to bottom out before the commercial counterpart. Thus, a residential market beginning to show signs of a recovery may indicate an optimal time to invest in the commercial market. Moreover, the amount of time necessary to complete the construction or renovation of a particular commercial property should also be considered when formulating an investment strategy. Certain types of commercial property may take years to complete.

Another important concern when investing in commercial real estate is the type of lease or leases currently in place and the type that should be offered for a particular property in a particular market. Primarily, there are four different types of commercial property leases, and each type requires different levels of responsibility from the tenant and the investor/landlord.

The categories of commercial real estate are office, retail, leisure, health care, and industrial. Serviced offices and office buildings comprise the office category. Properties classified as retail encompass malls, retail stores, shopping centers, and shops of any kind. The leisure category includes such establishments as restaurants, hotels, cafés, and sports facilities. Hospitals and medical clinics comprise the health care category. Garages, warehouses, distribution centers, and factories make up the industrial category, which can be especially broad. Depending on state law, multifamily units of a certain number also qualify as commercial real estate for tax and borrowing purposes. Zoning ordinances are especially important to consider when real estate investors purchase undeveloped land.

Additionally, an investor should carefully consider the costs necessary for developing the land as well as any related environmental issues. Land value is usually dependent on what can be developed. For example, an investor should consider whether utility, water, and sewer lines are in place. An investor must typically have a larger down payment and is charged higher interest rates when purchasing land alone. Land can go down in value just like developed property, but unlike developed property, land itself does not depreciate in the accounting sense. When investing in land, one should carefully analyze what, if any, income-producing qualities the land possesses prior to development.

Equity real estate investment trusts own and manage different types of commercial properties. The managers of a particular equity real estate investment trust identify and negotiate the purchase of seemingly profitable investment properties. Real estate investment trusts work with advisers and property management companies to oversee the management of the property. Thus, real estate investment trusts allow individuals to invest in real estate from a distance. However, this distance may also enable illegal activities to flourish, such as embezzlement and/or fraud. Prior to purchase, investors must determine that there are no conflicts of interest between the trust, management companies affiliated with the trust, and/or advisers to the trust. Cash flow of the trust and its return on investment should also be carefully scrutinized. Some real estate investment trusts are publicly traded companies. In such cases, these trusts must disclose much more information than privately-owned trusts or face possible criminal penalties related to securities law. Additionally, interest in real estate investment trusts is typically as easy to sell as bonds or stocks. Ideally, real estate investment funds are diverse, which further minimizes the risk assumed by an investor. It should be noted that real estate investment trusts, like other investment vehicles, may be utilized as a front for illicit and illegal activities, as well as for Ponzi schemes.

Various real estate investment strategies may be hampered or helped by the interpersonal skills of a particular investor. A strong investment strategy takes this, as well as the cash flow of the investor, into consideration. Certain types of transactions, for example, foreclosure purchases, require larger amounts of cash,. However, other types of transactions require far less cash, for example, purchasing property at a builder's auction. Property taxes and basic supply-and-demand considerations are always important factors when considering a real estate investment, as are time constraints, as certain strategies must be executed within a limited period of time to be profitable. Moreover, certain strategies, such as renovating a house to flip, may require extensive time commitments. Effective real estate investing must be tailored to the individual investor and exist within the parameters of the law and of ethics.

Illegalities

Real estate investing has also been utilized as a vehicle for various illegal endeavors. Most generally, various forms of fraud have been perpetrated against investors under the guise of a legitimate real estate investment. Both mortgage fraud and insurance fraud often involve real estate investments. Generally, any individual who withholds, hides, or deceives a financial institution, no matter how minuscule the deception, in an attempt to acquire a mortgage is guilty of mortgage fraud. Thus, many individuals in the real estate industry may be found guilty of real estate fraud. These individuals include property inspectors, attorneys, paralegals, real estate agents, and/or mortgage brokers, as well as any individuals who assisted in completing a fraudulent application. Specifically, mortgage fraud involving real estate investments may include the fraudulent inflation of property values and/or the fraudulent submission of borrower qualifications to obtain mortgages. Money laundering often accompanies large-scale mortgage frauds. Additionally, tax evasion may accompany real estate investments. This white-collar crime may involve simply filing tax forms with false information concerning real estate investments or illegal transfers of real estate in an attempt to avoid tax obligations.

Individuals with extensive real estate holdings often have complex portfolios that may include various business entities known as "shells." These entities may be used to commit various white-collar crimes. Money laundering filters illegally obtained cash through various transactions in an attempt to make the money seem clean/legal. This crime is often committed in stages. These stages include the depositing of the illegal funds into a legitimate financial institution; the commingling of the illegal cash in various complicated financial transactions, including real estate investing; and finally, the dirty money is combined with clean funds often through the purchase or sale of assets, including real estate. Depending on the amount of illegal cash, as well as other facts related to the illegal funds, the money launderer may choose between residential or commercial real estate. Again, at a certain point, the money launderer will likely turn to legitimate investment strategies to accomplish illegal objectives.

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See Also: Money Laundering; Mortgage Fraud; Mortgage Modification Fraud; Predatory Lending; Real Estate Settlement Procedures Act.

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Real Estate Settlement Procedures Act

The Real Estate Settlement Procedures Act (RESPA) was passed in 1974 to assist consumers who are shopping for settlement services and to eliminate referral costs and kickbacks that increase the fees for certain services. RESPA also requires that borrowers receive disclosures concerning servicing costs as well as business relationships between settlement service providers. The U.S. Department of Housing and Urban Development's (HUD) Office of RESPA and Interstate Land Sales is tasked with enforcing RESPA.

RESPA's main purpose is consumer protection, and its provisions cover loans secured with a mortgage on one- to-four-family residential real estate. Loans covered under RESPA include most purchase loans, refinancing, property improvement loans, assumptions, and equity lines of credit. When borrowers submit a loan application, lenders must provide borrowers with a booklet that contains information on real estate settlement services, a good faith estimate (GFE) that lists the charges the buyer is likely to pay at settlement, and a Mortgage Service Disclosure Statement, which outlines whether the lender intends to service the loan or transfer it. These documents are to be provided when the loan application is submitted or within three business days of receiving the application. If the borrower is denied the loan, the lender is not required to provide the documents.

After an application is submitted—but before a settlement occurs—additional disclosures may be necessary under RESPA. When a settlement service provider refers the consumer to one of the provider's affiliates, an Affiliated Business Arrangement Disclosure is required. The disclosure must describe the business relationship between parties and provide an estimate of the affiliate's charges. A second form, the HUD-1 Settlement Statement, shows all charges the borrower is responsible for in connection with the settlement and provides a comparison chart of charges listed on the initial GFE and the actual charges imposed.

Once the borrower and lender agree on the settlement, an Initial Escrow Statement is used to provide estimated taxes, insurance premiums, and other anticipated charges to be paid out of escrow during the first year of the loan. Over the course of the loan, service providers must deliver to the borrower Annual Escrow Statements, which document all escrow account deposits and payments during the corresponding 12-month period. In cases where the loan servicer sells or assigns rights to another loan servicer, the borrower must receive a Servicing Transfer Statement. This form provides the borrower with information on the new loan servicer, such as the name and address, telephone number, and the date the new servicer will begin processing payments.

Prohibited Practices and Enforcement

To further enhance consumer protection, RESPA complements its disclosure requirements with additional provisions on prohibited practices. Section 8 forbids anyone involved in a RESPA transaction from giving or accepting kickbacks or anything of value in exchange for referral of services. Violations of this section trigger criminal sanctions of up to one year of imprisonment and a fine up to $10,000, whereas civil penalties impose liability in an amount equal to three times the amount charged for the settlement service. The statute also states that sellers cannot require home buyers to use a particular title insurance company (Section 9) and places limits on the amount of money a lender may require a borrower to deposit in escrow (Section 10).

RESPA allows individuals to bring private lawsuits against lenders who violate provisions concerning kickbacks, title insurance requirements, escrow account statements, and complaints about the servicing of their loan. Borrowers may also file complaints directly with the HUD Office of RESPA and Interstate Land Sales. HUD, state attorneys general, and state insurance commissioners are authorized to request injunctive relief for violations of RESPA.

Though RESPA provides borrowers with various rights and protections related to loan servicing, lender violations are still prevalent. During 2010 and 2011, the Office of RESPA and Interstate Land Sales opened about 1,500 cases of alleged violations of the statute. At the same time, the office has increased enforcement efforts through collaboration with the U.S. Department of Justice and state regulators. For example, in 2011, HUD discovered that Prospect Mortgage, LLC, a

California-based mortgage lender, created sham affiliated business relationships with real estate brokers, mortgage brokers, and other settlement service providers to generate illegal kickbacks and referral fees. Prospect agreed to pay $3.1 million in restitution to resolve the complaint. In that same year, Fidelity National Inc., paid $4.5 million to settle allegations that it engaged in a multiyear scam to pay real estate brokers kickbacks for referrals for real estate services, home warranties, and title insurance.

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See Also: False Foreclosures; Foreclosure Fraud and Rescue Schemes; Housing and Urban Development, U.S. Department of; Kickbacks; Mortgage Fraud; Predatory Lending.

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Redlining

Redlining is the name given to various practices involving the denial of services such as banking and insurance, or even housing, to residents of specific neighborhoods or urban areas on the basis of race, income, status, or class. Redlining can extend to other resources, such as the location of parks, community centers, workplaces, or supermarkets. The term *redlining* is attributed to Northwestern University sociologist and community advocate John McKnight in the 1960s. The practice makes it extremely difficult or even impossible for residents of poor inner-city neighborhoods to borrow money, be approved for a mortgage, purchase insurance, or gain access to financial services. Rejection is not based on the individual's qualifications and creditworthiness. It has played a part in the structuring and transformation of neighborhoods and contributed to urban decline and deurbanization and suburbanization.

In the 1930s, the Home Owners Loan Corporation (HOLC) instituted a redlining policy involving color-coded maps of U.S. cities that used racial criteria to categorize lending and insurance risks. Newer, affluent neighborhoods with predominantly (or exclusively) white residents were given green lines, but neighborhoods with African American or poor white residents were often marked by red lines, suggesting their undesirability. Banks and insurers adopted the HOLC's maps and practices to guide lending and underwriting decisions, as did the Federal Housing Administration, created in 1934, which used the HOLC's approach to judge locations for federally insured new housing construction.

Negative impacts of redlining have been numerous and often severe, not only individually on affected people, but also socially on entire neighborhoods or communities. Without bank loans, insurance, and other resources, areas subjected to redlining have lacked the material means necessary for investment and redevelopment. With the suburban expansion following World War II, in cities like Chicago and Detroit, residential investment in suburban areas received preference over poor and minority neighborhoods in the urban core. The comparative lack of investment in new housing stock and spending on home improvement and restoration contributed, along with the decline in public resources, to the decimation of older urban neighborhoods. At the same time, higher-income earners moved to the relatively better-serviced suburbs, thereby impacting the tax base in the cities and further contributing to resource erosion.

In the United States, Title VIII of the Civil Rights Act of 1968 (also called the Fair Housing Act of 1968) was passed in an effort to curtail redlining. The motivation for the passage of this legislation came in the aftermath of the April 4, 1968, assassination of Martin Luther King, Jr., and the resulting civil unrest and riots that broke out in numerous cities across the country. This followed on the major urban uprisings and riots of 1967, including those in Detroit and Newark, that were sparked by racism and discrimination, including in housing, in the urban centers. The 1968 act prohibited redlining on the basis of color, sex, family background, and religion. Prohibitions were added with reference to children and disability in the 1970s and 1980s. Protections have not been extended on the basis of sexuality. In the 1980s, during the presidency of Ronald Reagan, Congress voted to weaken the ability of plaintiffs to prosecute cases of discriminatory treatment in housing. In 1988, the Fair Housing Act was also amended to allow plaintiffs' attorneys to recover attorney's fees.

The Community Reinvestment Act (CRA) of 1977 further required banks to apply the same lending criteria in all communities that they serve. Although explicit redlining was generally made illegal in the 1970s (with exceptions noted above) through community reinvestment legislation, like many other forms of white-collar crime, it is certain that the practice continues in less overt or observable ways. Recent reports suggest that redlining has grown as a practice over the last decade of deindustrialization, urban decline, and foreclosures. A 20-person unit of the U.S. Department of Justice dedicated to fair lending issues reported receiving a record number of discrimination referrals from regulators in 2010. In addition, the percentage of banks earning negative ratings from regulators on CRA exams has risen from 1.45 percent in 2007 to more than 6 percent in the first quarter of 2011.

Practices of redlining are also associated with environmental racism, both in terms of access to natural spaces, including parks, and in terms of the site location of environmentally harmful facilities and practices. This is usually related to issues of class, as poor and minority neighborhoods are more likely the sites for waste treatment facilities and industrial plants, as well as toxic dumping. Recent research shows that industrial waste sites are disproportionately located in poorer neighborhoods in which residents are predominantly people of color. Parks in poorer neighborhoods are often smaller, sparser, less accessible, or more industrialized than are parks in wealthier neighborhoods. In turn, the impacts of such environmental racism are reflected in decreased public health in poorer neighborhoods.

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See Also: Age Discrimination; Corporate Dumping; Fair Housing Act; Housing and Urban Development, U.S. Department of; Price Fixing; Racial Discrimination.

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Reform and Regulation

Regulation can be defined as any attempt by government to control the economic behavior of individuals and corporations. It typically involves the imposition of official standards and rules on some form of business activity, accompanied by an enforcement mechanism and some type of sanction.

Ever since Edwin Sutherland first popularized the term *white-collar crime* in 1939, the regulatory justice system has been considered the principal method of social control of corporations. Through regulation, corporations can be forced to observe certain practices, to supply certain goods, to apply particular techniques in the production process, or to pay the legal minimum wage. Regulatory sanctions include fines, cease-and-desist orders or injunctions, product recalls, imprisonment, or closing down the business.

The employment of such methods to some extent blurs the lines of demarcation between the criminal and regulatory justice systems. However, the principal difference between the two is that the regulatory justice system focuses on controlling productive economic activities, whereas the criminal justice system principally focuses on harnessing the harmful ones. The regulatory justice system is less likely than the criminal justice system to involve an adversarial confrontation but, instead, involves cooperation between the two parties.

This low level of formal punishment of violators has led commentators to conclude that the control of business through regulatory means is a stark failure. Nonetheless, contemporary technical developments, the increasing pace of innovation, the complexity of industries and the services they offer, and globalization constantly create new business activities that are subjected to regulatory intervention. Because of this rapidly expanding scene of regulation, commentators argue that we are now living in the age of the "regulatory state."

Regulatory Aims: Why Regulate?

Governments can regulate an industry based on a number of motives. There are several theories and models of regulation that propose different motivations behind why regulation emerges and which actors contribute to its emergence.

According to the traditional "public interest" theories, regulation and regulatory developments address the failures of markets to regulate themselves. Unregulated markets inefficiently allocate their resources and fail to produce behavior or results in accordance with the public interest. For example, left to its own devices, the market might result in a company imposing a monopoly over products or services, higher or predatory pricing for consumers, and other abuses of its private economic power. In these circumstances, the market does not function fairly for all participants. Regulation therefore curtails the excessive success of some participants and has positive consequences on achieving fair and efficient allocation of the scarce goods on the market. In sum, regulation pursues collective goals, aiming to promote the general welfare of the community.

Other accounts, however, are skeptical of the "public interest" motivation of regulation. These "private interest" theories of regulation view the motivations behind regulatory intervention as stemming from pressures of private parties who seek to secure and maximize their own self-interest. It is argued that regulatory policies and institutions are often subjected to the influence of powerful regulated parties and politicians with election agendas, so that regulation serves the interest of these parties rather than the interest of the wider public.

For example, big corporations might endorse more stringent environmental protection standards because they are in a better position than their smaller competitors to sustain the costs of air pollution prevention technologies. In consequence, the costly environmental regulation expulses smaller firms from the market, decreasing the competition for big firms. Private interest theories claim that every regulatory rule is eventually usurped, perverted, and manipulated in such ways to protect the interests, rights, and privileges of business owners.

The most critical view of the aims of regulation is proposed by conflict theories of regulation. According to these theories, the regulatory system reflects and reinforces the social inequalities of wealth and power. This is visible, for example, in the attitudes, which regulators adopt toward big corporations that are more likely to be perceived as "moral citizens," predominantly inclined to obey the law. Small firms, on the other hand, are more likely to be perceived as "rogue" traders, and thus are commonly subjected to punishment. This leads to underestimations of the level of violations committed by big corporations in official sanctioning data.

Types of Regulation

A distinction is made between economic regulation and social regulation. Economic or financial regulation encompasses the social control of financial markets. The regulation in this area is aimed at ensuring stability, fair competition (antitrust behavior), and the protection of consumers of financial services (e.g., mortgage, insurance, and pension users). Economic regulation exists in two forms: structural regulation and conduct regulation. Structural regulation imposes conditions of entry into providing financial services, as well as rules against unqualified individuals who attempt to work as financial services professionals. Conduct regulation is used for ensuring proper behavior in the market. The methods used are control against predatory prices, rules against manipulative advertising, and minimum standards of quality in the provision of financial services.

Social or protective regulation addresses the protection of the environment, occupational (workplace) health and safety, and protection of consumers of goods. This is achieved through, for example, regulating the levels of discharge of air, water, and soil pollution; safety regulations in factories; and the obligation to include information about contents and dangers on the packaging of goods.

The distinction between economic and social regulation is relevant in understanding the influence of corporate interests on regulation. Many commentators indicate that social regulation is much less likely to serve business interests, as it imposes stricter standards of behavior. That is why much environmental regulation and the regulation of product safety and labor conditions are opposed by companies: they have negative effects on profitability. Financial regulation, on the other hand, ensures competition, which ultimately aids broader business interests.

Despite this emphasis, however, social regulation has achieved particular expansion since the 1970s. For example, health and safety protection of workers and pollution controls have become standard practice in industries. Financial regulation is still predominantly achieved through self-regulatory mechanisms, though with increased governmental intervention after the 2008 financial crisis, as will be seen below.

Actors of Regulation

Various actors participate in the regulation of business, ranging from state bodies and the industry itself to public pressure groups. These have varying influence over the design and implementation of regulation. Also, governmental and nongovernmental actors may act alone or in any combination. There is a high interdependency of state and nonstate actors in the contemporary regulatory landscape.

Principally, state bodies have a focal role in the regulatory justice system. In fact, regulation is one of the oldest functions of the state, historically going back to the authority of issuing licenses to conduct certain professions. The principal state actor of regulation is the government or the executive branch of power, based on an authority delegated by Congress. The government usually discharges the regulatory function by establishing regulatory bodies or agencies with powers to create rules governing a certain area of economic life, powers to oversee compliance with these rules, and enforcement powers toward the disobedient.

Private and other nongovernmental actors also play an important role in establishing and implementing regulation. This principally concerns self-regulation where markets, corporations, or their professional bodies (self-regulatory organizations) comprising industry representatives set rules and standards of behavior. For example, corporations deliver and enforce internal guidelines for ethical behavior of their employees. Self-regulation is postulated on the view that corporations can and do act as moral rather than purely economically rational actors concerned with their self-interest. They have, therefore, commitment to compliance.

Finally, regulators have expanded from the state and self-regulatory bodies to third parties such as credit rating agencies, investors in financial services, consumers, and activist groups, but also to mechanisms such as tax and accounting. For example, the special entrepreneurship of Ralph Nader, a political activist, catalyzed the enactment of rules improving the lax safety standards of American automobile manufacturers in the 1960s. Nonetheless, third parties mostly represent an informal regulatory force in establishing the goals, design, and implementation of regulation.

The Regulation/Deregulation Debate

Regulation is the place where different political and business interests come into contest, impacting the constant debate on the scope and boundaries of regulatory intervention into the business sector. The principal question is where the boundaries between the state and the market should be drawn, or the regulation/deregulation debate. Deregulation is the process of removal of laws designed to control the market, or the withdrawal from the enforcement of such laws in practice.

The "Evils" of Regulation

Antiregulation critics, who are mostly representatives of the corporate lobbies and free market economists, advocate that regulation is intrinsically deficient and needs to be reduced or eliminated. The main arguments against regulation are that it is a costly, ineffective, unfair, and undemocratic mechanism.

The first criticism addresses a major problem in the regulatory field: whether the rules and standards imposed by regulation are cost-effective. Regulatory interventions in a field that previously operated under the principles of the free market involve costs of formulating, implementing, and maintaining regulation, as well as costs of compliance with the regulation. Deregulation proponents argue that regulation therefore represents a severe financial burden and impediment to business competitiveness and economic growth. For this reason, deregulation takes wing when the political yield of regulation results in declining profits.

Regulation is further perceived as inefficient. It imposes red tape and excessive bureaucratization on economic and social life, stifling free initiative. The interaction with regulators has also been labeled as too cumbersome and time-consuming.

The third criticism concerns the fact that decision making in the regulatory justice system is undertaken by appointed (nonelected) bureaucrats with enormous powers of discretion but little competence and accountability. Representatives of business claim that regulation and regulatory enforcement is an undemocratic process lacking legitimacy and industry expertise. For example, officials usually have a political background instead of a background and experience in the regulated industry. This undermines the perceived legitimacy of regulation and regulators by the industry, and resistance can lead to noncompliance.

Any of the above regulatory deficiencies can lead to a situation of regulatory failure—when the collective costs of regulation outweigh the benefits it brings. For this reason, the past couple of decades have seen the rise to prominence of utilitarian cost-benefit analysis by regulators, assessing whether the benefits of regulatory initiatives exceed their costs. Exact regulatory costs are, however, difficult to estimate, especially when taking into consideration the costs stemming from the lack of perceptions of legitimacy (the social costs).

The "Evils" of Deregulation

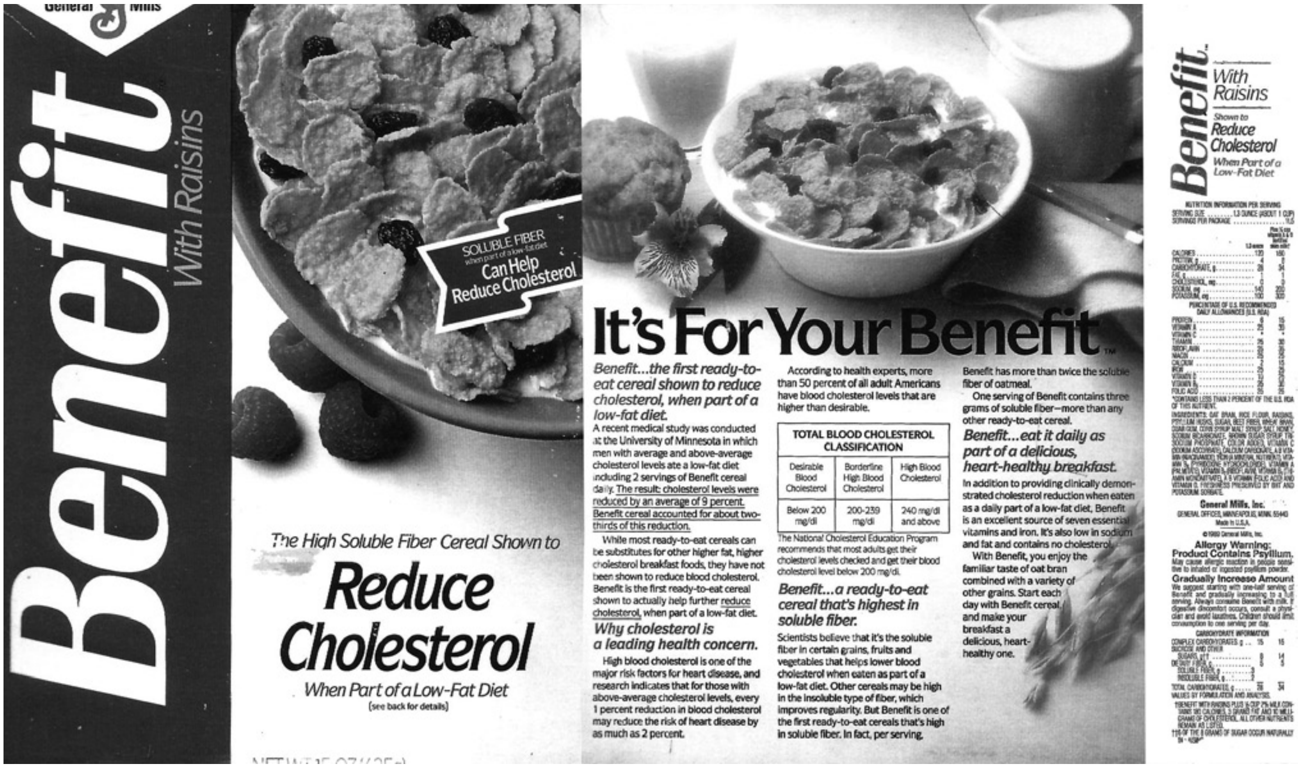
At the other side of the spectrum, proponents of regulatory intervention claim that regulation is necessary, as it aims to force corporations to behave properly and "do the right thing." These commentators view the market and corporations as intrinsically concerned with their own self-interest. Corporations are economically rational actors that, if left to their own devices, will naturally try to maximize their profits, with little regard for the common societal good.

In consequence, deregulation and the unhindered play of market forces can create serious liabilities for society. For example, deregulation commonly leads to unscrupulous corporate practices such as predatory pricing, insufficient or detrimental advice to customers in providing pension and insurance services in the financial regulation sectors, and lack of safety and job insecurity in the social regulation sectors.

Regulatory Capture

The possibility that regulation emerges under the influence of private actors has also been connected to the concept of regulatory capture. Regulatory capture occurs when officials in regulatory institutions develop such close relationships with the regulated industry that they promote the industry's narrow interests rather than the interests of the community. Regulatory officials therefore become "captured" by the economically powerful. Some commentators suggest that the empirically established low prosecution rate of regulatory agencies can be in part attributed to instances of regulatory capture.

Several factors contribute to regulatory capture. First, regulatory bodies are captured through the outright activity of groups lobbying for corporate interests. Powerful corporations utilize political supporters to push their own legislative agenda, and politicians might trade regulation for reelection in the light of such lobbying.



U.S. Food and Drug Administration (FDA) regulations did not allow health claims on food product labels. In 1989, the FDA challenged health claims made on behalf of Benefit cereal because its laxative ingredient made it suspect. It was removed from the market shortly thereafter. A new policy allowing limited use of health claims on food packages was instituted under the 1990 Nutrition Labeling and Education Act. The obligation to include accurate information on packaging falls under social or protective regulation.

Further, regulatory bodies are vulnerable to corporate influences, as the very conditions that promote cooperation with the industry also promote capture and corruption of agency personnel. This particularly refers to the fact that these regulators dispose with poor and, sometimes, flawed information on the industry and depend on corporations for their information, both in the drawing up of the rules and in their enforcement. For this reason, agencies try to avoid conflicts with the industry, as it can provide them with knowledge to identify the causes of problems, to design appropriate solutions, and, importantly, to identify instances of noncompliance.

Finally, a prominent reason for regulatory capture is the "revolving door" phenomenon. This concerns the problem of the two-way flow of personnel between regulatory agencies and the industry. The prospect of highly paid career opportunities for the regulators in the regulated companies might lead to counterproductive capture. A recent example of a criticized move of a regulator to the regulated industry was that of Meredith Attwell Baker, who, while serving on the Federal Communications Commission in 201, endorsed Comcast's controversial acquisition of NBC Universal. Four months after voting for this deal, she was hired as NBC's top Washington lobbyist.

The Historical Context in America

The constant changes of cycles promoting stronger regulation of certain industries with cycles of expanding deregulation can be seen in the example of U.S. regulation history. The American experience has been one of ongoing tension between calls for more or less regulation of a wide range of activities, prompted by different political and economic motives.

Regulation in the modern sense in the United States can be traced back as early as the later part of the 19th century, when it was mostly exercised through issuing licenses to conduct certain occupations, such as, for example, to doctors or teachers. Big corporations, however, were exempt from any kind of focused regulatory intervention, in accordance with the free market economic philosophy dominant at the time.

The first wave of regulatory expansion occurred in the so-called Progressive Era (1900–14) of heightened social and political activism. The other two major regulatory intervention periods occurred in the New Deal era of the 1930s and the Golden Age of the 1960s. The pro-regulation cycles were inspired either by a raised awareness among consumers and workers of the detrimental consequences of unbridled corporate activities (1920s and 1960s) or by major corporate scandals (1930s). Each period brought increased intervention through rules and standards of behavior and the establishment of regulatory agencies to enforce the rules.

The first regulatory wave in the Progressive Era was characterized by increased federal intervention in harnessing the harmful activities of big corporations on behalf of the public interest, but also to ensure better competition and free enterprise. Both social and economic regulation expanded during this time. Accompanying the creation of rules was the creation of numerous regulatory agencies, starting with the Interstate Commerce Commission in 1896, the first independent regulatory body in U.S. history. Many of the Progressive Era agencies, such as the Food and Drug Administration (1906) and Federal Trade Commission (1914), still exist today.

The second regulatory wave, in the New Deal period under the administration of Franklin D. Roosevelt, was inspired by the 1929 stock market crash and the massive failure of banks during this time. Contributing to the expansion of regulation was the belief that the Great Depression resulted in part from unregulated abuses by financiers and major corporations. This prompted increased scrutiny and regulation of the financial services, with major reforms in the banking sector and the regulation of securities—hitherto a scarcely regulated area. The Securities and Exchange Commission (1934) was the most important agency created in this period, to reestablish confidence in the stock market and control corporate abuses in the sale of securities.

Finally, the regulatory expansion in the affluent and prosperous Great Society of the 1960s was prompted by an expanding distrust of big business and ensuing organized protests against harmful corporate activities by consumers, environmentalists, and workers. This cycle is predominantly characterized by a growth in social regulation through initiatives in the protection of the environment, workplace conditions, and consumers. For example, consumers' rights were protected by passing the Fair Packaging and Labeling Act. Also resulting from this period are several regulatory agencies, among which the most important are the Occupational Safety and Health Administration (1970) and the Environmental Protection Agency (1971).

The last regulatory cycle was followed by a major deregulatory era, instigated by the deterioration of the U.S. economy and declines in industrial productivity in the second half of the 1970s. In the 1980s, the need to raise U.S. competitiveness abroad was used as a rationale for limiting the scope of federal regulation. Federal regulation was declared by business to be oppressive, economically harmful, and contributing to declining profits. Also, corporations threatened to relocate to more lightly regulated countries, which gave them enormous leverage in opposing federal regulation. In consequence, funding for many of the programs of the Great Society was cut under the administration of Ronald Reagan beginning in 1981. These excessive constraints on regulation during his administration caused severe damages to consumers, the environment, the workplace, and financial institutions.

Another major deregulatory cycle was the 2001 to 2007 period of economic expansion with little intervention, especially in the financial services sector. Further, under the George W. Bush administration, the free market economic stance decreased the role of the government in the private sector. The hostility to aggressive regulation of business was executed in practice through, for example, allowing self-regulation of investment banks and appointing those with a pro-business outlook to head regulatory agencies. One such example is the appointment of Pat Wood, an outspoken proponent of deregulation, as head of the Federal Energy Regulatory Commission in the Enron period. The removal of regulatory constraints during the period from 2001 to 2007 precipitated the 2008 financial crisis.

Scandal and Reform: The 2008 Credit Crunch

As seen in the example of the 1929 stock market crash and the subsequent heightened intervention in the financial markets, many shifts in regulation are rooted in corporate or industry scandals occurring in times of loosened regulatory controls. Such is the case, for example, of Enron Corporation in 2002, when poor regulatory oversight failed to acknowledge that a massive accounting fraud was portraying the energetic giant as a highly successful enterprise. The public anger over Enron's demise provoked the substantive and institutional regulatory reforms of the Sarbanes-Oxley Act in 2002.

Regulatory oversight is also suggested as one of the crucial causes of the 2008 financial crisis. The 2008 credit crunch was preceded by a booming financial market in which the main regulatory mechanisms were reliance on self-regulation and internal assessments of risky practices by the corporations themselves. This contributed to the massive failure of banks and other financial institutions to appropriately assess the level of the credit risk posed by securities instruments connected to subprime mortgages. In addition, governmental bodies failed to understand and properly evaluate these innovative and complex instruments, designed to satisfy investors' demands for higher profits.

The ensuing financial crisis once again revealed the asymmetry in expertise between regulators and the financial markets as investment products became more complex. It also exposed the need for substantive overhaul of the regulatory system. By 2010, calls for more regulation in the financial markets were widespread, prompting changes in the politics of regulation—a radical reform in response to the crisis conditions. The most important regulatory outcome was the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. The act made a substantive intervention in the financial services industry through comprehensive regulation of the financial markets, increasing consumer and investor protection from abusive practices, and introducing a host of new regulatory agencies (such as the Consumer Financial Protection Bureau).

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See Also: Bush, George W.; Dodd-Frank Wall Street Reform and Consumer Protection Act; Federal Gambling Regulation; Financial Industry Regulatory Authority; Occupational Safety and Health Act; Predatory Practices; Price Fixing; Reagan, Ronald; Regulatory Enforcement; Revolving Door; Roosevelt, Franklin D.; Securities and Exchange Commission, U.S.

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Regulatory Enforcement

Ever since Edwin Sutherland revolutionized criminological thinking by introducing the notion of white-collar crime, significant attention has been given to the fact that the legal response to white-collar offenses is largely pursued through the regulatory system rather than the criminal justice system. Sutherland himself highlighted this fact, underlining that the majority of white-collar crimes perpetrated within the course of business are addressed by regulatory agencies in administrative or civil proceedings, remaining largely outside the scope of the criminal justice apparatus. As a result, sociolegal and criminological scholarship has focused significantly on researching the functions and powers of regulatory enforcement actors, their enforcement styles, and the factors that influence enforcement.

Regulatory Enforcement Actors

Depending largely on governmental approaches toward intervention in economic life, different actors have been accorded the task of regulatory enforcement. In general, the two main approaches are governing through self-regulation or through regulatory agencies.

Self-regulation: Self-regulation or voluntary compliance accompanies periods of deregulation or limited state intervention into economic life. Enforcement is entrusted to the companies themselves or to their professional bodies (self-regulatory organizations) comprising industry representatives. Supporters of self-regulation claim that the market is capable of policing itself, with the "invisible hand" weeding out unethical participants. Because corporations have the most immediate insight into unscrupulous activities, they should be allowed to monitor and remedy their own problems. This would also alleviate the costs of setting up a formal enforcement body that impedes productive economic activities.

Critiques of self-regulation, however, have pointed out that deregulation and voluntary compliance do not work in practice. In fact, left to their own devices, companies would focus only on pursuing their self-interest and maximizing profits. For this reason, enforcement through formal bodies or regulatory agencies today prevails as a governing model.

Regulatory agencies: Regulatory agencies are bodies created through a congressional statute that regulates a certain area of economic life. Significant differences exist regarding their structure, functions, and enforcement powers. Regarding the structure, some agencies are established as departments of the executive branch. This is, for example, the case with the Food and Drug Administration within the Department of Health and Human Services. Others, such as the Environmental Protection Agency, function as relatively independent agencies with statutory powers and oversight by Congress.

Regulatory agencies are usually headed by a chief executive—a director or an administrator—and a commission that is politically appointed by the president and then confirmed by Congress. The political appointment also means that the commissioners serve in this function mostly during the term of their presidential sponsor. The lower managerial levels, as well as the inspectors, are usually long-term civil servants with varying degrees of expertise.

Agencies perform three important functions: rule-making, administration (oversight of compliance), and adjudication (enforcement of noncompliance). Many, though not all, regulatory agencies possess an authority to enact rules of proper business behavior. In overseeing compliance with these rules, agencies can utilize various information-gathering techniques, some of which are equal to the powers used by the police. For example, certain agencies possess extensive investigation powers, such as requiring an immediate submission of documents or requiring persons to attend investigative interviews.

Depending on the manner in which investigation of wrongdoing is mobilized, agencies may adopt either a proactive or a reactive stance. Proactive strategies rely on actively seeking violators through frequent inspections, upon the agency's internal initiative. If an agency has adopted a reactive strategy, its oversight function is instigated by an external factor, such as complaints by wronged consumers or employees, governmental or congressional investigations, or the media. In practice, however, regulatory oversight involves a mix of reactive and proactive strategies, with more visible or formal complaints-based cases taking precedence.

Finally, agencies have the authority to penalize regulatory noncompliance through a hybrid of administrative, civil, and even criminal prosecution powers. Not all agencies possess the authority to apply the full range of sanctions, as they differ in the sharpness of their "regulatory teeth."

Administrative powers include imposition of various orders and fines, sometimes of an unlimited amount. Through cease-and-desist orders or injunctions, regulatory agencies can freeze the fraudulent or damaging business activity. Further, agencies can impose orders regarding products, such as recalls of products if deemed dangerous to consumers. Orders can be given to correct certain inappropriate business practices, such as marketing misinformation or accounting malpractices.

Regulatory enforcement relies heavily on administrative suspension or revocation of licenses—a temporary or permanent prohibition order from a certain profession or industry. Prohibition is a powerful enforcement tool, as it means effective discontinuation of an individual's professional career and corporate death for companies whose authorization to work in a specific field has been withdrawn. The authority to impose prohibition orders stems from the agency's licensing powers. The agency acts as gatekeeper of proper business conduct through assessing whether individuals and companies have the appropriate knowledge, personal integrity (individuals), or compliance mechanisms (companies) to carry out activities in the industry. For example, in the financial services sector, every investment advisor must pass a licensing exam administered by the Financial Industry Regulatory Authority (FINRA) to become a legitimate financial professional. In cases of serious misconduct, the agency can withdraw the license, banning the business actor from regulated activity. Such prohibitions, for example, frequently accompany FINRA's enforcement of brokers abusing clients' accounts.

Civil lawsuits are another frequently used enforcement tool, especially regarding large corporations. In one such case, upon a civil lawsuit by the Securities and Exchange Commission (SEC), a New York District Court ordered Goldman Sachs to pay $550 million—the largest-ever fine imposed on a Wall Street firm—for fraudulently misleading investors in a subprime mortgage product at the time when the U.S. housing market was starting to collapse. A certain portion of the fine was returned to the harmed investors, and this is a standard practice when consumers have suffered damage from business activities.

Administrative and civil sanctions are frequently imposed through a settlement procedure without the violator admitting or denying the allegations. In cases of challenging the enforcement action, adjudication takes place in the form of quasi-criminal proceedings, and decisions are made by a judge or an administrator.

Finally, for the most serious breaches of regulatory law, regulatory agencies have criminal prosecution at their disposal. However, the authority to single-handedly undertake a criminal prosecution is retained by only a few powerful agencies; the rest need to cooperate with the U.S. Department of Justice and the police in order to prosecute regulatory offenders.

Enforcement Styles

The frequency and punitiveness of various enforcement actions depend upon the enforcement style and philosophy adopted by the agency. In practice, regulatory agencies move along the continuum between the compliance and the deterrence styles of enforcement. The compliance or persuasion strategy is based on cooperation, accommodation, and conciliation between the regulatory agency and the regulated. The regulated are considered to be political citizens who understand the importance of regulation and strongly adhere to abiding by the law. Regulators therefore act as "politicians" and are heavily involved in advising and persuading individuals and corporations to obey.

Conformity with law is secured through bargaining and bluffing by the agency, without immediately resorting to penalizing violators. As the relationship between the agency and the regulated industry is close, personal, and ongoing, the resort to processing offenders would taint the relationship and damage the ultimate enforcement goal—prevention of future harm. Proponents of the compliance strategy also argue that the reliance on negotiation, advice, and persuasion is less costly than mobilizing the expensive formal legal process with uncertain outcomes. In contrast, the deterrence or punishment strategy is based on a confrontational, accusatory, and adversarial style of enforcement. Regulatory offenders are perceived as "amoral calculators" who, motivated by monetary incentives, break the law to maximize profits. Regulatory agencies should therefore act as policeofficers, whose imperatives are to detect, investigate, and penalize wrongdoings. Their mission is to remedy caused harm but also to send a strong deterrent message to future offenders. This approach precludes personalized relationships between the regulator and the regulated.

Another typology of enforcement styles also suggests that the regulatory decision making, whether to persuade or to prosecute, is similar to that of the police. Depending on the prevalence of a persuasion or prosecution orientation, regulatory agencies can adopt a service style, based on advice and education; a watchman style, a relatively lenient approach and very few prosecutions; a legalistic style of "going by the book" and higher rates of prosecution; and a free agent style, with great discretion but little accountability.

Other models of enforcement styles combine mixes of cooperative and punitive strategies, with the most popular ones being responsive regulation, risk-based regulation, and meta-regulation. Responsive regulation is conceived as a dynamic enforcement game in which the regulators-regulated relationship begins with cooperation and trust that the regulated are law-abiding. However, when the regulators' expectations are disappointed, they respond with progressively more punitive strategies until the violator conforms. The techniques at their disposal form a sort of enforcement pyramid, with the wide base consisting of advisory measures (e.g., warnings, directions, and negotiated outcomes) and the narrowest top with punitive civil and criminal sanctions (fines, criminal prosecution, and incapacitation—corporate death). The use of a tit-for-tat strategy and frequent interaction form the basis of the responsive regulatory enforcement, ultimately backed by the existence of credible sanctions.

More recent approaches increasingly center around the notion of "risk," modifying the basic principles of responsive regulation with reliance on risk assessment. In this model, regulatory agencies rely on targeting and distributing their enforcement resources based on an assessment of the degree of risk posed by different regulated entities. "Bad" firms with greater threats of risk are differentiated on the basis of their track record, complaints, and attitude toward cooperation. Risk-based enforcement yields higher benefits relative to costs, as resources are allocated to the identified regulatory "hot spots." Finally, meta-regulation also represents a risk-based approach, but the assessment of risks is undertaken by the regulated entity itself. The regulatory agency only lays down broad standards and principles; the company is then encouraged to develop its own compliance systems and monitor its own behavior. This approach transfers enforcement responsibilities to those who are in a much better position to evaluate and discharge them, while the regulator's role is to govern at a distance. However, unlike in self-regulation models, the agency still retains the prerogative of assessing the compliance measures and undertaking enforcement actions if these fall short of expected standards.

Various empirical studies of regulatory agencies' enforcement have shown that the cooperation and persuasion strategy is the dominant enforcement style of the regulatory justice system. Inspectors, in fact, think of themselves less as police officers and more as government agents whose task is to negotiate voluntary compliance. Finally, despite having authority, criminal prosecution is a path rarely taken by regulatory agencies. Going down the criminal justice route is considered to be a means of ultimate resort—to be used when all other persuasion methods fail.

Enforcement Philosophy Factors

Inspectors use discretion to decide (1) whether to proceed if a violation has been detected and (2) what type of sanction—civil, administrative, or criminal—to apply. The tensions over adopting a cooperative or a deterrent enforcement approach in making these decisions are influenced by factors that are internal and external to the agency.

Internal factors concern the scope of agency resources. The decision whether to proceed is influenced by the availability of valid sanctions, the current caseload, and available staff. Regulatory agencies frequently have been reported as overloaded but understaffed and underfunded. For example, the Occupational Safety and Health Administration employs 2,200 inspectors responsible for the health and safety of 130 million workers at more than 8 million work sites. This translates to about one compliance officer for every 59,000 workers. Scarce resources limit the number of cases that can be pursued on a yearly basis, and cases with a greater possibility of being settled or being closed quickly take precedence.

Enforcement styles also depend on external factors such as regulatory cycles—it is difficult to implement a tougher enforcement stance in periods of deregulation—and regulatory failures. Specifically, in the aftermath of large corporate scandals, industries become more heavily regulated, new regulatory agencies with deterrence-oriented missions are created, or the existing agencies are awarded with heightened enforcement powers. For example, the massive accounting fraud of Enron prompted the establishment of the new Public Company Accounting Oversight Board, with authority to register and inspect public accounting firms and bring enforcement actions. Also, the recent financial crisis of 2007 to 2010 initiated widespread criticism and inquiry into the regulation of financial markets and the regulatory handling of the crisis. This resulted in the Dodd-Frank Act, which expanded the enforcement powers of the Securities and Exchange Commission (SEC). The SEC itself has adopted a tougher enforcement stance by imposing a palette of new sanctions, such as barring from all financial services industries, already within a year of the act's passing.

In addition, an agency's heavier involvement regarding certain regulatory problems might be instigated by political pressure from consumers, workers, and citizens, as well as from the media.

Criticisms of Regulatory Enforcement

The frequent resort of regulatory personnel to negotiating compliance rather than to initiating a formal response has been heavily challenged by industry critiques. The main argument is that relying on persuasion strategies underscores the reality of imbalances of power between the regulator and the business it regulates. Relying on larger pools of resources, knowledge, and expertise, industries can exert significant power over their environment, misleading regulators and their enforcement staff. The significant resort to bargaining in day-to-day interaction with business, and not to formal sanctioning, can also create problems of control and accountability. There is a higher risk of developing corruptive practices among enforcement staff as their interaction with the regulated goes on largely unrecorded in official accounts.

Furthermore, critiques address the low rate of criminal prosecutions by regulatory agencies, especially of large corporations. Most cases of corporate misconduct, similarly to the Goldman Sachs case, are resolved through settlement procedures undertaken in civil court. This reflects the ability of large corporations to avoid the full power of the law—an advantage not enjoyed by smaller businesses. For example, studies of the sanctioning patterns of the SEC found that the most severe sanctions, including criminal prosecutions, were reserved for financially or organizationally moribund firms. In the end, this brings into question the sufficiency and effectiveness of deterrence of imposing administrative and civil penalties in serious cases of corporate crime.

Regarding external pressures, the regulatory justice system has been severely criticized for being a subject of considerable political meddling and business lobbying. Regulatory agencies are pressured into shaping their enforcement priorities and practices to satisfy powerful business interests. In the end, the subservience to both political and business interests leads the agency to a state of regulatory capture. For example, in the famous "Keating Five" case of 1989, five U.S. senators pressured the thrift regulator, the Federal Home Loan Bank Board (FHLBB), on behalf of Charles Keating, chairman of a major thrift, who had donated heavily to their political campaigns. The FHLBB subsequently discontinued the investigation against Keating's financial institution.

Political meddling is also visible in the appointment of agencies' administrators, as they have a crucial role in shaping the enforcement philosophy and practices. Politicians are therefore interested in appointing administrators whose ideology is closely aligned with their own agenda. Kenneth Lay, the chief executive officer of Enron and a substantial donor to the George W. Bush campaign for the presidency, even recommended to him the chairman of the Federal Energy Regulatory Commission—the agency that would oversee Enron.

Finally, political factors are also connected to the amount of resources devoted to staffing and funding regulatory agencies. In times of a booming housing market, the Federal Housing Administration poorly policed fraudulent mortgage lenders, partly because of its small staffing levels. Low salaries also result in the "revolving door" phenomenon, when regulatory enforcement experts move to the industry, leaving behind arguably mediocre employees. In the savings and loan scandal of the 1980s, modestly trained regulatory accountants were easily manipulated by the complex accounting practices of fraudulent thrifts.

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See Also: Bureau of Consumer Financial Protection, U.S.; Consumer Product Safety Commission, U.S.; Consumer Product Safety Commission Act; Dodd-Frank Wall Street Reform and Consumer Protection Act; Federal Gambling Regulation; Financial Crimes Enforcement Network, U.S.; Financial Industry Regulatory Authority; Goldman Sachs Group Inc.; Keating Five; Occupational Safety and Health Act; Organizational Compliance Programs; Securities and Exchange Commission, U.S.; Truth in Lending Act.

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Religious Fraud

Fraud is the knowing misrepresentation of fact or misrepresentations made without belief in the truth of an inducement. Hypocrites (from the Greek word for "actor") and a variety of fakes occur in religion just as they do in other areas of life. Although the overwhelming majority of people engaged in religious work are faithful to their religious beliefs, there are always those few "bad apples" who spoil the whole barrel.

Religious fraud is very harmful because it can destroy trust in religion, which is a major social institution. In addition to the devastating effects of sexual exploitation by a priest or the money that is bilked from people by a church, religious fraud can have a shattering effect on public confidence. The practice of religious fraud creates a cynicism that affects faith, lowers social morale, and contributes to social disorganization.

As with other types of fraud, financial religious fraud can be as simple as the acts of a church treasurer who misappropriates funds for personal use or a church officer who writes a check for all of the cash in the Sunday offering and then uses the checks as proof of donations to the church for tax purposes. Fraud can also occur when pastors or priests steal money from a special fund for their own personal use. It also includes the use of funds that are diverted from a dedicated fund or trust. However, regardless of how necessary or noble the misapplied use of stolen funds may be, it is fraud because this action violates the trust of those who gave in the belief that the funds would be used for the original purpose.

A quintessential symbol of religious fraud in modern America is Sinclair Lewis's fictional character Elmer Gantry, the lead character in the 1927 satirical novel by the same name. Gantry is a hypocritical fake who traffics in religion for personal gain. His character is similar to some real ministers who cropped up in post–World War II America. These religious fakes did not believe what they preached and used their pulpits or religious works for personal gain. If their theological views had been made public, they would have been asked to leave the church on the grounds of heresy. Some of these so-called preachers were faith healers whose preaching was lucrative but whose spiritual practices came up short.

Faith Healing

Christian faith and practice has always believed in the possibility of divine miracles in response to prayers as well as in medicine as a means of grace for healing. However, modern "faith-healing" practice began in the 1940s with the ministry of an Indiana preacher, the Reverend William M. Branham. He held tent revivals with "miraculous cures." Although charges of suspect theology could be directed at his teaching, only a few disaffected followers made charges of fraudulent behavior against him. The impact of Branham's tent-revival and faith-healing practices was enormous and inspired many others to imitate his ministry. He was killed in 1965 in an automobile accident.

Jack Coe (1918–56) began a healing ministry in the 1940s. In 1955, he held a revival service in

Miami, Florida. During the service, he claimed to have healed a 3-year-old boy of polio. He ordered the parents to remove his leg braces. However, this left the boy in constant pain, so the parents filed charges against Coe for practicing medicine without a license. The case was dismissed on the grounds that Florida law did not cover divine healing. A few months later, Coe was diagnosed with bulbar tuberculosis, from which he died on December 17, 1956.

Coe's revival tent was purchased after his death by Asa A. Allen, an evangelist who practiced a Pentecostal healing ministry. He was associated with the Voice of Healing movement that had been founded by Gordon Lindsay. His preaching attracted a considerable following, but in 1955 he was arrested for drunk driving. He jumped bail and was defrocked by the Assemblies of God, but he re-ordained himself through his Miracles of Revival Fellowship. He eventually left the tent circuit for radio and then television ministry. He eventually sold jars of water and containers of dirt from his Miracle Valley center in Arizona, claiming that they had to power to heal. He died in San Francisco in 1970 from liver disease resulting from acute alcoholism. The income from his ministry was $2 million per year at the end of his life. Since he did not like publicity, he was reported to have goons deal with anyone who was spotted with a note pad or camera. He also successfully sued the Internal Revenue Service (IRS) for return of Social Security payments.

Allen's successor was Donald Stewart (1939–), who soon afterward was accused of embezzlement by Allen's brother-in-law. The Miracle Valley organization and property in Arizona were the center of legal actions for years. Eventually the property was bought by another ministry. Stewart developed a television program on Black Entertainment Television (BET) from which he sold green prayer handkerchiefs, claiming they had the power to heal. In 2008, the IRS revoked his Don Stewart Associates tax exemption license because of the lavish lifestyle of Stewart and his family.

Robert Tilton (1946–) became notorious for his infomercial-styled television program, *Success-N-Life*. Like a number of other healing ministry preachers, Tilton preached a version of a "prosperity doctrine." His prosperity doctrine declared that God would bless with rich returns those who gave to his ministry. In 1991, *ABC News* conducted an investigation, finding that Tilton's organization banked the money sent in along with prayer requests but simply discarded the prayer requests without praying over them, as Tilton promised to do. Legal difficulties followed, but they never resulted in successful prosecution. His ministry was greatly reduced in success thereafter.

Walter Vinson Grant (1945–) was convicted in 1996 of tax evasion. He purchased a million-dollar home in Texas but did not report the income. Grant was a faith healer who was accused of using magicians' tricks to simulate healings.

Peter Popoff (1946–) is a German American who developed a television ministry as a prophet and faith healer. Popoff was notorious for sending people "holy shower caps." These were to be worn once and then returned, wrapped around cash or a check. Popoff was exposed in 1986 during the services of his Miracle and Blessings Crusade. James Randi, a veteran magician and investigative skeptic, was able to capture a recording of Popoff's wife describing to Popoff, via a concealed in-ear transmitter, details about the people with whom she met prior to the healing service. During the service, he would claim to have a message from God about the same people, whereas it was actually his wife feeding him information about who the person was and his or her prayer needs. The exposure on Johnny Carson's *Tonight Show* caused his ministry to quickly go bankrupt. However, by 2002, Popoff was back in business, this time on BET, where he continued his works. He later expanded to other channels and to television programs in foreign countries, offering "blessed water" and "holy sand" to supporters. His latest "ministry" is a supernatural debt-relief scam.

Benny Hinn (1952–) was born in Israel, the son of a Greek father and an Armenian mother. He is now based in California and has a televangelism ministry that takes in $100 million per year. Without any formal religious training, he has used flamboyant showmanship to preach his "prosperity gospel." His lifestyle is luxuriant, and his ministry claims to heal by zapping people with power he has absorbed from dead faith healers; however, no true cases of healing from his ministry have been documented. He has been fierce


One of the most notorious cases of religious corruption involves Jim and Tammy Faye Bakker, who founded the Praise the Lord (PTL) Club on the Trinity Broadcasting Network in the 1970s. In 1978, they opened a hotel and amusement park complex and sold fraudulent lifetime memberships. In 1984, Jim Bakker and another minister lured a 21-year-old church secretary to a hotel room for sex "in the name of God." After Jim Bakker was convicted and imprisoned for PTL's financial irregularities, Tammy Bakker divorced him.

with critics who have questions about the large sums of money he has raised for projects, such as an orphanage in Mexico, that were never begun. His ministry inspired the cynical movie *Leap of Faith* (1992). Hinn and other prosperity-gospel revivalists have been investigated by a U.S. Senate committee for living very lavish lifestyles on funds from their ministries.

Religious Corruption

Besides the faith healers, a number of evangelists have foundered on a variety of scandals. From 1981 to 1994, the Reverend "Lyin'" Henry J. Lyons was president of the National Baptist Convention USA, which is one of the largest African American denominations. He was convicted of stealing from corporations by offering nonexistent membership lists. He also misappropriated funds dedicated for other purposes. The claim used by his attorneys, that using church money for personal purposes was simply the way the black church operated, was rejected. A fellow clergyman said that Lyons was a victim of too much power and too little supervision.

Some televangelists have been involved in sexual scandals. These include Jimmy Swaggart (1935–). Like many faith healers and evangelists, Swaggart grew up in very poor circumstances. During the 1950s, he preached across rural Louisiana and then into other states. He eventually developed a radio ministry and then a television ministry. However, in 1988, his involvement with prostitutes became public, and he was defrocked by the Assemblies of God. He then entered into a ministry that was unaffiliated with other religious organizations.

One of the most notorious cases of religious corruption occurred with the rise and fall of Tammy Faye Bakker (1942–2007) and Jim Bakker (1940–).They began as members of the Assemblies of God. They traveled for years as revivalists before they were invited in 1965 to join Pat Robertson's Christian Broadcasting Network (CBN). Jim Bakker was a gifted preacher who was soon on a radio program and then went on to host CBN's *700 Club* in the evenings. In 1972, the Bakkers left CBN, and a few months later, they organized the Praise the Lord (PTL) Club on the Trinity Broadcasting Network. By 1976, PTL was on nearly 100 television stations and over two dozen cable systems. In 1978, they opened Heritage USA, a Christian-themed amusement park.

However, money became a major trap for Bakker, because he spent lavishly on his personal life, diverting funds from PTL. In 1982, he was nearly prosecuted by the Federal Communications Commission (FCC) for financial irregularities of PTL. In 1984, Bakker was moving to create a Christian center; however, he and members of his inner staff were accused of sexual misconduct by 21-year-old church secretary Jessica Hahn. Bakker and his aides were further accused of engaging in a financial payoff to Hahn in exchange for her silence. In 1987, the IRS moved to revoke PTL's tax-exempt religious status, while the FCC issued a stinging report that detailed the Bakkers' lavish spending. By the end of 1987, Bakker had been defrocked by the Assemblies of God for adultery and alleged homosexual activity. He had to declare bankruptcy in 1988 and was soon afterward convicted of criminal fraud in federal court for overselling lifetime memberships to his Heritage Grand Hotel at Heritage USA.

He served nearly seven years of an 18-year sentence in federal prison. During his sentence, in 1992, Tammy Bakker was granted a divorce and custody of their son.

Wolves in Sheep's Clothing

Wolves in sheep's clothing who masquerade as respectable clergy prey on people who are often poor or desperate as well as vulnerable. They are often charming charlatans with winsome ways who lure the undiscerning and then bilk them of money or virtue. They not only practice financial fraud but also engage in sexual abuse.

In 2007, Ted Arthur Haggard (1956–), an American evangelical pastor, was exposed as a practicing homosexual. In November 2006, Mike Jones, a masseur, claimed that Haggard had paid him for sex and had also supplied illegal drugs. His sexual failings were similar to those of Bishop Eddie L. Long (1953–), pastor of the New Birth Missionary Baptist Church, Lithonia, Georgia.

The Roman Catholic Church in the United States has been rocked for a number of years by revelations of pedophile priests. These revelations include cover-ups of their dioceses by certain bishops who, although aware of the perversions, did not address the sins but simply moved the priests to new parishes. The Roman Catholic Church has had to pay millions of dollars to redress these corrupt practices. The fraud centers on the fact that the priests were held out to be harmless when in fact the hierarchy knew they were not safe to be around children. Jewish organizations have also been harmed by pedophile rabbis.

Many fraudulent evangelists, revivalists, faith healers, and independent preachers have taken offerings for their ministries that add up to millions of dollars annually. Their independent evangelistic ministries do not report their incomes, and some do not submit to supervision by an outside accounting agency. They usually personally control their organizations. Many faith healers and radio and television ministries claim that any outside supervision or government interference in religious affairs is "unspiritual." In many cases, the lack of supervision allows for heterodoxy, corruption, and lavish lifestyles supported by donations meant for other purposes.

In addition to faith healers, abusive televangelists, and priests, there are new religious movements that have spawned cult leaders who have also engaged in frauds. Sun Myung Moon (1920–2012) created a neo-Christian sect, the Unification Church. A self-proclaimed prophet, he received honorary degrees from Shaw University (a historically black university) and from the University of Bridgeport after he made substantial financial contributions to both institutions. Moon was convicted in 1982 of tax evasion after he filed falsified federal income tax returns. He was also convicted of conspiracy and given an 18-month prison sentence, of which he served 13 months in the Federal Correctional Institution in Danbury, Connecticut. *United States v. Sun Myung Moon* (1982) generated support from many religious leaders, and organizations filed petitions on Moon's behalf on the grounds that the government was engaged in religious persecution. However, part of the evidence of tax evasion was Moon's failure to report over $100,000 in interest.

The Real Deal

In contrast to these religious charlatans are the overwhelming number of churches and religious organizations that do practice sound and faithful accounting for the funds they receive. For example, the Billy Graham Evangelistic Association has always used an independent board to provide integrity to the financial part of its ministry. An annual consolidated financial statement of the ministry is issued each year and can be found online. Most churches and religious organizations follow a similar practice to safeguard themselves from religious fraud that could interfere with the faithful practice of their ministries.

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See Also: Accounting Fraud; Caveat Emptor; Charity Fraud; Corruption; Ethics; Forensic Auditing; Nonprofit Organization Fraud; Self-Control Theory; Sexual Harassment; Tax Evasion.

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Research Fraud

Research fraud is a broad term relating to the improper conduct of research activity. This includes the fabrication of data or findings, the falsification of the research process or research data, and plagiarism of data, arguments, or studies. The level of severity inevitably varies from minor infringements to more serious career-threatening malpractice and even offenses that attract a prison sentence. It is difficult to estimate the true extent of such activity because it comes to light only once a researcher or organization has been suspected and identified, and this is difficult, even with peer review processes.

However, high-profile cases from around the world in research areas such as stem cell science, climate change, and psychology have raised questions about the integrity and morality of so-called experts in the development of knowledge and the shaping of policy. Most cases of research fraud that are reported tend to be in the sciences, but not exclusively. In part, this can be put down to the intense pressures on researchers to publish in those areas. As Danielle Fanelli notes, researchers are torn by a conflict of interest—conducting accurate and objective work to develop subject knowledge versus the need to develop their careers through research publications.

Such a topic is closely fitted with the study of white-collar and corporate crime, as it involves trusted professionals abusing their privileged position in an attempt to benefit their personal careers and their institutions. Such fraud is not solely the preserve of career academics; over the previous few years, a number of leading public figures have been connected to fraudulent doctorate degrees and research papers. This has led to a number of those accused—including Hungarian president Pal Schmitt, who was accused of plagiarizing his doctoral thesis—being forced to resign over such matters.

Extent of the Problem

In a 2002 survey by the National Institutes of Health, one-third of U.S. researchers surveyed admitted to having engaged in some form of research misconduct in the previous three years. This goes some way to demonstrating the sheer scale of the problem. As startling as that may be, the problem is not restricted to the United States. In 2012, the *Times Higher Education* reported on the *British Medical Journal*'s claim that 13 percent of scientists and doctors in the United Kingdom had witnessed colleagues fabricating or altering data ahead of publication in peer-reviewed journals. It was also claimed that 6 percent of those surveyed claimed to have personally practiced such misconduct. We can expect to see similar patterns in other countries with established research cultures, as demonstrated through some of the later examples in this article.

Analysis in 2011 revealed that the rates at which research papers are withdrawn from top science journals have increased significantly between 2001 and 2010, which may indicate a correlation between those rates and the impact factor of such publications. Papers can be withdrawn for a number of reasons, but often withdrawal is a result of questions being raised about the integrity and transparency of the research process. Data provided by Thomson Reuters indicated a 15-fold rise in such retractions over the period. For some academics, this can be put down to the increased pressures to publish in top journals if they are to progress in their careers. This creates a temptation to cut corners and, in some cases, even fake entire research projects.

Commenting at a meeting organized by the *British Medical Journal* in early 2012, Professor Malcolm Green of Imperial College London noted that for every case of fraud detected, a dozen or so more go undetected. Some commentators remark that what we see as identified and reported cases simply represent the tip of the iceberg. That tip includes a number of cases from around the world that received significant media attention. Such cases demonstrate that research fraud is often on a grand scale and that those involved sometimes get way with fraudulent activity over a sustained period of time. Perhaps what is most surprising is the seeming audacity of some of those involved.

In a 2010 study, Danielle Fanelli of the University of Edinburgh highlighted a propensity for researchers to report more positive findings when working in U.S. states where academics publish more frequently. It is generally thought that papers presenting positive findings are more likely to be accepted for publication. This signals the potential for publishing pressures to impact researcher integrity, as researchers are caught in a dilemma. As Fanelli notes, researchers are torn between a conflict of interest: conducting accurate and objective work to develop subject knowledge versus the need to develop their research careers via publications. The examples of fraud cited below reflect that tension.

Universities and other research institutions have individual policies and mechanisms in place for dealing with cases of research fraud. There is also a range of regulatory bodies to prevent and investigate research misconduct, such as the Office of Research Integrity (ORI) in the United States and the UK Research Integrity Office. There are also other nonofficial bodies set up to monitor and report on suspected misconduct. The Retraction Watch blog is one such entity. This was developed in 2010 and serves as a window of transparency into scientific research; the blog serves to demonstrate the true scale of research paper retractions. Retractions are reported in detail, and this site acts a repository for those interested in studying academic malpractice.

Examples of Research Fraud: United States

In 2012, a number of research fraud cases in the United States were globally reported. One involved British eye researcher Peter Francis, who worked at the Oregon Health and Science University. Francis was forced to resign after it emerged that he faked studies that he had cited in applications for funding. The award-winning researcher had claimed success in stem-cell research experiments in grant applications despite the fact that those experiments had not actually taken place. Such grant fraud is not unique, with other researchers having been investigated for this; neither is faking entire experiments. A significant number of researchers have had research monies stopped or recalled following suspected cases of grant fraud. Despite the fact that the exact prevalence of such practices is unknown, perhaps the most worrying aspect of all of this is how such activity represents a manifestation of the pressures researchers and academics face to secure funding.

Earlier in the same year, a researcher at the University of Connecticut, Dipak Das, achieved notoriety after a three-year investigation concerned with suspected fabrication and falsification of research data arrived at a damning conclusion. Das was suspected of malpractice relating to a series of research papers dating back a number of years. The Office of Research Integrity in the United States initially raised concerns over his work. Although Das's work has been described as peripheral in his field of expertise, the sheer scale of his misconduct is significant, with the three-year investigation into his work pointing to 145 instances of fabricated research. The University of Connecticut contacted 11 journals that published Das's work with details of its investigations.

Other notable cases have included that of cardiologist John Darsee, formerly of Harvard University, who was found to have fabricated data in a series of articles for high-profile journals. The case of Anil Potti, formerly of Duke University, is also noteworthy. Potti has been accused of falsifying data within research on cancer treatments.

Examples of Research Fraud: Global

In the Netherlands, a psychologist based at Tilburg University, Diederik Stapel, had a prolific and now infamous career of reporting fraudulent research. Stapel was suspended from his post after investigations revealed that he had cut corners on dozens of research papers. Stapel was found to have manipulated data prior to publication and even fabricated entire data files for research. A report on Stapel's research was commissioned by the university, and this cites numerous examples of his malpractice. In the case of joint papers, Stapel often took responsibility for the data collection element and created fictitious files. Stapel then presented colleagues with the faked data for them to analyze and report. Research partners have been cleared of wrongdoing, since they had unwittingly participated in the fraud.

In Norway, oncologist Jon Sudbø published a series of high-profile papers in the early 2000s that eventually proved to be faked. In 2006, it was reported that Sudbø had fabricated data, and an independent commission was established to investigate his work, including his Ph.D. thesis. Sudbø's malpractice includes a 900-patient study published in the prestigious journal *The Lancet*. That study appears to have been entirely faked, reflecting the scale of Sudbø's fraudulent behavior.

In 2009, two Jinggangshan University researchers in China were dismissed for large-scale research fraud. After details emerged, Dr. Hua Zhong and Professor Tao Liu, with a number of their coauthors, agreed to the retraction of 41 papers published by Dr. Zhong and 29 by Professor Liu. The articles were published in the highly respected group of journals *Acta Crystallographica*. This was one of several research misconduct scandals in China during that period. Commenting on this and on other Chinese scandals, Richard Horton, editor in chief of *The Lancet* went on record in 2010 to claim that the Chinese authorities had not done enough to stamp out such fraudulent behavior, despite growing attention to the problem. This was reported by the BBC and other media outlets. Horton cited the great pressures to publish and the great incentives to commit fraud, particularly where top jobs and salaries are intrinsically connected to publications. As Fanelli also demonstrated, such behavior now appears to be an inherent feature of contemporary academia.

A researcher in South Korea sparked media attention after he claimed to have made a series of breakthroughs in cloning techniques and offered the potential for revolutionary treatments for major diseases. The stem-cell researcher Hweng Woo-suk made a series of false claims that brought him acclaim and wide recognition. However, Hweng was eventually investigated as questions began to be asked about his work when inconsistencies emerged. Hweng was found to have faked much of what he had claimed, and he was subsequently dismissed from his post at

Seoul National University. Hweng even received a prison sentence for his actions, although this sentence was suspended.

In 2009 the "Climategate" episode caught the media's imagination when scientists at the Climate Research Unit (CRU) at the University of East Anglia in England were accused of manipulating data and selectively omitting data on climate change research. The controversy involved a series of e-mails obtained by hacking a CRU server. The content of the correspondence supposedly proved that scientists had altered data in their analysis and ignored data that appeared to contradict their argument. Climate change skeptics pointed to this as further proof of a climate change conspiracy and cited it as another example of scientists seeking to suppress the climate change skeptics.

Those in question were eventually exonerated following a series of reports and committees finding no evidence of research fraud. However, the CRU did receive criticism for its reluctance to release e-mails to the authorities when requested to do so, and it is thought that some of the e-mails were deleted. Despite the fact that the researchers were cleared of any suspected wrongdoing, for many this episode has been a blow to the reputation of climatology.

In 2010, a medical researcher based at University College London (UCL), Jatinda Ahluwalia, was found to have manipulated research data and subsequently sabotaged colleagues' work in order to hide his deceit. Ahluwalia left the university but has continued to work in academia. It also emerged via Retraction Watch that he had previously been warned about his conduct and removed from a Ph.D. program at the University of Cambridge for suspected fabrication of results from experimental work.

Public Figures Embroiled in Research Fraud

Research fraud scandals are not reserved only for career academics and researchers. Over the course of the last two years alone, a series of high-profile public figures have been embroiled in claims of research misconduct, and this has forced some of them to quit. Others have narrowly escaped losing their jobs but have had their reputations tainted nevertheless. Often, these claims involve concerns regarding plagiarized Ph.D.s, and even nonexistent Ph.D.s cited in personal résumés. Some have even been accused of fabricating research papers. This has been particularly noteworthy in Europe, where holding a Ph.D. carries substantial prestige. Those recently accused of such fraudulent behavior include Karl-Theodor zu Guttenberg, German defense minister, who resigned in March 2011 in relation to his Ph.D., Hungarian president Pal Schmitt also resigned, in April 2012, over allegations that he had copied most of his Ph.D. thesis from other materials without duly crediting them. Ioan Mang, Romanian education minister, resigned in May 2012 after allegations surfaced that he had plagiarized a series of research papers.

Research fraud represents the unsavory side of academia, with researchers increasingly under pressure to develop their research profiles and bring in funding from external bodies. In light of such pressures, it is perhaps inevitable that some researchers will cut corners and some will go even further. The true scale of research fraud is unknown, but it is certain that those examples that come to the attention of the regulatory bodies and media represent a fraction of the true total.

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See Also: B. F. Goodrich Co.; Baycol Case; Bendectin Case; Cigarette Advertising; Ethics; Food Fraud; Global Warming; Johns Manville Corp.; Love Canal Disaster; Nader, Ralph; Occupational Carcinogens; Silkwood, Karen; Thalidomide Case; Tobacco Industry.

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Respondeat Superior

Respondeat superior is an English common law doctrine governing employer-employee relationships. A Latin phrase for "let the master answer," respondeat superior is also called the "master-servant rule." Originally, the doctrine imposed a strict liability on an employer or master, who was held responsible for the wrongful acts of his/her employees or servants.

In the modern application of respondeat superior, an employer may be held liable for an employee's wrongful act only if the act occurred within the general scope of her or his employment or if the employer was negligent. The doctrine has also been extended from torts (civil law) to criminal law. Respondeat superior is the most customarily accepted doctrine in terms of corporate criminal liability. A corporation may be held liable not only for the criminal conduct of its own employees but also for its subsidiaries and subcontractors.

Origins

Respondeat superior was established in 17th-century England when servants (domestic employees) were the largest single group of employees. Respondeat superior signified a paternalistic relationship between masters (employers) and servants (employees). It derived from a Latin phrase, *in loco parentis*, "in the place of a parent"; that is, the master-servant relationship is equivalent to the parent-child relationship. With industrialization, a more impersonal monetary relationship replaced the highly personal master-servant relationship. In the early days of industrialization, however, the courts still upheld the paternal obligations of masters under respondeat superior.

New Developments in the Courts

In the first half of the 19th century, as the number of industrial injuries increased, the courts began to move away from strict liability under respondeat superior to the law of tort and contract by creating new rules based on negligence and contract.

In 1827, the fellow-servant rule, a new doctrine, was created in an English case, *Priestly v. Fowler*. This rule was an exception to the general rule of a master's strict liability under respondeat superior. A servant (employee) could not sue his or her master (employer) for damages for personal injuries if caused by the negligence of a "fellow-servant," another employee. A landmark Massachusetts case in 1842, *Farwell v. Boston and Worcester Railroad Corporation*, made the fellow-servant rule popular in American courts. The negligence standard became the norm in English and American tort law and began to release masters from strict liability for their employees under respondeat superior.

Courts in the 19th century also developed defenses for employers who would have otherwise been liable for injured employees. In the case of *Farwell v. Boston and Worcester Railroad Corporation*, the assumption of risk, a defense based on the law of contract, was applied. Employees were said to assume the inherent risk of work-related injuries when they agreed to their employment contracts. With this defense, the contract relation was elevated to interfere with all preexisting legal duties. Another employer defense created was the doctrine of contributory negligence. This doctrine barred an injured plaintiff from recovering damages if s/he was negligent, even slightly.

Some scholars today believe that pro-business judges of the era self-consciously promoted a series of legal rules that put limits on the liabilities of corporations in order to benefit the burgeoning industries of the mid- to late 19th century.

Contemporary Implications

Respondeat superior remains a traditionally accepted legal basis for corporate criminal liability. For example, respondeat superior was one of the arguments that the government used to prosecute

Exxon Corporation for its liability for the 1989 *Exxon Valdez* oil spill, an environmental offense.

As the service industry, such as the finance and retail sectors, expands, more business transactions are conducted through computers in the workplace. Thus, computer crimes—for example, Internet fraud or stock fraud—are on the rise, and respondeat superior can be used as a legal basis for corporate liability for employees' criminal activities using the company's computers.

However, an employment contract can provide an employer with a defense to respondeat superior. A good example is an employment contract with a mandatory arbitration provision, whose purpose is typically to prevent employees from resorting to a lawsuit. The provision received public attention in a recent lawsuit by a KBR employee against Halliburton and KBR. The employee claimed to have been raped and assaulted by Halliburton and KBR employees in her workplace in Iraq. The plaintiff was able to proceed in court, but she lost the jury trial.

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See Also: Bureau of Consumer Financial Protection, U.S.; Consumer Deaths; Consumer Product Safety Commission, U.S.; Consumer Product Safety Commission Act; Corporate Criminal Liability; Dodd-Frank Wall Street Reform and Consumer Protection Act; Employee Safety; *Exxon Valdez* Oil Spill; Halliburton Co.; Negligence; Real Estate Investments.

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Revco Medicaid Scandal

The Revco drugstore chain was embroiled in a major scandal in 1977 concerning the filing of false Medicaid claims. The case had broad implications beyond Medicaid fraud because it was one of the first fraud cases to be perpetrated using computers, and it became indicative of the role that computer technology would play in the commission of white-collar crimes over the following decades.

The case stemmed from Revco's filing of double claims with the Ohio Department of Public Welfare. Revco officials involved in the scandal insisted they were not attempting to bilk the government out of money but only wanted to collect on valid claims that had not been approved or that had been returned for additional processing. Ultimately, two Revco executives were convicted of fraudulent billing practices in the scheme that led to Revco illegally accepting more than $500,000 derived from the fake claims.

Even though company officials insisted that they were unaware of the fraud, Revco was required to pay a $50,000 fine and make restitution in the amount of $521,000. There was considerable outcry to prevent Revco stores from continuing to be involved in processing Medicaid claims, and the Ohio legislature went so far as to introduce a bill that would have prevented Revco from doing so by state law. Ultimately, a ban that had been temporarily enacted was lifted, and the filing of Medicaid claims continued. Both Revco and the Ohio Department of Public Welfare put new monitoring controls in place to prevent future frauds.

The drugstore chain that became Revco was founded as Royal Drugs in Detroit by pharmacist Bernard Shulman in 1945. Under the guidance of Shulman's accountant, Sidney Dworkin, the store grew into a chain and was incorporated as Revco in 1956. The Revco employees involved in the Medicaid fraud scheme were Myron Winkelman, vice president of professional services, and John Turk, the Prepaid Prescription Program manager. Growing frustrated with the fact that the Ohio Department of Public Welfare continued to reject claims that had initially been legitimately filed, Winkelman and Turk began instructing their employees to routinely replace rejected claims with new claims for the same transactions.

Some rejected transactions were the result of Revco's computer system, which had been programmed to automatically reject claims that had not been filled out properly or that contained inaccuracies. "Red flags" that caused claims to be rejected were often the result of Revco's computer system identifying a recipient as ineligible for Medicaid, a claim appearing to be a duplicate of an earlier claim, or a claim containing information that was deemed inaccurate or incomplete. In order to bypass the system, Winkelman and Turk told their employees to use claims that had been approved as models for "fixing" rejected claims before resubmitting them as new claims.

Duplicate Claims Discovered

The Revco Medicaid fraud came to light when a worker at the Ohio Department of Public Welfare observed that Revco frequently submitted duplicate claims for transactions that had been filed only a few days earlier. While an investigation was still in process, the governor dispatched five state troopers to the Ohio Department of Public Welfare and other state buildings to facilitate investigations into the Revco situation and into other case of welfare fraud.

Four years earlier, the federal Economic Crime Unit had been established under the auspices of the National District Attorney Association for the purpose of combating white-collar crime. When Revco initiated its fraud, these special prosecutors were already in place. The Revco case led investigators to uncover 208,539 claims that had been filed incorrectly or that had been disputed. The fraud extended to 150 stores across Ohio. Revco countered charges of Medicaid fraud with assurances that virtually all of the claims were for legitimate transactions and insisted that it intended to resubmit the claims once mistakes were corrected.

When faced with their crimes, both Winkelman and Turk pleaded no contest in a Franklin County Court to misdemeanor counts of filing false claims for prescription services. The court levied the maximum fine of $500,000 against Revco, and the company was required to return the $521,000 that had been fraudulently obtained. Additionally, Winkelman and Turk were fined $2,000 each. After years spent at Revco, Rite Aid, Perry Drugs, and Value Rx as a senior executive, Myron Winkelman established Winkelman Management Consulting in 1994 and served as company president. He also became a director of Lanell Company Inc. in 2003.

Revco continued to struggle over the next decade. In addition to the Medicaid fraud scandal, the company states in its official history that it had to deal with ill-advised acquisitions and corporate infighting. In 1988, Revco filed for Chapter 11 bankruptcy. Subsequently, the outlook for Revco improved. By 2012, Revco had 16,000 employees and was reporting $1.9 billion in annual sales.

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See Also: Employee Crimes; False Claims Act; Medicare and Medicaid Fraud; Vaughan, Diane.

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Reverse-Mortgage Fraud

A reverse mortgage, also known as a home equity conversion mortgage, is a special type of home equity loan that provides older homeowners with loan money that does not have to be immediately repaid. This type of arrangement can be useful to seniors who own their homes but have limited monthly incomes. However, because these loans are complex and available only to vulnerable populations, they can be used by unscrupulous professionals to perpetrate various scams.

Reverse Mortgages Defined

Reverse mortgages are only available to homeowners over the age of 62 who have paid off all or most of their original home mortgages. When entering into a reverse mortgage, a qualified borrower takes out a loan based on the equity in his or her primary residence. The money may be paid to the borrower in a lump sum, dispersed in monthly installments, or drawn on a line of credit. In all cases, a borrower is not required to make regular repayments on the amount borrowed. Instead, monthly interest is added to the loan, causing the balance to grow. The total balance, including interest, must be repaid when the borrower dies, moves out of the home, sells the home, or fails to pay property taxes or insurance while living in the home. Repayment is usually accomplished by selling the home when one of these events causes the loan to come due.

Reverse mortgages often specify, however, that if the loan balance exceeds the value of the home when the loan must be repaid, the lender will seek to recover only the value of the home instead of the full balance. These loans are thus designed to benefit seniors who are "equity rich" but cash poor—they own their homes but have limited incomes—by allowing them to use their home equity to generate funds for daily living expenses. Lenders assume that borrowers will remain in their residences for a substantial period and that home values will increase during that time so that the loan and accrued interest can be paid when the home is sold. In the period 2008–09, new reverse mortgages reached an all-time high when over 100,000 new loans were made but have since dropped back to approximately 70,000 new loans annually.

Types of Reverse-Mortgage Fraud

Although reverse mortgages are not scams per se, they are controversial because they typically have higher costs and fees than traditional mortgages. For instance, in a California class-action suit against Providian and Commonwealth Life Insurance, it was alleged that a senior who received as little as $13,716 in loan money was charged over $35,000 in fees during the first year of her loan. In other instances, unscrupulous loan officers, mortgage companies, and real estate agents have been known to charge seniors for reverse mortgage information even though such information is free from the U.S. Department of Housing and Urban Development (HUD). Additionally, reverse mortgage loan terms are often more complex than those found in standard loans. Financial advisors and other professionals have taken advantage of this complexity to dupe seniors in several ways.

One of the most common means is through equity theft—stealing loan proceeds. In a simple equity theft scheme, a financial advisor or agent arranges for a lump sum loan payment to a borrower to be divided into multiple checks. The professional then gives the borrower some of the checks but keeps others and cashes them before the borrower realizes that he has not received all the loan monies. More complex schemes involve withdrawing false equity from properties. In such cases, unscrupulous mortgage companies and real estate lawyers collude with straw buyers to identify and purchase distressed properties on the cheap. The straw buyers then recruit seniors to "buy" the properties from them for little or no purchase price. After the seniors take title and inhabit the properties for 60 days, the mortgage companies arrange for inflated appraisals and have the seniors take out reverse mortgages on the homes with lump sum loan payments. The fraudsters then pocket the loan checks and disappear. In another common scheme, instead of simply absconding with loan checks, financial advisors convince seniors to take out reverse mortgages in order to buy phony investment products such as fake annuities or nonexistent investment properties.

Although a number of these schemes are perpetrated by professionals who victimize the elderly, a recent study reveals that many reverse mortgage scams are perpetrated by family members who pocket loan money after convincing older relatives to enter into reverse mortgages. In addition, seniors have also been known to willingly collude with professionals. Seniors are recruited to take title to distressed homes bought for cheap prices by professionals, reside in them, arrange for inflated appraisals, apply for reverse mortgages, and give the loan proceeds to the professionals who purchased the discounted properties. In exchange, the seniors are told they will be allowed to live in the home for "free" until they pass away. As long as property taxes and insurance are paid while the senior lives in the home, the bank remains unaware that proceeds from the sale of the overvalued home will fall far short of the loan balance. Regulators report that seniors have even been recruited from homeless shelters to participate in such "free housing" schemes.

Regulation and Attempts to Combat Fraud

Most reverse mortgages are insured by the Federal Housing Administration (FHA), which is overseen by HUD. These agencies attempt to combat reverse mortgage fraud by educating potential borrowers. Before a borrower can receive a federally insured reverse mortgage, he or she must meet with a HUD-certified mortgage counselor. Unfortunately, a 2010 Government Accounting Office report describes concerns about the ineffectiveness of counseling. Provisions of some federal regulations also pertain to reverse mortgages. For instance, Regulation Z, implementing the Federal Truth in Lending Act (TILA), sets forth a few relevant disclosure obligations. Regulation X, implementing the Real Estate Settlement Procedures Act (RESPA), sets forth financial information that must be provided to borrowers and puts restrictions on referral fees for reverse mortgage lenders.

However, most federal consumer protection statutes do not apply to reverse mortgages. Moreover, most federally regulated banks ended up exiting the reverse mortgage market in 2011. That meant that most reverse mortgages would now be made by nonbank financial companies that were not subject to federal oversight. In response, a number of states enacted laws directed at nonbanks making reverse mortgages. Most of this legislation focused on curtailing deceptive marketing and creating disclosure requirements. In addition, in 2011, the newly created Consumer Financial Protection Bureau (CFPB) was authorized to federally regulate nonbank mortgage companies dealing in reverse mortgages. The CFPB was granted the power to regulate reverse mortgages for a variety of reasons. But Director Richard Cordray issued a press release in June 2012 indicating that deceptive mailings and advertisements exacerbate issues borrowers have understanding reverse mortgages. He also indicated that the CFPB will work with federal, state, and local agencies to target reverse mortgage scams.

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See Also: False Foreclosures; Foreclosure Fraud and Rescue Schemes; Housing and Urban Development, U.S. Department of; Mortgage Fraud; Truth in Lending Act.

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Revolving Door

Since the early 1980s, former members of Congress and their staffers have been finding lucrative new positions after either choosing to leave public service or losing elections. Already familiar with the process and expectations, they are easily drawn to a career as lobbyists, where the salaries are far greater than the income they received for their lawmaking and representative services. The lucrative nature of lobbying from K Street in Washington, D.C., has allowed these insiders to quickly begin earning over $1 million per year (which does not include typical bonuses for client recruitment). For some firms, it has been worth hiring former congressional members at high salaries to demonstrate the professionalism of their staff and their ability to retain insider status.

Although this series of events has been beneficial for former lawmakers, there are public concerns related to their choices. The main worry is the entanglement of elected officials (who are put into office to serve the public good) with companies and interest groups (driven by profits or their own self-promoting interests). If members and former members of Congress make decisions based on the criteria of the wants and needs of entities offering them the biggest perks or having the best connections, the public element has been removed from public service.

Common Cause, a watchdog group based in Washington, D.C., defines the revolving door as "the practice of government officials cashing in on their public service by leaving public office and going to work for the same special interests that were seeking favors from them when they were in office." As a result, a series of ethical questions arises from the new relationship between business, special interests, bureaucracy, and elected officials. If lawmakers intend to become lobbyists after leaving elected office, there is the potential for personal relationships to ultimately determine policy outcomes. Lobbying firms are able to utilize the experience and, even more, the connections of the former legislator, while lawmakers are able to make money based on who and what they know. This runs against the stated preference of most Americans on how the government should operate.

Mississippi Governor Haley Barbour at a Deepwater Horizon press conference in Jackson, Mississippi, on June 30, 2010. After his term ended in January 2012, he rejoined his Washington, D.C., lobbying firm, Barbour, Griffith, and Rogers.

Ethics After Office

Postemployment laws were applied to members of Congress through the Ethics in Government Act, which was passed in 1978. For one year after leaving office, these individuals were not permitted to lobby. Bureaucratic officials from upper agency administrations were also prohibited from lobbying their own agencies for one year. For two years, they could not lobby on matters specific to the area they supervised. There was also a lifetime ban on lobbying for matters in which they were personally involved while in office. Similar rules applied for congressional staffers.

The revolving door is not an unknown process. In fact, multiple annual reports attempt to measure the phenomenon and its potential impact on policy decisions. A 2011 estimate reported by online disclosure site LegiStorm reports that approximately 5,400 former congressional staffers have become lobbyists at the national level over the past decade, along with just under 400 former elected officials. The Center for Responsive Politics reported that in 2011 alone, 370 former congressional members were lobbyists, including at least 285 who were registered as federal lobbyists. The London School of Economics released a similar study in 2011 that found over 1,000 lobbyists who had formerly worked in the personal offices of lawmakers.

For staffers, the transition makes financial sense. Typically underpaid and overworked while on the payrolls of an elected official, they can see a return on their investment by working for lobbying firms later on in their careers. In fact, this has been directly attributed to the decrease in longevity among congressional staffers, who used to work for decades in the same office but now tend to leave within a few years.

Bob Livingston is perhaps the best example of the revolving door and the ethical questions it presents. Livingston was set to become Speaker of the House when he resigned from Congress in 1999. Since he resigned, his lobbying firm has become the 12th-largest non-law lobbying firm in the nation. Its clients have included the companies Rolls Royce and Northrop Grumman, the city of New Orleans, and the countries of Morocco, Azerbaijan, Libya, the Republic of Turkey, and, currently, Egypt. Although the list is impressive and demonstrates his success as a lobbyist, in recent years, Livingston and his political action committees have donated upward of $750,000 to various candidates that he has then chosen to lobby for his clients.

Dick Gephardt—former presidential candidate and House Democratic leader—is one of the most prominent and well-known examples of a former elected official turning to lobbying to seek profit. Gephardt, the principal at Gephardt Government Affairs Group, earned close to $10 million in revenues in 2011 from a client list that included Boeing and Goldman Sachs. Other examples include former Senators Robert Bennett and Byron Dorgan, Governor Haley Barbour, and Representatives Billy Tauzin, James Greenwood, and Daniel Glickman.

In 2005, the Public Citizen report "Congressional Revolving Doors: The Journey From Congress to K Street" received major national attention as it most clearly articulated what was happening with the revolving door. Through the Lobbying Disclosure Act and Foreign Agents Restoration Act, the study found that between 1998 and 2005, just under half of all members of Congress who left government were registered to lobby their former body. Similar reports have found that large numbers of former members of Congress were either directly lobbying or advising corporate clients on how to lobby effectively.

As a result of these studies, the *Washington Post* described what it saw as a "sea of change that has occurred in lawmakers' attitudes toward lobbying in recent years." Those in favor of revolving-door laws believe that pure government dictates that decisions are reached by elected officials without undue influence being placed on them by others—particularly their former colleagues and friends. Those in opposition to revolving-door restrictions believe that elected officials are able to exercise sound, proper judgment and, consequently, individuals with experience and knowledge should not be barred from participating indirectly in the system after leaving office. Despite the best efforts of federal laws to limit this influence, the revolving door will likely remain for some time.

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See Also: Campaign Finance; Corporate Capture; Corruption; Ethics; Public Corruption.

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Rich, Marc

Marc Rich was born Marcus David Reich on December 18, 1934, in Antwerp, Belgium. He came to the United States with his family in 1941 to escape the horrors of German-occupied Europe. After high school, he attended New York University but dropped out in 1973 to take a position at Phillipp Brothers, the commodities unit of the Salomon Brothers investment bank.

In that position, Rich began buying oil for $12 a barrel and selling it at $24 a barrel during the Arab oil embargo. Rich also worked with his father trading commodities. As he gained experience, he became an internationally known commodities trader and entrepreneur. Disgruntled Texas oilmen notified authorities about Rich's activities, and it was discovered that he had failed to pay an estimated $71 million in taxes on the illegal oil. Rich was indicted 1983, but by that time, he had already fled to Zug, Switzerland. Both Rich and Pincus Green, his partner in Marc Rich and Company, were listed by the Federal Bureau of Investigation (FBI) as "most wanted" fugitives for almost two decades. Conviction for the two men carried a possible 325 years in prison, $500,000 in fines, and forfeiture of illegal assets.

Indictment and Escape to Switzerland

Rich and Green were charged with tax evasion and trading with American enemies. The indictment involved 65 counts related to reselling 6.2 million barrels of Arab oil, amounting to some $200 million. Rich had negotiated the sales through his links to the regime of the Ayatollah Khomeini. Other charges involved wire fraud, mail fraud, and racketeering. In 1984, Marc Rich and Company pleaded guilty to its role in Rich's activities and paid $171 million in fines. Rich had tried to fight the charges by arguing that as a Swiss-based firm, Marc Rich and Company had not violated American tax laws. Despite that claim, the business of the company was actually carried out through its New York office.

In the face of imminent arrest, Rich and Green prepared to leave the United States. They sold the American branch to their colleagues, who changed the company name to Clarenden Ltd. Threatened with a freeze on assets, they agreed to comply with a demand for documents, but they then tried to ship them to Zurich. Alerted by a "mole," authorities seized the documents. After Rich and Green fled to Switzerland, authorities there refused to extradite them, chiefly because of Rich's political and financial influence.

Over the years, Rich seemed content with his life in Europe and never tried to return to the United States. Because he had been so successful in getting his assets out of the United States, he was able to continue to enjoy a billionaire's lifestyle, living in a mansion filled with original artworks in Switzerland, spending time in his ski villa in St. Moritz and his home on the coast of Spain, and continuing to interact with heads of state, celebrities, and high-profile financiers.

Some journalists have devoted much of their careers to reporting on Rich. British journalist Daniel Ammann, the author of *The King of Oil: The Secret Lives of Marc Rich,* conducted 30 hours of interviews with Rich and was granted access to many of his colleagues. Ammann describes Rich as one of smoothest villains the world has ever seen. He notes that Rich holds passports from three countries and seems to have no strong loyalties to any of them. Rich freely admits to having no scruples about breaking embargos or feeding espionage tips to intelligence agencies in a number of countries.

On January 20, 2001, his last day in office, President Bill Clinton pardoned Rich, generating a hailstorm of controversy. Clinton was accused of yielding to pressure from Rich's ex-wife Denise Rich, a loyal supporter of both the Democratic Party and the Clinton Library. There was considerable evidence that the outgoing president had yielded to pressure from Israel, a frequent beneficiary of Rich's generosity. Clinton publicly defended his actions, arguing that similar cases were already being dealt with by civil rather than criminal courts.

Those involved in investigating the case, such as Rudolph Giuliani, who was a U.S. attorney at the time of the 18-month investigation, were furious that Rich would never have to pay for what Giuliani identified as the "biggest tax evasion case in United States history." Humorist Calvin Trillin summed up public reaction: "As proven by this pardon/Two facts of life prevail/The rich have got the money/And everything's for sale."

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See Also: Clinton, William J.; Commodities Fraud; Giuliani, Rudy; Tax Evasion.

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Risk Analysis

Risk analysis (RA) is a broad label for a method of decision making. "Risk" can roughly be defined as the probability that an event will cause harm multiplied by the damage the event might cause. Although this definition may not comprehensively assess risk, it provides a useful starting point. Risks are not completely quantifiable; therefore, RA relies on assumptions or parameters to put boundaries on events. For example, actuarial analysis of environmental risks often explicitly excludes acts of war. When either risk component, that is, the probability of actualizing the threat or the amount of damage associated with actualizing threats, is unknown, assumptions must be substituted for these values. Studies based on samples or comparisons across similar industries or environments can raise mere guesses to the level of more systematic estimates. In some cases, any systematic assessment or even a collective hunch is used.

Organizational risk assessment is a common form of RA that is valuable in allocating scarce resources. Its crucial decision concerns how much of the organization's risk can be assessed to provide the broadest basis for rational decision making. This leads to the use of data based on multiple noncomparable criteria. For example, industry leadership and reputation may be at stake in some risk scenarios. These must be compared with direct financial risks and prioritized for resource allocation. One of the most common ways to standardize RA in businesses is with cost analysis of actualized risk versus prevention cost, but this does not encompass all the issues present in the analysis. In fact, it introduces a bias toward quantifiable risk. Other implementations of risk include business impact analysis and security risk assessments. Although some RA methods are fairly well defined, each analysis is a combination of unique features, assumptions, and comparisons.

Risk Analysis Process

Risk analysis begins with the identification of risks or vulnerabilities. It is impossible to identify or consider all sources of risk. However, experience and research within the field can help readily identify categories of risk for inclusion or exclusion. In a typical business, risk may include denial of resources needed to conduct business. These can include raw materials used in manufacturing or some other form of good used or transformed by the business. For steel mills, iron ore constitutes a resource subject to denial; for an online travel service, vacant hotel rooms are the resource that could be unavailable.

Another risk is denial of labor or services used by the business to transform the resource into a product or facilitate the operation of the business. Such denial can include skilled, unskilled, or semi-skilled labor from striking employees or productivity losses from Web-browsing office workers. The risk of denial of vital services can include tangible services, like utilities or shipping, or outsourced business processes, like human resources, payroll, or accounting. Finance and marketing risks can include denial of access to capital, denial of market, or denial of income source. Disruptions in cash flow can force businesses to default on their creditors and suppliers, which may in turn reduce investment or access to borrowed capital. Disruptions to accounts payable and payroll can dramatically affect any business.

Exposure of intellectual property or customers' or employees' personally identifiable information (PII) can also cause damage. Information releases that undermine confidence (e.g., those caused by banks), expose proprietary business processes (e.g., those caused by investment firms), or expose intellectual products (e.g., those caused by the entertainment or software industries) can also strike at the core of businesses. From these examples, it should be clear that different industries suffer risks differently. RA needs a mechanism to assess risk in relation to the industry.

Analysis and study of identified risks creates the basic risk equation: the probability that an event will cause harm multiplied by the damage that the event might cause. RA assesses the probability of risk actualization through data ranging from complex model forecasting to pure guesswork. The available data and skill of the risk analyzer can vary widely. RA also assesses the criticality of the asset at risk. Criticality is the degree to which an actualized risk will impair the function of the organization. For professional services businesses like law, medicine, or consulting, denial of labor may be far more critical than denial of resources. For businesses with interchangeable, unskilled, or semiskilled labor pools, labor denial is less critical.

Some physical assets are deemed completely expendable because the probability of risk is so high. The computer forensic industry often destroys hard drives after a single use because the risk of data exposure is so high and so hard to disprove. However, hard drives are necessary to the present function of the industry. The balanced risk solution is to build the cost into the cost of forensics and to keep a ready supply available. The criticality of an asset goes beyond mere necessity. It can also be assessed on the basis of replacement cost, including interim replacement cost, such as rental costs until the item can be replaced, downtime to other assets, insurance rate change, and even loss of market position. No matter how necessary, a readily and cheaply replaceable asset is not critical in a risk analysis; however, complex solutions for replacements bring other risks like denial of services, such as shipping and delivery.

Risk analysis is useless unless it informs a risk management strategy. Generally, risk management follows one or a combination of several forms. Risk avoidance finds methods to prevent the risk. Risk reduction reduces the impact of risk actualization. Risk spreading shares the risk among several entities. Risk transfer holds another party responsible for remediating actualized risks. Risk acceptance simply absorbs the damage from risk actualization. Insurance companies are the most common course for risk transfer. They operate on the basis of risk spreading by accepting money from many customers to pay for relatively few risk actualizations. Major disasters can disrupt this balance by causing many claims at the same time. Insurance companies must anticipate such risks and prepare accordingly.

Finally, risk is not static. Even a very competent risk analysis may not be relevant in several years. The solutions may have evolved and need reassessment in the overall risk equation. Ongoing audits of risk management strategies help keep the strategies true to the original intentions of the risk analysis. Audits also help spot the ways that innovators adapt to changing conditions.

Theoretical Risk Analysis

Risk analysis is fundamental to business decision making. When assessing corporate crimes, it is the most likely implementation of rational choice criminological theory. Some corporate crimes may be the direct product of the process of weighing numerous, complex variables, including regulatory actions and lawsuits. Laws like the Foreign Corrupt Practices Act are designed to curb corporate crime by raising the risks.

Some decision techniques can accurately assess factors in the decision; risk analysis generally accepts uncertainty without established probabilities. Such uncertainty is explicitly acknowledged in the word *risk*. Decision analysis within the field of decision sciences tends toward establishing methods of decision making like decision trees and nested decisions in computer code. The order of such decisions may be event driven; an event is an action not entirely under control of the decision maker. Risk analysis also acknowledges values in decision making. Rather than simply planning for the optimal decision, decision analysis allows the injection of value questions in decision trees and algorithms. By qualitatively assigning priority to such questions, analyses can influence data-driven or weighted questions.

The basis of data used in risk analysis can vary widely. Engineering risk analysis can be very precise within ranges of environmental variables, whereas business process risk analysis tends to rely on estimates by experienced practitioners. Regardless of the quality of underlying data, uncertainty always exists within risk analysis. Even in large data set–driven actuarial analyses, events can skew results over a limited time, and apparently reliable, long-term trends can fail to predict unusual cases and the tremendous consequences of such "black swan" events. Still, most risk analysis techniques attempt to quantify as much of the decision process as possible. This makes the production of decision aids from simplistic red-yellow-green charts to decision support systems (DSS) software possible. In simplified decision tools, a decision maker can create a simple rule: one red light means "no go." The rule may also be changed to "go" for results with more green than red. This type of decision tool requires simplification of the data. Accordingly, complex systems like DSS reduce data to graphics (e.g., hot spot analyses) or ratios (e.g., confidence coefficients).

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See Also: Board of Directors; *Challenger* Disaster; Coal Mining; Conflict Theory; Fear of Crime; Foreign Corrupt Practices Act; Self-Control Theory; Short, James F., Jr.

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Rite Aid Corp.

In 2002, the drugstore chain Rite Aid found itself embroiled in a major scandal involving Martin Grass, chief executive officer (CEO) and son of founder Alexander Grass, and other high-ranking company officials who had engaged in a major accounting fraud. The fraud had actually begun in 1997, when Grass and his cohorts had begun making Rite Aid appear more profitable than it actually was to influence current and potential stockholders. In 2004, Rite Aid was forced to pay $7 million to settle the case. Some $200 million was paid to settle claims of former shareholders who had filed a class-action lawsuit in 1999. The company was also required to restate 1998–99 financial reports, with earnings declining from $2.3 billion and net income decreasing by $1.6 billion. The restatement was the largest ever imposed in American history.

"An Extensive Bag of Tricks"

Headquartered in Camp Hill, Pennsylvania, Rite Aid had grown to be the largest drug store chain on the east coast and the third largest in the United States by the time the scandal broke. It took a team of four investigators from the Federal Bureau of Investigation (FBI) and the Securities and Exchange Commission (SEC) four years to unravel the details of the Rite Aid accounting scam, which the SEC called "an extensive bag of tricks" that had been employed to "manipulate earnings and defraud investors." Timothy Noonan, who had replaced Grass as CEO in 1999, pleaded guilty to one count of hiding information from the company and agreed to wear a "bug" in order to get his cohorts to entrap themselves on tape. In total, 37 indictments were handed down against Rite Aid executives.

In 2003, Martin Grass was charged with more than 30 counts of conspiracy to defraud and attempting to obstruct justice. He had lied to investigators, submitting fake minutes of a meeting involving a loan that had never actually taken place. He had also postdated letters that granted lucrative severance packages to former Rite Aid executives. Ultimately, Grass agreed to work with prosecutors to target other individuals involved in the scam. He pleaded guilty to one count of conspiracy to defraud the company and its stockholders and one count of obstructing justice. All other charges were dismissed. Grass was given an eight-year federal prison sentence and required to pay $3.5 million in fines and to forfeit all profits made from the scam. He served six years of his sentence and was released in January 2010.

In addition to Grass and Noonan, those found guilty in the scandal were Franklin C. Brown, former vice chairman; Philip Markovitz, former senior vice president; Franklyn M. Bergonzi, former chief financial officer; and Eric S. Sorkin, former vice president of pharmacy services. Brown, who had been charged with 36 felony counts, was found guilty of making false statements to investigators, obstructing justice, and tampering with witnesses and was given a 10-year sentence. Markovitz acknowledged that he had lied to FBI agents about when he had actually received his severance letter from Martin Grass. He faced five years in prison and a $250,000 fine. Bergonzi pleaded guilty to conspiracy to defraud, admitting that he had illegally recorded $76 million in manufacturers' rebates. He also agreed to cooperate with investigators.

Rite Aid's problems continued to mount in the wake of the scandal. On December 19, 2007, Reuters reported that Ride Aid's shares had fallen 31.7 percent, to the lowest level in three years. In 2010, another scandal erupted when the Federal Trade Commission launched an investigation into Rite Aid's handling of confidential patient records after it was discovered that records had been disposed of in easily accessible trash containers. The company was forced to submit to independent monitoring and improve employee training.

In December 2008, 13 employees filed a class-action lawsuit against the company, alleging that they had not been paid overtime and had been prevented from taking lunch and rest breaks. By the time the case was settled in 2012, the Rite Aid chain included 4,667 stores. The employees' lawsuit eventually grew to include 6,100 employees in 31 states who were expected to receive approximately $2,000 each from the $20.9 million settlement. With a $6.1 billion debt in 2012, Rite Aid reported a loss of $368 million, despite $26.1 billion in revenues.

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See Also: Accounting Fraud; Antitrust, Federal Trade Commission; Board of Directors; Stock and Securities Fraud.

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Robber Barons

Robber baron is a derogatory term generally used to describe an elite group of capitalists who advanced the American economy through investments in natural resources and land development throughout the 19th century. It was widely rumored (and in many cases true) that the business practices of these men were questionable, even for a time when regulations were lax, especially compared to today's standards. The term *robber baron* itself arose based on the combination of ruthless business practices and lavish lifestyles common to all of the early American industrialists who earned the label. The notion that these capitalist pioneers were criminals (e.g., robbers) implies a lack of morality as well as impressive cunning. In feudal Europe, barons were powerful men who had connections to the king and thus held a title, land, and place in higher society. Combining the two terms created a symbol of American upper-class power and greed. The term invokes a dichotomy because, especially in their later years, many were generous philanthropists.

Elite Group of Industry Tycoons

The turn of the 20th century was a fascinating time in modern economic history. The era of the Civil War and western expansion in the United States had changed the structure of the American economic system as agriculture gave way to industrialization. Technological advances made possible the extraction of natural resources in vast quantities, and the American landscape began to transform as oil, coal, iron, and steel took the place of horses, carts, and cotton. The new and expanding railroad system quickly became a way for a small few to amass great fortunes.

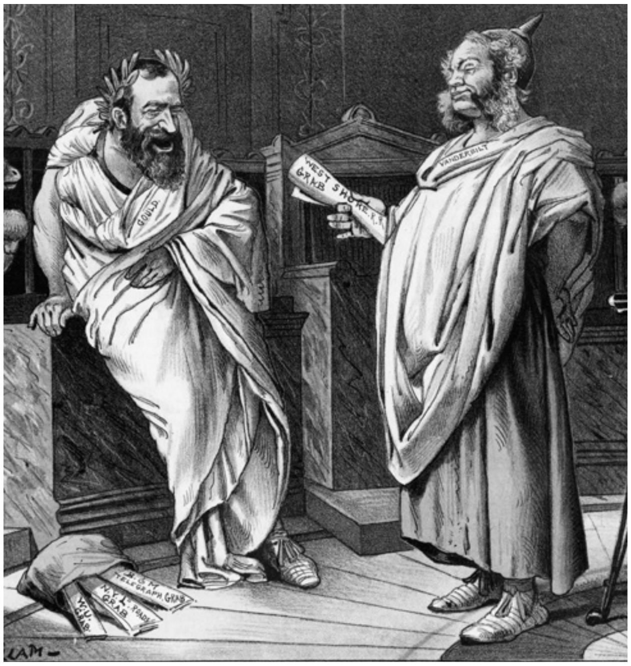
Men such as Jay Gould, Charles T. Hinde, and Cornelius Vanderbilt capitalized the railroad system, creating a private sector that could exploit cheap labor while enhancing other industrial and financial partnerships, thereby manipulating the cost of goods and services. This elite group also included oil tycoons John D. Rockefeller and Andrew Mellon, steel magnates Andrew Carnegie and Charles Schwab, and financiers such as J. P. Morgan, as well as land developers, coal mine owners, tobacco farmers, shipping and transport owners, bankers, and exporters/importers.

These men began investing and colluding with each other in order to drive the markets. They could knock out competitors by setting prices extremely low and buying out small enterprises. Their fortunes continued to grow as they increased prices on goods and services after cornering the market. In short, every means at their disposal was used to further financial and expansionistic goals, often without regard to ethical or legal considerations. In contrast, much of this accumulated wealth was then invested in education, development, science, and preservation. This confound between ruthless business practice and philanthropy is a defining characteristic of the robber barons. They represented the "great American capitalists" in myth and culture and are often historically depicted as either champions of advancement or villains stealing money from the less fortunate. In actuality, both perspectives are true, and as a whole, they profited either way—both admiration and fear made them more powerful. The spirit of the robber baron was free, and he did as he pleased, a notion that personified the American dream, for better or worse.

Holdings and development required support from the U.S. government, which, over the 19th century, became increasingly intertwined with the private sector of industry. Political ties allowed the robber barons to pick and choose investments that would strengthen their wealth without fear of regulation. By working within the political sector, actual practices were little impacted by the enacting of such legislation as the Sherman Antitrust Act (1890). On both federal and state levels of government, the robber barons could influence investments, infrastructure development, logistics allocation, and the cost of resources. It was not until the New Deal era, as a consequence of the Great Depression, that the American stock market would truly be regulated. The phrase *white-collar criminal* had yet to be coined; however, it was widely recognized and hardly under the radar that questionable practices were responsible for such great fortunes enjoyed among those who by birth, familial connections, and powers of persuasion controlled American economics.

Today's White-Collar Criminals?

A popular debate considers the distinction of the robber barons and what would today be considered white-collar criminals. Explaining the difference between real robber barons of the 1800s and those who were (or are) unfairly labeled as such, Thomas DiLorenzo defines the robber barons as "political entrepreneurs." Financial success for political entrepreneurs comes from direct government support, such as subsidies, as well as from less direct methods, such as legislation that impedes competitors' ambitions. This distinction is in contrast to what DiLorenzo defines as "market entrepreneurs," those who achieve success through production and distribution of better goods and services without any government subsidies. Accordingly, both are capable of white-collar offenses, but the motivations are quite different. Market entrepreneurs, under this theory,



The August 12, 1885, cover of Puck, *titled "The Two Gobblers," depicts Jay Gould and William H. Vanderbilt dressed as Roman senators and laughing between themselves as they "gobble" up telegraph and railroad companies to add to their monopolies.*

would commit a white-collar crime in order to maintain the status quo, while a political entrepreneur's intention might be to control the market.

The robber barons of the 19th century amassed fortunes in industry and banking, in part because the two were, at the time, inseparable. The stock market crash changed the perception of American economics so dramatically that it influenced great changes in the economic system during the New Deal era. The Progressive Party used as a platform the need for government to regulate big business. Although the regulations enacted during this time crippled the fortunes of the robber barons, the robber baron elite's fortunes were never critically wounded. World War II served to strengthen the bonds between the U.S. government and the oil, steel, iron, banking, and commerce industries. Although the growth of new robber barons stagnated, the elite few maintained their fortunes and class standing through political ties as much as through big business. The generations that followed profited again and again by the familial links between industry and politics, creating a blue-blooded class whose values and behaviors became more and more popular while their lifestyles became less and less attainable.

The term regained popularity in the later part of the 20th century as big business and government again became more intertwined. More recently, technology moguls such as Steve Jobs of Apple and Mark Zuckerberg of Facebook have also been called robber barons. The modern-day robber baron is portrayed as being much like the original, only as a bureaucrat rather than a baron. Given modern regulations and social mores, it is debatable as to whether the term *robber baron* can be applied today. Regardless, it can be argued that the success of early American business pioneers has inspired many business practices that continue into the present day.

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See Also: Capitalism; Carnegie, Andrew; Industrial Revolution; Maxwell, Robert; Morgan, John P.; Sherman Antitrust Act; Standard Oil; Stanford, Leland, Sr.; World War II.

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Robinson-Patman Act

The Robinson-Patman Act of 1936 was designed to strengthen the federal government's efforts to curb anticompetitive actions by businesses. Sponsored by Senator Joseph Robinson of Arkansas and Representative Wright Patman of Texas, the measure was the most complicated of the antitrust laws and, in time, became by far the most controversial. Impetus for the measure came from the agonies of the economic depression that had begun with the 1929 crash of the stock market and from concerns about the emergence of chain stores, most notably the juggernaut Atlantic & Pacific Tea Company (A&P), which, by the end of the 1920s, owned 16,000 outlets.

The act's major target was price discrimination, that is, the charging of different rates to different customers for the same product in the same geographic area. It also focused on advertising allowances in which manufacturers gave favored customers discounts to cover the cost of the buyers' ads for the suppliers' product. The act allowed that price discrimination might be acceptable if the amount charged was based on manufacturing costs, the volume of goods purchased, or varying methods of delivery. Military post exchanges were exempted from the act's provisions.

Restructuring of the Motion Picture Industry

Two major enforcement thrusts illustrate the history of the Robinson-Patman Act. Soon after its passage, the Federal Trade Commission (FTC) filed a number of suits that resulted in drastic rearrangements in the structure and practices of the motion picture industry. More recently, the FTC failed to prevail in an effort to keep suppliers from granting more favorable prices to the giant Walmart chain because, the suppliers successfully argued, the extensiveness of Walmart's business produced transaction savings that were shared with customers.

In the motion picture realm, the U.S. Supreme Court in a 1948 case against Paramount Pictures and eight other film producers and distributors forcefully recommended that in a rehearing of the case by a lower court, film studios should be made to divest themselves of ownership of theaters because they tended to favor their own outlets over competitors' when releasing movies. With a good deal of foot-dragging, the producers finally acceded to the mandate.

Subsequently, the government ended tying relationships in which theaters were given top-rated movies on condition that they also rent "oaters," low-budget westerns that constituted the second offering on a program that generally included a double feature, a newsreel, and a short serial thriller (e.g., *Perils of Pauline*). After a comprehensive study of the litigation, legal scholar Alexandra Gil concluded that the court rulings reduced film studios' risk-taking and innovation, as well as the quality of films produced.

Walmart

In regard to Walmart, a major complaint was that the giant company was using its clout to coerce its vendors to charge their other customers higher prices. American courts have not been sympathetic to these allegations. The Arkansas Supreme Court ruled that there were satisfactory reasons to endorse Walmart's marketing, even though it often included loss leaders, that is, items offered for sale at a price less than what they had cost Walmart, either to entice customers who possibly would purchase additional items or to undercut competitors. In two other cases, both settled out of court, Walmart was charged by an Oklahoma company with price discrimination; and in Wisconsin, the state's Department of Agriculture, Trade, and Consumer Protections maintained that Walmart was violating antitrust laws in regard to its pricing of butter, milk, and detergents, among other products.

Walmart suffered an antitrust price discrimination setback, however, when German authorities accused it of violating the country's law fostering competitive business behavior. Walmart had won in a lower court, but the German Supreme Court in 2003 ruled against it, whereupon Walmart abandoned plans to open about 50 additional German outlets and closed the stores it already had in the country.

Walmart's success before American courts exemplifies the decline in the significance of the Robinson-Patman Act. Litigation today under the act is often inhibited because precedent covers the matter of concern. An inquiry found that in 2006, the government prevailed in one out of three cases brought under the Robinson-Patman Act, but between 2006 and 2010, it was victorious in only one of 20 such cases.

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See Also: Advertising Fraud; Antitrust, Federal Trade Commission; Clayton Antitrust Act; Corporate

Criminal Liability; Federal Trade Commission; Illegal Competition; Predatory Practices; Price Discrimination; Regulatory Enforcement.

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Robo-Signing

Robo-signing was a practice of some bank employees in mortgage departments and mortgage service organizations in other parts of the mortgage industry. Acting like robots, dehumanizing themselves, they signed foreclosure documents without reading the details of individual cases.

The subprime mortgage crisis of 2008 sparked a major economic downturn. This in turn sparked a large number of foreclosures, especially of homes owned by people who had been granted loans despite their weak ability to make mortgage payments. With the economic downturn, many homeowners lost their jobs, or their income dropped sharply. Victims of the economic downturn, they were now victims of their own borrowing actions or, in some cases, victims of predatory lending by banks and others who used deceptive practices to get fees from handling mortgages.

By 2010, the large number of foreclosures needed to be processed in a timely manner. To handle the volume of time-consuming and expensive foreclosures, the mortgage departments and the mortgage service institutions began to rubber-stamp the foreclosure paperwork without even reading it. The robo-signing practice was illegal, and when discovered, it created a scandal in the last half of 2010.

Some of the institutions involved were GMAC Mortgage, Ally Financial Inc., and many large banks in the United States, including Bank of America, Wells Fargo, JP Morgan, and OneWest Bank. Robo-signing made the foreclosure paperwork illegitimate. The majority of those engaged in the practice of robo-signing were quite often ill informed about the nature of the legal process of which they were a part. A great many robo-signers were either temporary employees who did not understand the meaning of their work or were middle managers with a variety of incentives to robo-sign.

"Shocking" Scandal

When the practice of robo-signing was made public, it was a scandal that "shocked" the country's state attorneys general. Oddly, the shock came in light of the fact that Fannie Mae had hired an outside law firm to investigate charges of abusive foreclosure procedures as early as 2005. The September 2011 report of the Inspector General for the Federal Housing Finance Agency (FHFA) found that the law firm had reported in 2006 that abusive practices were occurring. The practices were ordered to cease but to little avail, because during the housing boom, both Freddie Mac and Fannie Mae were stressing earnings goals and not abuses inflicted upon citizen homeowners.

An independent bureau of the Treasury Department, the Office of the Comptroller of the Currency (OCC), also failed to catch the flood of robo-signing. Among the reasons offered for the failure to detect the robo-signing was the absence of mechanisms that would have alerted regulators. More to the point, it was ignored because the OCC did not see faulty foreclosure documents as a significant risk.

As the robo-signing scandal unfolded, many banks suspended foreclosure proceedings in many states. The specter of expensive lawsuits against the lending institutions as predatory lenders was looming large. In addition, the potentially fraudulent practice opened the institutions to charges of engaging in forms of white-collar crime. The scandal then gave some homeowners in danger of foreclosure leverage to negotiate more favorable mortgage rates.

Consumer advocates began using the term *robo-signing* to describe the forging of mortgage documents, including the execution of mortgage assignments, affidavits, satisfactions, and other similar legal documents by people who were ignorant of the facts to which they were attesting by their signatures when robo-signing. Because some documents had to be notarized, the robo-signing also created cases of notary fraud. In effect, the falsely notarized documents were cases of false swearing.

By July 2011, enough examples of robo-signing had been discovered to describe it as more than a single practice. It involved a variety of practices by financial actors, including bank officers who signed mortgage affidavits without examining their merits. It also included lower-level employees who signed documents with a fake or forged title. It meant failing to comply with notary procedures as well as false swearing that the documents represented verified facts when, in reality, they had not been verified.

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See Also: Bank Fraud; False Foreclosures; Foreclosure Fraud and Rescue Schemes; Predatory Lending; Predatory Practices; Subprime Loans.

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Rockwell International

Rockwell International was an American company founded by Colonel Willard Rockwell. The company merged with various manufacturing companies over the years until it became Rockwell International in 1973. With the colonel's son Willard Rockwell, Jr., at the helm, followed by Chief Executive Officer Bob Anderson, Rockwell evolved into a leading U.S. defense and aerospace contractor as well as a Fortune 500 company with billions of dollars in sales and assets. By the late 1980s, Rockwell had pleaded guilty to breaking numerous environmental laws, resulting in over $18 million in fines—reportedly, the second-largest monetary penalty for an environmental offense.

Rocky Flats

In 1975, Rockwell International replaced the Dow Chemical Company as the contractor at a Department of Energy–owned nuclear weapons plant called Rocky Flats located just outside Denver, Colorado. The late 1970s and early 1980s saw the plant come under fire for its handling of radioactive toxic waste, with studies concluding that the plant posed a public health risk to nearby housing developments. Organized protests involving celebrity speakers, peace activists, and as many as 17,000 demonstrators targeting the plant during this time period. Coincidentally, at this time, the employees at Rocky Flats also celebrated 25 million hours of safety, with Rockwell coveting distinguished research and National Safety Council awards for meritorious safety.

An incident involving toxic chemicals leaking into the local water system forced suspension of the plant's plutonium production and compelled the Environment Protection Agency (EPA) and the Colorado Department of Health to engage in rigorous on-site monitoring of the plant. Rockwell and, to some extent, the Department of Energy had been secretly allowing toxic wastes to enter Denver's water supply, while also violating federal laws governing the storage and burning of radioactive wastes, thereby causing serious contamination issues. The protests outside the facility continued, while whistleblowers inside the plant began to secretly disclose information to the EPA and the Federal Bureau of Investigation (FBI) regarding the hazardous practices at the plant. The plant's operations came to a grinding halt in 1989 when the FBI conducted an extensive covert investigation (Operation Desert Glow), including the use of airplanes equipped with heat sensors that would detect signs of toxic burnings while flying over Rocky Flats at night.

The FBI's investigation resulted in search warrants, a clever sting operation, and a dramatic raid of the facilities. Initially in the investigation, it was not clear whether Rockwell International or the Department of Energy would be criminally responsible should charges be filed. A special grand jury was convened in Denver, and a formal investigation began. Records regarding the plant's operations and the resulting investigation were sealed from public view, and a plea agreement between Rockwell, the U.S. Department of Energy, and the U.S. Department of Justice (DOJ) was arranged to avoid a criminal trial that would have made the details of the investigation open to public scrutiny. Eventually, the grand jury report was leaked to a small, local newspaper. The grand jury's report and, later, some of the written accounts of the key players involved in the Rocky Flats investigation suggested a cover-up on the part of the DOJ as it tried to keep the extent of the hazardous plant operations from public knowledge through sealed records.

Rockwell International faced several charges of breaking environmental laws and paid over $18 million in fines—reportedly, the second-largest fine for breaking environmental laws at the time. It took numerous government agencies and close to $280 million over the course of several years, extending into the 2000s, to complete a safety and cleanup effort at Rocky Flats. It is reported that at one point in the process, workers came across enough plutonium in the plant's ventilation ducts to produce several nuclear bombs or create the potential for a spontaneous, unpredictable nuclear-based reaction.

Additionally, after 20 years of court battles, a 2010 appeals court reversed a prior award decision against Dow Chemical, the original contractor at Rocky Flats, and Rockwell International, its 1975 replacement contractor. The appeals court held that the class-action suit brought years ago by the owners of 12,000 properties reportedly affected by the Rocky Flats plant leaks had not sufficiently proven damage or injury from the toxic emissions of the plant.

In yet another case, an engineer who was once employed at Rocky Flats filed a qui tam suit in 1989, alleging that Rockwell had violated the False Claims Act when it was the contractor for the Rocky Flats nuclear production plant. Although the plaintiff was awarded statutorily based damages, the Tenth Circuit Court of Appeals held, on remand, that the relator had satisfied a statutory requirement for disclosing information and was the original source.

Rockwell International began to diversify in the late 1980s, leading to multiple moves of its headquarters and the sale of several of its divisions. Rockwell International was divided into two smaller companies, signaling the grand finale to its reign as a major American defense and aerospace corporation.

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See Also: Class-Action Lawsuits; Dow Chemical Co.; Environmental Protection Agency, U.S.; False Claims Act.; Hazardous Waste; Pollution, Water; Whistleblowers.

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Roosevelt, Franklin D.

Franklin D. Roosevelt served as governor of New York from 1929 until 1932, when he was elected president of the United States for the first of his four terms, the only president to have served more than two terms. As the first president elected after the advent of the Great Depression, Roosevelt was charged in part with taking steps to prevent some of the financial and accounting improprieties that led to the economic difficulties facing the nation. Under Roosevelt's stewardship, the United States instituted a series of securities laws to regulate the financial industry as well as safeguards to protect individuals who deposit money in banks. Although the innovations and reforms undertaken during Roosevelt's administration made a host of new financial products available to consumers, they also regulated certain behaviors that until this point had not been under government regulation. Roosevelt also oversaw the passage of the 21st Amendment to the U.S. Constitution, which returned regulation of the manufacture and transport of alcohol to the states.

Background

Franklin Delano Roosevelt was born on January 30, 1882, in Hyde Park, New York, which is located in the Hudson River Valley. Roosevelt's parents, James Roosevelt and Sara Delano, were both from long-established and successful New York families. Roosevelt attended Groton School, located in Groton, Massachusetts, where he was greatly influenced by headmaster Endicott Peabody, who stressed the virtue of public service to the boys who attended the boarding school. Following this, Roosevelt enrolled at Harvard College, graduating with a bachelor's degree in history, and then studied at Columbia Law School, leaving without a diploma when he passed the New York bar exam in 1907. After a few years practicing corporate law, Roosevelt was elected to the New York state senate in 1910 and quickly became known for his progressive positions. Roosevelt broke with the New York political establishment in 1912 and supported Woodrow Wilson in his bid to become U.S. president. After Wilson won, he appointed Roosevelt assistant secretary of the Navy in 1913. Serving in this position until 1920, Roosevelt helped oversee the mobilization of the Navy for World War I and successfully fought plans to break up the fleet at the end of the war.

In 1920, the Democratic National Convention chose Roosevelt to run for vice president with presidential nominee James M. Cox, the governor of Ohio. Although the Cox-Roosevelt ticket lost to Republican candidate Warren G. Harding in the general election, this experience greatly raised FDR's national profile. In 1921, Roosevelt suffered a paralytic illness, then believed to be polio but now suspected to have been Guillain-Barré syndrome, which left him unable to walk without assistance. After working to rehabilitate himself physically, Roosevelt ran for and was elected governor of New York in 1928 and was reelected in 1930.

After the beginning of the Great Depression, Roosevelt was nominated by the Democratic Party to run against incumbent Herbert Hoover in 1932, handily winning election with 57 percent of the votes cast and carrying 42 states. When Roosevelt took office in March 1933, the nation was reeling economically, with over 25 percent of the workforce unemployed, industrial production down by 50 percent, and 32 of 48 states having closed their banks to prevent a panic. Roosevelt, in his first inaugural address, blamed many of the nation's problems on excesses on the part of those who controlled the United States' financial exchanges, asserting that new controls were needed to protect the public.

New Deal Financial Reforms

The Great Depression, precipitated by the stock market crash of 1929, caused changes in citizens' behavior. Many were afraid to spend money or even to save it because of distrust in banks and the financial markets. Upon taking office, Roosevelt set about to restore public faith in the banks, after the earlier runs on banks as people tried to withdraw all of their money, causing further bank failures. To address this, Roosevelt implored Congress to pass the Emergency Banking Act, which it did on March 9, 1933, five days after his inauguration. The Emergency Banking Act authorized the National Bank Holiday that Roosevelt had declared four days earlier and attempted to restore the public's faith in the system. To that end, the legislation provided that deposits in approved banks were guaranteed by the federal government, an action later established through the Federal Deposit Insurance Corporation (FDIC) through the Banking Act of 1933 (the Glass-Steagall Act). Roosevelt also was able to curtail the hoarding of gold.

These actions restored faith in the banks, which reopened on March 14, 1933. The Glass-Steagall Act also prohibited many interactions between banks and securities firms, criminalizing behavior that had been common throughout the 1920s. Although repealed by the Financial Services Modernization Act of 1999, the Glass-Steagall Act is credited with restoring trust in the banking system by separating the activities of banks, brokerage firms, and insurance companies.

Roosevelt next turned to reform of the securities industry. Roosevelt worked with Congress to ensure passage of the Securities Act of 1933 and the Securities Exchange Act of 1934. The Securities Act gave the federal government the right to regulate the sale of securities, including the requirement that most securities be registered prior to their sale. The company issuing securities, its underwriters, and any sales representatives involved in the sale of commercial paper are all strictly liable for any errors or omissions in the registration statements. The Securities Exchange Act permitted federal regulation of securities exchanges, national marketplaces such as the New York Stock Exchange and the American Stock Exchange, and regional ones such as the Pacific Stock Exchange and the Philadelphia Stock Exchange. The 1934 legislation also established the Securities and Exchange Commission (SEC), which had the authority to enforce federal securities law and pursue criminal and civil penalties from those suspected of violating these statutes.

These changes, in addition to restoring faith in the system, made illegal many activities that had been common until their passage. Although this created a series of white-collar behaviors that were now considered criminal, it provided purchasers of securities peace of mind and faith in the financial system. Roosevelt's actions also prevented brokers and corporations from taking advantage of inside information to profit at the expense of the small investor. As a result, these laws changed the way the financial markets are conducted to this day.

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See Also: Antitrust, Federal Trade Commission; Bank Fraud; Coolidge, Calvin; Federal Deposit Insurance Corp.; Food and Drug Administration, U.S.; Reform and Regulation; Securities and Exchange Commission, U.S.; Truman, Harry S.

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Roosevelt, Theodore

Theodore Roosevelt (1858–1919), born into a family of prominence and wealth from New York, was an improbable individual to rise up in political life as a corporate reformer. Continually embarking on reform efforts as an officeholder (at city, state, and federal levels), Roosevelt quickly rose through the political ranks, ultimately assuming the presidency in 1901. Throughout his political career, spanning some 32 years, he developed a reputation as an independent-minded reformist, challenging both political and corporate corruption in his fight to remake government as a defender of the general public interest. In one of his first notable acts as president, he addressed Congress, asking it to curb the power of large corporations (also known as trusts). For his aggressive attacks on trusts throughout his presidency, he soon earned the nickname Trustbuster.

Roosevelt's political career began in 1881 with his election to the New York state assembly, where he became a leader of the reform faction of the Republican Party. Upon his appointment by President Benjamin Harrison to the National Civil Service Commission in 1888, Roosevelt continued his reform efforts, battling the spoilsmen and seeking greater enforcement of civil service laws. Roosevelt went on to serve two years as president of the New York City Police Commission (1895–96), making a name for himself as a radical reformer through his efforts to root out corruption in the police force (reputed to be one of the most corrupt in the country) and expose its ties to criminal enterprises.

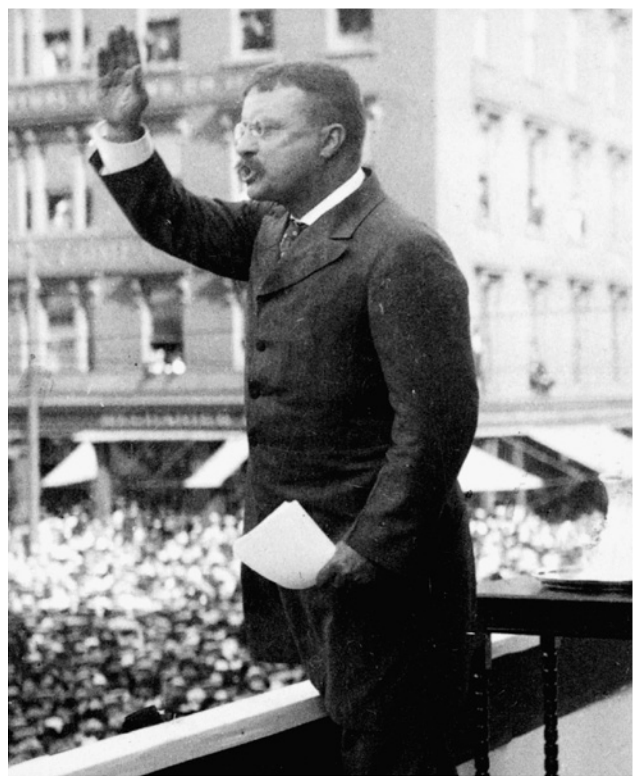
Roosevelt was soon thereafter appointed assistant secretary of the Navy by President William McKinley, though he quickly resigned to fight in the Spanish-American War. Leading his Rough Riders to victory in Cuba, he came home to a hero's welcome and a burnished public image that helped lead to his election as governor of New York in 1898. After his victory, Roosevelt continued his reformist ways, seeking early on to expose the excesses of big corporations and to root out corruption. Such actions oftentimes placed Roosevelt at odds with leaders in his own party, prompting them to advocate Roosevelt's move out of New York to the vice presidency in 1901 under President McKinley. They were mortified after McKinley's assassination in 1901, when Roosevelt assumed the presidency, becoming the youngest president ever at the age of 42.

Roosevelt's Presidency

Soon after becoming president, Roosevelt initiated actions against major corporations, beginning with an announcement by his attorney general of proceedings against the Northern Securities Company in 1901. Aware that his actions would overturn a long-standing precedent restricting government regulation of interstate commerce, Roosevelt authorized his attorney general to file an antitrust suit. Such action revealed Roosevelt's aim to contest the extent of the Sherman Antitrust Act, thus pitting himself against J. P. Morgan, arguably the most powerful man in the country.

During the campaign in the 1902 midterm elections, Roosevelt utilized the bully pulpit to garner public support for tighter government controls over corporate trusts. His receipt of an increased appropriation for the new antitrust division of the U.S. Department of Justice represented a major victory for Roosevelt in 1903. This new Bureau of Corporations possessed authority to investigate corporations and report back to the president, providing Roosevelt some degree of executive discretion.

Roosevelt won the presidency in a landslide victory in 1904. In his second term, he helped pass the Meat Inspection Act of 1906 (banning misleading labels and preservatives containing harmful substances) and the Pure Food and Drug



President Theodore Roosevelt delivers his now-famous "Trust" speech to a huge crowd in Providence, Rhode Island, August 23, 1902. While he lauded the necessity of industrial growth, he emphasized federal regulation for oversight of corporations.

Act (banning manufacture, sale, and shipping of tainted or falsely labeled food and drugs). That same year, an inquiry into Standard Oil's monopolistic practices concluded it had received illegal rebates and returns. As a result of the inquiry, Roosevelt's Justice Department disbanded Standard Oil of New Jersey later that year.

Throughout his political career, Roosevelt repeatedly bucked his party through reform measures he pushed through because of his widespread public appeal. Using the term Square Deal to describe his progressive views, Roosevelt highlighted the significance of government regulation of corporate interests and trust-busting. Though he tried to move his party toward Progressivism, he eventually bolted in the 1912 presidential election, running under the newly formed Progressive Party (aka, Bull Moose Party). In the party's platform, Roosevelt stayed true to form, continuing to argue for active government oversight of special interests and an end to the impure alliance between trusts and public officials.

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See Also: Antitrust, U.S. Department of Justice; Interstate Commerce Commission, U.S.; Meat Inspection Act; Morgan, John P.; Sherman Antitrust Act; Standard Oil Co.; Steffens, Lincoln; United States Steel Corp.; Upton, Sinclair.

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Ross, Edward

Edward Alsworth (E. A.) Ross (1866–1951) was a very influential sociologist. He was well known as one of the founding fathers of American sociology and a major figure of early criminology. Ross was born in Virden, Illinois. He attended Coe College in Iowa, where he earned a bachelor's degree in 1886. He received his Ph.D. degree from Johns Hopkins in 1891. His career spanned 35 years, and his influence is still felt today.

Ross wrote 27 books and over 300 articles during his career. The basic elements of Ross's extensive work can best be examined in his *Foundations of Sociology* (1905), *Social Control* (1901), *Social Psychology* (1908), *The Principles of Sociology* (1920, 1930, 1938), and *Sin and Society: An Analysis of Latter-Day Inequity* (1907). Ross explored the subject matter of sociology and the nature of sociology in relation to the other social sciences. He had great influence in the development of social psychology.

Ross held numerous academic positions during his career. He was a professor at Indiana University (1891–92), Cornell University (1892–93), and Stanford University (1893–1900). Ross was forced from Stanford for his political views. He objected to Chinese immigrant labor, which conflicted with the Stanford family's views. The university's founding family made a fortune using Chinese labor to build its extensive railroad dynasty. He subsequently taught at the University of Nebraska until 1905. He retired from academia in 1937 from the University of Wisconsin–Madison.

Although Ross never conducted research on crime or developed specific criminological theories, his research on social control has had a major impact on criminology. Ross outlined the theory of social control by identifying the grounds, means, and system of control. His work is relevant to understanding white-collar crime because of his ideas about corruption in the business world.

Ross's book *Sin and Society* vividly expressed his dismay about corrupt business practices. Ross conceptualized the idea of the "criminoloid" as a social type who enjoys a public image as a pillar of the community and a paragon of virtue; but beneath this veneer of respectability is actually a very different persona, one that is committed to personal gain through any means. The criminaloids encounter feeble opposition and, because their practices are often more lucrative than the typical criminal act, they outdistance their more scrupulous rivals in business and politics and reap an uncommon worldly prosperity. The key to the criminaloid is not evil impulse but moral insensibility.

The criminaloid prefers to prey on the anonymous public and is therefore an even greater threat. He or she even goes beyond by convincing others to act instead of acting himself or herself, which protects him from liability, scrutiny, and being labeled a criminal. The criminaloid practices a protective impersonation of the good by counterfeiting the good citizen.

The criminaloid plays the support of a local or special group against the larger society. He or she identifies with some legitimate group and, when necessary, calls upon it to protect its own. He uses guile and political connections to rebuke reforms that would have an impact on his or her practices. So long as the public conscience is lazy, the criminaloid has no sense of immorality. The criminaloid flourishes until the growth of morality overtakes the growth of opportunities for prey. Ross regarded these criminaloids as people who lacked morals, directly accountable for unnecessary deaths of consumers and workers. Ross believed that these actions were just as, if not more, harmful than those of the ordinary criminal. The criminaloid personifies the corporate criminal and is an antecedent of Edwin Sutherland's seminal research on white-collar crime, which set the foundation for criminological theory about white-collar crime.

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See Also: Corruption; Ethics; Robber Barons; Self-Control Theory; Sutherland, Edwin H.

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Rove, Karl

Karl Christian Rove (1950–) is a longtime Republican consultant, government official, and television and newspaper commentator. Rove's career spans the late 20th and early 21st centuries. Rove's campaign victories include the 1986 election of Governor Bill Clements of Texas, the 1994 and 1998 victories of George W. Bush for governor of Texas, John Ashcroft's 1994 bid for the Senate from Missouri, a series of Texas-based candidates (Phil Gramm in 1982 and 1984; Rick Perry in 1990), and George W. Bush's two successful runs for the presidency in 2000 and 2004. Though Rove himself has never been convicted of a crime, his proximity to so many others who were merits his mention in relation to white-collar crime.

"Dirty Tricks"

Rove's political career began in the 1970s with the College Republicans. Rove included among his contemporaries Lee Atwater, whose later fame would spring from his brilliant use of negative campaign advertising. Whereas Atwater's consummate skill in working the hard-knuckle aspects of political campaigning were legendary in both Republican and Democratic circles, Rove's notoriety would be in the unsubtle realm of "dirty tricks."

When Rove was 19 and working as a volunteer with a campaign in Illinois, he falsely presented himself as a volunteer for his candidate's opponent in the Republican primary. Rifling through materials at his opponent's headquarters, he stole over 1,000 pieces of letterhead stationery, which he then used to create advertisements for a fake rally. The notices promised "free beer, girls, food, and fun for nothing," and he distributed these on college campuses, at Salvation Army doss houses, and to the homeless. The ensuing rally was a disaster, of course, but Rove's candidate lost the primary anyway. This kind of activity (with complexity and sophistication growing over time) was an identifying factor in nearly every Rove campaign.

Rove's connections to George W. Bush began in 1973, when he first met the younger son of then-rising Republican star George H. W. Bush. The relationship between the two continued for decades, through George W. Bush's Texas campaigns for governor and through two successful runs for the presidency in 2000 and 2004.

Though Rove's campaign methods and White House machinations skirted the law—narrowly—for years, his real troubles began during President George W. Bush's second term.

The second Bush administration was fraught by scandal almost from the start. The period from 2004 to 2008 comprised an almost unrelenting litany of political disasters, with Rove playing a direct role in nearly all of them. The mishandling of the Hurricane Katrina disaster, in which Democratic Louisiana was nearly ignored as federal aid flooded into Republican-leaning Mississippi, and his involvement with the Tom DeLay redistricting and money-laundering scandal both pointed to an "ends justify the means" attitude toward conventional political ethics.

Rove himself was nearly indicted for his admitted role in the exposure of the Central Intelligence Agency's Valerie Plame in an attempt to punish her husband, who had published an article exposing claims of the Bush administration concerning "weapons of mass destruction" in Iraq as a fraud. Rove was also identified in a clear association with criminal influence peddler Jack Abramoff, and he had hired onetime Abramoff aid Susan Ralston as an alleged favor to Abramoff. Though Ralston was hired in 2001, the possibility that Abramoff had placed her in the administration—and specifically in Rove's office—as a "plant" did not surface until much later. All of these rather public blunders, as well as many minor ones, conspired to place Rove much closer to the law than anyone was truly comfortable with.

Too Much Heat

The final "nail" in Rove's political coffin was probably the cluster of crimes, misdemeanors, and character assassinations that flowed from a broadly based attempt to destroy his political opponents using federal prosecutors as the instrument. Prosecutors who seemed reluctant to follow the Rovian line were fired and replaced. The Senate Judiciary Committee subpoenaed him, and though the Bush White House attempted to invoke "executive privilege," it was clear that he had finally brought down the roof, as far as Bush was concerned. When Republican leader Tom DeLay was indicted for money laundering as the result of a finagle of Rove's concerning legislative redistricting in Texas, he had finally run out of time and out of rope, and in midsummer 2007, the president simply pronounced, "Karl, there's too much heat on you, you've got to go."

Rove was eventually forced to testify before the Judiciary Committee, despite several attempts to avoid it, on the subject of the prosecutor firings and his alleged involvement in an allegedly politically motivated prosecution of Alabama governor Donald Siegelman, as well as the DeLay affair. Though the committee found him culpable in the firings, no action was taken. Rove has since been, variously, a commentator for Fox News, a columnist for the *Wall Street Journal*, and a speaker on college campuses. To date, he has not directly run a campaign since his departure from the Bush White House.

Rove's name has become synonymous with dirty politics and negative campaigning, particularly of the sort that barely skirts the legal limits. Rove has the questionable honor of having added new words to the language: "Rovian" campaigns and "Roverian" tactics have entered the common lexicon of politics.

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See Also: Bush, George W.; Campaign Finance; DeLay, Tom; Ethics; Legal Malpractice; Libby, Lewis (Scooter); Plame Affair; Public Corruption.

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Salomon Smith Barney Inc.

Salomon Smith Barney Inc. was a Wall Street investment bank that was involved in a major U.S. Treasury bond scandal from 1990 to 1991 that would lead to the company's sale to the Travelers Group and to the story becoming the basis of the book, *Nightmare on Wall Street*, published in 1993.

The company was established in 1910 in New York City as Salomon Brothers by three brothers, Arthur Salomon, Herbert Salomon, and Percy Salomon, and Ben Levy. It remained a partnership until the early 1980s. Ferdinand Salomon, the father of the three brothers, ran a money-brokerage company with his sons and Levy, a clerk for their father, starting with a $5,000 stake; they also opened a small office on Broadway, not far from Wall Street. Soon after the company's creation, they brought in Morton Hutzler, a broker who had a seat on the New York Stock Exchange.

Initially, the company dealt with money brokerage, which involved arranging loans for securities brokers, and also trading bonds for its institutional clients. In 1915, the partnership started dealing with Argentina, and two years later, when the United States entered World War I, the U.S. government was keen on selling government securities to pay for the war effort. The company boomed during the 1920s and soon had branches in Boston, Chicago, Cleveland, Minneapolis, and Philadelphia. Arthur Salomon kept the family partnership extremely cautious in its dealings and was said to be one of the few people who was able to meet J. P. Morgan without having made an appointment.

He died in 1928, but his business acumen resulted in the company surviving the stock market crash, although it went through major financial problems in the 1930s. It did make some money from U.S. government bonds in World War II, but not as much as it had made from 1917 to 1918. It was soon involved in underwriting the floating of various companies, doing well from AT&T in 1962. Between 1962 and 1964, it managed to triple its underwriting business, which rose from $276 million to $873 million.

The company dropped Morton Hutzler's name in 1970—he had actually retired in 1929. Taking advantage of new computer technology, the company grew in the 1970s, especially with the deregulating of brokerage commissions. Salomon Brothers cut its commissions by half and quickly managed to gain even more business, becoming the largest private brokerage house and the second-largest underwriter in the United States.

John Gutfreund became the chief executive officer in 1978 upon the retirement of William Salomon, the nephew of Arthur Salomon. This was to lead to major changes in the business, with the company starting to take part in major leveraged buyouts during the 1980s. It helped finance the acquisition of Crum & Foster by Xerox and the purchase of Getty Oil by Texaco, as well as the merger of Santa Fe Industries and Southern Pacific and the merger of Gulf Oil and Standard Oil of California.

In 1981, Salomon Brothers was acquired by Phibro Corporation, a firm dealing in commodities. For the next five years, it operated as Philbro-Salomon, and then, in 1986, the company changed its name to Salomon Inc. This resulted in access to much more capital for the firm to expand but upset many of the partners.

It was in 1991 that it became apparent that a Salomon trader named Paul William Mozer had become involved in an illegal bidding scandal. He was born on April 23, 1955, in New York City to Robert and Patricia Mozer. Studying at the Berklee College of Music until he was 18, he then decided on a change of career and transferred to Whitman College to study economics. Graduating in 1977, he went on to the Kellogg School of Management at Northwestern University and earned a master's degree. He then joined the Chicago office of Salomon in 1979 and moved to New York four years later.

Mozer became involved in bidding for government bonds and pushing up their price. There was a restriction that no broker could bid for more than 35 percent of the offerings. In August 1990, Mozer decided to submit a bid under his own name for 35 percent, a second bid—also for 35 percent—in the name of S. G. Warburg, and another bid for yet another 35 percent in the name of the Quantum Fund. This would ensure that the auction of government bonds would be oversubscribed. His bids in the name of Warburg and the Quantum Fund were submitted without their permission. Indeed, Warburg had submitted its own bid, and the Treasury noticed that Warburg had bid for more than 35 percent. Mozer assured Warburg that this was only a clerical error.

Nine months later, Mozer tried the same technique at another auction and ended up with $10.6 billion of the $11.3 billion in Treasury bonds. It soon became clear what Mozer was doing and, with the threat that Salomon might lose its trading authority, Mozer was suspended from the company. Salomon was eventually fined $290 million, at that time the largest fine ever levied on any investment bank. Gutfreund had to leave the company, and Warren Buffett became the new chairman.

Salomon became Salomon Smith Barney in 1998 and then Smith Barney from 2003 until 2009; since 2009 it has been Stanley Smith Barney. The rise of Salomon Brothers helped inspire Tom Wolfe, who wrote *The Bonfire of the Vanities* (1987), and Michael Lewis, a former bond salesman for Salomon Brothers, who wrote *Liar's Poker* (1989), which painted an unflattering picture of traders and others from Wall Street.

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See Also: Bendix Corp.; E. F. Hutton & Co.; Lehman Brothers Holdings Inc.; WorldCom Inc.

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Savings and Loan Fraud

Although long considered a staid and unadventurous part of the U.S. economy, during the 1980s and 1990s savings and loans were the focus of investigations because of fraud, negligent lending practices, and bankruptcy. Undone by a combination of deregulation, questionable lending practices, a changing tax code, and a collapse in the value of real estate, nearly a quarter of savings and loans failed during this period. As the result of federal intervention, including a bailout worth over $90 billion, a smaller savings and loan industry emerged by the mid-1990s, one that was regulated in much the same way as banks. The savings and loan collapse is often attributed as a major cause of the economic recession that began in 1990.

Background

Savings and loan associations are financial institutions that focus on lending to homeowners and consumers. Some savings and loans, also known as thrifts, are held mutually by their depositors and borrowers, while others are joint stock companies. Unlike banks, which conduct a variety of financial transactions, savings and loans specialize in accepting savings accounts and making loans. Indeed, thrifts' loans to commercial lenders can account for no more than 20 percent of their business. Volatility in the real estate market historically was almost nonexistent, permitting savings and loans to make reliable predictions regarding property values and interest rates.

During much of the 19th and 20th centuries, banking focused only on the wealthiest strata of society. Those who needed to borrow money to purchase a home often found no reliable and cost-effective means to finance this endeavor. Insurance companies sometimes made loans to prospective homeowners, but these mortgages were not amortized (i.e., they only collected interest) and required a large lump sum payment or refinancing at the end of a certain period. To encourage home ownership, in 1932 the U.S. Congress passed the Federal Home Loan Bank Act (FHLBA). The FHLBA promoted home ownership through the provision of funds available to lending institutions through the Federal Home Loan Bank. As a result of the FHLBA, savings and loans proliferated throughout the 1930s and 1940s, rates of home ownership soared, and savings and loans became common. The FHLBA also established the Federal Savings and Loan Insurance Corporation (FSLIC), which served to administer deposit insurance for thrifts.

For much of their history, savings and loan associations were treated differently from commercial banks. Up through the 1980s, for example, savings and loans were able to offer higher interest rates on passbook accounts than were banks. This privilege was permitted so that savings and loans would be assured a steady stream of deposits, which in turn could be used to make loans so that others could acquire homes. Banks were allowed a monopoly on checking accounts and credit cards, which thrifts were not permitted to issue until the late 1970s. These regulations provided a certain balance to U.S. financial institutions, as those desiring both checking accounts and higher interest earnings on savings needed to have several different accounts. Although inefficient, this system was popular with the many small thrifts, many with only a single location, which served only the local community.

Beginning in the 1970s, high inflation rates made it difficult for savings and loans to compete for customers. The public was moving toward options that yielded a higher rate of return than passbook accounts, and fewer borrowers were able to pay high interest rates on mortgages. In an effort to assist financial institutions, in 1980 the U.S. Congress passed the Depository Institutions Deregulation and Monetary Control Act (DIDMCA). The DIDMCA was believed at the time to have strengthened the Federal Reserve System's control over financial institutions, including nonmembers, but it had other consequences that would later contribute to increased savings and loan fraud. The statute removed the Federal Reserve's ability to set maximum interest rates paid on savings accounts, encouraged mergers of financial institutions, raised deposit insurance amounts from $40,000 to $100,000, and permitted interest rates on loans to rise as high as the market would bear.

Two years later, Rhode Island congressman Fernand St. Germain and Utah senator Jake Garn sponsored legislation that would become known as the Garn-St. Germain Depository Institutions Act. The Garn-St. Germain Act deregulated savings and loans and permitted loans to be issued in distant markets. Also problematic was the law's effect of minimizing regulations designed to prevent lending excesses and decrease institution failures. Regulation of thrifts was now largely the purview of state governments, and levels of control varied widely.

Factors Influencing Thrifts

At the start of the 1980s, many of the savings and loans continued to use business practices that they had embraced over half a century before. Many thrifts also suffered from very low, or nonexistent, net worth. The problem of low levels of capital was exacerbated by a net worth regulation process that was inadequate and antiquated. As savings and loans had historically concentrated on providing long-term fixed-rate home mortgages, most thrifts lacked the ability to vary their rate of return on assets. As inflation and increased competition for deposits grew, most savings and loans struggled to remain relevant in their communities. The passage of the Garn-St. Germain Act and DIDMCA were greeted enthusiastically at the time as a means for savings and loans to provide better investment options to members. A real estate boom that took place over the late 1970s and early 1980s also drove business. In 1976, total mortgage loans totaled $700 billion, and by 1980, this amount had grown to $1.2 trillion.

In order to take advantage of what were seen as great opportunities for profit presented by deregulation, a new generation of savings and loan owners and executives took over many thrifts. Whereas previous Federal Reserve regulations had required each savings and loan to have a minimum of 400 shareholders to qualify for federal account insurance, new rules required only one shareholder. This reduction greatly facilitated the takeover of institutions across the United States. The new generation of savings and loan operators pushed for the passage of the Economic Recovery Tax Act of 1981 (ERTA). The ERTA allowed thrifts to sell their mortgage loans and use the cash generated by these sales to seek better rates of return on other investments. Any losses that resulted from the sales were amortized over the life of the loan. Thrifts were also able to offset losses created by sales against taxes paid over the previous decade.

The promise of higher rates of returns, the belief that losses could be written off, and the aggressive new generation of savings and loan leaders combined to create an atmosphere in which many thrifts were eager to sell off their loans. Major Wall Street investment firms purchased many of these loans. Because the buyers were much more sophisticated than the sellers with regard to financial transactions, the loans often netted only 60 percent to 90 percent of their value. The Wall Street investment firms then bundled the loans and turned them into what were considered government-backed bonds because of the guarantees of the underlying loans by the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Government National Mortgage Association (Ginnie Mae). Ironically, many of these bonds were in turn sold back to the savings and loans, which had to pay considerable fees for the privilege of buying them. By 1986, the thrift industry held over $150 billion worth of these bonds.

The Garn-St. Germain Act and DIDMCA permitted savings and loans to expand their business base outside their traditional home loan base. This portion of the thrifts' business grew quickly. Although the amount of loans made for consumer or commercial purposes was supposed to be capped at no more than 20 percent, many savings and loans exceeded this amount. Indeed, the paucity of accurate, effective, or suitable evaluations of savings and loans by financial industry insiders, government regulators, public accounting firms, and security analysts exacerbated the problems facing the thrifts. Almost all regulatory laws were sufficient for supervising thrifts during the protected environment of the 1960s and 1970s, but they were wholly inadequate for the pressures facing the industry during the 1980s. Organizational structures of the thrifts also did not contemplate officers of the savings and loans making investments that were not secured by single-family homes.

As the Federal Reserve's attempts to lower inflation had proven successful by the mid-1980s, savings and loans were suddenly faced with asset-liability mismatch, a demand to pay increasingly higher interest rates on certificates of deposit (CDs) while most mortgages were at fixed rates. Because of the financial pressures on thrifts to garner deposits in savings accounts, the weakest organizations tended to make the riskiest investments. This conundrum was caused because weaker thrifts sought higher rates of profits so that they could sustain increasingly higher interest rates paid on passbook accounts. Depositors were unconcerned with the risk, as the FSLIC insured all deposits up to $100,000. In essence, this meant that putting one's money in a riskier institution was rewarded with a higher rate of return.

In order to increase their net worth ratios, many savings and loans departed from their traditional lending practices and moved into credits and markets that offered higher potential returns, but with

In the 1980s, Wall Street investment firms purchased and then bundled loans from thrifts at about 60 to 90 percent of their value and turned them into government-backed bonds because of the federal guarantees on the underlying loans. Many of these bonds were then sold back to the savings and loans at high fees.

higher risks as well. Some consumers during this period began to use deposit brokers, individuals who were paid a commission to find the best CD rates available. Small thrifts were able to establish relationships with deposit brokers so that large numbers of depositors could be attracted because of the high rates being paid on CDs. In certain cases, deposit brokers demanded linked financing, wherein the deposit broker guaranteed to refer thrift depositors in exchange for a promise to make loans to certain other individuals.

Many boards of directors of savings and loans abdicated their responsibilities with regard to the oversight required of them. Managers of the thrifts were often permitted to let expenses spiral increasingly higher and engaged in activities and transactions that presented clear conflicts of interest. Managements' uncontrolled use of their new operating authority also was not checked by federal or state examination and supervisory personnel. As the new world of savings and loan operations evolved at a rapid pace, federal and state regulatory staff proved inadequate in ability, experience, and number to adequately control change. All of these conditions established an environment where problems were ignored and permitted to grow worse. When conditions changed to challenge thrifts, those that were overexposed to risky loans and costly passbook savings accounts were in jeopardy.

In 1986, the U.S. Congress passed the Tax Reform Act of 1986. The Tax Reform Act had been promoted by President Ronald Reagan and enjoyed broad bipartisan support. Designed to simplify the tax code and expand the tax base, the Tax Reform Act eliminated many tax shelters, deductions, and other preferences that had become common over the previous half-century. The Tax Reform Act greatly shook the savings and loan industry, as it greatly decreased the value of many real estate investments that the thrifts had financed. Prior to the passage of the Tax Reform Act, a great deal of real estate investment was done by "passive" investors, wealthy individuals who held investments as much for their tax-privileged status than for their annual rate of return. Syndicates of investors formed, and they pooled their resources to invest in residential or commercial properties—apartment complexes, shopping malls, and office buildings were popular. The syndicate hired management companies to run the operation, and individual members could deduct the syndicate's losses from their gross income. This deduction was eliminated by the Tax Reform Act and caused many investors to attempt to unload their properties, further depressing market values.

Savings and Loan Crisis

Beginning in 1986 and continuing until the end of the decade, savings and loans began to fail in ever-increasing numbers. The failure rate was not the same across the United States. On one hand, those states with a strong regulatory system, such as Wisconsin, saw only a few thrifts fail during the crisis. In states that had largely deregulated their savings and loans, on the other hand, such as Arizona, California, and Texas, hundreds of thrifts were taken over by regulators because of insolvency. The FSLIC, the thrifts' counterpart to the Federal Deposit Insurance Corporation (FDIC), insured depositors' savings and loan accounts up to \$100,000 and moved to resolve the situation at those institutions that failed. Between 1986 and 1989, nearly 300 savings and loans with total assets of \$125 billion were taken over by the FSLIC. The scale of institutions taken over, and the reasons for their failures, varied widely. Some savings and loans failed because of incompetence and inexperience of their management, whereas others entered receivership because of sophisticated schemes to enrich individuals at the thrifts' expense.

Los Angeles–based Westwood Savings and Loan, for example, was taken over by the FSLIC after experiencing an \$11 million loss in 1985. Started in 1978, Westwood grew rapidly during the early 1980s as its chairman, Edward Israel, used his connections as a real estate developer to make loans to others who built and developed real estate syndicates. Westwood made extensive loans to, among others, Craig Hall, who had extensive real estate holdings in Michigan, Texas, and Arizona. Many of the properties for which Westwood extended loans to Hall were apartment complexes. Although the income streams from the apartment complexes were insufficient to service the loans, Hall anticipated making sufficient money to cover a balloon payment by selling the complexes for a profit. Unfortunately, the downturn in the price of oil decreased the value of many of Hall's properties in Texas, and a downturn in auto sales made his Michigan units impossible to sell. Unable to recover payment from Hall, Westwood was forced into receivership by the FSLIC, and its ultimate loss was estimated to exceed \$200 million. Israel was sentenced to 18 months in prison for selling Westwood a piece of property without disclosing his ownership of the real estate.

Lincoln Savings and Loan Association, also based in California, had been purchased by Charles Keating, who also served as chairman of the real estate development firm American Continental Corporation. Under Keating's leadership, Lincoln's assets increased by over 500 percent during the 1980s, and the thrift invested heavily in junk bonds, took equity positions in real estate development deals, and purchased land outright. In 1985, the Federal Home Loan Bank Board (FHLBB) sought to limit thrifts' direct investments to no more than 10 percent of assets. To counter this, Keating engaged in a series of disputes with the FHLBB, ultimately in 1987 asking five U.S. senators—Alan Cranston (California), Dennis DeConcini (Arizona), John Glenn (Ohio), John McCain (Arizona), and Donald Riegle (Michigan)—to intervene with FHLBB authorities so that Lincoln would be permitted to continue to operate. This group, known as the Keating Five, had been given generous campaign contributions by Keating. After Lincoln was given a clean bill of health, it continued to invest in real estate developments, many of which were owned by American Continental Corporation. After Lincoln's accountants questioned transfers of money between the two corporations, Keating fired the firm and replaced it with another. After American Continental went bankrupt in 1989, Lincoln was also taken over by the FHLBB.

In addition to nearly \$3.5 billion that the FSLIC paid to depositors, Lincoln employees had sold bonds of American Continental to customers of the bank, mostly elderly retirees who lost over \$250 million in investments they had erroneously believed were federally guaranteed. Keating was convicted of fraud, racketeering, and conspiracy in both state and federal courts and sentenced to prison. Although both convictions were later reversed on appeal, Keating did spend over four years in prison.

To help resolve the problems facing savings and loans, Congress passed the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). The FIRREA abolished the FHLBB and the FSLIC, and their operations were taken over by the newly created Federal Housing Finance Board (FHFB) and the Savings Association Insurance Fund, which is administered by the FDIC. The Office of Thrift Supervision was created to charter, examine, regulate, and supervise savings and loans. The Resolution Trust Corporation (RTC) was established to dispose of thrift assets taken over by federal authorities. In total, resolving the debts of failed savings and loans cost taxpayers nearly \$90 billion through 1995 and changed forever the way business was done in the sector.

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See Also: Accounting Fraud; Arbitrage; Bank Fraud; Centennial Savings and Loan; Comprehensive Thrift Act; Corporate Criminal Liability; Federal Deposit Insurance Corp.; Keating, Charles; Keating Five; Loan Origination Schemes; Mortgage Fraud; Reagan, Ronald.

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Securities and Exchange Commission, U.S.

The U.S. Securities and Exchange Commission (SEC) is the federal administrative agency responsible for overseeing the U.S. securities industry. It regulates all securities offered in interstate commerce or through the mails. It also oversees securities exchanges and associations, as well as brokers and dealers, investment advisers, and other investment professionals. Through its rule-making, investigation, and enforcement powers, the SEC seeks to prevent fraud, deception, and manipulation in the securities markets.

Money and investors poured into the burgeoning U.S. securities markets during the 1920s. The federal government had no direct role in regulating this activity at the time. Many states enacted laws to protect investors from fraud in intrastate securities transactions. Unfortunately, few states had regulatory bodies that could effectively enforce the laws, and none was able to regulate interstate securities transactions. The various stock exchanges helped fill the gap by setting listing standards for its member companies, but these bodies, too, were ineffectual, as the policies they adopted were too often designed to protect the interests of the issuers and the exchanges, not the investors. Consequently, market speculation, manipulation, and fraud ran rampant, contributing to the stock market's crash in 1929 and to its subsequent slow recovery.

In time, the public's still-skittish confidence in the markets spurred Congress to act. In 1933, it passed the Securities Act, which required issuers to register interstate offerings of securities. Congress followed this with the Securities Exchange Act in 1934, which enacted additional regulations and also created the SEC to enforce these acts in place of the Federal Trade Commission. Together, these laws, through their extensive disclosure requirements, were meant to ensure that not only companies but also securities traders and sellers were more forthright, fair, and honest in their dealings with the investing public.

The new regulatory body consisted of five commissioners serving staggered five-year terms. It was designed to operate as an independent, nonpartisan group largely free from the pressures of any one political party or the whims of a single presidential administration. Thus, although the president can appoint new commissioners (with the approval of the Senate) and designate a chairman among them, he cannot fire any of them. Additionally, by law, no more than three of the commissioners at any one time can belong to the same political party.

The SEC still maintains this basic, independent commission structure. But now, in addition to the two initial Depression-era securities laws that offer its primary grant of power, the agency has additional responsibilities under other statutes, including the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Sarbanes-Oxley Act of 2002, and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

Though its reach has expanded, the SEC still has three primary objectives. First, the SEC is expected to interpret federal securities statutes and develop securities rules. When Congress passes and the president signs laws like those above, it often only lays out relatively broad principles and objectives. It then charges the SEC, as a federal administrative agency, with building on this initial framework, providing actual guidelines that can embody congressional intent while addressing, at times, complicated, technical issues. For example, in the recently enacted Dodd-Frank statute, more than 90 different provisions called on the SEC to promulgate new rules. The SEC undertakes a long, regimented process to address each such request. It usually starts by drafting a proposed rule. It then offers the proposal to the public for 30 to 60 days of public review and comment. Next, the agency considers the feedback received and incorporates any necessary changes into a second proposal, which is then submitted to the full commission for a vote of approval. Even once a rule is enacted, the SEC might revisit it in time, adjusting or expanding it to keep pace with changes in the technologies, products, services, and dynamics of the securities markets.

Second, the SEC is responsible for enforcing the various federal securities laws and rules. The more common violations include, for example, manipulating security prices, trading on insider information, selling unregistered securities, and misrepresenting or omitting material information on securities. The agency's Division of Enforcement leads these efforts. It often initiates investigations after uncovering potential violations by conducting its own market surveillance or by relying on information from other sources, including investors, self-regulatory organizations, and media reports. The division may miss some leads, as it did when it ignored outside tips on Bernie Madoff's massive Ponzi scheme in the years before its collapse, but if it identifies a potential violation, it will conduct further inquiry. Though the SEC has the power to subpoena testimony and evidence, it often relies first on informal conversations and methods to build the case. Eventually, the five-member commission reviews the staff's findings. If there is an actionable violation, the commission can authorize the agency's attorneys to pursue it either in a civil case before a federal district judge or in an administrative action before one of the SEC's own independent administrative law judges. However, in many instances, the accused settles before reaching any formal proceeding.

Last, the SEC ensures that investors have access to adequate information on companies and their securities. This is its core function. The agency compels disclosure of a wide range of information from the companies, investment associations, and professionals under its jurisdiction. It then makes these various reports, filings, and prospectuses available online in its EDGAR database. Yet in doing so, the SEC makes no comment on the materials or their contents. It requires that all information provided to it be accurate, but it leaves the public market to determine, for instance, a security's actual worth or an individual's credibility.

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See Also: Hedge Fund Fraud; Insider Trading; Madoff Ponzi Scheme; Mortgage-Backed Securities; Regulatory Enforcement; Securitization Fraud; Stewart, Martha; Stock and Securities Fraud.

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Securitization Fraud

The great growth in the economy of the world, especially since the end of the Cold War, has been accompanied by ongoing quests for opportunities to invest. The search for investments produced, in the latter part of the 20th century and the 21st century, a need for new investment opportunities to handle the huge volumes of money seeking investment opportunities. No longer was simple direct investment in a manufacturing company enough to satisfy a great many investors seeking to invest trillions of dollars (or other currencies) sloshing around in the global economy.

To meet the demands for great quantities of capital for expensive projects and for large investments in productive enterprises, securitization was developed. It is a practice that is a bit miraculous because it involves transforming debts into assets.

Background

Many securities, such as those sold as penny stocks, have been promoted as potentially rewarding investments. Joint-stock companies issue stock to raise money for investment. Often representing young companies, penny stocks have been successful investments that came with the growth of a new company, or the penny stocks have vanished when the company failed. Confidence artists have often traded in these stocks, promoting them as "blue-sky" stocks in order to swindle people or institutions. They promise that the stock will rise in price to the heights of the blue sky, when in reality all the stock is worth the value of the blue sky. These types of securities have been traditional in that they represent real companies (or perhaps, in cases of fraud, they represented mere paper companies that were invented to defraud). The development of securitization represents a new kind of investment vehicle that has provided new ways to gain profits and new opportunities for criminal activities.

Securitization is different from securities such as stocks and bonds. Securitization is the practice of pooling into bundles contractual debts such as mortgages for homes, condominiums, commercial real estate mortgages, or other kinds of loans such as credit card loans or automobile loans. If, for example, 10,000 home mortgages were held by a bank, each loan would be treated as a separate liability until repaid. However, if the 10,000 mortgages were bundled into a single block of shares, the repayment could be sold as a form of collateralized debt obligation (CDO) or as collateralized loan obligation (CLO).

CDOs and CLOs can also take the form of collateralized mortgage obligations (CMOs) or mortgage-backed securities (MBS) or, if the accounts receivable are asset-backed securities, they are ABS. There are distinctions that can be made between these types of derivatives. They began in the 1970s, when the U.S. Department of Housing and Urban Development created the first mortgage-backed securities. The Government National Mortgage Association (GNMA, popularly known as Ginnie Mae) sold securities backed by its portfolio of mortgage loans. Its loans were now assets. Instead of representing a debt with a promise to repay, the Ginnie Mae security was an unidentified piece of a bundle of mortgages with a promise of payment of returns from the interest and principal payments.

The CDO allowed investors to buy a tranch (from the French word *tranche*, for slice) of the pool of mortgages or other debt. Tranching assigns the cash flow from the assets to be allocated to different investor groups in different ways. Ultimately, the securitization creates securities that are rated from the pool of unrated securities, which then creates rated securities in a market.

The different levels of tranching range from the most secure, which is usually the senior tranch, to mezzanine tranches in the middle, followed by subordinate levels of tranches at the bottom. Cash flows go to the senior level first, then to the mezzanine level, and then to the subordinate levels. The latter are the least secure and entail the most risk if defaults occur.

The common practice for CDOs has been to value them on a mark-to-market basis. Since the future value of the asset is unknown, the mark-to-market method of valuing an asset marks the asset's value as what it would bring today. Because of the complexity of CDOs, some businesses have used them to hide debt under the cover of CDOs, which is fraud.

In years prior to the credit crunch of 2008, rating agencies failed to accurately assign values to CDOs, causing a loss of confidence in the rating agencies and a retreat from lending. In effect, the rating agencies engaged in fraudulent behavior to gain fees from the companies that paid for the ratings. The conflict of interests was more than apparent. However, it was the Securities and Exchange Commission that opened the door to unreliable ratings when it changed the method for payment for the rating agencies from fees paid by subscribers to the rating companies for investment information. Instead, the fees that the rating companies received were paid by the very companies whose securities were being rated.

The regularity of the income and the sense of security—that if there were a few defaults out of the bundled mortgages, it would not affect the income significantly—appealed to many investors. By 1985, securitization was being used in other areas of financing. The first besides mortgages were automobiles, which along with homes are the two biggest purchases consumers make. Again the steady cash flows and the statistical reliability of the system appealed to investors. The Marine Midland Bank was the first to securitize automobile loans. It issued Certificates for Automobile Receivables Trust (CARS).

Fallout From the Subprime Crisis

The subprime crisis of 2008 created a credit crunch. As a result, securitized loans were not highly regarded unless they were backed by the U.S. government or one of its agencies. The impact of the credit crunch was to create a rise in interest rates because the securities were no longer viewed as secure. In addition, many of the problems with the subprime crisis were the result of fraud.

Securitization is complex. It may be a perfectly legal product of good financial practice and expectations that go wrong. However, the complexity has opened many products to charges of fraud if the investment does not perform well. The nonperformance or poor performance may be due to bad economic timing; however, it may be the result of fraud. Many foreclosure cases are the results of courts accepting the claim that a mortgage is a negotiable instrument when the fact is that a foreclosure case is not negotiable: It is a contract being executed. To those suffering the loss of their property who were victims of false promises or false words, the contract creates a device for cheating them.

As early as 2004, the Federal Bureau of Investigation had recognized an epidemic of mortgage fraud. The rampant sale of subprime mortgages from 2004 until 2008 was aided by false claims by realtors to buyers, by inflated assessments by real estate assessors, by the falsification of creditworthiness by loan officers, and by the knowledge that the mortgage would be sold in the secondary market very quickly so that none of the mortgage originators would be accountable. They would be long gone by the time it was discovered that the buyers of the property were unable to pay, or they were able to pay, but would not be able to pay when the 2008 crash occurred.

It would have been reasonable to expect an investigation of such massive fraud. However, the end of the second administration of President George W. Bush and the first administration of President Barack Obama produced no such investigations despite expectations that they would occur.

In 2009, President Obama signed the Fraud Enforcement and Recovery Act of 2009. The act created the Financial Crisis Inquiry Commission, with a mandate to examine the causes of the financial and economic crisis. Among the areas it was assigned to examine were fraud and abuse of consumers in the home mortgage industry. It was also mandated to examine the role played by federal and state financial regulators to discover any failures to enforce laws against financial fraud. Specific financial practices included fair-value rules, mark-to-market practices, off–balance sheet practices, and tax treatments of financial products and investments, as well as the credit-rating systems being used, the use of credit ratings in the securitization markets, and lending practices as related to securitization, including the originate-to-distribute model for extending credit and transferring risk.

These practices were used by Wall Street because, as some believe, it wanted inflated appraisals. The higher the appraisals, the more money could be seen as moving into the housing sector. Ultimately, the Wall Street financiers involved were ignoring the fact that even good credit risks could become unwilling or unable to pay exorbitant prices. In addition, higher appraisals were creating a frenetic bubble that led customers to believe that the rising home prices represented real values. The inflated home prices created a speculative bubble, encouraging a bandwagon effect that lured in many people.

The securitization of subprime mortgages and other subprime loans was known to many investment bankers who ignored it. The fact that it is against the law to create and pass on fraudulent mortgages and equally fraudulent to securitize such mortgages, auto loans, credit card debt, or other debts did not seem to deter large numbers of people in the business. The failure to investigate suggests that there may have been collusion or cronyism for political reasons. The statute of limitations on many acts of fraud will very likely pass before there is any serious inquiry.

The seriousness of the subprime crisis and the exposure of widespread fraudulent practices have engendered firms that train lawyers and others in detecting and understanding mortgage securitization fraud. Loan fraud auditing skills as well as forensic loan skills are being developed to detect and reconstruct securitization fraud.

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See Also: Collateralized Debt Obligations; Hedge Fund Fraud; Mortgage-Backed Securities; Real Estate Investments; Securities and Exchange Commission, U.S.; Stock and Securities Fraud; Subprime Loans.

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Self-Control Theory

Theory and research regarding the relationship between self-control and crime is attributed mostly to the work of Michael Gottfredson and Travis Hirschi. Self-control theory is a general theory of crime that posits that the locus of criminal tendency is found within the individual rather than in social-structural forces or the environment. According to the theory, one's propensity to commit criminal acts is a function of one's level of self-control; those with a low level of self-control are more likely to commit crime than those with a high level of self-control.

In self-control theory, one's level of self-control represents the degree of inhibition one has regarding choosing a course of action. "Self-control" is defined as the predisposition to avoid behavior whose short-term benefits potentially lead to long-term calamities or punishments. In other words, self-control represents one's ability to consider the range of potential costs of one's behavior before engaging in such behavior. Self-control develops in various ways; once it becomes an internalized trait, it operates perpetually to influence behavior. Proponents of the theory cite both genetic and environmental factors (for example, parental rearing) as determinants of one's level of self-control. Self-control is often measured by counting the number of acts a person commits with long-term negative consequences over a specified duration of time.

Self-control theory identifies self-control as a main determinant of crime for various reasons, including the fact that one's likelihood of engaging in criminal activity is often determined prior to adolescence and carries over throughout the life course. The theory links self-control to crime, since one's level of self-control tends to be established at an early age, and differences in self-control do not change much as one's life experience or environment changes.

Self-control theory is unique in that it challenges many—if not most—current theories in criminology. Advocates of the theory see it as an elegant and powerful explanation for criminal behavior that explains much of the variance in why people commit crime. Strengths of self-control theory include the fact that it accounts for criminal behavior at different points in the life course and its predictive ability in explaining how individuals' background characteristics relate to crime. An additional strength of the theory is its ability to explain both criminal behavior as well as general deviance. A low level of self-control is seen not only as the main factor that explains common delinquency (such as theft and assault) and serious and violent crimes (such as burglary and murder) but also as determining reckless behavior, difficulties in school and in the workplace, and even promiscuous sexual behavior and drug use. One of the unique facets of self-control theory is its contention that if one is likely to commit a particular deviant or criminal act, he/she is likely to commit other deviant or criminal acts as well.

Critics of self-control theory see its emphasis on self-control as the main determinant of crime as overly simplistic and reductionist. Some maintain that the theory offers an incomplete understanding of crime, because some criminals (such as occupational offenders or white-collar criminals) do not engage in a wide range of criminal activities. Other critics of the theory challenge the idea that all criminals have low levels of self-control and point to other important, environmental explanations for why individuals commit deviant or criminal acts (such as social learning or imitation/modeling explanations). Still others contend that self-control theory cannot be a general and predictive theory of all types of crime and deviance, as some criminals do not engage in criminal activity until later in life, and that the theory offers a poor explanation for variation in criminal activity regarding race and gender.

Research on self-control theory generally measures individuals' level of self-control and compares it to various behaviors. Self-control and inhibition is often measured using scales and self-reports. For example, studies have asked subjects how often they lose their temper, how often they engage in risky behavior for fun, and how much thought they give to their future. In addition to explaining criminal behavior, self-control theory has been used to understand other quasi-deviant acts, such as alcohol-related dysfunctions and gambling. Those who work in self-control theory have refined it over the years to improve its general efficacy toward explaining crime. Future research is needed to understand more about the connection between self-control and crime, but self-control theory remains one of the most compelling—albeit controversial—explanations for crime and deviance.

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See Also: Differential Association Theory; Gambling and Lotteries; Misappropriation Theory; Risk Analysis; Simpson, Sally; State Crime Theory; Techniques of Neutralization.

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Sentencing Guidelines

The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984) established the U.S. Sentencing Commission. Congress's objective was to enhance the ability of the federal criminal justice system to combat crime through an effective and fair sentencing system. The U.S. Sentencing Commission was established to review the existing practices of the federal law enforcement system and to create guidelines that were relatively concrete and equitable—the U.S. Sentencing Guidelines (Guidelines). Guidelines for individuals became effective November 1, 1987, and those for organizations (Chapter 8) became effective November 1, 1991.

However, the use of both individual and organizational Guidelines penalty structures by U.S. District Courts became strictly voluntary after 2005, based on the Supreme Court case *U.S. v. Booker* (543 U.S. 220). Thus, sentencing federally convicted organizations under the Guidelines is at the discretion of the U.S. District Court judge, but in no case can the punishment exceed statutory maximums. Nor can it involve, according to *Booker*, any statutorily allowable punishment increase unless the elements for the increase have been proven beyond a reasonable doubt to a jury (this excludes previous convictions and elements self-admitted by the defendant). Although the Guidelines are not required in the sentencing of federally convicted organizations, they are nevertheless often used by U.S. District Courts, and they put forth important theoretical principles for punishing nonhuman legal persons.

Chapter 8 of the Guidelines covers organizations and includes any "[legal] person other than an individual" (Title 18 U.S.C. § 18): corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof, and nonprofit organizations. As in the case of the Guidelines for individuals, organizational penalties consider offense harm, organizational culpability, and previous organizational criminality in determining the monetary penalty that is to be paid by the organization. Historically, only about 200 organizations are convicted under the Guidelines annually, the vast majority of which have fewer than 50 employees. Virtually all are "closely held" organizations with a small number of private owners. Only about one-tenth are recidivist criminal organizations.

The Guidelines punish organizations based on vicarious liability, or respondeat superior. Vicarious liability covers the illegal acts of any director, officer, employee, or independent contractor authorized to act on behalf of the organization. Offense levels for organizations are based essentially on the same criteria as individual offense levels, including aggravating and mitigating factors. Probation is also possible for organizations, especially when necessary to collect a fine or to restructure the organization in order to prevent future offending. According to Guideline principles, individuals and organizations are separately punishable for crimes committed by persons working on behalf of an organization, and when the organization is owned by the offender(s), considerations are made to reduce the organizational punishment in light of the punishment given to the individual(s).

The Chapter 8 Guidelines fines for organizations have been enormous in a few select cases, reaching several hundreds of millions of dollars. However, the vast majority of fines are associated with small organizations, for which the dollar values are consistently much less. Some larger organizations have avoided criminal prosecution under the Guidelines because they have the resources to leverage prosecutors into accepting civil and administrative sanctions, or they have circumvented vicarious liability by redirecting blame to their employees based on the leeway of the Guidelines.

Organizational Fining Procedures

Generally, the Guidelines provide that some combination of the following be paid by convicted organizational offenders: (1) victim restitution and any other costs that would be associated with righting the harm of the offense (restitution is paramount); (2) a fine; (3) payment (or "disgorgement") of any criminal profits beyond the value of restitution that has been or will be paid, including any social losses (such as harm to a marketplace in an antitrust crime); and (4) costs of prosecution. The disgorgement of profits realized from the offense must be added to the fine, so the monetary penalty will always exceed the financial benefits of organizational criminal behavior. Organizations are allowed up to five years to pay their fines. In addition, organizations can be sentenced to community service (which can involve expenditures), and they may be forced to make expensive structural changes designed to preclude future offending.

If an organization cannot pay its proper fine, either because it has no assets or because paying the fine will jeopardize full payment of victim restitution, the court can waive the fine entirely (under Guidelines § 8C3.3). Research has shown that two-thirds of convicted organizations that cannot pay receive no fine whatsoever; if they do receive a fine, it is substantially less than the prescribed minimum. This may be seen as a troubling crime-producing circumstance when both the motive to commit an offense and the reason to eliminate punishment for it derive from poor organizational financial performance.

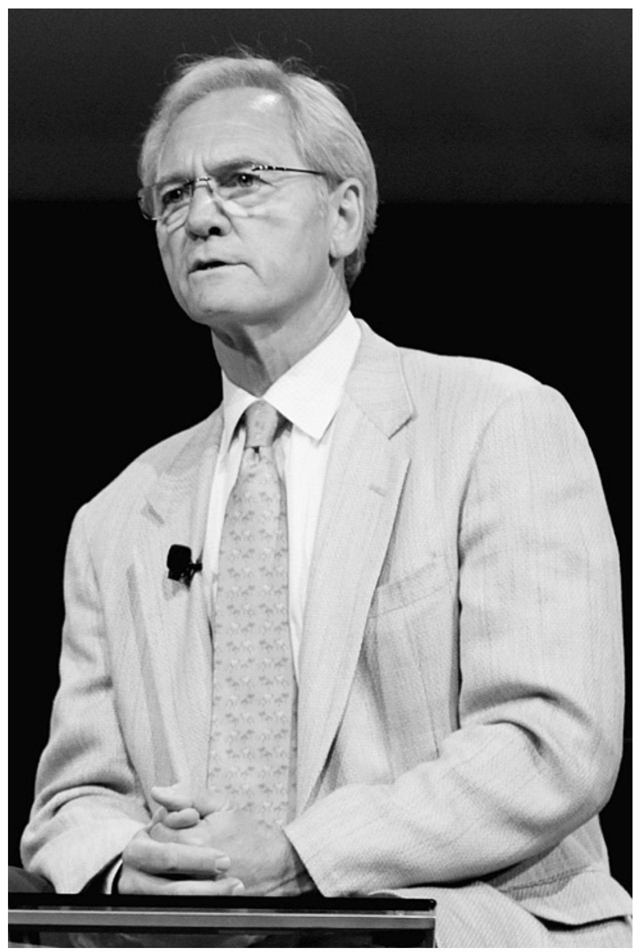
Determining the fine range for organizations first involves the calculation of a “base fine,” and it is the greatest of the following: the fine associated with a specific offense level (found in the Guidelines Chapter 8), pecuniary gain (pretax profit from the offense), or financial harm to victim(s). Base fines are high because they need to demonstrate the seriousness of the offense and that the fine is punitive, and they need to act as just punishment and as a deterrent to the convicted organization (and to others contemplating similar illegal behaviors).

Currently, base fines cover an array from $5,000 (for an offense level of six or lower) to $72.5 million (for an offense level of 38 or higher). Actual fine ranges are determined by a “culpability score” and each score has a specific minimum and maximum multiplier that is applied to the base fine in order to determine the fine range in which the sentence will fall. The score begins at five and can be reduced to as low as zero or increased to as high as 10.

The culpability score will be increased if the organization’s management either “participated in,” “condoned,” or was “willfully ignorant” of the offense. Equating these last two levels of criminal participation as equally blameworthy because the first precludes organizations from disclaimers of involvement when they knew about an offense but did nothing to stop it (condoning) and when they chose to insulate themselves from gaining knowledge about an offense (willful ignorance). Regardless of any of these three levels of involvement, the amount of the culpability score increase is based solely on the size of the organization, ranging from one point (10–49 employees) to five points (5,000 or more employees). The larger the organization, the higher is the government’s expectation that management will create formal structures to eliminate the organization’s participation in illegality. No longer can organizations claim that they are victims of their own success because they are too large to self-police individual employees and agents.

Criminal history is also an aggravator, adding one point if a similar offense occurred within the past 10 years and two points if it had occurred within the past five years. If the crime involves a violation of a previous court order or condition of probation, one or two points are added, depending on the circumstances. If the organization in any way obstructed justice related to the investigation or prosecution of the offense, including failure to prevent obstruction, three points are added.

Reductions in the culpability score are based on the following: (1) the organization had an effective compliance program to detect, prevent, and report violations at the time of the offense (subtract three points); and (2) the organization brought the offense to the attention of appropriate government officials before outside discovery was imminent, it accepted responsibility for the



In 2006, Alabama Governor Don Siegelman was convicted of bribery, mail fraud, and conspiracy. A federal judge set sentencing guidelines based on Siegelman’s failure to take responsibility. He served nine months of a seven-year sentence.

offense, and it fully cooperated with authorities in the investigation of the offense (subtract five points). Cooperation and acceptance entitle the organization to a two-point reduction, and acceptance of responsibility alone entitles it to a one-point reduction. The culpability score, in essence, punishes according to the inverse of the probability that an offense will be officially detected. Higher probabilities of detection—based on compliance programs, reporting the offense to the authorities, and cooperating in investigations—equate with lower culpability. Lower probabilities of detection—when management participates in, condones, or is willfully ignorant of the offending, or there is obstruction of justice—equate with higher culpability.

Based on the culpability score, a fine can vary by as much as a factor of 80 (0.05 to 4.0). There are very few reductions in culpability scoring based on the existence of an "effective" compliance and ethics program—even if it is determined that an organization had a compliance program, it highly likely to be judged to be merely cosmetic.

Organizations are fined within the prescribed range according to various criteria, including victim vulnerability or psychological harm, the role of the organization in the offense, and whether there is recidivism associated with the current offense(s). Any monies paid previously in civil or criminal proceedings because of the offense should be deducted from the fine. Victim vulnerability can be invoked as an aggravating criterion only when a class of victims is involved (e.g., the blind, the elderly, immigrants).

Organizational Probation

Under the guidelines, a convicted organization can be placed on probation for between one and five years to ensure that it will pay its fine and that it will rehabilitate its compliance structure to help prevent future violations. Such rehabilitation includes submitting to the court a viable compliance program, including a schedule for implementation. To monitor whether the organization is following the program, the organization must submit to regular audits and interrogations of key individuals by outsiders, the costs of which will be paid by the organization. The organization will also be required to notify its employees and shareholders of its criminal behavior and of its new compliance structure. Any failure to follow these or other conditions of probation will result in the revocation of probation and resentencing to more punitive sanctions. Early research indicates that about two-thirds of organizations convicted under the guidelines are placed on probation, about one in five of which were also ordered to create a compliance program. Organizations of all sizes have been placed on probation under the guidelines.

One of the most interesting features of organizational probation under the guidelines is the possibility for court-imposed adverse publicity. The court can, as a condition of probation, order the convicted organization to publicize the nature of the offense committed, the fact of conviction, the nature of the punishment imposed, and the steps that will be taken to prevent the occurrence of similar offenses. There is a befitting poetic justice in the fact that the organization has to pay for its own adverse publicity. Forced adverse publicity penalties are analogous to a "corporate pillory," for they subject organizational offenders to public ridicule. The primary purposes of this sanction are to shame the organization and to serve as a deterrent, but it is seldom, if ever, imposed.

In conclusion, in order for the guidelines to act as a deterrent, decision makers in large corporations must perceive a high probability of being implicated in and convicted for organizational criminal behavior. To help encourage this perception, federal prosecutors must be willing to expend their resources pursuing rich corporations in protracted criminal court battles, and they should not acquiesce to negotiations for a civil settlement in prima facie criminal cases. Prosecutors should also be critical in their acceptance of corporate assertions that lower level employees are responsible for offending when there is an "effective compliance program" in place to detect, prevent, and report violations. For persons making decisions in small and powerless organizations—the vast majority sentenced under the guidelines—the deterrent value of fine threats will work only to the point that the potential offender is able to pay. Threats of punishment that are beyond that capability offer no additional deterrent.

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See Also: Consent Agreements; Corporate Criminal Liability; Creative Compliance; Financial Crime Kingpin Statute; Legal Malpractice; Perjury; Respondeat Superior; Organizational Compliance Programs; Tying Arrangements.

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Sexual Harassment

Sexual harassment has been prominently covered by the media and has also received a great deal of scholarly attention ever since it was first recognized as a sociolegal phenomenon in the 1970s. Although the phenomenon itself is understood to have existed since ancient times, its recognition by sociolegal circles is relatively recent. Sexual harassment is understood to be one among a range of abusive or counterproductive workplace behaviors that have hierarchical power differences as an essential antecedent. Sexual harassment has a distinct sexual dimension to it and is different from other forms of harassment because in several instances, it is dismissed or excused as simply being welcome attention.

Some scholars also define sexual harassment as a psychological construct that is appraised by the recipient as offensive and unwelcome behavior that threatens the recipients' well-being. Over 50 countries proscribe sexual harassment in the workplace through legislative action, and in most cases, the legislative action includes holding the organization at liability unless it can establish that it took corrective or preventive steps to either correct or prevent sexual harassment. This sort of liability is termed "vicarious liability." In some countries (Australia and the United States), even if the act of sexual harassment was found to have occurred in a different location (i.e., not the location of employment), vicarious liability can still be assigned to an organization. However, not all countries have a system in place to assign vicarious liability—one such country is France, which narrowly defines sexual harassment as coercion to obtain sexual favors. Some scholars have provided detailed critiques and comparisons of the different laws on sexual harassment. However, the general consensus by scholars is that there is no simplistic or universal definition of sexual harassment but rather a multitude of varying and sometimes contradictory definitions.

The contradictory definitions aspect of sexual harassment also contributes to contradicting reports and statistics about the prevalence of sexual harassment. Whereas some studies suggest that anywhere from 17 percent to 81 percent of employed women reported experiencing some form of sexual harassment, others suggest a range of 40 percent to 75 percent for women and 13 percent to 31 percent for men. The reasons behind these variable ranges is that multiple studies relied on multiple and varying definitions of sexual harassment, some of which were stringent and others not as much. The studies that relied on a stringent and comprehensive definition of sexual harassment obtained higher ranges of prevalence of sexual harassment, whereas the studies that relied on less comprehensive definitions obtained lower ranges of prevalence of sexual harassment. Another reason for the discrepancy in these ranges is that some of the recipients of sexual harassment rationalized the experience as part of life and therefore did not consider those behaviors as sexual harassment. On the flip side to that, some accounts of sexual harassment rates suggest that its rates are magnified and overestimated because of incessant complaints by "whiners."

Victims of sexual harassment frequently experience a range of significant negative outcomes, ranging from psychological ones to health and job-related ones. Some of the mental consequences include irritation, anxiety, depression, and post-traumatic stress disorder. Job-related consequences of sexual harassment include absenteeism; lower job satisfaction; loss of commitment, morale, and productivity; and turnover. Apart from these individual-level outcomes, there is a significant financial component to sexual harassment—some estimates suggest that there is a loss of around $22,500 per person, while some others peg the cost at $48 million in monetary benefits over and above the cost of litigation itself.

Behaviors and Characteristics

Some typical behaviors considered sexual harassment include requests for socialization and dates, personal insults, leering, offensive comments, vulgar gestures, sexual propositions, and sexual and physical assaults. Nonphysical behaviors include jokes, sexual teasing, sexual jokes, and comments about private life or appearances. Sexual coercion involves both rewards and threats—in case of rewards, bonuses or promotions are offered in order to compel the victim to acquiesce to the sexual activity. On the threat side of things, financial entitlements or even one's job are threatened to be withdrawn.

Some nonphysical behaviors involve the use of computers to perpetrate sexual harassment, coined "cyber sexual harassment"—this involves displaying visually explicit materials on computers and cell phones. Several of these sexual harassment behaviors are often combined while targeting recipients, and in some cases the nonphysical forms of sexual harassment have much more insidious aftermaths. Sexual harassment is also frequently found to occur along with nonsexual forms of mistreatment—this combination ranges from the "dripping tap varieties" to the "sledgehammer harassment varieties," where the latter is of the form that would have the potential to make tabloid and media coverage headlines. The harassers will also often attempt to defuse outrage against their incivility by either acting in ways/places that do not allow others to witness those acts or by suggesting that the victim has a personal grudge against the harasser because of her/his incompetence. Other ways of defusing outrage include intimidating the victim and arguing that official channels have already served justice to the victim.

Most statistics indicate that women get harassed more than do men—about 85 percent of the complaints are filed by women, and the remaining 15 percent by men. The harasser is more likely to be a male—very few females have been known to have been the sexual harassment perpetrator. Women who are particularly vulnerable to being targeted by harassers include women in nontraditional jobs, divorced or separated women, and lesbian and minority women. Women who work in jobs that have contingent contracts or irregular hours are also frequently selected as targets of sexual harassment. However, similar characteristics of harassers have not been studied as much—but research typically suggests that harassers are aggressive people. There appears to be a research gap in the realm of women sexual harassers—not much research seems to have been conducted on that segment, possibly because of the rarity of that segment.

Organizations that are characterized by large power differentials between organizational levels typically have higher reported instances of sexual harassment. Industries and work contexts that are typically male dominated, such as firefighting, construction, law enforcement, and the military, report higher instances of sexual harassment. Some scholars have found that sexual harassment is more prominent in blue-collar, male-dominated settings than in white-collar, male-dominated settings. The norms and cultures in an organization also largely determine whether sexual harassment occurs—if the culture is more employee-focused, then sexual harassment is less likely to occur.

Reporting of Sexual Harassment Incidences

The reported instances of sexual harassment are largely underreported—only somewhere between 5 percent and 30 percent of the actual instances are first filed as complaints, and then only about 1 percent go on to legal proceedings. The fear of reprisals by the harasser and the fear that no punishment will be handed out to the harasser also contribute toward keeping sexual harassment underreported. Research has documented that reporting harassment experiences often results in worsened work conditions for the target.

Sexual harassment victims are also more likely to report harassment if the harassment involves sexual assault or sexual solicitation. More incidences are reported from smaller organizations, where the perpetrators are also the owners or supervisors. The valid perception that sanctions for harassers are usually less stringent also contributes to reducing the rates of reporting of sexual harassment.

Challenges and Future Direction

One of the biggest challenges that organizations face is the need to balance issues of confidentiality in their responses to sexual harassment. Another challenge they face is that fewer reported instances of sexual harassment could imply two different scenarios: one wherein there truly are fewer instances of sexual harassment and one wherein the climate is not conducive to people lodging complaints. Management challenges include improving the efficiency of grievance procedures. Those procedures are often inadequate because of the conflict inherent in legal compliance and risk management that organizations have to manage.

Some critics also allege that organizational sexual harassment policies are more effective in protecting the company from liability rather than in protecting sexual harassment victims. Management needs to emphasize training, education, and incentives and sanctions to change attitudes and behaviors in their organizations—this can be much more useful than just legal forums, as most victims never even consider pursuing the legal route to confront their harassers.

One of the essential directions that scholars in sexual harassment advocate is a better understanding of the characteristics and motivations of harassers. Another direction is understanding how reporting rates of sexual harassment can be made more accurate. More longitudinal research on sexual harassment is also suggested, as is research on how sexual harassment can be effectively deterred. Sexual harassment research also needs to be bridged with other counterproductive workplace behavioral phenomena research, as they all have power differentials at the heart of the issues.

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See Also: Clinton, William J.; Employee Crimes; Employee Safety; Ethics; Fear of Crime; Gender Discrimination; Labor Crimes; Police Corruption; Pornography; Self-Control Theory; Tailhook Scandal; Unsafe Working Conditions; Whitewater Scandal.

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Sherman Antitrust Act

The Sherman Antitrust Act was designed by Senator John Sherman of Ohio and was signed into law on July 2, 1890, by President Benjamin Harrison. It represents one of the earliest attempts in the history of U.S. law to curb white-collar crime by inhibiting the formation of cartels and monopolies. According to Senator Sherman, the law was designed to protect the interests of consumers by preventing business arrangements made with the intent to drive up the prices of goods. By limiting the ability of private corporations to align their interests, the Sherman Antitrust Act encourages competition among smaller firms that maintain an interest in delivering quality goods at competitive prices in order to gain market shares.

Essentially, the law grants federal courts jurisdiction over (1) price-fixing arrangements, or agreements, including contracts and trusts, that are seen to unreasonably restrain trade within a market and (2) market dominance, or individuals and corporations that combine or conspire to monopolize commerce across states. As such, the law applies primarily to interstate commerce. Violation of the Sherman Antitrust Act generally falls into two categories: violations "per se," or violations according to the letter of the law; and "rule of reason" violations, or violations resulting from business arrangements that purposefully reduce market competition. Violation of this law is considered a felony, with fines up to $350,000 for individuals and up to $10 million for corporations. Federal jurisdiction also extends to the District of Columbia and U.S. territories.

Evolution of the Sherman Antitrust Act

What is generally referred to as antitrust law in the United States is commonly known as competition law elsewhere. In U.S. law, the focus on "trusts," or relationships whereby one party holds property for the benefit of another, can be traced back to the dealings of Samuel C. T. Dodd, a lawyer for Standard Oil and an associate of John D. Rockefeller. During the late 1870s, Dodd devised a system of trusts to avoid legislation prohibiting the ownership of stock between members of competing oil companies in Ohio. In response to this and other similar combinations, Senator John Sherman (the younger brother of American Civil War general William Tecumseh Sherman) proposed the bill

Senator John Sherman of Ohio, the designer of the Sherman Antitrust Act. The law was one of the earliest attempts in the United States to curtail white-collar crime by inhibiting the formation of cartels and monopolies.

that is now known as the Sherman Antitrust Act of 1890. Until this point, concern over monopoly activity typically targeted government protection of businesses, making this one of the first laws to inhibit the concentration of private investors and corporations. Unsurprisingly, Dodd and other members of Standard Oil adamantly opposed the Sherman Antitrust Act. However, Dodd was a proponent of the "unreasonable" requirement, the precedence of which was established by *Standard Oil Co. of New Jersey v. United States*. Though the court deemed the actions of Standard Oil unreasonable, the unreasonable requirement established by this case relaxed the conditions under which the law applied.

The law was further modified by the Clayton Antitrust Act of 1914, which added greater specificity to the legal definition of practices that unreasonably restrained market activity. Specifically, the Clayton Antitrust Act outlined provisions for price discrimination, mergers and acquisitions, corporate directorates, and other similar business arrangements. This was later amended by the Robinson-Patman Act of 1936 and the Hart-Scott-Rodino Antitrust Improvements Act of 1976. Together, these laws form the basis of antitrust law in the United States and grant the U.S. Department of Justice (DOJ) and Federal Trade Commission (FTC) authority to police such matters. Despite the fact that these laws were originally created to protect consumer interests, they have come under attack in recent years for imposing excessive regulation over market activity.

Cases Involving the Sherman Antitrust Act

The first 10 or so actions taken under the law were against organized labor, which was never the intended purpose of the Sherman Act; however, it was used to protect those corporations that the act was intended to control. For instance, in 1894, the Sherman Antitrust Act was invoked in order to end the Pullman Strike of the American Railway Union, led by Eugene V. Debs. The 1911 case involving Standard Oil of New Jersey marked another landmark in the development of antitrust law, as did the 1911 case *United States v. American Tobacco Co.*, which ultimately resulted in the division of American Tobacco into four firms—American Tobacco Company, R. J. Reynolds, Liggett & Myers, and Lorillard—in an effort to diversify the market and promote competition. Similarly, a suit was filed in 1974 against AT&T, or the Bell System for monopolizing telecommunications. The case of *United States v. AT&T* was settled in 1982 and, by 1984, AT&T was divided into seven regional Bell operating companies. Over the years, the DOJ and the FTC have invoked the Sherman Antitrust Act to inhibit the monopoly activities of other notable firms such as Eastman Kodak, Microsoft Corporation, and Apple Inc.

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See Also: Antitrust, Federal Trade Commission; Antitrust, U.S. Department of Justice; Bid Rigging; Clayton Antitrust Act; Coolidge, Calvin; Federal Trade Commission; Hart-Scott-Rodino Act; Hoarding; Illegal Competition; Standard Oil Co.

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Short, James F., Jr.

James F. Short, Jr. (1924–), is a nationally recognized sociologist whose research has fundamentally informed the study of white-collar crime and other types of offending, juvenile delinquency and gangs, and risk analysis. Specific to white-collar crime, Short and colleagues examined perceptions and fear of white-collar crime in relation to other risks and as influenced by those who socially construct the crime "problem." Whereas many have focused on quantifying economic harms done by white-collar crime, Short also drew attention to damage to the social fabric of society—that is, the erosion of social trust and waning confidence in institutions that violate and enforce the law.

Short's early work (with F. Ivan Nye and Virgil J. Olson in 1958) demonstrated that social class may be unrelated to criminal offending, which suggests that white-collar and upper-class crime is far more prevalent than most believe. Throughout the 1980s, Short and colleagues Robert F. Meier and Laura Schrager conducted research related to public perceptions of consequences of white-collar crime. Defining organizational crime to include offenses perpetrated for the benefit of the organization rather than for self-interest, it was found that public perceptions of organizational crimes are viewed as more serious and problematic when there are direct physical impacts.

Organizational crimes that result in physical harm are also judged by the public to be equally as serious as commonly feared street crimes. However, delayed and diffuse economic costs, the focus of most previous studies on impacts of white-collar crime, tended to limit personal knowledge about white-collar crime and reduce perceptions of its seriousness. Moreover, individuals perceived the risk of serious physical harm resulting from organizational illegality as being low in relation to other hazards.

Short's research on the sociology of risk and organizational theory has had a substantial impact on the study of white-collar crime and helped refocus research efforts to include measurement and study of the social effects of white-collar crime. His work suggests that although public evaluations of crime problems tend to be based on seriousness of effect, organizational crimes often result in potential rather than actual negative consequences. Because of this as well as the difficulty of identifying involved individuals and whether they had criminal intent, individuals are rarely held accountable. The culmination of these factors produces an erosion of trust in corporations to fulfill fiduciary obligations and in the criminal justice system to justly punish corporate wrongdoers. Overall, Short's work suggests that white-collar crime results in significant harm to the social fabric of society and calls for increased attention to issues of institutional confidence and collective trust.

Short is past president of two prominent professional associations, the American Sociological Association (ASA) and the American Society of Criminology (ASC), as well as others. He served as editor of the *American Sociological Review*, the flagship journal of ASA and the discipline. Short is a Fellow of the American Association for the Advancement of Science. His awards include a John Simon Guggenheim fellowship, a National Institute of Mental Health fellowship, the ASC's Edwin H. Sutherland Award, the Bruce Smith Award (Academy of Criminal Justice Sciences), and the ASA's Award for Distinguished Contribution.

Short received his M.A. in 1949 and his Ph.D. in 1951 from University of Chicago, under sociologists William F. Ogburn and Ernest Burgess. Hired by Washington State University (WSU) in 1951, he found it a fruitful place to conduct research and raise a family throughout his career. Significant to his research on gangs, he was Visiting Associate Professor at the University of Chicago (1959–62) and at other universities such as Oxford and Stanford. Short retired in 1997 but remains an active scholar and mentor as professor emeritus in sociology at WSU. In 2006, he received the President's Award for Lifetime Service to WSU, and in spring 2007, the home of the Sociology Department was renamed from Wilson Hall to Wilson-Short Hall to honor and recognize Short's contributions to the university, the discipline, and society.

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See Also: Corporate Criminal Liability; Fear of Crime; Risk Analysis.

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Short-Sale Schemes

Short selling, or "shorting," is a type of speculative trading in securities that, depending on the context, can represent both a legitimate and an illegitimate business activity. It involves a trader selling a share in the belief that its value will decrease. The short seller then repurchases an equal but devalued share at a later point, making a profit from the difference between the selling and buying prices.

In "going long"—the most common type of securities trading—the trader owns the shares and hopes to make a profit from selling them at an increased value. In "shorting," the trader enters into a securities lending agreement, borrowing the shares for a certain lending fee. This leaves a "short" position at the lender, as he is missing (or short of) the borrowed shares. The short seller then trades in the market, hoping to repurchase equal shares at a lower price and return them upon the lender's demand or at an agreed date. This closes (covers) the lender's position.

Short selling has become an increasingly popular practice, amounting to approximately a quarter of all securities trading. Its scale is driven by the financial institutions (brokerage firms, banks, and pension funds) that hold a large amount of shares and are willing to lend them for substantial fees.

The nature of speculation in short-selling schemes, however, makes it a highly risky trading practice. Though the trader can gain significant profits by betting against share prices, he or she can also face immense losses. If his speculation on market fluctuations is incorrect and the share price rises, the short seller still has to repurchase and return the shares, suffering potentially unlimited losses because of the increased price. For this reason, short sellers are among the most sophisticated market participants, with a great dedication to research and the art of high-risk investment. Hence, the majority of short selling is undertaken by hedge funds and wealthy individual traders—the so-called bears.

Short-Selling Controversies

Proponents of short selling—free market economists and traders—claim that shorting is vital to the healthy and efficient functioning of securities markets. Whereas "long traders" have an interest in the price of their shares always rising, leading to unrealistically valued shares and market "bubbles," short sellers can help identify the overpriced shares and provide a skeptical view on bull markets. Opening short positions signals negative information about a stock, leading to a realistic price adjustment and a proper valuation of securities by potential investors.

Short sellers have also helped expose major financial frauds involving stock scams and misrepresentations, as with Enron, Tyco, WorldCom, and Adelphia Communications. For example, the short seller James Chanos became world renowned as the first investor to identify the accounting irregularities at Enron. For this reason, short sellers often portray themselves as market watchdogs or even heroes for uncovering irregularities in companies.

Critics, however, posit that short selling is an unethical business activity. Short sellers are morally scorned, as they make profits when all other investors lose value. For example, hedge fund manager John Paulson made $3.7 billion by betting against subprime mortgages and the companies that made these home loans during the 2008 financial crisis. Furthermore, short selling has been directly linked to failing companies and markets and, in the most insidious cases, to market manipulation. Short sellers specialize in targeting distressed firms. Sometimes, the vigorous shorting of its shares (a bear raid) can amount to persecuting the troubled company, further decreasing investors' confidence in its worth. Ultimately, this may lead to the bankruptcy of companies that were already financially fragile.

Finally, speculation losses represent a significant incentive for certain unethical traders to resort to "short and distort" or "trash and cash" tactics. This represents a type of securities fraud and a market manipulation tool. Share prices are manipulated through shorting a large amount of shares, followed by spreading false rumors about the financial soundness and worth of the company. Needless to say, markets are extremely price sensitive to information, and such smear campaigns spread fast, fueling panic among the company's current and potential investors. In a self-fulfilling prophecy, the targeted company suffers losses as its shares are sold under the mistaken belief that they are worthless.

For example, in 2000, investor Mark Jakob made a $241,000 profit by shorting Emulex shares and then issuing a hoax press release that its chief executive officer was stepping down. Emulex investors lost nearly $110 million, selling the shares at dwindled prices. Similarly, in 2007, one single broker, Paul S. Berliner, caused wreckage on the market when his fabricated Internet rumors resulted in Alliance Data Systems Corporation losing $1 billion of its market value.

Short Selling and the Financial Crisis

In times of bear or falling markets, investors are more susceptible to "short and distort" manipulations, which are easier to execute. If the targeted company is a vital financial institution such as a large bank, it can lead to investors losing confidence in the entire financial market. In this way, short sellers can destabilize a national economy.

Short selling was reported to be especially menacing throughout the 2008 to 2009 market crash, when financial institutions were already experiencing plummeting losses in shares and confidence. The investment bank Bear Stearns arguably experienced the worst systematic unethical short-selling attack. After short bets worth $1.7 million were placed against its shares, on Monday, March 10, 2008, a rumor was spread that Bear Stearns had problems with liquidity. In fact, at that point, the bank had $18 billion in reserves. As media outlets picked up on the gossip, investors started demanding their money back, causing the swiftest bank crash in Wall Street history. By Friday, March 14, Bear Stearns stock fell by 47 percent. Over the weekend, the bank ceased to exist after JPMorgan Chase purchased it at a mere $2 a share.

It is important to note, however, that ambiguity remains over the role of short sellers in the Bear Stearns demise: Was Bear Stearns toppled by rumor mongering and abusive trading, or was it just a legitimate short-selling target, as the bank already owned large amounts of the toxic subprime mortgages? Regardless, since the Bear Stearns collapse, short selling has been labeled as a worse market manipulation than insider trading.

Regulation of Short Selling

Short selling has been a feature of the stock market ever since the Dutch East India Company first issued stock in 1602. Yet its legality has always oscillated, with full prohibition in much of the 18th and 19th centuries and current legalization in modern sophisticated markets.

Short selling usually comes under increased regulatory scrutiny in market downturns, and during the recent crisis, most financial regulators undertook exceptional measures to restrict shorting to stabilize national markets. In August 2008, the Securities and Exchange Commission (SEC) issued a temporary ban on betting against the shares of 19 financial giants, including the mortgage lenders Fannie Mae and Freddie Mac, as their potential collapse would have posed a substantial systemic risk.

Currently, though most short-selling practices are legal, shorting undertaken to manipulate share prices through bear raids and rumor mongering is prohibited. The SEC's primary method of tackling aggressive short selling consists of imposing restrictions regarding the type, amount, and price stability of shares that can be shorted, and on naked short selling. The SEC frequently enforces breaches of these rules through administrative proceedings actions in which short sellers can be penalized with disgorgement of the illegally made profits, monetary penalties, and being barred from the securities industry.

The SEC's enforcement of transmitting fabricated rumors is, however, scarce, and the above-mentioned Berliner remains the only Wall Street broker sanctioned for such behavior. Rare abusive short-selling cases have also been enforced through the criminal justice system, often with the SEC's cooperation, and short sellers have received prison sentences. In general, enforcers have an exceptionally difficult task to prove and distinguish destructive rumors from healthy trading. This is exacerbated by the ability of short sellers to hide their shorting behind complex and opaque trading options as well as to rely on their reputation as skillful market researchers. With financial markets remaining highly malleable to manipulation through information, it is unlikely that rumor mongers will soon be silenced.

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See Also: Arbitrage; Hedge Fund Fraud; Market Manipulation; Naked Short Selling; Subprime Loans.

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Shover, Neal

Neal Shover is professor emeritus in the Sociology Department at the University of Tennessee, Knoxville. He earned his bachelor's degree in social welfare from Ohio State University in 1963, then his master's (1969) and doctoral degrees (1971) in sociology from the University of Illinois, Urbana-Champaign. His specializations are in white-collar crime and in ethnographic research methods. In addition to his many publications, professional memberships, and research and service activities, Shover was the recipient of the Fulbright Senior Specialist Award in 2006 and, as such, held a position at Umeä University, Sweden, in 2007.

Shover's most significant contributions to the field of white-collar crime can be organized into three categories: ethnographic, theoretical, and conceptual.

Qualitative and Ethnographic Work

Shover's major qualitative and ethnographic research focused first on a case study of the establishment of a regulatory bureaucracy and second on the thought processes of convicted telemarketing fraudsters. The Surface Mining Control and Reclamation Act of 1977 provided the basis for an enormous data collection and analysis undertaking, involving personal interviews, archival analysis, secondary reports, and mail questionnaires. Shover described how an enforced compliance approach was used and identified benefits and costs of this regulatory style. Among the disadvantages of this approach are hostility, opposition, and a multitude of political challenges. Using in-depth interviews with federal telemarketing fraud offenders, Shover, with Glenn Coffey and Dick Hobbs, reported the shared perception that apprehension and punishment are unlikely consequences for committing telemarketing fraud. Moreover, the offender interviews revealed that—compared to many legitimate jobs—telemarketing fraud offers better working conditions. Shover and colleagues' qualitative research also uncovered a tendency of telemarketing offenders to rationalize their behavior.

Crime-as-Choice Theory

Shover's early work crystallized into his statement of crime-as-choice theory. Observing the enduring popularity of choice theories in research and policy on street crime, Shover, with Andy Hochstetler, developed a likewise choice-driven theory of white-collar crime. Key concepts in this theory include the tempted and predisposed, lure, credibility of external oversight, and criminal opportunities. Shover and Hochstetler use these concepts to explain variation in the rate of white-collar crime.

In essence, white-collar crime is likely when external oversight is lacking or not perceived as credible, as there tends to be an existing pool of people motivated to take advantage of criminal opportunities. Key to white-collar crime control is the implementation of laws, agencies, and processes that will be perceived as effective deterrents to white-collar criminal activity.

Alternative Concepts

While not engaging directly in disputes about the proper definition of white-collar crime, Shover and Frank Cullen outlined the sources and implications of different definitions. Essentially, they argued that much disagreement in white-collar crime academia is a product of researchers' differing concepts of white-collar crime. First is the Populist perspective, which, drawing from Edwin Sutherland, characterizes white-collar crime as an abuse of power, prestige, or position. Second is the more recent Patrician perspective, which portrays a less sociological, more technical conception of white-collar crime as any act involving deception.

Consequences of employing one concept rather than the other include the Patrician perspective that anyone can commit white-collar crime; white-collar crime need not be limited to wealthy or powerful individuals and organizations. Populist definitions, conversely, require a high-status offender. Other implications of differing approaches to studying white-collar crime relate to which acts should be classified as white-collar crime, criminalization, and causes of white-collar crime.

Shover continues to conduct and publish research and to collaborate with upcoming as well as leading figures in the field of white-collar crime.

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See Also: Conflict Theory; Differential Association Theory; Fear of Crime; Self-Control Theory; Sutherland, Edwin H.; Sutherland-Tappan Debate; Telemarketing Fraud.

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Silkwood, Karen

Karen Silkwood, born in Longview, Texas, on February 19, 1946, did not aspire to become an iconic activist. By all accounts, when she saw evidence of injustice, she was determined to work for fairness. At the time of her death, she was collecting evidence that Kerr-McGee had violated health and safety standards at the plutonium production facility. Silkwood's death on November 13, 1974, resulting from a one-car automobile accident, was shrouded in mystery and remains controversial to this day, with some observers claiming the crash was a result of driver error and others speculating that forces within Kerr-McGee arranged for Silkwood's death. A 1983 feature movie, *Silkwood*, starring Cher, Meryl Streep, and Kirk Douglas, publicized the incident and garnered several industry award nominations.

After a difficult marriage, Silkwood fled from Texas and her husband and three children to Oklahoma when she learned her husband had an extramarital affair. In August 1972, shortly after arriving in Oklahoma, Silkwood applied to work at Kerr-McGee Company's Crescent, Oklahoma, metallography laboratory, where she could utilize the medical technology training she received while studying at Lamar College in Beaumont, Texas.

At the Kerr-McGee plant, processed plutonium, a by-product of uranium that has been bombarded with neutrons and is collected from nuclear reactor waste, was fabricated into pellets and loaded into stainless steel rods used in nuclear reactors. In the metallography lab, protected by a glovebox, Silkwood ran quality control checks by selecting random pellets and holding unexposed X-ray film against them to detect gamma rays. If the radiation was not uniformly distributed, the X-ray film would indicate a "hot spot." Another test required Silkwood to pulverize plutonium pellets and analyze the dust using a spectrograph; if the trace amounts of metals such as nickel or chromium were too high, the pellets were rejected. She also tested the fuel rods to ensure the welds had no cracks or damages.

Although nuclear facilities have safeguards, working with plutonium carries risks. If exposed, individuals have a higher risk of cancer or kidney disease because of the radioactivity of the material. The potential hazard to the general public was extremely low; however, the work conducted at Kerr-McGee's Crescent location subjected workers to higher peril because of the proximity of the element and the possibility of inhalation if safety equipment failed.

In 1973, two incidents underlined the dangers of working with radioactive material. A fire ignited from plutonium-contaminated waste, exposing six workers to a level of plutonium 400 times the weekly limit allowed by the Atomic Energy Commission (AEC). Kerr-McGee was faulted for slow attention to the workers' health as well as for faulty monitoring of radioactivity levels in the area where the fire began. Subsequently, two men performing maintenance on a pump were unknowingly exposed to plutonium particles. When they returned to the Kerr-McGee facility after a lunch break, they and their vehicle were scrubbed, but the restaurant wasn't tested for contamination, nor was the owner notified.

Against this background, Silkwood was elected to the Oil, Chemical, and Atomic Workers Union (OCAW) bargaining committee, and she was assigned to represent health and safety issues in the upcoming contract negotiations. Silkwood tracked contamination incidents and interviewed Kerr-McGee employees. She claimed to have evidence that Kerr-McGee was doctoring quality control records. Additionally, the company had inadequate security, failed to inform employees of the health and safety risks of their work, and did not have sufficient monitoring equipment. Meanwhile, on two occasions, Silkwood tested above approved contamination levels for plutonium exposure. In November 1974, as the union was preparing for negations, Silkwood and OCAW colleagues were preparing to present their allegations against Kerr-McGee to a reporter from the *New York Times*. Before Silkwood could rendezvous with the reporter, she was killed in a single-car accident on Oklahoma Highway 73, just south of Crescent.

After Silkwood's death, her family filed a lawsuit alleging plutonium contamination and seeking $11.5 million in damages. In 1986, 10 years after the lawsuit was filed, Kerr-McGee, admitting no wrongdoing, settled with the Silkwood family for $1,380,000. The precedent-setting lawsuit, argued before the U.S. Supreme Court, provided for punitive damages against the company despite its compliance with federal regulations.

Karen Silkwood's life—and death—brought attention to the health and safety hazards of nuclear facilities and highlighted how far corporations might be willing to go to protect their economic interests.

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Ithaca College

See Also: Employee Safety; Environmental Protection Agency, U.S.; Kerr-McGee Corp.; Unsafe Working Conditions.

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Simpson, Sally

Sally Simpson is an expert on causes and deterrence/prevention of corporate criminality. Simpson conducts research on individual-level reasons why managers might engage in corporate malfeasance as well as macro-level factors, such as firm characteristics or political-economic environment, associated with corporate offending and recidivism. Obedience to manager directives, low estimated risk to themselves or the firm, and moral-ethical dimensions figured prominently into offending decisions, whereas formal threats of legal sanctions were not necessarily effective deterrents to offending. Financial strain on the company or industry, economic downturn, and political environment also influences corporate offending (e.g., antitrust violations).

Simpson's research addresses how sociopolitical and economic factors impact corporate illegality and the role of sanctions in reducing recidivism. She gathered longitudinal data to examine antitrust violations over 55 years (1927–81) among a sample of 52 firms. Her research revealed that antitrust violations were more likely to occur when profits were "squeezed" and business conditions were poor (high unemployment and declining stock prices) and during Republican administrations. A caveat of this relationship is that more trivial antitrust violations were likely to occur when corporations were trying to increase profitability, whereas more major antitrust crimes were likely when industry profits declined. Simpson's research findings do not support a strict deterrence approach; rather, formal sanctions are limited in their effectiveness, particularly when compared to the influence of corporate culture and a firm's economic norms.

Hypothetical Vignettes

Other important research focused on individual deliberations to engage in a hypothetical corporate offense for the company's benefit. These studies utilized a series of vignettes and experimentally manipulated factors thought to be most important in the decision to commit a corporate offense. Respondents imagined themselves as a manager in the scenarios and answered survey questions regarding their evaluation of the behavior (e.g., costs/benefits, morality) and likelihood of committing the offense. Simpson initially administered vignette surveys to master of business administration and executive education students and more recently to managers of a Fortune 500 company. Analyses supported the rational choice perspective by showing that managers assessed the risks of formal and informal sanctions to both the company and themselves. Offending by managers increased when ordered by a supervisor and during times of economic hardship. Simpson's findings also support organizational theories claiming that individual decision making is influenced at multiple levels, and little support is found for theories of self-control.

Simpson's work has addressed the most important issues to researchers and practitioners concerned with the problem of white-collar crime. In the course of her work, she has evaluated mainstream criminological theory against the behavior of corporate criminality and has generated a testable rational-choice model of corporate crime. By focusing on factors that are most effective in deterring white-collar crime and preventing reoffending, Simpson's work consistently comes out against punitive formal legal sanctions in favor of more modest cooperative sanctions. Methodologically, Simpson's innovative use of longitudinal data and vignettes has helped overcome the shortcomings of previous research by exploring the causes and solutions of white-collar crime at both macro and micro levels. By providing a holistic, comprehensive view of corporate criminality, Simpson's work has illustrated how certain occupations, industries, and firms create opportunities for white-collar crime. More recently, Simpson's work has expanded on the role of opportunity and how characteristics, including sex and race, influence the opportunities to commit corporate offenses.

Simpson has written or edited at least five books on white-collar crime and published numerous articles in peer-reviewed journals. Simpson is past president and vice president of the White Collar Crime Research Consortium. For her outstanding contributions to the field of criminology, Simpson was awarded the Herbert Bloch Award (1999) and the Distinguished Scholar Award from the American Society of Criminology Division on Women and Crime (2008), and was named an Honorary Fellow of the American Society of Criminology (ASC) in 2009. Simpson earned her master's degree in sociology at Washington State University (1978) and her Ph.D. in sociology at the University of Massachusetts at Amherst (1985). Simpson was a postdoctoral researcher at Harvard University's business school before joining the faculty at the University of Maryland, College Park, where she currently is professor and chair of the Department of Criminology and Criminal Justice.

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See Also: Antitrust, Federal Trade Commission; Antitrust, U.S. Department of Justice; Conflict Theory; Differential Association Theory; Fear of Crime; Multinational Corporations; Reform and Regulation; Self-Control Theory.

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Sinclair, Upton

American novelist, essayist, journalist, and social economic reformer, Upton Beall Sinclair, Jr., (1878–1968) was born in Baltimore, Maryland. After graduating from the City College of New York in 1897, he studied for a time at Columbia University. In 1933, he was a candidate of the Democratic Party for governor of California. He became popular in the first half of the 20th century, earning fame for his classic muckraking novel *The Jungle* (1906). He published more than 50 books in his lifetime. Besides politics and social writing, he was interested in occult phenomena and experienced with telepathy. *Mental Radio* (1930) was a book about his wife's telepathic experiences.

While living in California, Sinclair founded the American Civil Liberties Union and ran for Congress—in 1920 for the House of Representatives, and in 1922 for the Senate. Although he was an unsuccessful political leader, Sinclair's platform—the End of Poverty in California (EPIC)—was a successful movement of his time. During the Great Depression, a large number of people from the southern and Great Plains migrated westward. Sinclair's plan to end poverty was a controversial issue, as the conservatives considered his proposal a communist takeover. From the mid-1930s, Sinclair abandoned politics and returned to writing. He wrote a series of 11 novels with a central character named Lanny Budd from 1940 to 1953. In this series, Sinclair highlighted socioeconomic classes and political history of the Western world.

The Jungle

In *The Jungle*, Sinclair criticized the social and economic conditions of the early 20th century and focused mainly on his views of the injustices of capitalism and the severe impacts of poverty during the Great Depression. *The Jungle* was based on his investigation that exposed the unsanitary conditions in the U.S. meatpacking industry as well as the inhumane conditions. Before writing this novel, Sinclair disguised himself and worked nine weeks as a packing-house employee in the meatpacking industry to collect material for the book.

The following passage from *The Jungle* describes the sorry state of the fertilizer men in Chicago:

> Worst of any, however, were the fertilizer men, and those who served in the cooking rooms. These people could not be shown to the visitor—for the odor of a fertilizer man would scare any ordinary visitor at a hundred yards, and as for the other men, who worked in tank rooms full of steam, and in some of which there were open vats near the level of the floor, their peculiar trouble was that they fell into the vats; and when they were fished out, there was never enough of them left to be worth exhibiting—sometimes they would be overlooked for days, till all but the bones of them had gone out to the world as Durham's Pure Leaf Lard!

Sinclair vividly portrayed the poor working conditions and the low quality of food that threatened the health and well-being of the public in *The Jungle*. This novel is centered on the lives of Jurgis Rudkus and Ona Lukoszaite, who immigrate from Lithuania to an area of Chicago known as Packingtown. Packingtown is described as the center of the Lithuanian immigration and of Chicago's meatpacking industry. In this dangerous and filthy place, Jurgis is forced to work in an unheated slaughterhouse in the cold winter season. Angered by his workplace conditions, Jurgis joins a union and begins to understand the political corruption and bribery that makes Packingtown run. Although the book's conclusion functions as an argument for socialism, this is a story that depicts the lives of the inhumane, the unjust, and the violent social and economic system that was an outcome of unbridled capitalism.

In the history of corporate crime in America, Sinclair and other muckraking journalists focused on contemporary scandals such as the poor sanitation in food-processing plants, the large-scale adulteration of meat products, and the false claims of medicine advertisements, leading to massive public outrage. Sinclair's writing drew the attention of the government as well as the public. Sinclair's *The Jungle* not only caused a public uproar, but President Theodore Roosevelt also read it and invited Sinclair to the White House to discuss the Chicago working situations of immigrants depicted in his novel. Sinclair contributed in the formulation of two powerful legislations, the Pure Food and Drug Act of 1906 and the Meat Inspection Act of the same year.

Although his critics called Sinclair hysterical, unbalanced, and untruthful, he is a noted author, and his book *Dragon's Teeth* won the Pulitzer Prize in 1943. Some of his popular works are *Sylvia* (1913), *Wide Is the Gate* (1943), and *O Shepherd, Speak!* (1949). His classic books are widely taught in schools and colleges today. Among his most influential books, *The Jungle, The Wet Parade,* and *The Gnomobile* were adapted for films.

Krishna Bista
Arkansas State University

See Also: Capitalism; Food and Drug Administration, U.S.; Food Fraud; Industrial Revolution; Labor Crimes; Meat Inspection Act; Pure Food and Drug Act; Roosevelt, Theodore; Unions; Unsafe Working Conditions; Workplace Deaths.

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Small, Gerald P., III

Gerald P. Small III, is a man from Broomfield, Colorado, just outside Denver, who was charged and convicted in 2006 of mortgage fraud. Arrested on a criminal complaint in March 2004, Small and five of his associates were charged with obtaining hundreds of millions of dollars in false mortgages and multimillion-dollar lines of credit by falsifying documents through two companies owned and operated by Small.

To perpetrate one of the largest cases of mortgage fraud in U.S. history, Small advertised false jobs on various career Web sites for the sole purpose of obtaining the personal information of job applicants to secure fraudulent mortgage loans. Small was ultimately sentenced to eight and a half years in federal prison and forced to pay over $37 million in restitution for his various criminal charges.

Identity Theft and Mortgage Fraud

Prior to their arrest in March 2004, Small and five other Denver metro residents began posting help wanted advertisements on job Web sites such as Monster.com and in local newspapers, seeking account representatives for a mortgage company known as Amerifunding that was owned by Small. Promising salaries over $100,000, Small and his associates lured potential job seekers to their Westminster, Colorado, office, where they asked applicants to fill out job applications as well as provide their social security cards and driver's licenses. Small and his associates then proceeded to falsify mortgage applications for the individuals they interviewed and used the money obtained from the falsified mortgage loans for their own personal benefit. The case was investigated by both the Internal Revenue Service and the Federal Bureau of Investigation. Prior to his arrest and subsequent indictment, assets obtained by Small through his mortgage scheme—including 15 houses in Colorado and Nevada, luxury cars including a Lexus and a Jaguar, and over $8 million in cash and bank accounts—were seized by authorities.

Small did not commit the crime of mortgage fraud alone. Several associates participated in the crime and were similarly charged and convicted. Small's wife, Kelli, was sentenced to five years probation and 160 hours of community service for her part in the mortgage fraud scheme. Robert Bichon was sentenced to 30 months in federal prison and ordered to pay restitution of $140,000 to Washington Mutual Bank and restitution of over $2 million to various other victims. Robert Sigg and Charles Winnett were sentenced to time served while awaiting trial, and 51 months in prison, respectively. Sigg was also ordered to pay restitution to Washington Mutual, and Winnett was ordered to pay restitution to Flag Star Bank and Impac Warehouse Lending Group. Chad Heinrich received a 28-month sentence in federal prison and was ordered to pay restitution to Flag Star Bank and Impac Warehouse Lending Group as well. Finally, Harry Lou Gayle was charged and later pleaded guilty to filing a false tax return. Information on his sentence was unavailable.

Greater Consequences

At the time, the mortgage fraud perpetrated by Gerald P. Small and his associates was the largest case of mortgage fraud in U.S. history. Small's scheme netted hundreds of millions of dollars in bogus mortgages as well as multimillion-dollar lines of credit. An untold number of individuals victimized by Small and his associates were tricked into providing their personal information under the auspices of obtaining employment. One individual reported responding to Small's job advertisement out of desperation after being laid off from her job and providing personal information despite her better judgment and personal reservations. The case of Gerald Small occurred several years prior to the economic crash of 2008 but presaged many cases of mortgage and banking fraud seen in later years. Mortgage frauds such as the one perpetrated by Small and his associates encompassed several distinct white-collar crimes, including identity theft, embezzlement, and falsification of documents.

Jason Dobrow
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See Also: Advertising Fraud; Amerifunding; Identity Fraud or Theft; Mortgage Fraud.

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Small Business Fraud

The term *small business* applies to a variety of businesses. In the United States, a small business may be small because it has only a few employees, has small capitalization, or has annual revenues of less than $250,000. A small business may also be a single proprietorship, a partnership, or a corporation. Small shops, tradesmen, restaurants, photographers, music stores, flower shops, barbers, hair stylists, motels, lawyers, physicians, accountants, funeral homes, music stores, coffee shops, and small-scale manufacturers are typical small businesses. Small businesses are often engines of economic growth. Start-up companies that introduce a new invention or innovation to the market will usually be small at first and, if successful, grow much larger. Many franchise operations are also small businesses because they have a small number of employees and small annual revenues.

The term *small business* varies in its meaning across the world, so a small business in one country may not be a small business in another country. In the United States, a small business has fewer than 500 employees, but in Australia the number is no more than 15. The European Union set the number of employees for a small business at less than 50. Overall, small, single-proprietor businesses are common everywhere there is freedom for individuals to build a business.

Small business fraud can happen to a small business or it can be done by a small business to its customers or to the community. In general, small businesses are more often the victims of fraud than perpetrators of it. Being alert to small business fraud is vital to the financial health of any business, but especially to small businesses with limited resources.

Frauds practiced on small businesses include simple employee theft of cash, assets, or product. Opportunities for employees who handle cash to pocket cash and to cover the theft with fraudulent bookkeeping abound. For an employee to "tap the till" (pocket cash from the cash register) is blatant theft that is likely to be discovered. More difficult to detect may be an employee forging a company check or embezzlement through fraudulently kept books.

Employee Theft and Collusion

Small businesses may lose money from shortages in merchandise. This may occur because an employee is in collusion with a shoplifting gang, or the employee may agree to sell an item(s) of merchandise for less than the marked price to confederates for cash. The corrupt employee then pockets the cash as the merchandise is allowed to leave the store. This form of corruption is more difficult to detect.

Employees may also steal assets such as tools, supplies, or other materials, or the company's product may be stolen in small amounts. An employee in a nail mill may carry home a few each night in his/her lunch box. The value may only be a dollar a day, but it adds up over the weeks and years. Employees may mark items off for a sale or as wasted and then arrange for the items, such as furniture or food or clothing, to be picked up by fellow conspirators, who then sell then on a black market.

Employees in small businesses may use the company's equipment and supplies for personal gain. For example, employees in heating and air conditioning or swimming pool companies may use the company's supplies and equipment to do jobs on their own time that are off the company's books. The job may be done for less and the employee paid in cash that will never be reported for taxes, let alone to the company. The company not only loses the business, but its equipment and its supplies are pilfered to its loss.

Small businesses may experience delivery of adulterated supplies, or they may find that the delivery is mysteriously short of the number of items listed on the invoice. These may appear to be simple errors but can be the result of theft by employees or "sticky-fingered" delivery personnel.

Identity Theft

Small businesses are also the targets of a variety of scams perpetrated by confidence men/women. Small businesses can be the victims of identity theft just as individuals can. Criminals use the stolen identity to order or sell merchandise in the name of the small business victim. Some of these scams use electronic media to make fraudulent sales. Telephone relay fraud occurs when telephone relay services are used (these are typically used by the hearing impaired for telephone calls) to make fraudulent purchases. The orders are shipped to a location where the product is accepted, and the thieves then disappear with the goods.

Identity theft may not cost a company whose identity is stolen any money, but it may damage the company's reputation because angry customers may think they have been defrauded by the real company instead of by a scammer. Identity theft may be the result of successful hacking, or it may be the result of the actions of a negligent or disgruntled employee. Data breaches of a business's Internet system may also reveal intellectual property data or research data that can be sold to competitors who are producing in foreign countries.

Many small companies are involved in research or are developing and marketing a new, innovative product. The company may employee students from foreign countries or immigrants who are actually industrial spies. They may capture the company's data, research, trade secrets, secret formulas, or other business information and then send it to their home country, where the product is made more cheaply and without paying for the expenses incurred by the defrauded business for its valuable research or trade secrets.

Cyber and Wire Fraud

Phishing e-mail scams target small businesses, small business employees, and small business owners. The goal is to hack into the computer system of the victim. Phishing scammers use very imaginative e-mails that claim the e-mail is from the Internal Revenue Service, the Social Security Administration, the Better Business Bureau, or other agencies. Numerous e-mails have been sent to small businesses claiming to be from the Federal Deposit Insurance Corporation. These have all proven to be fraudulent. The goal of phishing e-mails is to get the recipient to click on links or to open attachments. The attachments provide access to the recipient's computer and to any servers it is connected or to the company's entire computer system. This opens the system to hacking that can be very damaging. It may possibly expose the financial records and operation of the company.

Web page fraud can occur when a company is sent a packet of information about a Web page that the con artists claim to be designing. They may also claim that they will host the Web site. Inside the packet is a card that is for "opting out" of the service. The card and the packet may be discarded, but an invoice for the Web service is sent for services never ordered. Unless accounting staff are careful, invoices that appear normal may be paid to criminals.

Overpayment scams are tactics that a criminal uses. A credit card or a check is used to overpay the company, which is then asked to wire the extra money to the originator or to a third party. The check or the credit card is actually phony, so the extra money sent to the criminal(s) is lost. Overpayment schemes often hit businesses such as caterers or others when a large down payment is needed. It has even been used against online sellers such as eBay, Craigslist, and other electronic auction companies.

Marketing and Vanity Fraud

Small businesses may be harmed by a wide variety of marketing tactics that are a form of mass marketing fraud schemes. The goal of mass marketing fraud is to trick a business into handing over money or personal information for products or services that will never be delivered.

Sometimes business goods are sold in excessive quantities, or the scammers may reach an employee who is fooled into accepting an order for products such as office supplies (printer toner is a favorite item). The cost may be only $1 or a few hundred dollars in excess costs or, even if at current market prices, may be of poor quality. The scammers will refuse to allow the product to be returned. The small business is then billed for the goods. If it does not have the legal capacity to fight the fraudulent deliveries, which a great many small businesses do not have, the company may just pay the invoices to settle the matter.

Mass marketing fraud schemes use a confidence person who masquerades as the usual office supply provider. The scammer offers office supplies at reduced prices in anticipation of price increases. The invoice is paid, but the supplies never arrive, or the company may be sent and billed for goods it does not need or want. Internal threats from employees may worsen this type of fraud.

Invoice scams involve sending fraudulent invoices that claim goods were delivered that were never shipped. Phony invoices that go to the company's business office may be paid before the scam is discovered. The criminals often send invoices with higher costs than were agreed to in the bargain. If there is poor communications within the company, they may be able to receive payment without anyone in the company being the wiser. Or new employees may innocently pay invoices that would arouse the suspicions of those more experienced in business.

Scammers prey on small businesses by invoicing for office supplies that the company never ordered or by overcharging on an invoice. Every year, the Better Business Bureau receives thousands of complaints about deceit by office supply companies.

Asking an organization to pay for an advertisement in a business directory is another mass marketing scam that hits small businesses. The ad is paid for, but the business directory is never published. Another form of directory fraud that is commonly employed against small businesses is the deceptive sales of directories. Falsely claiming to represent the Yellow Pages, the scammer calls the targeted small business and say that the company's entry is being updated, or the scammer may lie and say that the entry will be put into an online directory. The business is later billed for services that were not delivered, or billed large sums of money for services it did not agree to accept. Payment may be demanded for advertisements in a "yellow pages" that is a cheap copy of the real Yellow Pages.

Ordinary citizens who are seeking to open a small business may experience fraud in lending origination schemes. Local institutions may employ corrupt individuals who conspire with others to take advantage of the innocent. This has frequently happened to immigrant businesspeople who, not knowing English and being unfamiliar with American business practices, fall prey to criminals who may make promises about land, equipment, buildings, and other things. The criminals take the victim's money and then disappear.

Vanity awards are scams that may be flattering but are really just money-making schemes. The business owner is called and informed that he or she has been nominated for inclusion in a "who's who" of rising business achievers or professionals. The individual is asked to spend perhaps $100 or $1,000 for an annual inclusion or for a lifetime membership. The award, a plaque or a certificate, may be sent, but the award has little merit because the organization does not really represent anyone other than the scammer.

Challenges and Prevention

The economic difficulties that began after 2007 have led many small companies experiencing business difficulties or needs to seek funding. Many small business owners have been victimized by loans offered via the Internet or by claims that they were to receive a grant. The grant may require some kind of monetary fee, which is fraudulently taken from the victim without any return or only poor performance in return.

Small business fraud can occur during times of great growth in a company because managers are challenged just to keep up with the increased workload. On the other hand, times of economic distress can also see an increase in small business fraud, as desperate people do desperate things. Years may pass before someone notices the fraud.

In order to prevent and contain fraud, small businesses need to identify who is to handle fraud control. Who deals with misconduct? Solutions include establishing a working group to keep abreast of potential internal and external fraud threats to the company. Roles should be assigned in order to define responsibilities, including antifraud training.

Fraud awareness training may involve simple assemblies of employees or may be more elaborate. Awareness of fraud is vital for all employees, as well as owners and investors of a small business. Losses can destroy a small business that is financially frail.

To prevent fraud by those who touch or track money, it is necessary that thorough background checks be conducted on new employees. It is also important that those who receive funds for a company are not the same employees who disburse funds for a company. A system of financial division of labor will reduce the likelihood that a single individual can engage in some kind of financial fraud. It is also important that accountants take vacations. Their time off may reveal wrongdoing.

Organizations that combat fraud in small businesses include the Association of Certified Fraud Examiners (ACFE). The ACFE publishes the Report to the Nations on Occupational Fraud and Abuse. The report seeks to define and describe emerging small business fraud techniques.

Andrew Jackson Waskey
Dalton State College

See Also: Accounting Fraud; Advertising Fraud; Bad Checks; Bankruptcy Fraud; Better Business Bureaus; Caveat Emptor; Credit Card Fraud; Computer Hacking; Embezzlement; Employee Crimes; Forensic Auditing; Identity Fraud and Theft; Internet Fraud; Marketing Fraud.

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Sorkin, Ira

Ira (Ike) Lee Sorkin is a New York City criminal defense attorney who specializes in the defense of white-collar and corporate offenders. Indeed, he is well known for his vigorous defense of high-profile clients. His clients have been persons and corporations charged with crimes that include false filings, perjury, bribery, securities fraud, insider trading, obstruction of justice, Ponzi schemes, accounting fraud, violation of the Foreign Corrupt Practices Act, and obstruction of justice. His most infamous client was the $65-billion Ponzi schemer Bernard Madoff in 2009. Indeed, Sorkin's own parents had invested funds with Madoff until 2007, when their account was voluntarily closed. Sorkin became the subject of immense scorn and death threats for his efforts to negotiate a reduced sentence of 12 years for Bernard Madoff, based on his client's cooperation with investigators. Madoff was eventually sentenced to 150 years in prison.

Some of Sorkin's other better-known clients include convicted arms dealer Monzer al-Khazar in 2008; Vincent Montagna, the Tiburon Partners hedge fund manager who faced charges of defrauding millions of dollars from his investors in 2009; Credit Suisse traders Salmaan Siddiqui and David Higgs, who both pleaded guilty in 2012 to falsifying records and committing wire fraud; and brothers Jeffery and Robert Wolfson, who were charged with illegal short selling involving $17 million. Another client was insider trader Igor Poteroba in 2010, whose tips about impending acquisitions in the health sector allowed his friend Aleksey Koval and others to gain over a million dollars in profits.

Ira Sorkin was born on May 30, 1943, the child of Nathan and Rosalie Sorkin. He married his wife, Ellen, in 1969 and they had two sons, Roger David Sorkin and Peter Neil Sorkin. Sorkin completed a bachelor's degree at Tulane University in 1965 and a Juris Doctorate from George Washington University law school in 1968. His legal career has included work as an attorney with the Securities and Exchange Commission from 1968 to 1971, to which he returned from 1984 to 1986, and work as a prosecutor from 1971 to 1976, then as senior counsel in the federal Southern District of New York (Brooklyn).

He later worked in private practice with Squadron, Ellenhoff, Plesent and Lehrer from 1977 to 1984 as a partner; he remained with this group (as Squadron, Ellenhoff, Plesent and Sheinfield) from 1986 to 1995. Sorkin then spent less than two years with Nomura Securities International (1995–97) as its chief legal officer, then returned to Squadron, Ellenhoff, Plesent and Sheinfield from 1997 to 2002. From 2002 to 2005, he was a partner at Carter, Ledyard and Milburn. In 2005 he joined Dickstein Shapiro, where he was a coleader of the firm's white-collar criminal defense and investigations area. Since 2010, he has been a member of the white-collar defense group at Lowenstein Sandler.

Push for Effective Investigation

Sorkin's work at the Securities and Exchange Commission, both as a prosecutor and then as a private defense attorney, informed his conclusion that many fraudulent trade schemes might be uncovered if investigators were more effective. He suggests that focusing on the following four key questions would deter an investment Ponzi scheme:

- If a firm is trading overseas, which banks are involved?
- If buying billions of dollars in securities, where are these funds custodied?

- Where are the depository trust corporation (DTC) sheets to indicate contra-parties in the trade?
- Where are the ledgers that indicate how investors have been charged for trades performed on their behalf?

Author Andrew Kirtzman reported that Sorkin used this knowledge to delay the discovery of even Madoff's schemes by having Madoff's accountant Frank Avellino claim successfully in court that audit compliance was too expensive.

Sorkin has compared his willingness to defend notorious white-collar and corporate criminals to a doctor's willingness to offer medical treatment to an ill villain. Nevertheless, Sorkin has been accused of assisting companies to conceal and operate their Ponzi schemes. One such example is the $462.5 million theft by Towers Financial, led by Steven Hoffenberg, that was uncovered in 1994. In the 1980s, as investigators closed in on Tower Financial's fraud, the law firm employing Sorkin—Squadron, Ellenhoff, Plesent and Sheinfield—appears to have delayed the discovery of the enormity of the fraud by having Tower Financial admit to limited wrongdoing to facilitate a deal on less-serious matters. For the most part, Sorkin's work with persons convicted of white-collar and corporate crime has involved mitigating their sentences.

Camille Gibson
Prairie View A&M University

See Also: Bernard L. Madoff Investment Securities LLC; Madoff, Bernard L.; Madoff Ponzi Scheme; Picard, Irving; Ponzi Schemes; Securities and Exchange Commission, U.S.

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Spitzer, Eliot

Eliot Laurence Spitzer, the 54th governor of New York, was born on June 10, 1959, to Bernard and Anne Spitzer. He is married to Silda Wall Spitzer and has three daughters. Spitzer was raised in New York and attended Princeton University and Harvard Law School. After law school, he joined the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP. He later joined the Manhattan district attorney's office, where he focused on organized crime. He directed the investigation of the Gambino family's monopoly of Manhattan trucking and garment industries. After leaving the district attorney's office, he joined a private law firm.

Despite his campaign platform of honesty and integrity, Spitzer became embroiled in various scandals while in office, including skirting campaign finance limitations, misuse of the state police, and prostitution. David Paterson, his lieutenant governor who succeeded him, was himself engaged in ethically questionable acts of misusing the power of his office.

Political Career

In 1998, Spitzer was elected New York State's attorney general but was soundly criticized for accepting a multimillion-dollar campaign loan from his wealthy father. Spitzer and his father were believed to have used the loans to circumvent campaign contribution limitations.

Once elected, Spitzer elevated the office by increasing the number of criminal prosecutions for white-collar crimes. Citing the Martin Act of 1921 as the basis for his authority, Spitzer issued subpoenas for corporate documents and witnesses during investigations of corporate fraud and illegal activity. Although such cases were traditionally pursued by federal prosecutors, Spitzer broke with tradition and prosecuted a substantial number of corporate officers and filed a number of civil claims against corporations. Some of his notable prosecutions involved fraud at American International Group (AIG); Richard Grasso, former chairman of the New York Stock Exchange; and predatory mortgage-lending practices. Spitzer also targeted Internet fraud, securities fraud, and environmental protection interests.

Spitzer announced in 2004 that he would seek the Democratic nomination for governor. Early in the race, Spitzer was able to secure endorsements from Democrats throughout the New York area and nationally. He selected David Paterson as his running mate. Spitzer and Paterson won notable support from two well-respected former mayors, David Dinkins and Ed Koch, as well as from the Democratic Party of New York State. Running on a platform of acting ethically and with integrity, Spitzer defeated his opponent by a comfortable margin and was sworn in as the governor of New York on January 1, 2007.

Spitzer's early efforts as governor caused significant friction with members of his own party. Spitzer proposed a number of controversial initiatives during his gubernatorial tenure. In April 2007, he proposed a bill that would legalize same-sex marriage; however, the measure failed in the New York senate, with opposition to the bill led by senate majority leader Joseph Bruno.

Troopergate and Undocumented Immigrants

Later in 2007, Spitzer's administration was chastised by the New York state attorney general's office after an investigation revealed that the administration had misused the state police. For political gain, Spitzer's staff used state police resources to monitor and track Bruno's travels, implying that he was acting unethically and with the intent to embarrass him politically. The governor's staff had also created and disseminated media coverage on Bruno's travels and use of state aircraft and police escorts. Spitzer and his administration were admonished for wasting taxpayers' resources for political gain and cleared Bruno of any wrongdoing. The investigation later became known as Troopergate and led to the suspension and reassignment of two of Spitzer's top staff.

In September 2007, then governor Spitzer issued an executive order that would allow undocumented immigrants to acquire driver's licenses without regard to immigration status. This order set off a firestorm of protests among both Republicans and some Democrats. Spitzer altered his proposal only after discussions with the Department of Homeland Security; however, the changes were not significant enough to gain the support of the state senate. After the state senate successfully opposed the order, Spitzer made additional concessions by proposing a third edition of the driver's license; however, after a public opinion poll found that most New York residents disagreed with the proposed plan, Spitzer abandoned the proposal in its entirety. Shortly after this failed effort, Spitzer's approval rating continued to plummet.

Prostitution Scandal

Although Spitzer based his campaign on acting responsibly as a public servant, he had several missteps that called his integrity into question, none more noted than what became known as the Eliot Spitzer prostitution scandal. The governor became the focus of a federal investigation after his bank grew suspicious of some of his money transfers. Investigators first believed that Spitzer may have been hiding money paid to him as a bribe; however, the investigation uncovered Spitzer's use of high-class prostitutes. It was suspected that Spitzer had also used the prostitution service while he was the attorney general and had spent approximately $80,000 for prostitution services during the years he frequented the service.

The *New York Times* revealed that for some time, Spitzer had been a patron of an exclusive prostitution organization known as the Emperor's Club VIP. The *Times* investigation revealed that Spitzer had booked a two-hour appointment with call girl Ashley Alexandra Dupré. Dupré, whose given name is Ashley Youmans, commanded $1,000 per hour for her services. The investigation further revealed Spitzer had liaisons with other women from the club and over a six-month period had spent approximately $15,000.

After Spitzer's indiscretions were made public, some lawmakers called for him to be impeached. On March 12, 2008, Spitzer announced that he would resign from the governor's office.

Post-Political Career

After resigning from office, further investigation suggested that Spitzer had used campaign funds to pay for two hotel rooms possibly used for his encounters with call girls. The U.S. Attorney's Office subsequently found no credible evidence that Spitzer had misused campaign funds and did not bring charges against him.

After his resignation as governor, Spitzer took on a number of roles, including columnist, adjunct professor, public speaker, and anchor for programs on MSNBC and CNN. He has hosted his own television show titled *Viewpoint With Eliot Spitzer* on Current TV.

Tonya Y. Willingham
Independent Scholar

See Also: American International Group; Clinton, William J.; Corruption; Creative Compliance; Giuliani, Rudy; Paterson, David; Public Corruption; Prostitution; Revolving Door.

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Standard & Poor's

Standard & Poor's (S&P) is a 150-year-old financial rating service. It has offices in 23 countries and is a leader in producing market intelligence on stocks, bonds, and other financial markets. Its market-intelligence services provide credit ratings, indices, investment research, and risk evaluations and solutions.

The S&P rating system was introduced in 1923, but its origins are in the *History of Railroads and Canals in the United States*, published by Henry Varnum Poor in 1860. Poor compiled a thorough report on the financial and operations condition of railroad and barge companies operating in the United States. With the help of family members, including his son, Henry William Poor, he published the book annually for years afterward.

Luther Lee Blake founded the Standard Statistics Bureau in 1906. Its purpose was to provide financial information about companies that were not in the rail transportation business. To keep its information current, it used a system of 5-inch by 7-inch index cards. In 1916, it began to rate corporate bonds, and began rating municipal bonds in 1940. It merged with Poor's Publishing Company in 1941 to become Standard & Poor's. In 1961, S&P was acquired by the McGraw-Hill Companies. Today, it operates as the Financial Services Division. McGraw-Hill was formed in 1909 from the merger of the McGraw Publishing Company (founded by James McGraw in 1899) and the Hill Publishing Company (founded in 1902 by John Hill).

The Standard Statistics Bureau began rating stock markets in 1923 in a stock market index of 233 American companies. Both Poor's Publishing and Standard Statistics Bureau advised their customers to liquidate their holdings well prior to the stock market crash of 1929. After merging in 1941, S&P began to publish a bond guide. By 1950, S&P had begun to use computers extensively to handle its growing business. In the 1960s, additional rating services were developed. In 1969, it began publishing the Committee for Security Uniform Identification Procedures (CUSIP), which made the identification of securities uniform.

In 1973, the Securities and Exchange Commission (SEC) designated S&P as the Nationally Recognized Statistical Rating Organization (NRSRO). The designation is made in recognition of the common use and the objective presentation of S&P data. In the 1980s, S&P opened offices in London and Tokyo to gain direct access to major overseas financial centers. In the 1990s, it opened offices in several European cities.

The credit rating system used by S&P is the company's analysts' opinion of the creditworthiness of a borrower in general or the creditworthiness of a borrower and a specific debt or financial obligation. It is very important to those who want to judge the market value of a debt instrument in the likelihood of being repaid.

The S&P credit rating system and other indices were criticized well before the 2008 housing bubble collapse. In 2003, the SEC sent a report to Congress that was generated by the dot-com stock bubble collapse of the late 1990s. The complaints were that the series of corporate scandals and defaults were not being publicized in a timely manner. In addition, critics were complaining about conflicts of interest within the agencies because they were paid to rate corporate debt. Finally, the question was being raised: was it appropriate for S&P be an NRSRO? By 2007, S&P, Moody's, and other rating agencies were being summoned to testify before Congress about their operations for rating mortgages. Critics were complaining about the quality of the ratings; however, the complaints were about the downgrading of the ratings for mortgages, which were being reduced in creditworthiness.

When the U.S. housing bubble burst and the subprime crisis ensued, S&P and other rating agencies were among those blamed. The creation of collateralized debt obligations (CDOs) and other forms of mortgage-backed securities (MBSs) had occurred in part because S&P and other rating agencies had given safe ratings to what had become unsafe securities. Critics argued that rating agencies had an inherent conflict of interest when they were paid to rate financial instruments by those who were issuing them. Criticism of S&P became very political when it began to downgrade the rating of sovereign debt instruments. The downgrading of the credit rating of the U.S. government from AAA (the highest) to AA+ in 2011 brought denunciation from the Barack Obama administration. Warnings of further downgrades were being issued in 2012.

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See Also: Collateralized Debt Obligations; Moody's Corp.; Mortgage-Backed Securities; Savings and Loan Fraud; Securities and Exchange Commission, U.S.; Subprime Loans.

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Standard Oil Co.

Standard Oil is synonymous with corporate greed and ruthless business practices. As a symbol of the great robber barons era of the late 1800s and early 1900s, Standard and other titans in the railroad, banking, coal, and sugar industries amassed wealth by engaging in unethical business practices, including monopolization, fraud, price fixing, and exploitation of labor. Eventually, public outrage and federal intervention forced the dismantling of the monopolistic Standard Oil companies.

John D. Rockefeller, in partnership with four other businessmen (William Rockefeller, Henry Flagler, Samuel Andrews, and Stephen Harkness), established the Standard Oil Company, based in Cleveland, Ohio, on January 10, 1870. Prior to creating Standard, Rockefeller was co-owner of a small yet profitable commission firm (Clark & Rockefeller) that traded in grain, hay, meats, and other commodities. The success of this company allowed Rockefeller to venture into other areas of business, including the emerging petroleum industry. In 1859, the opening of the nation's first commercial oil well in Titusville, Pennsylvania (an area known as the Oil Regions), sparked great enthusiasm for profitable business opportunities.

Rockefeller and his business partner, Maurice Clark, teamed with oil expert Samuel Andrews in 1863 to form a refinement firm—Andrews, Clark & Co. In short order, the company became one of the largest refiners in Cleveland, but internal strife concerning expansion eventually led to the disbandment of the company. Rockefeller allied with Andrews to outbid Clark for the rights to the company, and in 1865 the firm was renamed Rockefeller & Andrews. Rockefeller's younger brother William aided in managing the restructured company and helped it enhance its status in the oil industry. By 1867, the company was renamed Rockefeller, Andrews, & Flagler, after Henry Flagler and silent partner Stephen Harkness invested in the company. Flagler, who possessed transportation expertise and connections, would become one of Rockefeller's closest confidants. In an effort to seek an infusion of capital for greater expansion purposes, the company incorporated and became a joint stock corporation under the name Standard Oil Company, which offered 10,000 shares valued at $1 million.

Titan of the Industry

Almost immediately, Standard became a national oil titan, primarily because of its advantageous relationship with the railroad industry. Flagler's close ties with railroad leaders helped Standard secure substantial rebates and discounts. In addition, Standard's partnership with the South Improvement Company (SIC) afforded the company generous kickbacks. Established by railroad leaders as a means of stabilizing transportation costs, SIC provided joint ownership to the largest oil refineries, including Standard. Nonmember oil refineries had to pay full transportation costs, and the railroads used a percentage of these expenditures to make monthly payments to SIC members. Beyond its monopoly over railroad transportation costs, Standard leveraged similar strategic alliances with leaders in the shipping, gas, raw material, and banking industries. The breadth of these relationships stifled competition, as rivals had to pay both higher transportation and production costs. Further, Standard convinced major banks to forgo any extension of credit or loans to their competitors.

The March 22, 1905, cover of Puck *features Henry Harrison Tucker, Jr., a Cherryvale, Kansas, small-time oil refinery owner, as the youthful David determined to sling down Goliath (John D. Rockefeller), who wields a club labeled "Standard Oil." The oil giant used newspapers, judges, politicians, regulatory agencies, detectives, and saboteurs to stop Tucker's battle for justice.*

The accumulation of these advantages gave Standard the financial means to aggressively acquire most of its rivals, and by the 1890s, it controlled approximately 95 percent of the oil industry. Subsequently, Standard greatly expanded its operations to other industries such as metals, shipping, and petroleum by-products. More significantly, Standard's dominance allowed it to engage in crushing monopolistic practices such as price fixing or price gouging that adversely affected competitors as well as consumers.

The financial success subjected Standard Oil to intense scrutiny and acrimony. In *The History of the Standard Oil Company*, muckraker Ida Tarbell (1904) wrote a scathing critique of the company that chronicled its unscrupulous business practices and ignited great public ire. Standard's monopolistic practices also necessitated serious federal government intervention. The Sherman Antitrust Act of 1890 was the first landmark legislation enacted by the U.S. Congress to address unfair business practices. Named for Senator John Sherman of Ohio, the act prohibited activities that restricted interstate commerce and competition in the marketplace.

This act was amended in 1914 by the Clayton Act, which expanded the scope of antitrust laws by forbidding any restraint of trade or practices that suppressed free market competition. Likewise, the Elkins Act of 1903 targeted the railroad industry and its use of rebates and kickbacks to favor monopoly interests. In 1906, the U.S. federal government directly targeted Standard and filed formal charges against the company. Then in 1911, the U.S. Supreme Court found Standard

Oil guilty of antitrust violations and ordered the firm to be dismantled into 33 smaller oil companies. Eventually, many of these smaller businesses would become industry leaders such as ExxonMobil, Chevron, and Amoco.

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See Also: Antitrust, Federal Trade Commission; Antitrust, U.S. Department of Justice; Capitalism; Chevron Oil Co.; Clayton Antitrust Act; Illegal Competition; Labor Crimes; Oligopoly; Price Fixing; Robber Barons; Sherman Antitrust Act.

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Stanford, Leland, Sr.

Leland Stanford, Sr. (1824–93), was born on March 9, 1824, to a relatively wealthy farming family in Albany County, New York. Stanford practiced law in New York and Wisconsin before traveling to California to participate in the Gold Rush. He went into business with his brothers, investing in the mining industry and opening several successful businesses in Sacramento, San Francisco, and other California cities. Prominent in Sacramento's Republican circles, Stanford ran for governor twice, winning a full two-year term from 1862 to 1863. He also represented California in the U.S. Senate from 1885 until his death in 1893. He helped found Stanford University in 1885 and held the position of president of the Occidental and Oriental Steamship Company. The predominant source of Stanford's notoriety, wealth, and potentially illegal business practices came from his work in California's rail industry as president of the Central and Southern Pacific railroad companies.

In the late 1850s, Stanford met with fellow Sacramento businessmen Collis P. Huntington, Mark Hopkins, and Charles Crocker to discuss the development of a transcontinental railway. In 1861, the men, who became known to history as the Big Four, created the Central Pacific Railroad Company. Serving simultaneously as the governor of California and president of the Central Pacific, Stanford formally approved grants for the same transcontinental railroad that his company would soon build. To the frustration of California's nativists, his company brought in thousands of Chinese laborers at low wages to help build the railroad. In 1869, the Central Pacific linked with the Union Pacific's line in Promontory, Utah, serving as the western portion of America's first transcontinental railroad.

The Big Four also created the Southern Pacific Railroad Company in 1865, which monopolized California's railways and politics. The company controlled rail transportation running from the West Coast and set high, if not exorbitant, rates for travel and the transportation of goods. The commercial monopoly begot a political monopoly, which lasted for decades in California alone. For instance, the state legislature established a small regulatory commission in the early 1880s to control shipping tariffs but authorized Stanford and his colleague Huntington to name two of the three commissioners. Under Stanford, the company likely spent hundreds of thousands of dollars influencing lawmakers, though he regularly claimed that he worked to defeat harmful legislation rather than to get special treatment or favorable deals. It was alleged but never proven that Stanford used state funds allotted for the construction of the main line of his railroad to purchase many of California's already existing short lines.

Finally, the creation and practices of the Contract and Finance Company ranks high on the list of Stanford's most questionable business activities. The Big Four organized the finance company in 1867 and used it to award contracts to themselves in their capacity with Southern Pacific. Consequently, they could transfer money, assets, and bonds between the two, keeping the Contract and Finance Company perpetually in debt while obscuring the profits of the rail company. Stanford died a very wealthy man, passing away at his home in Palo Alto on June 20, 1893.

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See Also: Crocker, Charles; Hopkins, Mark; Huntington, Collis P.; Interstate Commerce Commission, U.S.; Robber Barons.

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Stark Act

The Stark Act refers to federal legislation that is commonly associated with federal efforts to control financial kickbacks in the health care field. Although frequently thought of as a single piece of federal legislation, the current collective provisions of the Stark Act were actually enacted, amended, revised, and integrated over a period of time.

Collectively, the legislation attempts to prevent physicians from obtaining unprincipled financial benefits that might accrue from patient referrals made in instances when a conflict of interest exists. The original provisions of the Stark Act were passed in 1989 as a part of the larger Omnibus Budget Reconciliation Act. The provisions of this preliminary legislation are commonly referred to as Stark Act I given that additional revised versions of the legislation would be forthcoming. In essence, Stark I prohibited physicians from referring patients to laboratories for clinical lab services if the physician or an immediate family member of the physician had a vested financial interest in the laboratory to which the patient was being referred. The ostensive purpose of the initial legislation was to prevent perceived abuses in the existing physician referral system, to protect the public from unscrupulous physicians who might place financial gain above the provision of sound patient care, and to save federal dollars that might otherwise be wasted as a result of fraudulent medical referral practices. The passage of Stark I signaled an increased willingness to legislate certain aspects of the physician-patient care relationship at the federal level. However, there were some lingering perceptions that the legislation did not go far enough.

Stark II and III

In 1993, the Stark Act was amended in an attempt to provide greater applicability to a wider array of health care services. These amendments, collectively referred to as Stark II, prohibited referrals for identified designated health care services when the referring physician had a financial interest in the agency, office, or organization to which the patient was being referred. Seen in this light, the Stark II provisions can be viewed as the means by which the reach of the original provisions of the act were broadened to include other types of institutions providing a wider variety of health care services, such as physical therapy, radiology, home health care, inpatient and outpatient hospital services, and a variety of other patient care services and medical products. The passage of Stark II raised concerns regarding whether the legislation interfered in the provision of medical services or undermined the inviolability of the physician-client relationship. Additionally, some confusion existed in regard to which practices were and which were not allowed under the act in any given context.

Concerns of this nature helped spur passage of another set of amendments and modifications to the original Stark Act. These changes went into effect in 2007 and are collectively referred to as

Stark III. Rather than providing sweeping and substantive revisions to the previous legislation, Stark III provided clarification regarding existing provisions. For instance, Stark III provided additional clarification in regard to the act's provisions regarding physicians in a group practice and the types of permissible referral relationships that can exist between physicians and hospitals. In order to help ensure compliance, the Stark Act provides for a number of penalties when violations are discovered. The severity of potential punishments ranges from the denial of payment and mandated restitution to fines and exclusion from participation in the Medicare and Medicaid programs.

The provisions of the Stark Act have evolved and changed over time. However, one constant feature of the legislation has been its lack of universal applicability and the existence of a number of excluded practices or exceptions. In at least some instances, a number of common practices are not subject to the provisions of the Stark Act. For example, exceptions to the Stark Act are recognized in situations where fair market compensation arrangements are present or in rural areas where the supply of health care services are limited.

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See Also: Bribery; Corruption; Ethics; Health Care Fraud; Insurance Fraud; Kickbacks; Medicare and Medicaid Fraud; Pharmaceutical Industry.

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State Crime Theory

State crime theory reflects the role of a nation, or government agency, and/or collusion between policy makers and entities with positions of power and influence as the perpetrators of crime. Criminological theory has focused historically on explaining what stimulates an individual to commit crime. The emphasis has been on crimes that elicit fear within the imaginations of those who would envision that the crimes occur by the misdeeds of the "other." The U.S. government has focused on the war on drugs, the war on terrorism, and the war on gangs and juvenile delinquents. Despite catastrophic economic failures caused by white-collar offenses that were stimulated and enhanced by government action, few efforts have focused on mitigating financial crimes. Additionally, in spite of accelerated rates of asthma linked to air pollution, a record amount of oil spills on American coastlines, and compromise of underground water supplies because of leaks from oil and gas wells, environmental crimes have not received the attention of policy makers.

Notable explanations to elucidate why those in power would direct attention toward less impactful events include the theories of sociologist Karl Marx. A Marxist perspective within the study of crime reflects the notion that crime is the manifestation of conflict between socioeconomic classes. Although there is legitimacy within this viewpoint, postmodern America does not exhibit such a simplified position. Those who identify themselves as middle class do not recognize that they have slipped into the lower socioeconomic classes according to financial and economic measures. This perpetuates a conservative approach to the study and understanding of crime that focuses on offenses committed by those in the lowest socioeconomic class, namely, petty theft, shoplifting, vandalism, low-level fraud such as writing bad checks, and drug possession.

Concentrating law enforcement and prosecution efforts on street-level violations rather than state-facilitated crimes is achieved partly through the media. Television and newspaper reports focus on individual offenders who act violently, particularly those with gang affiliations or destitute personal histories. Public opinion on political and governmental crime is often limited because of the media's failure to expose those in power. Despite empirical evidence that white-collar offenders have characteristics and contact with law enforcement in the same manner as lower-level offenders, those in power are depicted as rational players who exercise discretion rather than engaging in emotionally gratifying behaviors.

Although some would argue that the role of the state is to control territory and resources, others believe governments have been acting to protect an artificially privileged ruling class, expand influence and privilege of individual members who work within the government, and exploit publicly owned natural resources to enhance the wealth of a few. Governments achieve this through taxation, regulation, government contracts to selected companies, and political pressure leveraged on enforcement agencies.

Government Imposition

The state is the only entity that can engage in violence and refer to the action as law. President George W. Bush's proclamation of engaging in a "preemptive strike" by initiating war in Iraq drew considerable criticism, yet no action was undertaken to hold members of the U.S. government accountable to international criminal law, which prohibits such action. The state is able to employ tactics that would be considered criminal if enacted by any other party or group. Notably, groups that engage in antagonistic behavior toward large corporations are frequently labeled as terrorist organizations or are dismissed as liberal, suspect, or fringe. Corporate-owned media co-opt the image of marginalized groups to further officials' positions.

State crime theory applies to government actions that result in the imposition of one nation's will and desire to control markets and resources. This is accomplished through repressing governments in other countries either through military and/or financial support to opposing factions, or threat or actual invasion. This has occurred in Central America and Africa, as the United States has sponsored civil wars in Angola as well as overthrown democratically elected leaders in Honduras and Panama. The public has not been in a position to question government motives and actions because factual information relating to such events is often withheld from public scrutiny. Corporate-owned media outlets have not been critical of actions the state characterizes as taken on behalf of "security" or "national interests." As a result, government secrecy has been routinized, as well as cover-ups, relating of false or misleading information, and lack of accountability. Former Central Intelligence Agency (CIA) director Richard Helms was convicted of perjury for lying to a Senate committee hearing about actions taken by the CIA in Chile. Helms received a very light sentence because the government did not want to expose actions taken by the government during his trial.

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See Also: Conflict Theory; Domhoff, G. William; Foreign Corrupt Practices Act; Globalization; Iraq War; TPolitical Assassinations; Public Corruption; errorism; War Crimes; War on Drugs; War on Terror; Watergate.

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Stavisky, Serge

Serge Alexandre (Sacha) Stavisky was the embezzler behind the Stavisky Affair (in France, L'Affaire Stavisky). Prior to the Bernard Madoff case in 2009, it was referred to as the "swindle of the century" in 1933. Stavisky had issued millions of francs in false bonds backed by government officials and by the existence of jewels that turned out to be fake. The bonds were sold to life insurance companies for the city of Bayonne, France. This threatened the French economy and led to the government failure of two French leaders—Camille Chautemps and, later, Edouard Daladier, who resigned in the aftermath of street riots. Indeed, the fraud generated such public ire that in France the name Stavisky became synonymous with "thief." Stavisky was arrested in 1927 for this offense but, given his political connections, he avoided prosecution until 1933. The trial was one of enormous intrigue, with its reach into French society and the allegations of cover-ups. Riots resumed in 1934, leading to the injury of thousands and the death of 50 people.

Early Interest in Crime

Stavisky, of Jewish ethnicity, was born in Kiev, Ukraine, in November 1886. As a youth in school, he developed a fondness for cheating his peers out of their belongings. He attended casinos, theaters, and racetracks whenever possible. His first arrest, in his early 20s while in the company of like-minded peers, was for embezzlement. He was sentenced to 19 days incarceration. This incident did not bring repentance but a determination to be more cautious at crime. His second arrest was in 1912, and he served a six-month sentence. Thus, Stavisky lived a life of excitement that involved forgery and various white-collar offenses spanning 30 years. To continue his operations in France after a few arrests, he began using Alexandre as a last name instead of Stavisky. Under the name Alexandre, he threw lavish parties for France's elite, many of whom were unaware of his common criminal background.

Stavisky and his parents, Dunia and Emmanuel, had emigrated to Paris, France, in 1889 with very little. There, he engaged in securities fraud and the passing of stolen bonds. One of his illicit schemes involved a clinic in which he offered services to women. There, he used a fake device called a *matrascope*, which he claimed diagnosed pregnancies. The clinic brought him fame and contact with France's elite. Indeed, he married famous Coco Chanel model Arlette Simon. Stavisky was relatively attractive, charming, and intelligent, so he had many friends. At times, he served as a police informer, which rendered him insights into law enforcement operations.

In 1926, he was sent to La Sante Prison for the theft of millions of francs in a shady stock arrangement. Stavisky was able to continue his schemes because often his powerful victims had secrets of some wrongdoing that they did not want revealed. Thus, Paris' prosecutor Georges Pressard apparently postponed and hindered Stavisky's trial many times—19—while the mayor and others in government assisted Stavisky to open a pawn shop in Bayonne, France. From this business, he used stolen jewels as collateral for the issue of fraudulent bonds for over 80 million francs in the Stavisky Affair.

The embarrassment of Stavisky's lifestyle had led his own father to commit suicide and, reportedly, others caught in his schemes did likewise. Although Stavisky managed to negotiate and bribe himself out of incarceration numerous times, his wife, Arlette, and 15 others did not escape imprisonment. Nineteen persons were tried for involvement in Stavisky's crimes, including Bayonne mayor Joseph Garat. A magistrate, Albert Prince, believed to know many secrets in the Stavisky Affair, died mysteriously. Two former French ministers who had been lawyers for Stavisky, Rene Renoult and Albert Dalimier, were also investigated.

Stavisky was found shot to death on January 8, 1934. The police called it suicide, but some believed that he had been killed by the police to protect influential persons who were involved in Stavisky's frauds. The scandal was also used by some as an excuse for an anti-Semitic response.

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See Also: Extortion; Forgery; Insurance Fraud; Madoff, Bernard L.; Public Corruption.

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Steffens, Lincoln

Lincoln Steffens was an American author and investigative journalist who exposed white-collar crime and corruption among business leaders, government officials, and politicians in the late 19th and early 20th centuries. Believing strongly in democracy and honesty, Steffens sought to ensure that America's leaders upheld the highest standards possible. He had a knack not only for gaining the confidence of the wealthy elite but also for communicating with the nation's less fortunate citizens in direct, straightforward prose.

Steffens himself was raised in relative prosperity—born Joseph Lincoln Steffens in San Francisco on April 6, 1866. His father, born in eastern Canada, worked as a schoolteacher, clerk, and bookkeeper before becoming director and vice president of a bank in Sacramento. His mother, born in England, worked as a seamstress before marrying and raising four children. Their palatial Sacramento home became the governor's mansion when the family sold it to the state of California in 1903.

After graduating from the University of California, Berkeley in 1889, Steffens had sufficient funds to continue his education in Europe: studying philosophy in Berlin, art history in Heidelberg, psychology in Leipzig, and ethics in Paris. In 1891, he married Josephine Bontecou, a fellow American studying overseas, with whom he moved to New York in 1892.

Thanks to his father's connections, Steffens found work as a general assignment reporter for the *New York Evening Post*, where he quickly distinguished himself by unraveling a Wall Street scandal. His enthusiasm for covering everything from fires and fights to labor and politics, as well as his ability to charm everyone from police officers to power brokers, brought him increased attention, prestige, and contact with notable New York reformers, including Jacob Riis and Theodore Roosevelt.

In 1897, Steffens became city editor of the *Commercial Advertiser*, New York's oldest newspaper, and four years later managing editor of *McClure's Magazine*, a popular political and literary periodical, where he worked with such distinguished writers as Ray Stannard Baker, Hamlin Garland, Ida Tarbell, and William Allen White. Quickly realizing that Steffens would be more effective if not stuck behind a desk, publisher S. S. McClure sent him into the field to investigate municipal corruption in Chicago, Minneapolis, New York, Philadelphia, Pittsburgh, St. Louis, and elsewhere. The result was a series of articles in *McClure's*, subsequently collected into the book *The Shame of the Cities* (1904), which fearlessly exposed the hypocrisy and disgrace of America's urban centers. Because *McClure's* had also published Tarbell's exposé of the Standard Oil Company and Baker's crusading reports on labor and economics, it became the journalistic hub of the muckrakers, a term coined by President Roosevelt in 1906 to describe those who—like a character in John Bunyan's novel *The Pilgrim's Progress* (1678)—raked muck or filth.

Muckraking

To be sure, there was no shortage of dirt to uncover in American life at this time. Even after Steffens left *McClure's* in 1906 and became a freelance journalist in 1908, he continued to champion reform by exposing land fraud in the Pacific Northwest, graft and bribery in California, corruption in Boston, and more. During this time, he published two additional books that were compilations of previous articles: *The Struggle for Self-Government: Being an Attempt to Trace American Political Corruption to Its Sources in Six States of the United States* (1906), which attacked malfeasance in Illinois, Missouri, New Jersey, Ohio, Rhode Island, and Wisconsin; and *Upbuilders* (1909), which pointed more optimistically to five reformers who had successfully challenged corporate and political corruption. Following the death of his wife in 1911 and the decline of muckraking journalism, Steffens's insatiable curiosity and rigorous reporting skills led him to travel widely in search of stories on new revolutionary movements around the world, especially those in Mexico and the Soviet Union.

In 1924, Steffens married Ella Winter, a youthful activist, with whom he fathered his only child, Peter Steffens. After moving in 1926 to Carmel, California, Steffens began work on his autobiography, which brought him renewed respect when published in 1931. He died of a heart attack on August 9, 1936.

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See Also: Industrial Revolution; Robber Barons; Roosevelt, Theodore; Sinclair, Upton; Standard Oil Co.; Whistleblowers.

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Stewart, Martha

Martha Stewart (1941–) is one of the most recognizable women in American households for numerous reasons. Prior to 2004, the name and brand of Martha Stewart was widely associated with cookbooks, household tips and tricks, and domestic entertainment ideas. It was a company that reached households through magazine, television, and radio media. However, the woman at the helm of the company, Martha Stewart herself, was soon being recognized just as much for her criminal actions as for her home and style. This shift from domestic entrepreneur to white-collar criminal occurred in 2004, when Stewart was convicted on charges of conspiracy, obstruction of an agency proceeding, and making false statements to federal investigators. As a result, Martha Stewart is now known not only as an entrepreneur but also as a convicted white-collar criminal.

Martha Stewart is a New Jersey native who graduated from college with a double major in history and architectural history. Following college, Stewart began her company by publishing a cookbook, *Entertaining*, in 1982. She continued publishing several more cooking and domestic entertainment idea books throughout the 1980s. It was through these books and her creative approach to domestic entertaining that she began to gain public notoriety and fame, and the Martha Stewart brand was created. In 1990, Stewart released her home arts magazine, *Martha Stewart Living*. The magazine experienced great success and is currently still in print. In 1997, Stewart founded the company Martha Stewart Living Omnimedia, serving as the chairwoman, president, and chief executive officer (CEO). Martha Stewart Living Omnimedia went public two years later.

Martha Stewart at the Tribeca Film Festival, New York City, April 27, 2011. The founder of Martha Stewart Living Omnimedia engaged in insider trading in 2001 when she dumped ImClone stock based on nonpublic information relayed by her broker.

It was Stewart's role as CEO that provided the impetus for her white-collar crimes. In 2001, Stewart was involved in insider trader with ImClone, a biopharmaceutical company. ImClone's stock price dropped at the end of 2001 when an experimental antibody failed to receive approval from the U.S. Food and Drug Administration. According to the U.S. Securities and Exchange Commission (SEC), Peter Bacanovic, Stewart's broker, relayed nonpublic information to Stewart about the drop in the price of ImClone stock. Upon news of this information, Stewart allegedly sold almost 4,000 shares, worth about $230,000, of her ImClone Systems stock. The day after this sale, ImClone's stock value fell 18 percent. Thus, the sale based on Bacanovic's nonpublic information allowed Martha Stewart to elude a monetary loss of more than $40,000.

On June 4, 2003, Martha Stewart was indicted by the U.S. government and the SEC filed a civil complaint with charges of insider trading. Immediately following the indictment, Stewart willingly stepped down as CEO and chairwoman of Martha Stewart Living Omnimedia. The civil charges were stayed, pending the criminal proceeding in which Stewart was charged with lying to investigators, obstructing justice, conspiracy, and securities fraud. Stewart pleaded not guilty to all charges, and the jury trial in *United States v. Stewart* began in January 2004.

Throughout the five-week-long criminal trial, Stewart maintained her innocence, stating that she decided to sell her ImClone stock because the stock price had fallen to her predetermined $60 limit. In March 2004, after three days of deliberation, Stewart was found guilty on charges of conspiracy, obstruction of an agency proceeding, and making false statements to federal investigators. Stewart was sentenced to a 10-month term of incarceration, two years probation, and a $30,000 fine. This was the lowest possible sentence that Stewart could have received under the Federal Sentencing Guidelines. Stewart's 10-month incarceration sentence was split between five months in a federal correctional facility and five months of home detention. Stewart served her incarceration beginning in October 2004 at Alderson Federal Prison Camp, a minimum-security prison in West Virginia. She was released March 4, 2005, to home confinement in her New York residence.

In August 2006, two years after her criminal sentencing, the SEC reached a settlement with Stewart concerning the related civil charges. Stewart agreed to a monetary loss of over $195,000, which was three times the losses she avoided by selling her ImClone stock. She also agreed to a five-year ban on serving in any professional role responsible for preparing, auditing, or disclosing financial results of any public company. Since her release from prison, Stewart has continued as a businesswoman. She has published numerous books, made public television appearances, and has expanded her Martha Stewart brand. Although Stewart was convicted of a federal offense and fined, she has since thrived and the backlash against her has diminished. Such experiences are most uncommon even among those who do not commit white-collar crimes.

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See Also: Conspiracy; Employee Crimes; Insider Trading; Pharmaceutical Industry; Securities and Exchange Commission, U.S.; Stock and Securities Fraud.

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Stock and Securities Fraud

The term *securities fraud* covers a wide range of illegal activities but boils down to three areas: Ponzi schemes; insider trading; and marketing scams involving high-yield investment fraud, advance fee fraud, broker embezzlement, and late day trading. It is the third area that will be discussed here.

The cold calling of investors by bogus stockbrokers to persuade them to invest in high-yield securities when in fact they are shares in fake companies is a major problem. Although it is as old as shares themselves, modern communications now make it not only easier to perpetrate but also difficult to prevent, prosecute, and recover the stolen funds. Although the technicalities may vary between countries, cold calling usually comes from what are often referred to as "boiler rooms," referring to the high-pressure selling practices used. Invariably, the boiler room is not authorized to sell shares, and its promoting and selling of stocks is illegal.

First, it is necessary to clarify certain terms. The words *shares* and *stocks* are used interchangeably and mean precisely the same thing. The word *securities* is a more general term covering both common stocks or shares and bonds. Many of the companies whose shares are sold in this way are (or are claimed to be) microcaps, an American term used to describe small, publicly traded companies with a market capitalization of below $250 million, although there is no official definition. (If the company is smaller, it is sometimes referred to as a nanocap.) Many of these companies are also penny stocks or shares, a term simply referring to the fact that their market price is less than a pound or dollar. A small price for a single stock helps them to be traded easily, and a price change is likely to have a relatively large impact on returns. Penny shares are traditionally considered to be highly speculative and high risk but have a large potential for high returns. They are often traded on second-level markets around the world, such as the over-the-counter (OTC) operated by OTC Markets Group Inc. in the United States, and the Alternative Investment Market (AIM) in the United Kingdom.

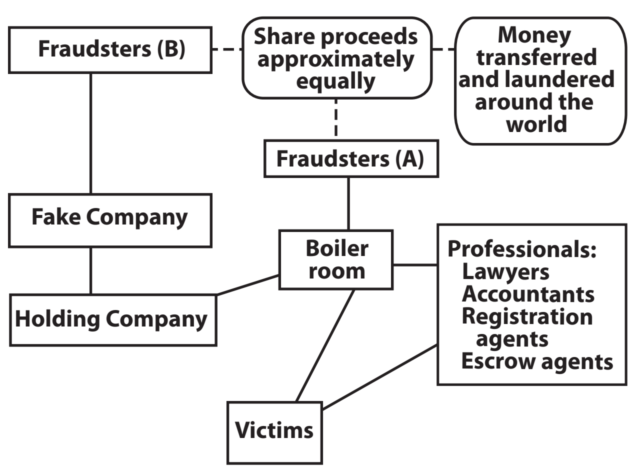
The important point about both microcaps and penny stocks is that while they may be risky, they are not necessarily fraudulent, and most are not. However, most fraudulent share scams do involve microcaps and penny stocks.

Most schemes involve "pump and dump" in some way. This is a term used to describe the fraudulent activity of artificially raising the price of a stock (pump) before selling it (dump), after which the price falls to a more realistic one. Pumping will probably involve the boiler room salespeople attempting to convince potential investors that the shares are about to "take off" in some way, such as a still-secret takeover offer, a new listing, or some other unexpected change in the company's fortunes. It may also involve manipulating the price and the volume of trading in some way. A stock price chart would appear as an inverted V. When the scammers have exhausted their opportunities, they will cease to support and manipulate the share price and "dump" the stock, allowing its price to fall to a more realistic one.

The Scam: How It Operates

Essentially, there are two aspects to the fraud, as illustrated in Figure 1. There is the boiler room operation, which is run by fraudsters (A) and there are the owners of the sham company (or companies), fraudsters (B). Fraudsters A and B may effectively be the same individuals who generate new companies, whose shares they sell. Another scenario is where fraudsters (B) decide to market shares and employ an existing boiler room operation run by fraudsters (A), in which case they share the proceeds from the issue of the shares, say 50:50. Another scenario is that (B) runs a legitimate business but finds it difficult to raise equity and decides to employ a boiler room to do this. It is also possible that (A) also markets shares in legitimate and genuine companies. In any event, the marketing is probably from a separate location (i.e., the boiler room) from that of the companies (if the latter exist) and the

Figure 1 Organization of the scam



money—whether it goes directly to one of the two fraudster groups or agents (escrow agents or lawyers)—or is transferred to another/other location(s), that is, laundered. The shares are actively sold over a certain period of time, during which the price and investor expectations are "pumped" (and probably fraudulently manipulated) but after which, whether this is because it becomes too difficult to keep the pretence "alive," the boiler room finds other stocks to sell, or for other reasons, the price and pretence cease to be supported and the company "dumped."

Boiler Room Organization

The average size of a boiler room is 20 persons comprising "brokers" (sales staff) and managers (see Table 1). Those targeting investors in Europe typically are in Spain, whereas those targeting the Australasian market are usually located in Thailand, the Philippines, Cambodia, or Laos, where staff have more diverse backgrounds.

A company may be formed in another country to act as a front for the boiler room. Typically, this is an offshore company registered in the Caribbean, for example, the British Virgin Islands. It may also have a post office box to which mail is sent before its is forwarded to the boiler room. The boiler room's bank may be in yet another country, probably in a reputable financial center.

There is a fairly strict division of labor within the boiler room. At the bottom of the hierarchy are the "qualifiers," who try to interest customers into making an investment. They may make unsolicited telephone calls and send out newsletters. Next are the "verifiers" or "openers," who call customers to interest them in the investment and their firm, win the confidence of the victim, and sell them, perhaps initially, a small amount of shares. This may be followed up with hints of inside and other information suggesting that the price will rise. They usually use false names. If the money is not forthcoming, a "driver" contacts the victim, saying that he/she has missed an opportunity, as the price has risen. The driver may then offer the shares at the original price. Once the victim has paid for the shares, he/she will hear no more. When the share price stops rising and falls, he/she may then contact the firm in a panic. He/she will be put in contact with a "cooler," who has the task of calming down victims. Victims are then transferred to a "loader," whose job it is to persuade them to buy more while the price is low. Dissatisfied customers are often told that the original opener has left the organization. Coolers are instructed to return no more than 25 percent, and if the pressure gets too great, the boiler room may decide to close down and reopen under a new name. About 90 percent of victims soon accept the situation and write off the investment. Very few recover any of their money.

Table 1 Top locations of boiler rooms

Location	Percent
United Kingdom	30
United States	17
Switzerland	12
Spain	8
Germany	4
Japan	4

Boiler Room Staff

"Brokers" targeting U.S. or European investors are typically male, English speaking, and not highly educated but confident, with good verbal skills and a background in telesales or at least sales experience. Those in Australasia may have more diverse backgrounds. Applicants are offered high earnings potential, and full training is provided. Usually they are new to the business but aim to get rich quickly and to be able to demonstrate their wealth. Although staff turnover is high, they are provided with incentives to remain working. Many have a record for dishonesty or violence.

According to Operation Archway, a reporting system in the United Kingdom (UK) set up by the London police to coordinate intelligence-gathering on boiler room scams, a quarter have criminal records, of whom half have a previous charge or impending prosecution for fraud. They are attracted to the lifestyle at the location—sun, sea, alcohol, soft drugs, and access to prostitution—and they usually live in rented accommodations. Recruitment takes place through the Internet, advertisements, and recruitment fairs; if the latter, it is through third parties. Boiler rooms operating in Asia and Spain normally recruit from backpackers passing through. This advertisement in a UK newspaper is typical:

> TELEMARKETERS WANTED for job overseas. 18–30 years, with previous experience but not necessary. Training, flights and accommodation provided for successful applicants. Excellent communication skills and good phone manner are essential. Please phone . . .

Others Involved in the Scams

There are many professional groups involved, effectively adding the reputation of their firm or profession to the credibility of the investment. First are the accounting firms that act as auditors to the companies or reporting accountants in prospectuses and offers for sale/subscription. In those cases where the companies concerned have filed audited accounts, it is likely that the accounting firm knows and understands the scheme, the financial arrangements, and the difference between it and what is understood by investors. In other words, it is reasonable to assume that the accountants/auditors know that the company they are putting their name to is part of a scam.

In a similar way, the lawyers used by the boiler room and companies in the preparation of documents are likely to recognize that the scheme is a scam and that they are allowing their name and reputation to be used to mislead investors into thinking it is valid. The use of escrow agents to act as intermediaries in the receipt of money also has the effect of adding apparent legitimacy to something they should know is not.

Victims

Targeted victims are typically older people with money to invest, such as inheritance, pension, or redundancy payments. They are often well educated, with previous experience of investment. Many describe themselves as experienced investors, having gained false confidence from their experiences during the Reagan-Thatcher era, when they were actively encouraged to purchase stocks. Some have been the victims of other financial frauds and scams such as Ponzi schemes and lottery scams. Operation Archway has estimated that 50 percent are aged over 65. The average amount lost is $30,000 (£20,000), and the largest individual loss to date is £1.8 million. Although most victims are male, recently there has been an increase in female victims and younger males, indicating that the brokers will approach just about anyone. Boiler room scripts suggest that the criminals find men are easier to deal with, as "women ask too many questions" and men are more likely than women to feel shame and not report crimes.

Secondary Scams

Fake regulators and fraudulent recovery agents are often used in scams. After being the subject of a scam, the investor may attempt to recover his/her money by contacting recovery agents and/or regulators. This may be seen by fraudsters as an opportunity to steal more from the victim. There are regular reports of "phantom regulators" who confirm the reputational status of the fraudulent brokers or direct victims to firms—fraudulent of course—who claim to provide assistance in recovering the lost money. Usually, these fraudulent recovery agents require victims to submit personal identity and confidential information online on "claim forms," for which they request a fee. Victims are also contacted by fraudulent recovery agents or someone claiming to be from the police or a government agency stating, that they know the investor has been a victim of a scam and offer advice. Recent examples of fake regulators include the State Securities Commission, International Exchange Regulatory Commission, International Securities Department, Regulatory Compliance Commission, Securities Protection Agency, and International Registry Corporation, and fraudulent recovery agents include Securities Financial Commission and Crest Trust Management.

There are other scams as well. The fraudsters may offer to exchange the stock for another one they are pushing, provided the victim pays a transfer fee. The investor might also be told that the brokers have sold the stock and a large profit has been made but the victim needs to pay the capital gains tax bill to them before the proceeds can be released. Of course, this is not true.

Fake Companies

There are three types of fake companies:

1. A completely fictitious company that may be registered but is a shell company with no business behind it.

2. A legitimate but defunct company that the fraudsters have acquired. As it is moribund, it is possible for the fraudsters to acquire it from its previous owners at a nominal price.
3. The acquisition of a public company whose shares are already listed on an exchange by a private company, a "reverse takeover/merger," enables the owners of a private company to effectively acquire a share listing but bypass the lengthy and complex processes otherwise required. Not only is a reverse takeover much cheaper than an application by a private company, if the individuals involved in the application are known fraudsters or have a dubious reputation, they may find listing on a reputable stock exchange difficult. Although the United States imposed tighter laws in 2005 for reverse mergers, requiring companies to increase the amount of information disclosed to the Securities and Exchange Commission (SEC) after merging with shell companies, fraud is, nevertheless, believed to be still rampant.

A small, publicly traded company, whose owners wish to raise funds for genuine business purposes but, because of the business risks involved, investors are unwilling to subscribe. As a result, it approaches a boiler room to market the shares, for which the boiler room charges a large slice of the proceeds of the share issue.

As shown in Table 2, many of the microcap or penny stock companies used are U.S. companies known as Regulation S, or Reg S, stocks. Regulation S relates to U.S. stock sold outside the United States. According to section 5 of the Securities Act (1933), unless they qualify for an exemption, securities offered or sold to the public in the United States must be registered with the SEC by filing a registration statement. However, under Reg S, companies do not have to register stock they sell outside the United States to foreign or offshore investors. It contains two safe harbor provisions: an "issuer safe harbor" and a "resale safe harbor." In both, Reg S requires that offers and sales of the securities be made outside the United States and that an offering participant (which includes the issuer, the banks assisting with the offer, and their respective affiliates) does not engage in "directed selling efforts." In the case of issuers for whose securities there is substantial U.S. market interest, the regulation also requires that no offers and sales be made to U.S. persons, including U.S. persons physically located outside the United States.

Securities acquired in unregistered private sales from the issuer or an affiliate are known as "restricted securities." When issued, they are stamped with a restrictive legend stating that they may not be resold in the market unless they are registered with the SEC or are exempt from the registration requirements. SEC Rule 144 allows public resale if certain conditions are met.

If the company that issued the securities is subject to the reporting requirements of the Securities Exchange Act of 1934, then the securities must be held for at least six months, but if not, they must be held for at least one year. The relevant holding period begins when the securities were bought and fully paid for. However, even if the conditions of Rule 144 have been met, restricted securities cannot be sold to the public until the legend has been removed from the certificate by a transfer agent. It will agree to do so only if the stockholder has obtained the consent of the issuer for the restricted legend to be removed, usually in the form of an opinion letter from the issuer's counsel. Unless this happens, the transfer agent does not have the authority to remove the legend and execute the trade in the marketplace. Therefore, to begin the process, an investor needs to ask the issuing company about the procedures for removing a legend.

Most Reg S companies that are part of boiler room stings are incorporated in U.S. states such as Nevada, Delaware, Wyoming, Alaska, and Florida, particularly the first two, which

Table 2 Top company locations

Location	Percent
United States	37
United Kingdom	30
Spain	9
Canada	5
Hong Kong	3

encourage companies to incorporate there. They offer various advantages, including tax benefits and a relatively liberal regulatory environment. Delaware has been at the forefront of this, but in recent years Nevada has tried to "out-Delaware" Delaware. (Tax laws in Nevada, which has no personal income tax, can make it difficult, if not impossible, to find out who is really behind a company.)

Markets: Where the Stock Is Traded

Stocks in fake companies are not listed and traded on the major, highly regulated stock exchanges such as the New York Stock Exchange (NYSE) and the London Stock Exchange (LSE) but on alternative investment or OTC markets. The OTC markets are not stock exchanges in the way that the NYSE and LSE are. Trading occurs via a network of middlemen, called dealers or broker-dealers, who hold stocks of securities to facilitate the buying and selling orders of investors rather than providing an order-matching service, as occurs on large exchanges. An OTC market simply provides a means by which securities may be bought and sold. In many cases, they carry out no checks on the companies concerned and apply few or no criteria when deciding to allow shares in these companies to be traded.

In the United States, the OTC market is effectively run by OTC Markets Group Inc., a private company, which provides electronic quotations, trading, messaging, and information platforms. It classifies stocks into three tiers (see Table 3). About 20,000 companies' securities are quoted on OTC Link, and around 500 are on Caveat Emptor. The market and broker-dealers' activities are regulated by the Financial Industry Regulatory Authority (FINRA), the SEC, and other U.S. state regulators, but OTC Markets Group Inc., is not regulated by either. Also, of course, companies with SEC-registered securities are regulated by the SEC. The OTC market has no central "exchange." Broker-dealers communicate and trade directly with each other in order to notify others they are willing to trade a security at a particular price. These "quotes" are placed on an interdealer quotation system, then are aggregated and ranked and so represent the reported "market" for a security. The highest "bid" (purchase price) and lowest "ask or offer" (sale price) becomes the "inside market," or NBBO—the national best bid and offer—which is displayed on financial Web sites, including OTC Markets' own Web site.

The U.S. OTC market has effectively two major interdealer quotation systems: OTC Link, which is operated by OTC Markets Group, and FINRA OTCBB. Broker-dealers are able to view all quotes for OTC securities and, if desired, trade those securities through the system. The FINRA OTCBB does not have electronic trading capability, and broker-dealers use OTC Link's trade messaging system to trade these securities electronically.

Boiler room shares have been listed in the UK on the Alternative Investment Market (AIM), OFEX, and PLUS. The AIM has less stringent listing requirements, primarily concerning the provision of financial information. PLUS Stock Exchange is a London-based stock exchange providing UK

Table 3 U.S. over-the-counter (OCT) market tiers by OTC Markets Group

OTC Link	
OTCQX	Exclusively for companies that meet the highest financial standards and undergo a qualitative review.
OTCQB	The venture marketplace for companies up to date with their reporting with a U.S. regulator. There are no financial or qualitative standards to be in this tier.
OTC Pink	OTC Pink is the open marketplace for a wide spectrum of equity securities.
OTCBB	
Grey Market	No bid and ask information is available. Due to the lack of pre-trade data, these securities are illiquid.
Caveat Emptor	

and international companies with a quote-driven trading platform with competing two-way prices. OFEX is a market operated by OFEX Plc, which has a company information and announcement system called Newstrack for professional intermediaries, including bid and offer prices and trade information. Individuals wishing to buy or sell on OFEX must do so through a stockbroker who is a member of the OFEX market.

Elsewhere in Europe, they have been listed on Xetra and the Frankfurt and Berlin exchanges. Xetra (Exchange Electronic Trading) is a worldwide electronic securities trading system based in Frankfurt, Germany. It was originally created for the Frankfurt Stock Exchange but now also operates on a number of other exchanges, including the Vienna, Irish, Bulgarian, Budapest, and Shanghai stock exchanges.

The Frankfurt Stock Exchange (FSE) is the world's third-largest stock market. Although it has some traditional broker-supported floor trading, most of the trading is done via Xetra. The FSE has both a regulated and an "open" market (also referred to as the regulated unofficial market), which is not subject to the transparency standards and the strict for-investor-protection provisions on EU-regulated markets. The Berlin Stock Exchange is a relatively new exchange, but it lists many U.S., international, and other European companies. OTCBB companies can obtain a dual listing.

Because this may be done at a relatively small cost, shares may also be listed in another secondary market, for example, shares traded on the U.S. OTC market may also be traded on Xetra. This may give the impression of the company's shares being traded on international markets. When victims complain that they are unable to sell their shares on one market, this may help a boiler room salesperson to say that there is a good market elsewhere.

The Frauds

As mentioned above, most schemes involve the "pumping" of the company's stock price, the creation of the appearance of an active and liquid market, and/or public perception of the company. There are various ways in which this may be done.

The publication of incorrect and misleading press releases to raise expectations is common. Financial statements are also manipulated—if they are reported. Many fake companies whose shares are available OTC may not comply with reporting requirements (e.g., those of the SEC).

"Wash trading" is an illegal form of market manipulation whereby a fraudster simultaneously sells and buys shares through associated or affiliated brokerage accounts in order to artificially increase the apparent trading volume and thus the stock price. It usually occurs near the end of a day's trading so as to affect the reported closing price.

The value and therefore the price may also be altered at a stroke by means of stock splits and reverse stock splits, perfectly legal procedures, the former often used by listed companies to make trading in their shares easier. A stock split is simply the division of a share into smaller units. For example, if a trader holds one share, a two for one split would cause them to hold twice as many shares; that is, two. However, because nothing else has changed to affect the value of the company other than the number of its shares doubling, the value of each share (and therefore the new price) will be half of what it was before. A reverse stock split is precisely the opposite of a stock split. For example, if a trader held two shares, a one for two reverse split would cause them to hold half as many shares; that is, one, but it would now be valued at twice what it was previously. The effect on the price of a stock, therefore, is to cause it to rise by the relevant proportion; here, by 100 percent.

Rationally, the share price would adjust precisely in line with the proportional effect described. However, this may not always be the case, as a sophisticated market such as the NYSE and LSE may see a split or reverse split as having "information content" and adjust to that as well. In a thinly traded market in which these scams occur, such price changes may not be seen for what they are but, in the case of a reverse split, believed to be a real increase in price or, in the case of a stock split, a windfall increase in the number of shares the investor holds. This is the intention of the fraudsters.

Whether a particular scheme is fraudulent and the perpetrators are guilty of fraud depends on the situation and the law in that jurisdiction. It may not be sufficient for a share price chart to exhibit an inverted V. Firms fail, smaller firms in particular, and microcaps especially. Investors who invest in microcaps know, or should know, the risks involved, and they should accept them only if they believe the expected returns are sufficiently high to compensate. However, there is a difference between business risk and the risk of fraud. The share price rise needs to be shown to be the result of fraud—pumping. It also needs to be shown that the fall in price is the result of a reversion to what it should have been in the first place, that the market was false and had been manipulated. The chart in Figure 2 relates to the share price of an anonymous company whose shares were available OTC, accused of boiler room operation during late 2005 and 2006. It will be seen that the price was allegedly pumped to \$2.5 but subsequently fell to \$0.25 when it ceased to be supported. Support can last as long as the fraudsters are prepared to do so, but in the case of Reg S shares, it is more difficult when they are derestricted.

Prevention, Prosecution, and Recovery

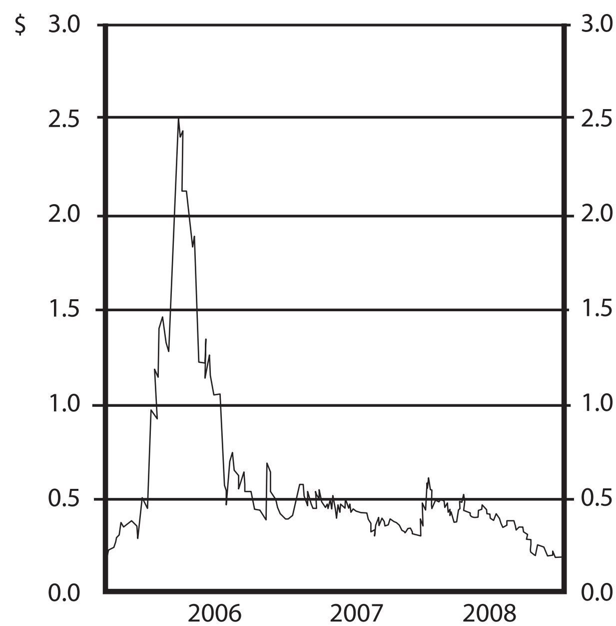
Prevention of such scams is, in the first place, by means of authorization of those allowed to sell stocks. In the United States, a stockbroker license from the Financial Industry Regulatory Authority is required The legal requirements for persons selling investments are similar elsewhere: in Australia, an Australian financial services (AFS) license is required, and firms offering financial services in the UK must be authorized by the Financial Services Authority (FSA). The FSA also publishes lists of authorized and unauthorized firms, the latter being firms and individuals known to have offered services unlawfully. However, once on the list of unauthorized dealers, they may simply decide to change their name.

There have been many warnings on regulators' Web sites, such as the Federal Bureau of Investigation, SEC, and OTC markets in the United States and the Australian Securities and Investment Commission (ASIC) in Australia and the FSA and the City of London Police in the UK. Various other firms and organizations such as banks have also decided to issue warnings, and newspapers, radio, and TV have regularly campaigned about share scams by exposing cases, particularly those that regulators have decided not to pursue.

It is not the purpose here to review the law. It is sufficient to say that in the United States, in addition to federal law, each state has its own securities act addressing securities fraud. Additionally, the victim may make a claim under common law. In respect to market manipulation, Section 10b of the Securities Exchange Act of 1934 states that it is "unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails . . . to use a manipulative or deceptive device or contrivance . . ." In respect to misleading customers, stockbrokers are usually considered to be fiduciaries and are expected to conduct themselves with a higher degree of care than would the ordinary person.

Despite the prevalence of fraudsters purporting to act as recovery agents, there are genuine organizations that attempt to recover lost money. It is possible that a fraudster's funds may be seized by a court order—but only if the action is quick enough before the money is transferred abroad, where it becomes out of reach of investigators, asset tracers, and recovery agents. In many jurisdictions, if the fraudsters are found guilty in a criminal case, they are required to repay the funds obtained illegally and, unless or to the extent it can be shown to the contrary, all funds in the

Figure 2 Example of an anonymous stock subjected to a "pump and dump" scheme



fraudster's possession are assumed to have been obtained illegally. Unfortunately, by the time the fraud has been recognized, the money has been transferred abroad. However, what has happened, particularly in the United States, is a plea bargain in which restitution of some of the lost money is obtained in return for a lighter jail sentence.

The Future

It has never been easier to conduct these forms of securities fraud. It is also difficult and expensive to prosecute. This is why regulators have placed emphasis on education and warnings. There is some evidence to suggest that this may be working. However, when stock market investment again becomes popular, securities fraud will probably continue to grow. In the meantime, there is some evidence to suggest that fraudsters are using these techniques in other investment areas, notably bonds, land banking, carbon credits, and marketable assets such as fine wines.

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See Also: Bond Fraud; Commodities Fraud; Corporate Raiding; Criminal Facilitation; Hedge Fund Fraud; Insider Trading; Investment Trust Fraud; Marketing Fraud; Mortgage-Backed Securities; Ponzi Schemes; Respondeat Superior; Securities and Exchange Commission, U.S.; Securitization Fraud; Short-Sale Schemes; Stock Churning; Stock Spamming.

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Stock Churning

Stock churning is a type of securities fraud. It occurs when a broker manipulates a client's account by initiating excessive transactions chiefly for his own personal gain. Each time the broker executes a transaction, he or she is paid a predetermined commission regardless of whether this was profitable for the client. If the broker trades the account several times per month, the client's money will be eaten up, but the broker will still earn a substantial profit. The broker therefore abuses the client's trust and acts fraudulently by engaging in trading that is not suitable for the client's financial situation and investment objectives. Churning, for example, often occurs when a broker excessively trades in a mutual fund, an investment account, or a retirement package designed to yield low but steady profit, as well as low commissions. Churning also occurs when the broker trades bonds that are financial products not designed to be traded at all. Finally, in cases of reverse churning, the broker charges fees on an account that has long been inactive.

To determine stock churning, three features must be established: control of the account by the broker, excessive trading, and the broker's "evil intent." First, the broker needs to control the volume and frequency of trading in the customer's account. This can easily be established because in many cases inexperienced clients open discretionary accounts, giving the broker full authorization to trade as deemed fit.

In contrast, excessive trading is the most difficult to establish. The primary method is assessing whether the trading was suitable in relation to the account's size and objectives. A sure indicator of overtrading is a large broker's commission compared to the size of the account and the size of the profits and losses after the trading. Excessive trading also occurs when the investor's objectives are disregarded: the client opts for conservative and steady return trading, but the broker trades aggressively and speculatively.

Finally, it has to be established whether the broker was acting in the client's best interests or primarily for the purpose of generating personal commissions, disregarding his or her fiduciary duty toward the client. Brokers can argue that they were acting in the client's interests but simply lost money in doing so. Losing money is not immoral or illegal per se, and it is a calculated risk that any investor in securities must consider. "Evil intent," however, is established when the other two churning elements are demonstrated.

Stock churning is a significant broker fraud and the most constant violation of securities laws. Its expansion has been coupled with the increased number of, and competition between, brokerage firms since the 1990s. In addition, there has been a constantly widening influx of unsophisticated clients who can be victimized (e.g., charities, people who lack education or financial acumen such as particularly young and old people—one churning case even involved elderly nuns!). They are attracted to the high profits that securities markets offer yet are largely unknowledgeable about their functioning.

Overtrading can involve individual brokers but can be also endemic to brokerage firms. For example, in the period 2005–09, six brokers at Aura Financial Services engaged in rampant churning of 15 customer accounts, depleting them by $3.5 million in trading losses and excessive transaction costs. In order to profit from the commissions, senior managers intentionally failed to supervise, enforce the rules, and follow up on client complaints. In a different example, broker Harold Jaschke overtraded the accounts of two Florida municipalities. He disregarded the clients' objectives of conservative trading, executing over 500 transactions. Jaschke yielded profit of $9.8 million to the accounts, but this was smaller than his commission of $14.2 million. In the end, the accounts were devalued by around 70 percent.

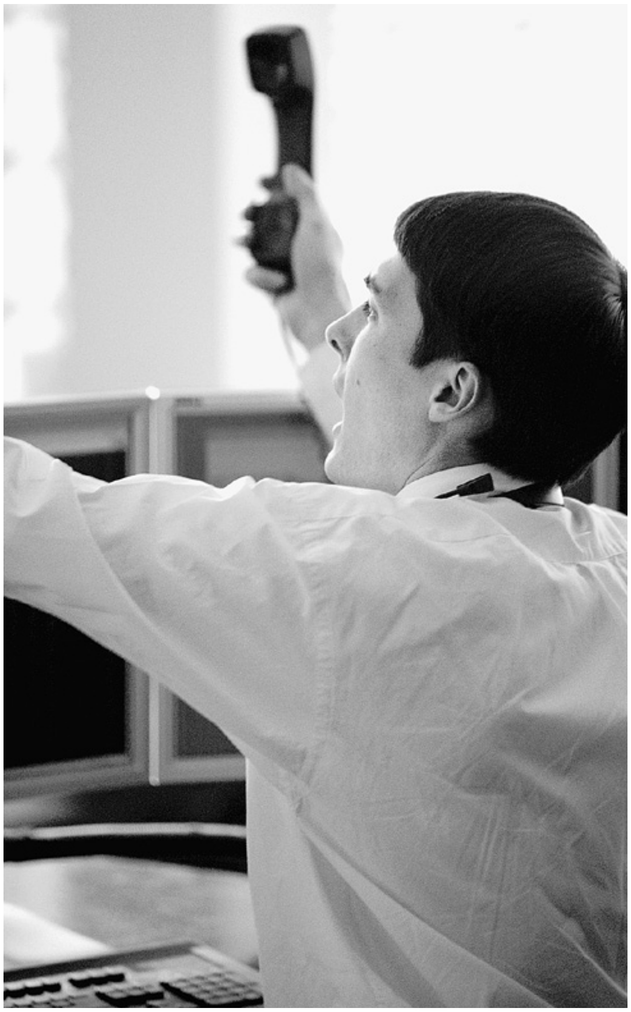
Causes of Churning

The brokerage commission–based system represents the principal incentive for brokers to engage in excessive trading. Rather than working on a fixed salary, most brokers are paid commissions upon newly attracted clients and executed transactions. Individual brokers receive a percentage of the commission paid to the brokerage firm—usually between 30 and 40 percent. Attracting more money to the firm also gives the broker a better professional reputation, larger bonuses, and promotions.

Incentives for churning also stem from the conflicting professional role of brokers, who must act as both investment advisors and salespersons. As advisors, they need to earn the trust of their clients and present themselves as skilled financial analysts who can be entrusted with investment decisions; as salespersons, they must insistently pursue earnings both for themselves and for the company. This creates a conflict of interest that undermines concern for the client.

Brokerage firms profit from the same compensation system and have an interest in retaining the best-performing brokers. Hence, higher-level executives also have an incentive to support, tolerate, or inadequately supervise inappropriate brokerage behavior, especially if the overtrading initially brings profit to the client. Consequently, as in the case of Aura Financial, brokerage firms can nurture aggressive trading workplace cultures in which "rogue" traders can prosper until they ultimately collapse the client's account.

Workplace pressures can induce even a broker with a high moral character to rationalize the trading decisions as beneficial to his or her clients. This usually takes the form of offering logical explanations for the sham transactions such as "changing market conditions," or justifying their "extra efforts" as looking out for their client's interests. These rationalizations allow the corrupt broker



Workplace pressures, including a commissions structure, the conflicting dual roles of salesperson and broker, and a firm's pressure to retain top-yielding brokers can influence even highly moral brokers to rationalize their stock-churning activities.

both to maintain a self-deluding perception of an honest business professional and to continue with the illusion of fiduciary responsibility.

Regarding opportunities, churning is facilitated by the broker's easy access to client money, especially when he or she has full trading authorization. For example, Harold Jaschke was able to falsely depict his behavior as nonrisky because the victimized municipalities had an unsophisticated investment manager, fully relying on the broker. The proliferation of highly risky and complex but lucrative financial products such as spread-betting and other types of speculative trading further allow brokers to justify their excessive investment decisions. Finally, volatile markets often provide the greatest opportunities for broker fraud, as trading rationalizations are plentiful and churning is difficult to prove.

Tackling Stock Churning

Stock churning violates antifraud provisions in securities laws. The main enforcers of churning violations are the Financial Industry Regulatory Authority (FINRA) and the U.S. Securities and Exchange Commission (SEC). FINRA regulates the behavior of stockbrokers and the brokerage firms and demands that they observe high standards of commercial honor and just principles of trade. It also demands that brokerage firms install appropriate oversight of broker trading.

Disciplinary actions can be undertaken by both FINRA and the SEC. Churners are commonly sanctioned with a fine (which includes a base fine and the profit made by commissions generated through churning) and a suspension or permanent barring from the securities industry. Supervisory-level managers and compliance officers are also frequently penalized, with fines for supervision failures and suspensions from supervisory capacities. In the worst case, a brokerage firm exposed to be a churning nest can be expelled from FINRA's registered providers of securities services.

Aggrieved investors can further claim recovery of the excessive commissions and incurred losses through FINRA's arbitration process. In most cases, this is the only option for getting damages, as all client-broker contracts contain a mandatory dispute resolution through FINRA's arbitration.

Arguably, the best approach to prevent churning victimization is to become familiarized with the securities market. FINRA, for example, publishes educational information on smart investing and fraud protection on its Web site. This allows the client to adopt an "auditor mentality" to exclude discretionary trading and request clear explanations of broker-initiated trades. Potential investors can also benefit from researching the professional and disciplinary background of brokers and firms through FINRA's BrokerCheck database.

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See Also: Corporate Raiding; Financial Industry Regulatory Authority; Securities and Exchange Commission, U.S.; Stock and Securities Fraud; Stock Spamming.

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Stock Spamming

Like any venture that seeks to encourage an individual or group to do something they had previously not considered, the stock spamming process has to both inform the individual or group of the opportunity and overcome resistance to the desired action. The stock spamming process achieves those goals through a number of means. Although the process of Internet or e-mail-based spamming is somewhat new, the ideas and goals behind this process are as old as organized economies. Since individuals began purchasing items for consumption or collection, there have been those who desired to encourage the purchase of the items they sought to sell at as high a price as possible, even if it meant artificially increasing the perceived value of that item. The goal is simple: quickly and efficiently generate as large a profit as possible. While that is unarguably true for the stock market in general, it is remarkably obvious when one considers the process and effectiveness of stock spamming.

Before there can be a discussion of stock spamming, there first must be a discussion of the various types of spamming, their differences and similarities, and how changing laws and technologies have affected their impact on society.

Pump and Dump and Short and Distort

The "pump and dump" and the "short and distort" are similar—they simply represent opposite means to achieve the same end. Both attempt to generate profits, but their methods of doing so are in diametric opposition. In the pump and dump scenario, an individual purchases a large block of stock that is trading at its "normal" price, then either the individual or a third party creates some form of media interest that drives the price of the stock up (the "pump"), allowing the holder to then sell the previously purchased block of stock at an inflated price. The methods by which media attention is increased and the persons involved in that increase in media attention may change, but the end result will be the same.

In contrast, the short and distort process involves selling a block of stock at its normally traded price. Then the individual or a third party creates a flurry of media attention, only this time the goal is to drive the price of the stock down. When that occurs, the stock can be repurchased, and either more stock purchased with the money generated by the initial sale, or the same amount of stock purchased and the excess money used as profit.

A less common variant of the pump and dump is known as the "hack, pump, and dump." In this scenario, hackers purchase a block of stock at its normally traded price, then they illegally gain access (the "hack") to the accounts of a large brokerage house and use the large brokerage house's assets to purchase large blocks of the same stock. This increases the interest in a stock, thereby resulting in a natural increase in the price of the stock. The hackers then sell the block of stock purchased prior to the hack at a profit. The brokerage house now holds a large block of stock that is likely worth less than the hackers paid for it, and the hackers have yielded a profit by manipulating the value of the stock using the resources of the brokerage house.

Low-value stocks, such as penny stocks, are the preferred market for stock spammers for a number of reasons. First, these are often hard-to-find stocks and, consequently, little is known about the companies, so price manipulations are easier. Second, the low value of these stocks makes the potential for high percentage increases far more likely. Finally, because of their low prices, purchasing large blocks of these stocks does not require substantial financial resources.

Manipulations of this nature are far from new. From rumors started in elevators of brokerage houses to stock tips passed to strangers on golf courses, the idea of driving stock prices up or down using social communication has not changed. What has changed, however, are the methods utilized and the available technologies.

Information Transfer

In the decades that followed the creation and distribution of the telephone, boiler room operations were the most common method of mass-contact communication. Callers would contact potential customers, sometimes drawn at random and sometimes from a list of known stock purchasers, and inform them as to the nature and value of certain stocks. This process involved large numbers of callers, dedicated phone lines, and cheap office space that could be used to house these callers (hence the term *boiler room* operations). With the advent of the Internet and the increase in professional, personal, and home e-mail accounts, making these contacts became substantially easier and the cost virtually free.

Initially, the increase in junk e-mail (or spam) resulted in the creation of new and better filters to keep this spam from inboxes. These filters utilized keyword recognition and other techniques to identify spam. In order to bypass these filters, stock spammers utilized more creative and sophisticated e-mailing techniques. For example, rather than sending actual text, images of text were used. This was essentially a picture of a page of text, rather than a page of text where keywords could be identified. Subject lines were either innocuous statements or random letters—neither of which would be considered questionable by the filtering software.

Legality of Stock Spamming

Almost all stock spamming is illegal for two reasons. First, communications of this nature violate the Securities Act of 1933, which makes it illegal to promote stocks without disclosing the details of the compensation received by the promoters. Second, the 2003 CAN-SPAM (Controlling the Assault of Non-Solicited Pornography and Marketing) Act requires that the recipient of the spam be allowed to opt out of future e-mail. Since most of these e-mails do not allow such an option, they violate the CAN-SPAM Act and also many state antispam laws.

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See Also: Advertising Fraud; Computer Hacking; Internet Fraud; Marketing Fraud; Microsoft Corp.; Nigerian 419 Scams; Stock and Securities Fraud; Stock Churning.

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Stone, Christopher

Christopher D. Stone is a law professor whose many publications include the prize-winning book *Where the Law Ends: The Social Control of Corporate Behavior*, published by Harper & Row in 1975. Stone is recognized as one of the first persons to highlight the inadequacies of the law in responding to corporate or white-collar crime. In this book, he described how corporate law evolved and then recommended changes toward preventing corporate crime. His ideas seemed radical in 1975.

Stone's recommendations for preventing corporate crime are based on the premise that it is better to address weaknesses that facilitate wrongdoing instead of reacting after the act. He argued that the lack of transparency in business was problematic, and so too was identifying the responsible party in corporate wrongdoing given typical organization structures. One of his main theses was that rather outdated traditional laws are often a poor fit for emerging white-collar crime schemes such as those facilitated by advancing knowledge.

Stone also described the problem of corporations influencing who is appointed to regulatory commissions and in this way managing to insulate themselves from legal sanctions. Before these became practice, Stone argued for the protection of corporate "whistleblowers"; the collection and publicity of data that are of public interest, such as product liabilities; and the on-site monitoring of businesses. He also called for a well-defined flow of information structure within corporations to make it easy to identify who knew what, and who did what, and when. This is so that individuals are encouraged to act ethically and legally, if for no other reason than that they can be held accountable for their acts and/or omissions within corporations.

Why Immoral Choices?

Stone described how adhering to morals in corporations might not work given an organizational structure that blocks communication and given hierarchies that facilitate making immoral choices. And why immoral choices? Stone argued that the large profits in the corporate world, which are rewarded and admired, diminish the moral impetus to do the right thing. Toward dampening the temptations, he recommended a focus on internal corporate dynamics more than external sanctions to generate a greater sense of corporate social responsibility. This requires changing values, attitudes, and beliefs throughout companies. It involves encouraging persons at all ranks to report knowledge of wrongdoing without fear of retribution.

Using a variety of methods, persons throughout the organization should consider and monitor the impact of any major corporate actions. To that end, Stone recommended that corporate boards include 10 percent general public directors in sectors such as manufacturing, transportation, and retail. For financial institutions and public utilities, he suggested that 50 percent of the board members should be general public directors. The number of directors might also vary with company assets. These directors would be appointees of a recommended Federal Corporations Commission. For companies with noted legal violations, well-qualified "watchdogs" might serve in the organization to monitor activities.

Business professor and critic John Donnell in 1976 described Stone's recommendations for business board composition as easy to refute given that businesses are designed to be profitable. Donnell surmised that the proposed composition might introduce politics and counterproductive inhibitions when swift action is necessary for business success. Donnell suggested that Stone's ideas seemed more in keeping with group dynamics than with the nature of business. Indeed, he went on to comment that it would be difficult to be on a board with others who are there to catch persons when they err.

Stone graduated with honors from Harvard University, then studied law at Yale. He was in private law practice at the prestigious Wall Street law firm Cravath, Swaine and Moore. He has taught law at the University of Chicago, University of Michigan Law School, Yale Law School, and, since 1965, the University of Southern California Gould School of Law, where he holds the J. Thomas McCarthy Trustee Chair in Law. In addition to white-collar crime, he is particularly knowledgeable about international environmental law, property, trade, and globalization-related policy making.

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See Also: Corporate Criminal Liability; Ethics; Multinational Corporations; Reform and Regulation; Regulatory Enforcement; Whistleblowers.

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Submerged Lands Act

The Submerged Lands Act of 1953 (43 U.S.C. §§1301-1315 (2002)) returned control of lands along the coastal areas, including the Gulf of Mexico, back to the states to which these are adjacent. This legislation reduced federal control of the lands that were more than three miles off the coast of the particular states. In the cases of Texas and the Gulf Coast of Florida, the submerged land controlled by the federal government must be more than three nautical leagues off the coast. This legislation was a response to three Supreme Court cases that had resulted in federal control of these submerged and tidal lands for the purposes of defense and control of national borders. Although land was a major issue, it was the valuable natural resources below the water that were at the heart of the cases and the debate surrounding the legislation.

On May 22, 1953, President Dwight D. Eisenhower welcomed the Submerged Lands Act of 1953 by stating the following:

> I am pleased to sign this measure into law recognizing the ancient rights of the States in the submerged lands within their historic boundaries. As I have said many times I deplore and I will always resist federal encroachment upon rights and affairs of the States. Recognizing the States' claim to these lands is in keeping with basic principles of honesty and fair play. This measure also recognizes the interests of the Federal Government in the submerged lands outside of the historic boundaries of the States. Such lands should be administered by the Federal Government and income therefrom should go into the Federal Treasury.

A series of three Supreme Court cases had established the right of the federal government to control the first three nautical miles (or its equivalent of three nautical leagues in the cases of Texas and the Gulf Coast of Florida) of submerged land. In the first case, *United States v. California* (332 U.S. 19, 1947), the federal government sued the state of California for control of the coastal waters, including the rights to oil, gas, and minerals. The state of California had negotiated several leases of off-coast property for the purposes of collecting petroleum products. The federal government challenged the authority of the state to do this. The Supreme Court agreed with the federal government and stated that the federal concerns of sovereignty and the need to protect the coastal waters and shores outweighed the states' rights of ownership. Two other cases followed, *United States v. Lousiana* (339 U.S. 699, 1950) and *United States v. Texas* (339 U.S. 707, 1950), with similar outcomes. In the Louisiana case, the court also found that any money resulting from the procurement of products from these waters must be shared with the U.S. federal government.

In 1953, Congress enacted legislation in response to these cases. The legislation transferred control and ownership of the natural resources (oil, natural gas, and others) to the states to ensure their continued development. The submerged land legislation withstood Supreme Court review in *Alabama v. Texas* in 1954. The court found that the federal government could relinquish federal rights to the states without threatening national sovereignty. In fact, the court noted that these areas were similar to the lands not submerged in the United States. The federal government had the same power, rights, and responsibilities to the submerged lands and coastal waters as it does to the rest of the United States. Following the enactment of the Submerged Lands Act, Congress also passed the Outer Continental Shelf Lands Act (OCSLA). This legislation gave the federal government control over the lands submerged outside the three-mile barrier. In addition, the U.S. government also retained rights to the petroleum, gas, and minerals within those regions.

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See Also: Bureau of Ocean Energy Management, Regulation, and Enforcement, U.S.; Clean Water Act; Eisenhower, Dwight D.; Environmental Protection Agency, U.S.; Minerals Management Service, U.S.; Office of Natural Resources Revenue, U.S.; Pollution, Water.

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Subprime Loans

Subprime mortgage loans were the primary contributor to the mortgage default crisis of 2008 and beyond. Subprime loans were made to borrowers with impaired and/or limited credit histories. A subprime borrower as defined by federal guidelines issued prior to the default crisis included someone who displayed one or more of the following credit risks: (1) bankruptcy in the last five years; (2) relatively high default probability based on marginal credit score; (3) history of two or more 30-day credit delinquencies in the last year, or one or more 60-day delinquencies during the last two years; and (4) debt-to-income ratio of 50 percent or greater. A wide variety of mortgage loans were increasingly issued to subprime borrowers beginning in the early 2000s. Types of subprime mortgage loans included "no doc" loans made to mortgage borrowers who could not verify income, loans that required no down payment and large "balloon" payments at the end of the loan term, loans that contained an option to make interest-only payments with little or no reduction in principal over the loan repayment period, and loans that had adjustable interest rates (ARMs). Many subprime borrowers only qualified for loans that had layered risk through a combination of these types of loans, such as "pay-option ARMs" that offered interest only payments and initial low interest rates that reset to substantially higher interest rates after two or three years.

The immediate cause of the mortgage default crisis involved the collapse of the residential real estate market and a surge of roughly 3 million home foreclosures. Most of the foreclosures were tied to defaults on these subprime loans made to borrowers with impaired and/or limited credit histories. The number of subprime mortgage loans made to borrowers with impaired or limited credit histories had grown exponentially until 2005, when over one in five mortgage loans originated were made to a subprime borrower. Defaults on these loans were precipitated by a decline in U.S. home prices beginning in 2005 and a succession of interest rate hikes that reduced the affordability of mortgages nationwide. These trends coincided with the scheduled reset of adjustable rate loans originated during the preceding housing boom. Many subprime borrowers could not afford higher monthly payments and could not refinance their subprime loans because the outstanding balance on the loans often exceeded the market value for their homes.

The mortgage default crisis worsened as subprime borrowers defaulted and the value of mortgage-backed securities (MBS) backed by the subprime loans declined. The remainder of this article outlines the primary factors that led to increases in subprime lending, including both political arrangements and opportunities for corporate fraud in the market for subprime loans.

Contributing Factors to Subprime Spike

The U.S. government first became involved in the housing market during the Great Depression of the 1930s, when severe home price declines and tight credit markets resulted in a wave of home foreclosures. The Federal Housing

Administration (FHA) was created to enable the government to purchase defaulted mortgages, reinstate them on more borrower-friendly terms, and insure loan repayments. The government created what would eventually become the Federal National Mortgage Association—Fannie Mae—to establish a market for the sale of FHA-insured loans to private investors. The federal government stepped into the mortgage market once again during the late 1960s to restore the free flow of mortgage credit by transforming Fannie Mae into a privately operated "government-sponsored entity" (GSE) designed to buy and sell nongovernment-backed mortgages originated by private lending institutions. The "new" Fannie Mae and its companion GSE Freddie Mac would act as clearinghouses for the buying and selling of mortgage-backed securities (MBS). The GSEs became the driver of what has become the largest fixed-income investment market in the world—a complex process involving purchases, bundling, and selling of investment products backed by packaged real estate loans commonly referred to as the securitization process.

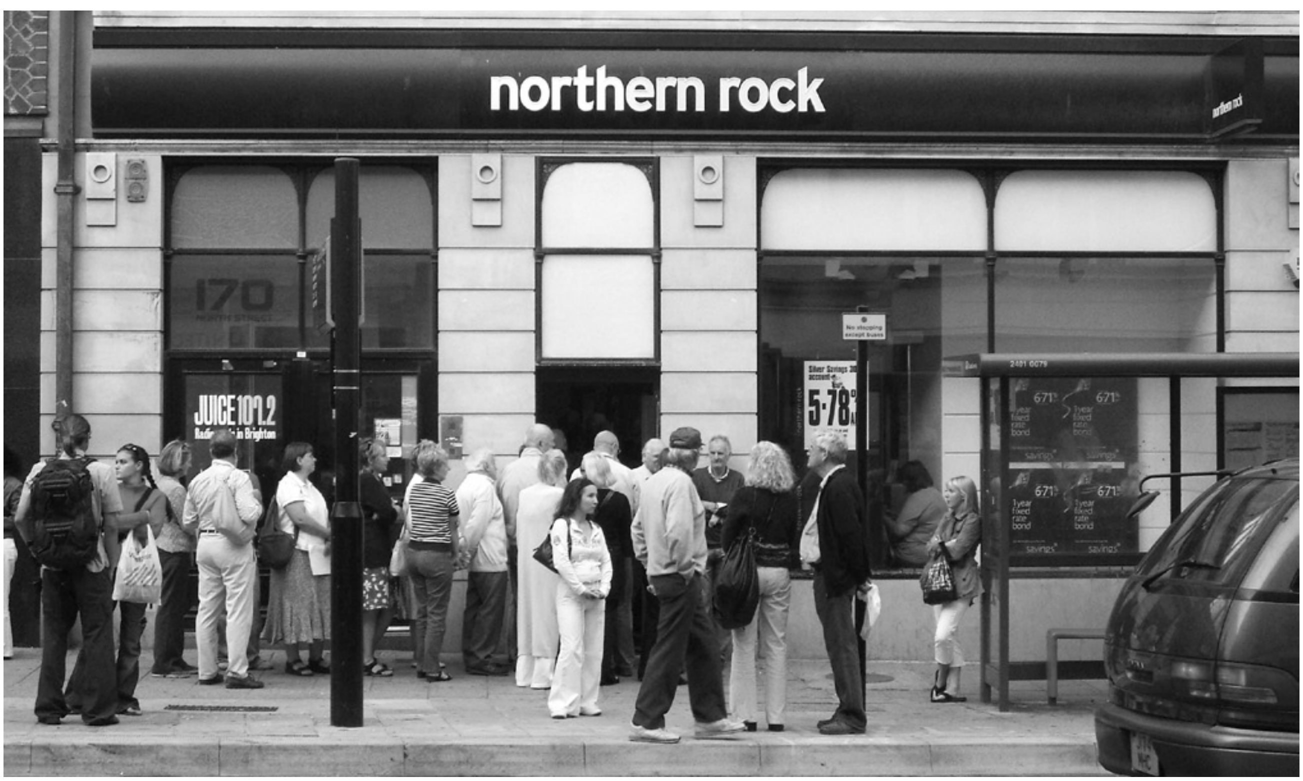
The trend toward securitization altered the nature and character of interactions in the mortgage market and generated opportunities for corporate deviance and fraud, especially in the origination and sale of MBS. The primary problem relates to the manner in which securitization supplanted the traditional long-term one-to-one relationship between borrower and lender with one that included numerous intermediaries. The traditional mortgage relationship required ongoing interactions between borrowers and mortgage lenders because the lender maintained an interest in the ongoing repayment of the loan. This system has been replaced by securitization, with arrangements that increased relational distance between borrower and lender and created more diffuse patterns of interaction among all participants, including borrowers, loan originators, loan servicers, and MBS investors. The mortgage loans of individual borrowers are now packaged and sold with other mortgage loans to investors. The originator of the mortgage has very limited interest in the ongoing repayment of the loan because the loan has been packaged and resold. The erosion of traditional borrower-lender ties transformed the traditional market and engendered deviance and fraud among buyers and sellers of MBS. Mortgage brokers and lenders earned commissions on the volume of loans produced and fees derived from the securitization and resale of loans, but they had very little incentive to screen loans based on risk because the loans would ultimately be passed off to MBS investors. This structure has been commonly referred to as the "originate-to-sell" model, wherein lenders were motivated to originate loans—any loans—without much regard to the creditworthiness of borrowers, especially subprime borrowers with limited and/or impaired credit histories. The market contained a finite number of borrowers who qualified for mortgage financing based on traditional underwriting guidelines, so lenders met production goals by failing to adequately screen borrowers and lowering underwriting standards. Millions of these loans eventually went into foreclosure and contributed to the mortgage default crisis.

The increased production of subprime mortgage loans and the eventual mortgage default crisis was also influenced by government initiatives that encouraged growth in the market for subprime mortgage loans, including (1) monetary policy and the expansion of mortgage credit, (2) the promotion of national home ownership goals, and (3) statutory changes and deregulation of the mortgage market.

Monetary policy refers in part to the relationship between interest rates, or the cost of borrowing, and the total supply of money in the economy. Two key ways in which the government directs monetary policy are interest rate adjustments by the Federal Reserve Board and regulation of bank reserve requirements, or the amount of funds banks must hold in reserve against deposits. Policy decisions in these two areas during the early 2000s led to an expansion in consumer borrowing and reckless mortgage lending. The Federal Reserve Board set and maintained unusually low interest rates from 2000 to 2005. Low interest rates promoted a sudden increase in mortgage borrowing by consumers, including subprime borrowers. The impact of low interest rates occurred during a period when banks were allowed to reduce the amount of capital held in reserve, which further expanded the supply of money available for mortgage financing and fueled speculation on the part of lenders in the subprime market.

Government strategies to increase homeownership provided another incentive to originate subprime mortgage loans. The U.S. Department of Housing and Urban Development (HUD) initiated the so-called National Homeownership Strategy to increase the rate of homeownership in America during the summer of 1994. The initiative was an attempt to build on an earlier law that required the GSEs Fannie Mae and Freddie Mac to dedicate a percentage of their lending to support affordable housing for residents of low- and moderate-income communities. The plan originated as a public-private partnership of housing market participants, including realtors, home builders, private lenders, the GSEs, and various federal agencies. The strategy was intended to make it easier for subprime borrowers to obtain mortgage loans through streamlined regulation, reduced or no down payments, and other prominent features of subprime loan products. The goal was to accomplish an all-time high level of homeownership, strengthen communities, and build wealth among working-class citizens, and these policies contributed to record levels of homeownership into the early 2000s. The goal of expanded homeownership also effectively forced the GSEs to participate in the riskier subprime market because most of the targeted borrowers could not qualify for prime loans. Lenders began to originate a virtually unlimited quantity of risky subprime loans to marginal borrowers until the wave of foreclosures began in 2008.

Statutory changes and deregulation also contributed to the increased production of subprime loans during the early 2000s. State and federal laws strictly regulated mortgage instruments from the 1930s through the 1970s. Federal regulations prevented most lenders from originating variable-rate loans, and state laws capped interest rates and prohibited mortgages that were negatively amortized or those with end-of-term balloon payments. Congress removed these restrictions



Anxious customers wait outside the Northern Rock (NR) bank in North Street in Brighton, East Sussex, September 14, 2007. Ripples from the U.S. subprime lending crisis led to the bank's failure. After BNP Paribas—heavily invested in the U.S. subprime credit market—suspended its wholesale money market withdrawals, NR received an emergency infusion from the Bank of England. An insider tipped the BBC on September 13, triggering NR's bank run and an eventual bankruptcy. The government nationalized the bank in 2008.

through a series of laws during the early 1980s. The Depository Institutions Deregulation and Monetary Control Act (DIDMCA, 1980) preempted state laws that capped loan interest rates and allowed the origination of high-interest-rate loans to subprime borrowers.

The Alternative Mortgage Transaction Parity Act (AMPTA, 1982) permitted the origination of loans with variable interest rates, balloon payments, and negative amortization, loan terms that were commonly used to aid subprime borrowers to qualify for mortgage loans. The Tax Reform Act of 1986 prohibited the deduction of interest on consumer loans but retained the tax deduction on mortgage interest, a provision that encouraged cash-strapped homeowners to refinance their mortgage and use home equity funds to pay off credit card and other consumer debts. More than one-half of subprime loans are these types of home equity loans, or "cash-out" refinancing of mortgage loans.

Congress passed additional legislation to ensure that subprime loans could be securitized and sold as investments. The Secondary Mortgage Market Enhancement Act (SMMEA, 1984) made it easier for private entities (e.g., investment banks) to securitize mortgage loans. Additional provisions in the Tax Reform Act of 1986 created an investment vehicle called a Real Estate Mortgage Investment Conduit (REMIC), which provide MBS issuers ways to structure these investments to include riskier subprime loans and provides higher rates of investment returns. Overall, these statutory changes and deregulation helped create the market for securitized mortgages and the sale of MBS backed by subprime mortgage loans made to borrowers with poor credit histories.

The mortgage default crisis quickly became the source of an unprecedented wave of securities litigation. Almost all of the cases involve allegations of civil fraud rather than criminal wrongdoing. The D & O Diary Web site provides information on trends in this type of securities litigation. The first wave of securities litigation began in early 2007 and mostly involved suits against loan originators, banks, mortgage companies, home builders, and real estate trusts. The wave of litigation tied to the crisis in subprime mortgage loans gained momentum during 2008 as 101 subprime and credit crisis–related securities lawsuits were filed. The wave of litigation showed no signs of slowing down going into 2009. The Securities and Exchange Commission has settled a handful of high-profile lawsuits related to the mortgage default crisis and subprime lending, including a $2.45 million settlement with former executives of American Home Mortgage, a $67.5 million settlement with the former chairman and chief executive of Countrywide Mortgage, and a $75 million settlement with Citigroup and two of its former executives. Also, several state attorneys general are pursuing possible violations of state law related to the mortgage default crisis.

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See Also: Bank of America Corp.; Countrywide Financial Corp.; Mortgage Fraud; Mortgage Modification Fraud; Mortgage Reform and Anti-Predatory Lending Act; Mortgage-Backed Securities; Predatory Practices; Securitization Fraud; Short-Sale Schemes; Wells Fargo Mortgage.

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Sumitomo Mitsui Banking Corp.

Sumitomo Mitsui Banking Corporation is a Japanese bank that is headquartered in Chiyoda-ku, Tokyo, Japan. It is a global corporation offering personal, corporate, and investment banking. It is also engaged in leasing, securities, credit card, mortgage securitization, venture capital, and other credit-related businesses. Its chairman of the board is Teisuke Kitayama, and the president is Takeshi Kunibe. There are 437 domestic and 15 overseas Sumitomo Mitsui branches and 22,686 employees worldwide. Currently, its total assets are 119,037.5 billion yen; deposits are 75,804.1 billion yen, and capital stock is 1,770.9 billion yen.

Sumitomo Mitsui is a member of both the Mitsui Group and the Sumitomo Group—thus the name Sumitomo Mitsui. The Sumitomo Group is one of Japan's five great sogo shoshas (trading houses) and one of the world's largest distributors of basic commodities, such as metal, and a wide variety of industrial goods and consumer products. The Sumitomo Group is one of the oldest surviving business entities in the world—in operation since the early 1600s. It was originally founded near Kyoto as a medicine and book shop but soon expanded into the highly profitable copper trade. By 1868, Sumitomo was one of Japan's largest companies. Having built wealth through the copper trade, Sumitomo then established its banking division in 1895—then called the Sumitomo Bank.

Scandals at Sumitomo Mitsui

Japan's banking community has had its share of financial scandals since the 1990s, including credit union collapse, money laundering, bad loans, and other fraudulent activities. Sumitomo Mitsui in particular has been featured in the financial news for troublesome activities. In the early 1990s, the Japanese banking industry was in crisis. Sumitomo was involved in a stock manipulation scandal in 1990 that involved a firm with a long-standing tie to the Sumitomo Group—Itoman. Sumitomo chairman Ichiro Isoda resigned as a result. An official of his bank was implicated in a plan to provide illegal loans to corporate raiders. A Sumitomo branch manager was arrested on charges that he accepted almost $750,000 for arranging $170 million in improper loans for a well-known and influential corporate raider. This raider was indicted in August 1990 for stock manipulation.

In January 1993, Sumitomo wrote off 100 billion yen in bad loans, some of which had been related to the Itoman affair. This caused an increase in violence against Japan bank employees who attempted to collect bad debts from customers. In September 1994, a murder of the director of the bank's Nagoya branch occurred. In an effort to resolve its bad loan problem, Sumitomo sold 40 billion yen in problem loans to Goldman Sachs.

As this was the beginning of the Asian financial crisis, Sumitomo was saddled with additional bad debt from loans made in troubled nations such as Indonesia and South Korea. New Japanese disclosure rules forced Japanese banks to write off more bad loans. In 1998, Sumitomo wrote off another 1.04 trillion yen. More bad news came in February 1998, when the bank was named in a scandal involving the bribing of Japanese financial ministry officials.

In June 1996, the Sumitomo Copper Scandal occurred in which $2.6 billion was lost because of transactions made on the world copper market by one of its traders, Yasuo Hamanaka—also known as Mr. Five Percent because he was said to control 5 percent of the world's copper market. These losses had been accrued by Hamanaka over a 10-year period. In 1997, Hamanaka was jailed for eight years after he was found to have conducted rogue trading and fraud for more than a decade. This scandal is on record as one of the largest losses ever blamed on the transactions of a single trader.

Then, in 2005, thieves posing as cleaning staff were helped by a security guard who installed hardware keystroke loggers on computers of personnel responsible for wire transfers in the Sumitomo-Mitsui London branch. Capturing administrative passwords for remote access, they broke into Sumitomo Mitsui Bank's branch in London and sought to transfer $440 million to accounts in other countries. The theft was foiled, and the money was recovered. This would have been the largest bank heist in history.

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See Also: Bank Fraud; Bribery; Computer Hacking; Employee Crimes; Market Manipulation; Money Laundering; Wire Fraud.

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Sutherland, Edwin H.

Edwin H. Sutherland was an American sociologist and criminologist best known for introducing the concept of white-collar crime and proposing differential association theory as a general theory of crime.

Sutherland was born in 1883 in Gibbon, Nebraska. He graduated with his bachelor's degree in 1904 from Grand Island College, where he tied for a Rhodes Scholar nomination. Following graduation, Sutherland taught at Sioux Falls College for several years before enrolling in graduate school at the University of Chicago. While at the University of Chicago, Sutherland majored in sociology and political economy and minored in psychology. He graduated with his doctoral degree in 1913, having studied under numerous famous scholars of the time, including sociologist W. I. Thomas, philosopher and social psychologist George Herbert Mead, behaviorist psychologist John Watson, and political economist Thorsten Veblen.

Over the course of his career, Sutherland held faculty appointments at William Jewell College, the University of Illinois, the University of Minnesota, and Indiana University. He also held research appointments at the Bureau of Social Hygiene and the University of Chicago. His time at the University of Illinois represented a turning point in his scholarly work, as the department head, Edward Hayes, asked Sutherland to write a criminological textbook. Sutherland had not previously studied criminology, but from this moment forward, it would become his primary area of interest—and his writings would forever change the field.

Sutherland's eclectic scholarly interests undoubtedly provided him with the tools necessary to develop his ideas on white-collar crime and to develop a scientific explanation of criminal behavior: differential association theory. The concept of white-collar crime was introduced to challenge existing theories of criminal behavior and the official data on which it relied. Criminological theory up until the 1940s was primarily an oxymoron, as criminologists primarily relied on multifactor approaches to explain crime that rested upon correlating multiple variables with the occurrence of crime. Those theories that did exist tended to explain crime in terms of poverty or factors associated with poverty, such as whether a person was reared in a broken home.

In introducing the concept of white-collar crime, Sutherland criticized existing crime statistics as resting upon criminal convictions, statistics that underrepresented the crimes of the wealthy. This was because affluent individuals were better able to resist prosecution, and many of the acts they committed, such as crimes committed in the course of their occupations (e.g., false advertising), were handled through civil or administrative enforcement mechanisms rather than in the criminal courts. This led to a famous debate between Sutherland and Paul W. Tappan over whether white-collar crime was in fact a crime, since many of the crimes discussed by Sutherland were not prosecuted in criminal courts.

As existing criminological theories were based upon biased data, Sutherland proposed differential association theory as a general explanation of criminal behavior. The theory proposed that individuals learn to engage in criminal behavior through interactions with others. This learning process could take place in slums, where a person might learn how to steal cars, or within businesses, where a person might learn to engage in criminal business practices such as price fixing.

Sutherland died in 1950, leaving a significant criminological legacy. He is largely credited for establishing criminology as a legitimate field of scientific inquiry. Differential association served as the first general sociological theory of criminal behavior. The concept of white-collar crime has been particularly important to criminology for drawing attention to the distinction between criminal and civil/administrative violations of law, and to whether criminology would include both types of violations within its purview. The concept also drew attention to the biased nature of official crime statistics and the shortcomings of theories based upon them. This has led criminologists over the years to develop alternative means of collecting data on criminal behavior, such as self-report surveys that directly measure the occurrence of crime.

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See Also: Clinard, Marshall; Coleman, James; Cressey, Donald; Cullen, Francis T.; Differential Association Theory; Geis, Gilbert; Hartung-Burgess Debate; Ross, Edward; Shover, Neal; Sutherland-Tappan Debate; Techniques of Neutralization.

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Sutherland-Tappan Debate

The Sutherland-Tappan debate occurred during the 1940s between the sociologist and criminologist Edwin H. Sutherland and Paul W. Tappan, a sociologist and lawyer. The debate centered on the issue of how criminal behavior should be defined, as well as the implications a particular definition had, once adopted, for criminology as a science.

The debate began when Sutherland introduced the concept of white-collar crime as a way of criticizing the predominant criminological theories of his time that explained crime in terms of poverty or by social or individual characteristics (e.g., being raised in a broken home or being a psychopath) correlated with poverty. The concept of white-collar crime was intended to demonstrate that those of wealth and status also committed crime; however, their crimes were not fully tallied in official crime statistics that enumerated criminal convictions. This was because those of high socioeconomic status were more able to influence the process of making laws, as well as how laws were enforced.

In order to arrive at the concept of white-collar crime, Sutherland needed to evaluate the very definition of crime, as many white-collar crimes—for example, tax fraud, price fixing, or antitrust violations—were primarily regulated through civil law, various commissions, or other administrative bodies. Sutherland's effort to define crime evolved over time. Initially, Sutherland contended that white-collar crime was in fact real crime. It violated criminal statutes and could be convicted within a criminal court of law. However, because of the social influence and status of white-collar offenders, civil or administrative laws had been developed that paralleled criminal statutes and allowed white-collar crimes to be addressed outside criminal courts. Thus, white-collars crimes were not treated as crimes by governmental agencies.

Later, Sutherland adopted a definition of crime that defined a crime as being a socially injurious act that was punishable by the state. This definition established a class of behavior that could be identified as criminal, regardless of the precise bureaucratic legal mechanisms used to determine whether a violation of the law occurred, and waspunishable for a person or organization should it be found guilty of committing the behavior.

Paul W. Tappan was initially approving of Sutherland's effort to draw attention to the crimes of those with high status, so long as those acts were truly violations of criminal law. Tappan was, however, critical of the efforts by Sutherland, among others, who sought to redefine the term *crime* to reflect abstract criteria of classification that were universally applicable to all societies. Tappan objected to criteria based upon whether an act was injurious, for example, by noting that such a criterion was based upon the subjectivity of the person defining the term and allowed for virtually any behavior to be defined as a crime. He instead proposed that acts that have been convicted as crimes by criminal courts should be the only acts considered crimes. This is because such acts have been processed by enforcement agencies and due process has been exercised in officially determining the act to be a crime.

Abstract Criteria or a Legalistic Definition?

The key point of distinction between the views of Sutherland and Tappan is whether abstract criteria can be employed to define crime or whether a legalistic definition of crime—that is, an act that violates a criminal law—is the only valid definition. For criminologists, as well as for governmental agencies, a definition of crime that relies upon the occurrence of a conviction has proven overly restrictive for both scientific and official purposes. Official crime statistics such as the Uniform Crime Report provide counts of crimes reported to the police, not convictions. Likewise, criminologists have developed methodologies, such as self-report surveys, that measure the number of crimes committed by individuals. These surveys rely on respondents to identify whether an act is a crime. Both of these conceptions of crime tend to assume an act has been legally prohibited under the criminal code. Criminologists studying occupational, organizational, or governmental crime tend to incorporate violations of civil or administrative codes into their definition of crime.

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See Also: Conflict Theory; Critical Theory; Differential Association Theory; Fear of Crime; Misappropriation Theory; Self-Control Theory; Sutherland, Edwin H.; Techniques of Neutralization.

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Sweepstakes Fraud

Millions of people worldwide have had their dreams shattered after hearing that the sweepstakes they won was actually a sweepstakes scam. There's a big difference between legitimate sweepstakes and fraudulent ones. Prizes in legitimate contests are awarded solely by chance, and contestants are not required to make a monetary contribution to enhance their chance of winning. In fraudulent schemes, winners have to make a monetary contribution to enter the competition or to collect their prizes.

Sweepstakes are not actually lotteries but are often confused with them. Sweepstakes fraud appears in different forms, such as telephone calls, check scams, e-mails, direct mail, and computer-generated personalized letters. These scams are designed by perpetrators whose main objective is to entice people to send cash under false pretenses to claim a sweepstakes—in these cases, phony—prize. In helping combat this massive fraud, the Federal Trade Commission (FTC), the nation's consumer protection agency, and the Better Business Bureau have launched a massive education campaign to inform the public about these fraudulent schemes.

According to the FTC, Americans report losses of billions of dollars annually to fraud through national and international crime rings, because scam artists ignore geographical boundaries to reach potential victims. One such example is fraudulent telemarketers based in Jamaica who call U.S. residents, informing them that they have won a sweepstakes or foreign lottery. Jamaica is not unique—sweepstakes scammers from Canada, Africa, Australia, the United Kingdom, and Ireland also prey on U.S. citizens. Although identifying cross-border fraud can be difficult, partnership among law enforcement agencies, the FTC, and U.S. Immigration and Customs Enforcement are making it harder for cross-border scam artists.

Each year, the National Fraud Information Center reports the Top Ten list of most common frauds. For 2010, the top five Internet scams reported by the National Fraud Information Center were mortgage relief scams, debt relief scams, robocall scams, sweepstakes scams, and identity theft scams. Often, these scam artists identify themselves as lawyers, customs officials, or lottery representatives. Prizes range from vacations and cars to thousands or even millions of dollars, but a fee is required to collect the winnings. In order to recognize sweepstakes fraud, it is helpful to know the goals of scammers and how they are operationalized.

Sweepstake fraud is not new, but the recent economic crisis has enabled unscrupulous scammers to prey on financially strapped consumers who are trying to get themselves out of financial binds. Thousands of these consumers have become victims of sweepstakes scams; because many are caught in the collapse of the housing market, unemployment, and the meltdown of Wall Street, it is no wonder many are falling for the promise of getting rich quickly. However, the FTC has been very active in stopping these fraudulent enterprises. According to the FTC, one such scam that operated under numerous names, including National Awards Service Advisory, International Award Advisors, and Prize Registry Bureau, was recently shut down.

Sweepstakes scams use different methods of operating. For example, sweepstakes scammers contact individuals, informing them of their win in a sweepstakes, but in order to receive the prize, the "winner" will have to electronically transfer money to cover taxes or service fees. Personal information is requested in a hurry, not giving the prospective winner time to realize what is happening. In addition to scamming prospective winners out of their cash, it is also a means to identity theft. Stealing one's identity enables scammers to use personal information to get credit cards or loans or to commit crimes in someone else's name. Not only do sweepstakes scanners steal people's identify, but they also convince people to give them their bank account or credit card information, which they use to deplete the accounts.

The growth of technology and Internet usage and, most recently, the surging membership of social networking sites like Facebook and Twitter have fueled more online scams. For example, computer-generated personalized letters are a standard marketing ploy in the sweepstakes industry. These letters are skillfully constructed to draw the attention of vulnerable elderly, retired, and disabled persons. Scammers build personal relationships with these individuals to dupe them out of their savings and their pensions. Teri Cettina reported that the elderly are scammed out of some $2.6 billion annually.

Federal investigators return money to elderly San Jose, California, citizens victimized by con artists posing as attorneys—including one for a multimillion-dollar Canadian sweepstakes claim center—from November 2009 to January 2010.

What Is Known About These Scammers?

Given the typical sweepstakes scam, there are many known signs that fraud is involved: (1) sweepstake scammers require winners to pay to receive their prizes; legitimate sweepstakes do attach conditions to prizes, and winners pay taxes to the Internal Revenue Service (IRS); (2) sweepstakes scams use a free e-mail account, such as Gmail or Hotmail, to notify winners of their prize from big companies such as Publishers Clearing House; (3) a counterfeit check with an attractive sum of cash is sent to winners as a form of notification to convince people of the legitimacy of the sweepstakes; (4) winners are instructed to use electronic transfer to send money to collect their prize; (5) victims are encouraged to respond immediately before the check bounces or before the victims become suspicious; (6) bank or credit card information is required to receive the prize; (7) names are rarely used in the e-mail win notification because thousands of generic fake e-mails are sent out to numerous addresses; and (8) government organizations are often falsified in order to make information seem legitimate.

Fighting Sweepstakes Fraud

Despite a high degree of public education on the dangers of fraud, people are still cheated out of their money, because sweepstake scammers have gotten more sophisticated. There are several key strategies for avoiding sweepstakes scam. First, investigate the win. Using the names appearing on the notification will help determine if it is authentic, since the same sweepstakes or sponsors' names are sent out in thousands of letters and e-mails. Second, for every notification received, examine the signs described above to ensure that there is no evidence of fraud, considering sweepstakes scammers use different methods to enhance their business. Third, using the Internet to your advantage, use a search engine to validate the sweepstakes name and sponsor. Fourth, verify the win by making direct contact with the sponsor. This can be done by checking the win notification for the company that made the contact. Additionally, use the telephone directory to help with verification and check regularly the consumer fraud reporting Web site, which has useful tools to help in recognizing sweepstakes scams.

If anyone suspects they are being scammed, they should file a complaint with the FTC (at FTC.gov or by calling 1-877-FTC-HELP), contact the police, and report the incident to the National Fraud Center at www.fraud.org. Finally, personal information should never be given out and advance fees should never be paid, regardless of how convincing the arguments. The party on the other end of the telephone should be informed that one is aware of the scam and the conversation discontinued as quickly as possible. The less time spent in conversation, the less time there is to form a relationship.

Sweepstakes scammers will always be present in society, despite all the efforts being made by government agencies and correctives posted in different locations. The chance that scammers will get caught is slim. It is incumbent on consumers to be aware of all the tactics used by scammers, in particular for the elderly, pensioners, and the disabled, who are often intimidated. However, consumers with the "get rich attitude" will continue to fall prey because they are guided by their emotions and their wishes.

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See Also: Better Business Bureaus; Federal Trade Commission; Gambling and Lotteries; Internet Fraud; Mail Fraud; Microsoft Corp.; Nigerian 419 Scams; Predatory Practices.

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Tailhook Scandal

Created in 1956, the Tailhook Association is a private group consisting of U.S. Navy and Marine aviators, both active and retired, and various other individuals or corporations dealing with naval aviation. In 1963, it moved its annual meeting, which consisted of a reunion, seminars, and presentations of interest to pilots, from San Diego to Las Vegas. The naval and defense contractors provided both logistical and fiscal support for this group until its notorious 1991 meeting in Las Vegas. Officers were allowed to attend meetings of Tailhook while getting per diem allowances and with no prejudice to their annual leave. This was a tense period for women in the armed forces generally, and women who were naval officers were trying to advance their cause and raise their status. The Tailhook Scandal, which involved drunken sexual antics by male aviators at a convention and a cover-up by senior naval officers, brought the situation of women in the naval services to the attention of Congress and the public.

At that particular meeting, held September 3 through September 8, 1991, a number of alcohol-fueled, scandalous episodes took place. Evidence suggests that they were practiced at previous meetings as well but were not as boisterous and problematic on those occasions. It also appears that many of the senior officers and civilian authorities present, including the secretary of the Navy and the chief of naval operations, must have been at least partially aware of what was transpiring. Most of these incidents involved extreme examples of sexually oriented harassment and grossly puerile behavior. Some Navy and Marine officers were observed consuming "navel shots," that is, drinking alcohol from the navels of apparently willing though probably intoxicated females. Others were seen shaving women's legs in group settings and "ball-walking," strolling in public contexts within the convention hotel with testicles displayed outside their zippers. Some strippers were observed stripping, nude, and engaging in sex acts with male officers and each other—all for the boisterously approving audiences in open-door hotel suites.

Though some female officers went along with the hijinks, others were intimidated into silence. Other drunken misbehavior involved "mooning" incidents; in one case, an aviator pressed his buttocks against a window, causing it to crash several stories below, injuring a young female. A suite was reserved for aviators and their dates to imbibe mixed drinks from a sexual device attached to a poster of a rhinoceros. Some highly intoxicated officers were observed "butt-biting," biting women on the buttocks until forcibly shaken off. Reportedly, a few men were thus manhandled by several

Three of the more prominent U.S. Navy officers embroiled in the Tailhook '91 fiasco are (left to right) H. Lawrence Garrett, secretary of the Navy in 1991 and present at the Tailhook '91 convention; Frank Kelso, chief of naval operations and present at Tailhook '91, later found to have lied to investigators about where he was and what he witnessed at the convention; and Commander Christopher Remshak, who ran the Hilton suite at Tailhook '91 where Lieutenant Rolando Diaz performed leg shaves on female volunteers.

females. Women also reported being "zapped," having squadron insignia slapped on their buttocks. Again, several women asked to be zapped and were apparently "collecting zaps." Although bizarre, this was considered, in general, among the least offensive behaviors at Tailhook '91.

The most troubling events involved a large group of young officers aggressively pawing women, many of whom were unsuspecting, as they walked down a hall to their rooms or to other parties. This planned activity was known as the "gauntlet," and any female walking through the hall was subject to various indignities, some of which were clearly sexual assault. Several women reported having their breasts grabbed and pinched, and some reported men's hands inside their undergarments. Some were lifted from the floor and divested of their clothes. One teenager was found on the floor of the hall, dead drunk, with virtually no clothes on. Several reported fear of gang rape by intoxicated aviators. Hotel security and older officers apparently were not able to curb or prevent this activity.

It was only when Navy Lieutenant Paula Coughlin, an admiral's aide, complained afterward and eventually went public about her having been assaulted that action was forthcoming. Her boss, Admiral John W. Snyder, was initially unresponsive but came to realize that she had been traumatized and that the incident went beyond harmless convention antics and therefore warranted an official response. Ultimately, the Naval Investigative Service reported 140 cases of misconduct and 90 victims. Many of those questioned proved to be hostile and/or uncooperative. Investigators characterized their responses as "stonewalling." Seventy personnel were eventually charged with obstructing the investigation or actually assaulting the victims. Secretary of the Navy H. Lawrence Garrett resigned, and Frank Kelso, chief of naval operations, was forced into early retirement for not having acted to halt the juvenile and assaultive behaviors.

Other senior officers were reprimanded or forced to retire for allowing this behavior to go on or for obstructing the investigation. Approximately 60 lower-ranking supervisory officers received some sort of reprimand or were censured.

Ironically, this event, the blundered cover-up, and the initial obtuseness of the Navy hierarchy garnered the attention of Congress, and the Navy was forced to address real issues concerning women in the armed forces with more commitment and sincerity. Today, women enjoy many more aviation and advancement opportunities because of the tailwind from Tailhook.

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See Also: Gender Discrimination; Public Corruption; Sexual Harassment.

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Tampons and Toxic Shock

In the years following World War II, the roles of women changed drastically. Women began to demand feminine hygiene products that fit their more active lifestyles. Although tampons had been on the market for decades, the number of women using them increased in the postwar years. By 1978, 70 percent of women in the United States were using tampons.

In 1980, the first cases of toxic shock syndrome (TSS) caused by tampon use were reported, with a total 890 cases recorded by the Centers for Disease Control and Prevention (CDC). Among the 890 cases reported, 91 percent occurred among menstruating women. Most cases were soon traced to the use of Procter & Gamble Inc.'s (P&G) new Rely tampon, which was capable of absorbing 20 times its own weight. Rely was promoted as being so absorbent that "it even absorbs the worry." The Rely tampon was made of a compound of polyester foam and small particles of carboxymethylcellulose. Because women had complained about leakage with other tampons, the Rely tampon was designed to expand into the shape of a cup during use. Eager to get its product out to potential customers and to outperform competitors, P&G mailed 16.8 million samples of Rely in April 1980.

Between 1975 and 1980, 400 cases of toxic shock were reported, with 40 fatalities. In May 1980, following the mass distribution of Rely tampons to consumers, the number of cases reported was 813, with 38 fatalities. One of the most publicized cases concerning Rely and toxic shock syndrome involved the death of Patricia Kehm of Cedar Rapids, Iowa, who died on September 6, 1980. Sixteen days later, on September 22, P&G recalled Rely. Kehm's family was awarded $300,000 in compensatory damages. A national Toxic Shock Syndrome Task Force was created, and by September, the link between superabsorbent tampons and toxic shock had been well established. Subsequent research indicated that synthetics used in Rely and similar products had increased susceptibility to toxic shock. In 1985, polyacrylate tampons were taken off the market and replaced with tampons composed of cotton or rayon.

Although toxic shock has come to be closely associated with women because of the connection with tampons, anyone can develop toxic shock as the result of an infection contracted in conjunction with wounds, burns, or insect bites or following surgery. In rare cases, toxic shock has been associated with the use of contraceptive sponges. TSS is caused either by the staphylococcus aureus bacterium or the streptococcus bacterium. Symptoms of toxic shock include fevers of 102 degrees F or higher, vomiting, diarrhea, a rash, reddened eyes, flaking or peeling skin, dizziness or light-headedness, and aching muscles. The fact that blood pressure may drop suddenly and drastically is the reason toxic shock often leads to death. Immediate hospitalization with proper treatment is essential.

Because they allow blood to collect inside the body, spurring the growth of bacteria, tampons—particularly those that are promoted as superabsorbent—make women of childbearing age more susceptible to toxic shock than any other group. Young women are especially susceptible because they have not built up immunities to bacteria to the same extent as older women. Women who use tampons are encouraged to opt for lower-absorbency products and change them every four to eight hours. Health care professionals warn that under no circumstances should more than one tampon be worn at a time. Alternating tampons with sanitary pads is considered to cut down on risks of developing toxic shock.

At the time the number of toxic shock cases began to increase, the U.S. Food and Drug Administration (FDA) had not yet begun to define tampons as medical devices, so testing was less rigorous than it was after tampons were so designated. Although P&G tested Rely on 1,332 women before placing the product on the market, the tests failed to adequately identify potential problems.

Researchers subsequently learned that efforts to make tampons more absorbent had led manufacturers to change from the traditional cotton composition to synthetics that actually spurred the growth of bacteria. Philip Tierno, a professor of microbiology and pathology at New York University, was one of the first to identify the link between superabsorbent synthetics and toxic shock syndrome. He suggests that P&G unwittingly created an ideal environment for the development of toxic shock syndrome in women using Rely because the synthetic materials caused the product to combine with the vaginal pH changes that occur in all menstruating women to accelerate bacterial growth. Tierno maintains that once toxic shock developed, the fever served to accelerate bacterial growth at an even faster pace. Those factors combined to increase susceptibility even further in young women who had not yet developed immunities to the bacteria.

In October 1980, the FDA proposed placing the following warning on all tampon packages:

> Tampons have been associated with toxic shock syndrome, a rare disease that can be fatal. You can almost entirely avoid the risk of getting this disease by not using tampons. You can reduce that risk by using tampons on and off during your period.

By December 1982, a warning informing women of the link between tampons and toxic shock, listing the symptoms of TSS and advising women to seek immediate help if suffering those symptoms, was mandated for all packages of tampons.

Government agencies, the medical community, researchers, and the manufacturers of feminine hygiene products all joined together to educate the public about the link between toxic shock syndrome and tampon use. Around the world, governments mandated warning labels on tampons. In the 1980s, toxic shock had occurred among women at a rate of six to 17 cases per 100,000. In 2004, *Newsweek* reported that such deaths were occurring at a rate of five per 100,000, in large part because women had grown negligent in heeding warnings about tampons and toxic shock. The fact that girls had begun to menstruate earlier combined with the increased susceptibility of young females had also led to an increase in incidences of toxic shock among tampon users.

In 2010, Amy Rae Elifritz, a 20-year-old Indiana woman, died after using tampons. Her family started the You ARE Loved foundation to raise awareness about the dangers of tampon use. Her death also spurred renewed interest in passing new federal TSS legislation. In 2011, a 15-year-old girl in Essex, England, contracted toxic shock after wearing a tampon for less than four hours. Although she came close to losing her life, the girl survived. She and her family also launched a campaign to educate young girls about their susceptibility to toxic shock. According to the CDC, it has received 3,295 reports of toxic shock since it began surveillance of the condition.

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See Also: Breast Implants; Consumer Deaths; Dalkon Shield Case; Food and Drug Administration, U.S.; Pharmaceutical Industry; Procter & Gamble Inc.; Public Citizen Health Research Group.

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Tariff Crimes

The importation of goods into the United States is subject to inspection and taxation, in the form of a tariff, by the U.S. Customs and Border Protection agency. The tax levied against imported goods is largely determined by the value of the goods themselves and the existing trade agreement with the nation of origin. These tariff rates can be as high as 20 percent of the value of the goods themselves. Tariff crimes describe the purposeful evasion of the taxation process through smuggling and other techniques aimed at hiding the true value and identity of goods being imported into the United States. Tariff crimes can be harshly enforced through large monetary fines and lengthy prison terms for those convicted of the crime. It is important to note that tariff laws are a reflection of the current political and economic climate for the time period in which they are enforced.

Historical Origins

The U.S. Customs Service was created to address the needs of states to protect industries deemed vital for states' local economic health. High tariffs ensured that imported goods would be costly compared to domestically produced goods. The tariff served to foster a competitive edge for American industries. This practice of protectionism is not unique to the United States. Tariffs are used throughout the world to protect local industrial institutions from low-cost goods that are imported. Tariffs also served as a key source of revenue generation in the United States until the federal income tax was reinforced by the Supreme Court in 1913. Up until that time, tariffs were responsible for the majority of American federal revenues.

Debt that was incurred by the United States was a major driving force for the creation of tariffs. The taxation of imported goods allowed the nation to generate income of up to 20 percent of the value of the goods imported. These high tariff rates would eventually lead to many efforts to evade the U.S. Customs Service. Owners of ships would attempt to smuggle goods into port, which led to the U.S. Coast Guard serving as a frontline defense against tariff crimes. After the federal income tax became cemented into federal law, tariff incomes in the United States steadily declined, a trend that continues today.

International Trade Agreements

The agreement between two or more nations to exercise low or zero tariffs on the importation of one another's goods has had a significant impact on tariff crimes. As tariffs reach extreme lows, there is little, if any, economic motivation to violate tariff restrictions. In the United States, this is particularly true with trade agreements with neighboring Canada and Mexico. The North American Free Trade Agreement (NAFTA) has allowed trade conditions between the United States and Canada to eliminate the incentive to smuggle most goods. Both nations are one another's largest trading partner. While tariff-specific crimes were reduced or eliminated, issues with excise tax evasion persisted. These are taxes imposed on certain goods such as alcohol and tobacco, where heavy taxation on one side of the border creates a price imbalance that drives the smuggling of these excised goods.

Tariff crimes that dominate the current trading environment in the United States are centered around the misclassification or underdeclaration of taxable goods. Trading containers may be mislabeled or inaccurately descriptive of cargo volume to effectively reduce or eliminate the legal tariffs that otherwise would be charged. Aside from Canada and Mexico, other nations have been rolled into other favorable trade agreements through the enlargement of the World Trade Organization (WTO). The inclusion of the European Union and China into the WTO has lowered trading barriers that directly impact the level of tariff crimes resulting from international trade with Europe and Asia. Despite this, many specialty goods, such as intellectual property and copyrighted digital media, continue to be major sources of income for those who avoid legitimate trade and the associated tariffs.

Other Tariff Crimes

Aside from the aforementioned attempts to defraud customs by evading detection and inspection, many criminals utilize creative means for avoiding tariffs. Goods may be imported into an intermediate nation and then sent to the intended destination nation as a legitimate importation. In this manner, the tariffs are avoided by using the intermediate nation's more favorable trading agreement. Goods may also be more easily smuggled into a nation across a land border, so that goods are imported into the intermediate nation, then smuggled into the destination nation. Crimes such as these are becoming more of a concern with heightened international concern for domestic security from rogue terrorist threats.

Crimes to avoid tariffs and importation detection are a multijurisdictional concern with the Department of Homeland Security, U.S. Customs, the U.S. Coast Guard, and local port authorities all playing important roles in detecting and prosecuting offenders. Tariff evasion is a serious criminal offense that holds potential penalties of huge fines, imprisonment for up to 20 years, and the forfeiture of the goods being smuggled into the United States. Often, it is difficult for the United States to hold the source of the offense accountable for violations because of international borders. Nonetheless, those who are actively engaged in smuggling or knowingly receive smuggled goods stand to lose their freedom and their source of income.

Future of Tariff Crimes

As trade agreements continue to lower trade barriers, tariff crimes will increasingly lose their fiscal motivation. It is to be seen what the future of tariff violations holds in the current international economic climate. The cost of violating tariffs may also outweigh the decreasing monetary rewards because of heightened international security at ports of entry. It may become increasingly difficult for criminals to mask their importation practices as customs officials become better funded and equipped in the name of homeland security. More efficient methods of cargo inspection, such as very large X-rays, could give government officials an advantage over offenders. Tariff laws and crimes will continue to evolve with the ever-changing economic and political conditions throughout the global economy.

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See Also: Bribery; Bush, George H. W.; Corruption; Federal Trade Commission; Foreign Corrupt Practices Act; Multinational Corporations; Offshore Entities; Tax Evasion; Unfair Trade Practices; War on Drugs.

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Tax Evasion

Tax liability arises from an obligation imposed by law by a federal, state, and/or local government (i.e., the taxing authority). There are many types of tax liabilities, such as income, value-added, sales, or real estate, whereby the taxing authority (collectively, the tax administration and tax crime investigation functions for any given jurisdiction) demands that an individual/entity (the taxpayer) remit monetary value to it based on economic criteria set forth in applicable laws, regulations, and rules. Tax fraud (aka tax evasion) is the willful, intentional failure by the taxpayer to remit and/or report the monetary value due the taxing authority. Tax fraud is considered a white-collar crime and a federal felony in the United States.

In the United States, the primary taxing authority at the federal level is the Internal Revenue Service (IRS), a bureau within the Department of the Treasury. States and municipalities have their own tax administrations (i.e., frameworks of taxation). Many of these taxing authorities cooperate with one another to detect tax evasion schemes.

Generally, a distinction is made between tax avoidance and tax evasion schemes, with the latter characterized by the specific intent to violate a tax law, regulation, or rule. Moreover, distinctions are also made to differentiate tax evasion from submitting a tax return with false information without intent to defeat the tax laws (e.g., unintentional error) and to differentiate tax evasion from not submitting a tax return notwithstanding the legal duty to do so (i.e., failure to file). This article focuses on tax evasion (i.e., tax crimes of deceit) and not these potentially lesser offenses.

Taxable events are characterized by nonexchange transactions with the taxing authority; that is, the taxpayer does not receive equivalent value from the taxing authority for its tax payment, unlike exchange transactions wherein the direct parties intend to receive reasonably equivalent values (e.g., a counterparty giving $20,000 to the taxpayer in exchange for an automobile with an equivalent fair value).

The taxing authority directly benefits from and indirectly influences both the occurrence of transactions between and among taxpayers and counterparties and the reporting of these transactions by taxpayers and counterparties. Presently, as the taxing authority depends on self-reporting by taxpayers and counterparties for many types of taxes (e.g., income tax liability), there exist the risks of understatement and underpayment by taxpayers.

In the case of income taxes, the taxpayer engages in an economic exchange transaction with a counterparty—which party may not be subject directly to the government's income tax laws—causing a reportable economic gain or loss; that is, the monetary value of what was given/received either increases the economic position of the taxpayer, resulting in a gain, or decreases the economic position of the taxpayer, resulting in a loss. Thus, the nature of income tax liability is for the taxing authority to capture a share of this increase in monetary value (or allow the taxpayer to deduct the loss against its other taxable income).

Tax fraud schemes may be generalized as follows: (1) willfully understating taxable income, (2) willfully overstating deductions against taxable income, (3) willfully overstating taxable income to create the appearance of a legitimate economic enterprise (e.g., money laundering, terrorism financing), and (4) willfully failing to report information required by the taxing authority. The magnitude of tax fraud is unknown. However, estimates of this magnitude—total required tax liability less reported tax liability—are in the hundreds of millions of dollars on an annual basis. Reliable and precise breakdowns of this estimate into tax errors and tax irregularities (evasive) schemes is beyond the scope of this article.

Tax fraud is a global issue (i.e., it is supported by cross-border networks of artificial entities aided and abetted by individual experts, including attorneys, accountants, etc.). Large, sophisticated schemes involve domestic and international (offshore) jurisdictions. Tax fraud may superficially replicate a race to the bottom among taxing authorities, whereby taxpayers devise and implement transactions that result in income being shifted to effectively low-rate taxing authorities (e.g., tax havens) and deductions shifted to effectively high-rate taxing authorities. The comparative onerousness of any taxing authority requires consideration of more than listed rates of taxation, as the specifically allowable items of income and deduction are differentiating factors. Nonetheless, these schemes may constitute legitimate tax avoidance plans, requiring a careful examination of the evidence underlying the transactions on a case-by-case basis.

Types of Schemes: Methodology

Taxpayers comprise persons, natural (aka individuals) and artificial (e.g., corporations, trusts). Tax fraud schemes range from the simple (e.g., willfully not reporting income from sales of autographed baseballs) to the complex (e.g., willfully creating artificially high tax bases in business equipment through the use of a global network of facilitators to inflate depreciation deductions and tax losses upon disposal of such equipment). Tax fraud may be accomplished by illegitimate enterprises (e.g., drug cartels) and respectable businesspersons (e.g., prestigious European banks). It may originate in high-rent business offices in cities across the globe and/or post office boxes on far-away islands.

Corporate (i.e., organizational/enterprise) tax evasion may be classified into the following methodological categories: (1) misfeasance, (2) malfeasance, and (3) offshore devices. These categories are neither exhaustive of the possibilities nor exclusive to one another; they are the figurative tip of the iceberg.

Misfeasance is operating a legitimate economic enterprise unlawfully in a manner to defeat frameworks of taxation. For example, manipulative mispricing may be created in the context of commercial trade—transfer prices of items produced in the global economy may be structured such that high costs of inputs and processing are attributed to high tax jurisdictions and high margins of sales of outputs are attributed to low tax jurisdictions. This tax arbitrage may constitute tax evasion if without economic substance, as the overall tax liability is artificially reduced. Total sales and taxable income may be reported, but they are structured to evade taxes without independent and sufficient economic justification.

Malfeasance is operating an illicit economic enterprise to defeat, among other laws, frameworks of taxation. For example, the production and distribution of controlled dangerous substances such as cocaine and opium through the black market (i.e., the outputs are per se illegal) or the distribution of weapons such as guns and chemicals through the gray market (i.e., the outputs are not per se illegal, but the manner of distribution is illegal) are entirely concealed from taxing authorities. Neither sales nor taxable income is reported accurately.

Offshore devices such as tax havens (i.e., foreign/alien jurisdictions under which frameworks of taxation impose little if no tax obligation on economic operations or returns from investment) may be used by legitimate and illicit economic enterprises, including corporations, pass-through conduits (e.g., limited partnerships, limited liability companies, etc., where tax liabilities may be passed to members of these entities, which may be other corporations/individuals, without taxation at the entity level), and natural individuals. The nesting of entity-within-entity-within-entity is a useful device to send offshore and reduce, if not eliminate, tax obligations. The complex objective of this nesting is as much to conceal beneficial ownership of economic enterprises as to defeat frameworks of taxation.

Types of Schemes: Accounts

Tax fraud focuses directly on willfully wrongful manipulation of the profit-and-loss accounts (e.g., sales, expenses); however, asset and liability accounts are indirectly implicated. Though taxable income is derived from the basic equation of revenues plus gains minus expenses minus losses, the economic substance of tax fraud revolves around the taxpayer retaining a share of asset value to which the taxing authority, through its framework of taxation, has a lawful claim.

Double-entry bookkeeping (i.e., each reportable economic transaction is characterized by inputs of balancing credit and debit entries into the taxpayer's book of accounts) does not meaningfully prevent tax fraud. For example, cash receipts from sales of services may be accepted into an offshore account not reported by the taxpayer. The source of the cash receipt may not be recorded in the books and records available for the auditors—effectively slipping under the gatekeeper's radar. The global economy, for better and worse, provides a superabundance of jurisdictions that do not follow the framework of taxation familiar in the United States (e.g., information returns such as form 1099-MISC disclosing miscellaneous income sent to taxpayers and the Internal Revenue Service, which may also be shared with state taxing authorities).

Expenses may be manipulated in a tax fraud scheme. For example, nonbusiness expenditures such as personal vacations or educational expenses for dependents of the taxpayer may be intentionally wrongfully classified as business expenses deducted against gross taxable income. Depreciation deductions may be inflated through wrongful overstatement of the depreciable cost of business equipment. These types of tax fraud schemes involve expense items that are neither ordinary nor necessary for the taxable enterprise.

Related issues include the recording and reporting of corrupt practices. For example, the Foreign Corrupt Practices Act requires accurate recording and reporting of transactions, both of which are violated when the taxpayer pays a bribe to a foreign official for business and fails to record and report the transaction as a bribe. Thus, tax fraud may be indicative of other crimes and wrongdoing. Counterintuitively, a taxpayer may overstate taxable income in the effort to establish the bona fides of a corrupt enterprise, such as reporting large profits from an apparently legitimate business that is in economic reality a shell for a drug-smuggling operation.

Enforcement Efforts

Effective enforcement of frameworks of taxation, which may be different under different jurisdictions, is a formidable objective for many reasons. Enforcement efforts should be interpreted in the economic and regulatory contexts in which they occur: viz., competitive individuals and entities seeking capital and maximizing return on invested capital under different regimes in an economy that crosses the borders of these regimes. Taxing authorities confront the economic reality that potential tax expense, a charge against return on investment and profit, may present a significant competitive disadvantage: other things being equal, the low/no tax jurisdictions offer enticing economic benefits.

Enforcement efforts are primarily domestically based. Internal agencies may cooperate with one another, such as having formal information sharing agreements, exchanging knowledgeable human resources, or organizing joint task forces. These federal, state, and local agencies, which are supported by tax administration officials, tax crime investigators, financial intelligence unit specialists, police, public prosecutors, departments of finance, financial regulators, and others, present a formidable bureaucratic array of government power to control tax cheating. The agencies establish legal gateways (e.g., the ability and/or obligation to share information spontaneously or upon request) to create a cooperative network, distributing information about individuals (including high-net-worth individuals), entities, and transactions among one another. However, these intranational efforts are more effective against taxpayers unable to exploit the cross-border potentialities available under modern, sophisticated, technology-based tax planning methods than against those well versed and aided in such cross-border tax evasion strategies.

Internationally based enforcement efforts exist (for example, Organisation for Economic Co-operation and Development (OECD)–led initiatives). These efforts strive to level the playing field among jurisdictions that would otherwise compete for capital investments by encouraging cross-border cooperation between and among governments and their tax authorities. As the OECD has supported global efforts to reduce the incidence of bribery in international transactions, it has recently begun to focus on and spearhead global cooperation against tax crimes.

Obstacles

The obstacles confronting efficient and effective enforcement of frameworks of taxation are manifold. By way of illustration and not exhaustion, these include the following practices: (1) Taxing authorities (i.e., broadly, jurisdictions) racing to the bottom in a global competition to attract business and capital investment, (2) complying with peer pressure (i.e., other rational economic actors behave in such manner), (3) seizing economic opportunities (e.g., using comparatively cheap resources in other jurisdictions that also offer favorable frameworks of taxation), (4) rationalizing away the harm (e.g., holding the belief that taxes comprise economic waste and/or create moral hazard), (5) protecting financial transaction data under secrecy laws (e.g., failing to create a useful database of transaction data for taxing authorities searchable by beneficial owner), (6) nationalizing the science of tax avoidance that transforms into the art of tax evasion (e.g., enabling a professional tax advisors class such as attorneys and accountants licensed by jurisdictions to aid and abet the sheltering of income), and (7) compartmentalizing taxable income (i.e., not taxing on the basis of global income).

Tax liability, whether imposed by an income tax or a customs administration, and whether imposed by federal, state, or local jurisdiction, arises from a potential cost to be minimized or eliminated by taxpayers engaged in commercial activities; this seems an objective of rational decision making. Though technologies exist to perform extensive surveillance and related detection schemes (e.g., data mining, through software, all electronic transactions of financial institutions), the political will to do so has been checked. Currently, tax administrators are not globally organized in a concerted, cooperative effort to detect, investigate, police, and prosecute tax crimes such as tax evasion. Sophisticated, well-organized efforts by taxpayers thwart and defeat the present tax administration systems with a divide-and-conquer strategy.

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See Also: Accounting Fraud; Bank Secrecy Act; Conflict Theory; Conspiracy; Corruption; Creative Compliance; Daisy Chains; Financial Crimes Enforcement Network, U.S.; Money Laundering; Offshore Bank Accounts; Offshore Entities; Regulatory Enforcement; Tariff Crimes; Terrorism; UBS.

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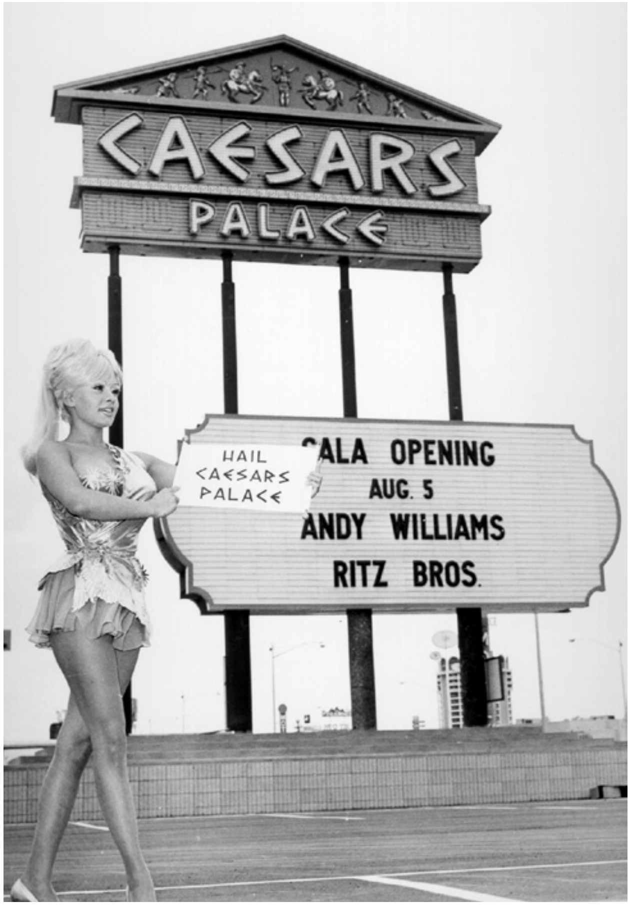
Teamsters Pension Fund

With an estimated membership of nearly 1.4 million, the International Brotherhood of Teamsters (IBT) is one of the largest and most diverse labor unions in the world. Throughout the IBT's history, its top leadership has engaged in rampant corruption and fraud. The most egregious example of corruption was the raiding of the union's pension fund to loan money to associates of organized crime (OC) families. The mobsters used these monies to build Las Vegas hotels and casinos, from which they subsequently skimmed untold millions of dollars.

Brief History of the Teamsters' Union

Headquartered in Washington, D.C., the IBT has 21 industrial divisions, consisting of an extensive array of occupations—blue collar



A model hails the grand opening of Caesars Palace, Las Vegas, August 1966. The casino was one of many establishments on the Las Vegas strip built with Teamsters pension funds. Jimmy Hoffa and organized crime bosses then skimmed millions from them.

and professional—including truck drivers, airline pilots, and zookeepers. Although the IBT is extremely expansive in its influence, scope, and power, its philosophy strongly promotes membership autonomy as well as leadership and decision making at the local level. Union officers and delegates are elected, membership structures are developed, and bylaws and constitutions are written at the local level. The IBT, which was formed in 1903 with the merger of several local and regional unions, was initially known as the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America. Its name derives from the nature of the work done by its earliest members, who drove teams of horses to pull large, heavy wagons full of deliveries. From its inception, the strength of the union stemmed from its ability to abruptly halt the movement of goods and products throughout the country. An IBT strike or sympathy strike (i.e., joining another union in a work stoppage in an expression of solidarity) could shut down businesses for weeks or months, drying up profits and allowing nonunion businesses to gain a competitive edge.

Corruption and Organized Crime

Daniel J. Tobin of Boston led the Teamsters from 1907 to 1952. During his lengthy tenure, the IBT became one of the most powerful and corrupt labor unions in the United States. Dave Beck, Tobin's vice president and immediate successor, fostered corruption even further. Beck allied himself with his former rival, James Riddle Hoffa, and established policies that expanded the power of the presidency while suppressing dissent from the rank and file. Organized crime's influence on the IBT increased steadily throughout both Tobin's and Beck's reigns. For example, local IBT chapters, especially in cities with OC families, engaged in bribery, extortion, and embezzlement as well as bombings and beatings in attempts to gain iron-fisted control over the construction and trucking industries.

Formerly a truck driver, Hoffa rose through the ranks of the IBT because of his cunning, intelligence, and charisma. In his ascendence to the presidency of the union, he also relied on mobsters who funded his campaigns for the presidency and coerced members to vote for him. In the mid-1950s, Hoffa challenged Beck's leadership. In doing so, he enlisted the aid of mobster Johnny Dio to create "paper locals" (fake local chapters of the union) to boost Hoffa's delegate count in the IBT presidential election of 1956. These and other illegal activities led the U.S. Senate to convene the Select Committee on Improper Activities in Labor and Management, known as the McClellan Committee, chaired by Senator Robert F. Kennedy.

Central States' Pension Fund

Hoffa's ties with OC families, especially the Chicago Outfit and OC families in Cleveland, Kansas City, Milwaukee, and Detroit, became inextricable after he orchestrated the use of the union's Central States, Southeast, and Southwest Pension Fund (referred to widely as the Central States

Pension Fund [CSPF]) to bankroll the construction of several Las Vegas casinos, thereby affording mobsters the opportunity to skim gambling profits from those entities. Known as the Mob's Bank, the Teamster's CSPF, which was based in Chicago, provided nearly $250 million in low-interest loans (6 percent) from 1958 to 1977 to hotel-casino developers who were also OC associates. Hoffa created the CSPF from the first centralized pension contract, which he negotiated with employers in the warehousing and trucking industries in the Midwest and southern regions of the United States. In its first year, the CSPF program raised $10 million by charging each member a $2 monthly fee. These fees were collected ostensibly to protect members' financial security during retirement.

Among those controlling the CSPF and the creation of new locals in order to make payments into the fund were labor racketeers and Outfit associates Paul (Red) Dorfman and his stepson Allen Dorfman. Loans were made to OC-connected businessmen (front men) to underwrite the building of several Las Vegas casinos and resorts, including the Dunes Hotel, the Stardust Resort and Casino, the Desert Inn, the Four Queens, the Fremont Hotel and Casino, Circus Circus, and Caesar's Palace. Hoffa also endorsed CSPF loans to build a private hospital and golf course in Las Vegas as well as to construct casinos in Reno and Lake Tahoe, Nevada. These loans were responsible for the formation of the Las Vegas Strip and the burgeoning downtown area of the city. Hoffa charged a finder's fee of 10 percent on each loan. By 1974, the CSPF had more than $1 billion in real estate loans circulating nationally, surpassing many of the country's banks in terms of such loans.

The Skim

The Outfit's hegemony over the casinos, which its members built and expanded with CSPF loans, provided mobsters with an unprecedented opportunity to steal millions of dollars from the establishments through a process known as skimming—namely, diverting profits from gambling tables and slot machines before the monies were delivered to the counting room. This untraceable, and thus untaxable, revenue filled the coffers of the casino investors and OC crime family bosses who owned the establishments in the shadows.

At the behest of mob bosses Frank Balistrieri (Milwaukee) and Nick Civella (Kansas City), Allen Dorfman enlisted California investor Allen Glick, of the Argent Corporation, to borrow $63 million from the CSPF for the purchase of the Stardust and Fremont Hotels. The skimming operation at the Stardust was monitored by Frank (Lefty) Rosenthal of the Chicago Outfit and his compatriot Anthony Spilotro, the Outfit's overseer in Las Vegas.

When the Nevada State Gaming Control Board uncovered evidence of the skimming, Glick maintained his ignorance and innocence in the face of the resulting charges. In 1981, Dorfman, Spilotro, and Joey (the Clown) Lombardo, a boss in the Chicago Outfit, were convicted of conspiracy to defraud the CSPF. Before he could be sentenced, Dorfman was slain gangland style in the parking lot of a Chicago suburban restaurant. In 1983, Lombardo and 14 other OC defendants were charged with conspiracy to skim $2 million from the Argent Corporation casinos: the Stardust, Fremont, Hacienda, and Marina. Lombardo and 11 others were sentenced to lengthy prison terms in the case. Glick was the key government informant whose testimony was instrumental in obtaining the convictions.

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See Also: Corruption; Federal Gambling Regulation; Gambling and Lotteries; Labor Crimes; Organized Crime; Racketeer Influenced and Corrupt Organizations Act; Racketeering; Unions.

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Teapot Dome Scandal

In this era of increased disdain for the "1 percent" by Wall Street protesters and a growing perception of undue familiarity between government officials and the industries they are legally entrusted to regulate, some might speculate that the corporate-state corruption paradigm is a relatively new phenomenon. However, long before the emergence and demise of corporate titans such as Enron and WorldCom, political leaders and private entities were being chastised for improper—and in some cases illegal—relationships. One such example is the Teapot Dome scandal of the 1920s.

Origins

In 1921, Albert B. Fall, secretary of the interior for the Warren G. Harding presidential administration, was able to convince Secretary of the Navy Edwin Denby to cede control of the U.S. strategic oil reserves to his department. The reserves existed for emergencies, such as wartime use by the Navy, when petroleum availability might prove limited. The reserves were located on public lands in Elk Hills and Buena Vista Hills (California) and Teapot Dome (Wyoming). Fall asserted that these oil reserves were unnecessary because the oil industry could meet whatever demands for fuel may be needed, even in times of crisis.

With the Interior Department now managing Teapot Dome, Secretary Fall quietly established leases with two businesses—the Mammoth Oil Company, owned by Harry Sinclair, and Edward Doheny's Pan American Petroleum Company. Sinclair and Doheny were each successful executives. Sinclair owned a lavish home on New York's Upper East Side, a mansion on Long Island, several thoroughbred horses, and a major league baseball team. Doheny built a palatial estate in Los Angeles and amassed a large amount of land in prestigious Dana Point, California. Both Doheny and Sinclair were regular contributors to political candidates of both parties and provided substantial donations to the Republican Party prior to Harding's election.

The Scandal

After receiving business leases for the Elk Hills Naval Petroleum Reserve and the Teapot Dome site, Doheny and Sinclair offered zero-interest loans to Fall for $100,000 and $25,000, respectively (about $1.6 million in today's dollars), along with an additional $300,000 in gifts and other personal compensation ($5.1 million in total). But Secretary Fall's opulent lifestyle raised eyebrows among both Washington, D.C.'s political elite and energy companies competing with Mammoth Oil and Pan American Petroleum. In April 1922, the *Wall Street Journal* released a story linking Fall to Sinclair and Doheny. This article further discussed how the leases had been awarded without a competitive bid process.

After President Harding's death in office in August 1923, the U.S. Senate began an investigation into the Teapot Dome and Elks Hills oil leases. In 1924, the Senate released its findings to the public. Lawsuits were filed by Sinclair and Doheny's competitors, citing that the oil contracts had been unfairly obtained.

One of the most damning pieces of evidence against Fall was that the $100,000 interest-free loan provided by Doheny had been offered in the form of World War I–era Liberty Bonds. Each bond was serialized and therefore traceable. Indeed, it was determined that Fall's bonds had been laundered through Will Hays, the former chairman of the Republican National Committee who served as President Harding's postmaster general. Moreover, these funds had found their way into the coffers of the Republican National Committee. Secretary of the Navy Denby resigned in 1924 and returned to his home in Detroit, where he resumed his law practice.

From 1924 through 1927, lawsuits continued to mount, leading to a 1927 U.S. Supreme Court decision upholding the finding that the oil leases had been obtained through corrupt practices. The Elk Hills and Teapot Dome leases were rendered invalid, and management of the oil reserves was returned to the Department of the Navy.

The Aftermath

In 1929, former interior secretary Fall was found guilty of bribery, sentenced to one year imprisonment, and required to pay a fine of $100,000 (nearly $1.3 million in today's dollars). He was the first former cabinet official in U.S. history to receive a prison sentence based on crimes committed while in office. His home in New Mexico was subsequently foreclosed upon (by Doheny, who had provided him with the zero-interest loan in exchange for the Teapot Dome lease rights). After a period of prolonged illness, Albert Fall died in November 1944.

Harry Sinclair refused to cooperate in the investigation. He received a six-month prison sentence in 1929 for contempt of court and obstruction of justice. Court records note that he attempted to tamper with his jury, going so far as to hire a detective agency to trail each member of the jury in an effort to gain advantage over them. He retired as president of the Sinclair Oil and Gas Company in 1949 and ultimately settled into a comfortable life in Pasadena, California, where he died in 1956 at the age of 80.

Unlike Fall and Sinclair, Edward Doheny was acquitted of bribery charges in 1930. His reputation tarnished, he resolved to repair it through a variety of philanthropic acts. After the scandalous murder of his son Edward (Ned) Doheny, Jr., in 1929, Doheny donated $1.1 million in 1932 to erect the Edward L. Doheny, Jr., Library at the University of Southern California—his son's alma mater. He also contributed substantially toward construction of the Mount Saint Mary's College campus and Loyola Marymount University, and he donated property for the Doheny State Beach at Dana Point, California. He died in 1935 as a well-respected benefactor of higher education.

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See Also: Bribery; Contractor Fraud; Coolidge, Calvin; Corruption; Kickbacks; Public Corruption; United States.

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Techniques of Neutralization

Techniques of neutralization (or neutralization theory) refers to a set of cognitive mechanisms used to rationalize or excuse wrongdoing. Offenders are able to use these cognitive mechanisms to mitigate the guilt resulting from their involvement in criminality; this allows them to engage in behaviors counter to their moral values with little damage to their self-image. Gresham Sykes and David Matza originally proposed five techniques of neutralization in 1957 to explain why juveniles engage in delinquency. However, since that time the theory has been applied to a wide range of criminal and noncriminal behaviors, including a broad range of white-collar crimes.

Sykes and Matza originally proposed their theory with two purposes in mind. First, they saw it as an expansion of Edwin Sutherland's differential association theory. As part of his theory, Sutherland proposed that criminals learn techniques for committing crime, as well as definitions in favor of it, through social interaction. In addition, a person becomes criminal when he/she posseses excess definitions, excuses, or rationalization favorable toward criminality. Although Sutherland's theory was well regarded, it was also criticized for not going into enough detail regarding what constitutes a definition of "favorable toward crime." Neutralization theory expanded on differential association theory by providing specific examples of rationalization that could lead to crime.

Second, Sykes and Matza presented it as an alternative to the many delinquent subculture theories popular during the 1950s. The majority of these subculture theories portrayed juvenile delinquents as accepting of values counter to those of the dominant normative structure. Sykes and Matza disagreed with this conception of juvenile delinquents. Based on interviews with delinquents, they concluded that the majority of delinquents are actually committed to the dominant normative values of society—meaning they know right from wrong and feel guilt for their delinquent and criminal actions. Because juvenile delinquents are committed to conventional values, they must use techniques of neutralization to reconcile the dissonance between their actions and their values. By doing so, they are able to drift in and out of delinquency by temporarily overcoming their inhibitions.

Application of the Theory

Neutralization theory has been applied to a wide range of behaviors. Its application ranges from minor forms of delinquency (e.g., smoking) to the most heinous of crimes (e.g., rape, genocide). The theory is particularly appealing for the study of white-collar crime because white-collar criminals seem to be resistant to the development of a criminal self-image. Experts believe that white-collar criminals may be able to maintain a noncriminal self-image through the selective use of various neutralization techniques. Thus, neutralization theory may be important in regard to understanding the etiology of white-collar crime. The theory is already highly regarded in the field of criminology. This is apparent by its influence on criminal justice initiatives, such as cognitive behavioral therapy and restorative justice, as well as the theory's integration into multiple other prominent criminological theories, such as social learning and social control theories.

In their original work, Sykes and Matza proposed five techniques of neutralization. The first technique is the denial of responsibility. When utilizing this technique, offenders justify their actions by attributing them to forces beyond their control. For example, corporate executives may justify cutting corners in regard to safety standards by rationalizing that such actions are necessary to remain competitive because of economic regulations beyond their control.

The second technique is the denial of injury. With this technique, offenders seek to minimize their wrongdoing by rationalizing that no one is seriously harmed or injured by their behavior. For example, credit card thieves may rationalize that their actions will not cause any lasting harm because victims will have their losses reimbursed by the credit card company.

The third technique is the denial of the victim. With this technique, the offender shifts the blame to the victim, portraying the victim as someone who is deserving of harm. Researchers have documented how this neutralization technique can be used to reduce the guilt associated with crimes against humanity such as were perpetrated by the Nazis during the Holocaust.

The fourth technique is the condemnation of condemners. When an offender utilizes this technique, he/she rationalizes that individuals in positions of social control also engage in unethical or even criminal behaviors. Because those in power are viewed as hypocrites, the laws they serve to uphold are more easily disregarded.

The final technique developed by Sykes and Matza is the appeal to higher loyalties. When utilizing this technique, an offender suggest that his/her misdeeds are warranted because some things are more important than following the law, for example, friends or family. This technique is most applicable to white-collar crime when individuals place the goals and profit of their company above the importance of following the law.

Since Sykes and Matza's original work, multiple new techniques applicable to white-collar crime have been identified. Examples of newly created techniques include the metaphor of the ledger, the claim of normalcy, and the claim of entitlement. When invoking the metaphor of the ledger, individuals rationalize that the good they have done in their life outweighs the bad. When utilizing the claim of normalcy, an offender rationalizes that others commonly engage in the same offense. In other words, offenders convince themselves that many other people engage in similar behaviors; thus, their wrongdoing is not abnormal or shameful. The claim of entitlement is a neutralization often used by individuals engaged in forms of white-collar crime that target an offender's workplace, such as embezzlement. When utilizing this technique, offenders rationalize that their behavior is justified because they are only taking what is rightfully theirs, for example, disgruntled employees who believe they should be compensated more for their work.

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See Also: Benson, Michael; Coleman, James; Conflict Theory; Critical Theory; Differential Association Theory; Fear of Crime; Misappropriation Theory; Self-Control Theory; Shover, Neal; Sutherland, Edwin H.; Sutherland-Tappan Debate.

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Teledyne Industries Inc.

Founded in 1960 by Henry Singleton and George Kozmetsky, Teledyne Inc. was a communications company created to capitalize on the shift from analog to digital technologies. Teledyne has since branched out into several subsidiaries, including companies in the fields of electronics, communications, engineering, aerospace, and energy. One of the units, Teledyne Industries, is a military contracting company based in Newbury Park, California, and has been involved in several cases of defrauding the U.S. government, specifically, the Department of Defense. Most of the cases involve inflated pricing and inadequate testing of military equipment.

Between 1980 and 1986, Teledyne Hydra-Power, a unit of Teledyne Industries, defrauded the U.S. Navy of $4.5 million on a helicopter contract by inflating the price of parts and the number of hours worked. Teledyne paid the U.S. government $11.9 million to cover overcharges, interest, and penalties. In 1992, Teledyne Industries agreed to pay $17.5 million to settle a criminal case in which it was accused of 35 counts of submitting false statements between 1987 and 1990. Teledyne sold over 12 million relay switches to the Pentagon without adequately testing them. The relays normally cost $6 each, but the government paid $26 per relay so that each one could be tested and certified. In the course of the 10-year contract, the government would have been defrauded of $240 million.

In a similar case in 1993, Teledyne's Firth Sterling division failed to properly test cluster bomb grenades, which resulted in a $275,000 fine. Ten months later, Teledyne plead guilty to three felony counts of submitting false statements about sales to Taiwan in the 1980s and paid the government $1.5 million in fines. Then, in 1994, Teledyne Industries paid the U.S. government another $10 million for failing to perform quality-control tests on parts used in the Army's Stinger missile. The Environmental Protection Agency also fined Teledyne $85,000 in 1994 for violating the federal Clean Water Act by releasing excess metals and cyanide in wastewater discharged to city sewer plants.

Perhaps the most noteworthy case against Teledyne Industries is the whistleblower case first filed in 1991 by a former employee. Gerald Dean Woodward, who worked for Teledyne from 1969 to 1990, filed a lawsuit under the federal False Claims Act, charging that Teledyne defrauded the government of millions of dollars between 1986 and 1990. Some of the allegations in the suit included selling military aircraft parts as commercial parts to private individuals and companies, falsifying paperwork to hide these sales, charging the government for parts that it had already paid for, and charging the government for time actually spent working on other business. The U.S. government picked up the case in 1996, and Teledyne settled for $4.75 million. Woodward received $831,250 from that settlement.

In 1986, Operation Ill Wind was launched by the Federal Bureau of Investigation (FBI) to look into allegations of corruption by the U.S. government, military officials, and defense contractors. Teledyne was one of two defense contracting companies named in the investigation for bribing Pentagon officials for inside information in order to win military contracts. Three executives were charged with conspiracy, wire fraud, and bribery of a public official; two of the executives were found guilty. George Kaub was sentenced to six months in a halfway house and a $30,000 fine, and Eugene Sullivan was sentenced to three months in a halfway house. However, they, respectively, faced potential sentences of 40 years in prison with a $2 million fine and 20 years in prison with a $1 million fine. The company agreed to pay $4.36 million in fines and penalties and to fulfill a single Pentagon contract without profit. In January 1989, the Pentagon banned Teledyne Electronics from bidding on government contracts for six months.

Teledyne is still a major military contractor for the U.S. government, winning contracts for the U.S. Navy, Air Force, National Aeronautics and Space Administration (NASA), and other defense-related government agencies.

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See Also: Clean Water Act; Defense Industry Fraud; False Claims Act; Government Contract Fraud; Government Procurement Fraud; Hazardous Waste; Pollution, Water; Price Fixing; Whistleblowers.

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Telemarketing Fraud

Telemarketing has long been a standard marketing practice used by businesses to quickly and conveniently spread the word about new business opportunities, solicit charitable donations, sell products, and establish relationships with new customers. The practice of telemarketing is legal, legitimate, and used by many of the world's most reputable companies. In fact, telemarketing can be an extremely successful tool for businesses. According to the Bureau of Labor Statistics, telemarketing employed approximately 250,000 people nationwide in 2011. However, when these sound marketing strategies are adapted to illegal means, telemarketing becomes a white-collar crime. The use of telemarketing strategies has proven to be equally as profitable for the telemarketing fraudster as it is for the legitimate business entity. The Federal Trade Commission (FTC) estimates that fraudulent telemarketing schemes cost consumers approximately $40 billion per year.

Legitimate Telemarketing Practices

The practice of telemarketing is a direct marketing strategy involving the use of the telephone as the primary means of contacting potential customers or donors. A telemarketing campaign can involve the use of inbound and/or outbound strategies. Outbound telemarketing strategies utilize the telephone to contact a large number of potential customers and deliver a scripted pitch. There are a number of avenues by which companies obtain the contact information for prospective customers, including publicly available lists such as a municipal public phone book. Conversely, businesses may purchase commercially prepared lists of customers who have previously purchased goods or services through a telemarketing sales call. Such lists are often referred to as "sucker lists."

Inbound telemarketing strategies rely on mass mailings of fliers and other forms of advertising, including television or radio commercials, to entice customers to call the business ("our operators are standing by to assist you") and place an order, make a donation, obtain more information about the company, or take advantage of a special offer.

Fraudulent Telemarketing Practices

The practice of telemarketing becomes problematic when used for illegal means or when used in an illegal manner. Telemarketing fraud occurs when the same telemarketing practices utilized by legitimate firms are adapted for the purposes of deceiving and defrauding contacts for monetary gains. Historically, such schemes have involved "boiler room" operations in which groups of skilled, fast-talking callers attempt to convince victims that they can receive something of great value for an investment of a relatively small sum of money. However, with improvements in telecommunications technology, the boiler rooms of the past are being replaced by much smaller fly-by-night call centers or even the comfort of the fraudster's living room.

The number of possible forms that a fraudulent telemarketing scheme could take is all but unlimited; many of them are also used in face-to-face fraud and Internet fraud. Regardless of the type, most fraudulent telemarketing schemes involve the same basic components: consumers who are lured in with promises of services or goods, or even charitable organizations that sound too good to be true, only to find out that what they were promised either never existed or was different from what was actually delivered. The elderly are frequent targets.

One of the most commonly reported forms of telemarketing fraud is the fake check scheme. In 2007, well over half (58 percent) of the complaints received by the National Consumer League's Fraud Center were in reference to a fake check scheme, with an average loss of $3,854.78 per victim. Such fraudulent schemes involve a victim who receives a telephone call from someone alleging that he/she is due to receive a check for a substantial amount of money but must first pay some fee, such as a legal or administrative fee, before the check can be released. Once the victim pays the fees, he/she often does receive a check; however, it is fake, and the victim is unable to recover the fees paid to the original caller.

A prize notification or sweepstakes fraud, which is very similar to the fake check fraud, involves a caller notifying the victim that he/she has won a prize but must first pay a fee or purchase some product. Victims often find that the prize they've won is either nonexistent or worthless. In 2007, such frauds accounted for 14 percent of the complaints received by the National Consumer League's Fraud Center and represented an average loss of $6,601.40 per victim.

In a fraudulent investment scheme, telemarketers representing a seemingly reputable company contact the victims and convince them, often using high-pressure sales tactics, to invest in some commodity (e.g., rare gems, gold, stocks, and bonds) that is all but "guaranteed" to grow in value. It is only after they have purchased their shares that the victims find out that the commodity was not as valuable as promised or that the company selling the commodity does not exist. The victims are left with no way to recover the initial investment.

Some fraudulent telemarketing schemes include fraudulent offers to raise the victims' credit scores but instead leave the victims in worse financial shape than before. Other fraudulent telemarketing schemes offer the victim the chance to take the vacation of a lifetime at an unbelievably low price but without mention of the exorbitant hidden fees associated with the trip.

Some schemes even prey on those willing to make charitable donations to seemingly genuine cases of economic hardship and disaster. A large number of these schemes appeared in the days and weeks following the tragedy of September 11, 2001.

Terrorist groups also use charitable fronts for their own fund-raising efforts. The U.S. State Department reports that al Qaeda, whose core constituency is reliant on contributions from wealthy donors and Islamic charities, has also broadened its fund-raising strategies to include video, Internet, and even cell phone solicitations. For example, in 2008, Ayman al Zawahiri, al Qaeda's second-in-command, solicited donations through cell phone recordings.

Cell Phone Scams

The FTC bans automatic dialing to cell phone numbers, so cell phone telemarketing is already illegal in most cases. However, numerous telemarketing frauds have sprung up to take advantage of the near-ubiquitous use of cell phones. The Better Business Bureau warns of several scams:

- Prison inmates call from jail and trick victims into dialing a number that starts with *72, which activates call forwarding and gives control of the victim's phone to the inmate—allowing him or her to make hundreds of long distance calls.
- A victim is asked to take a voter survey in exchange for a free cruise. After the survey,

the scammer asks the victim for a debit or credit card number in order to process the cruise's "port fees."

- A scam caller claims that the president is disbursing special federal funding to help consumers pay their utility bills. They then ask for a Social Security number and provide a fake bank routing number for paying the utility bills.
- A con artist pretends to be a relative in dire need of money wired to him or her right away to help him or her out of a jam.
- A text message announces that the cell phone user has won a free gift card and provides a link to a page requesting information, which is used to steal the victim's identity. About 70 percent of spam text messages are financially motivated. For example, in July 2012 alone, about 30 million messages were sent daily.

Do Not Call Registry

In 2003, the FTC established its primary foothold in countering fraudulent telemarketing schemes to consumers—the creation of the Do Not Call Registry. This registry allows consumers an easy means by which to opt out of most forms of telemarketing phone calls and provides a forum for filing complaints about registry rule violations. Charities and political groups are exempt from these rules, but if consumers request to receive no more calls from, or on behalf of, a specific charity but the calls continue, the fund-raiser may be subject to a fine. Business-to-business calls are not covered under the registry.

The program has proven to be very popular with consumers. Between the time of its creation in 2003 and October 2012, approximately 217 million phone numbers were registered. However, despite widespread knowledge about the registry and efforts by the FTC to encourage compliance with the registry rules, there were still almost 4 million telemarketing complaints between September 2011 and October 2012.

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See Also: Advance Fee Scam; Bait and Switch; Charity Fraud; Commodities Fraud; Credit Card Fraud; Direct-Mail Fraud; Disaster Fraud; Identity Fraud or Theft; Nigerian 419 Scams; Sweepstakes Fraud; Terrorism; War on Terror; Wire Fraud.

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Terrorism

Terrorist groups often engage in white-collar crimes to support their illicit activities. Terrorists' two primary motivations for committing white-collar crimes are to fund the terrorist operation and to create false identities that permit terrorists to operate without law enforcement surveillance as they plan and execute their actions. White-collar offenses most common among terrorists include identity theft, money laundering, intellectual property theft, tax evasion, and frauds involving the misuse of credit cards, insurance policies, or immigration documents.

White-Collar Terrorist Funding

The networked structure of terrorist organization fosters the linkage between terrorism and white-collar crime. Maintaining a large terrorist organization such as al Qaeda can be very expensive. The Central Intelligence Agency (CIA) estimated that al Qaeda spent $30 million each year prior to 9/11 to fund all of its activities. Most terrorist cells, however, do not report to a central command structure in a hierarchical organization but instead function independently or semi-independently. They are responsible for raising their own funding, often with little or no assistance from other parts of the organization. Funds are necessary to pay for travel, living expenses, weapons, and sometimes training.

A single attack need not create a significant expense for a terrorist group. The 9/11 Commission reported that the terrorists participating in that operation spent less than $500,000. A United Nations report estimated that the Madrid attacks of 2004 cost no more than $10,000. The cost of maintaining a terrorist cell, however, can be high. The potential attackers require living expenses and training in advance of the actual operation.

To obtain the necessary funding, white-collar crimes are more commonly committed by foreign nationals operating in an alien country, although domestic terrorist groups may also occasionally engage in white-collar crimes. However, domestic terrorist groups are more likely to engage in robbery, extortion, and illegal drug and gun sales. Transnational terrorists are more reliant on identity fraud and money laundering in order to operate across borders.

The most common white-collar crimes, among both foreign and domestic terrorists, involve identity fraud. Terrorists often use fraudulent passports or driver's licenses to camouflage their movements. Terrorist operations are also often funded by means of white-collar crimes, and fraudulent identities are prerequisites for certain financial crimes—using a false name to open a bank account to engage in money laundering, for example—or to file a bogus insurance claim or obtain a credit card as the first step in credit fraud. Identity theft is an alternative to creating a false identity from scratch. Stolen identities are most often used to commit credit frauds and social security frauds.

Another source of terrorist funding, which is discussed less often in the literature, is intellectual property (IP) crime. The illegal sale of counterfeit goods and illegal use of IP to commit other crimes, such as stock manipulation, have been used to support terrorist activities.

Another terrorism-related white-collar crime involves raising funds by soliciting charitable contributions to organizations that fraudulently claim to support a humanitarian cause—usually disaster relief or food assistance. This approach has a number of benefits for terrorist organizations. First, charities and nonprofit organizations may be able to operate with less government scrutiny from taxing agencies than are for-profit enterprises. Second, humanitarian organizations may be able to qualify for grants from governments or from other nonprofit sources.

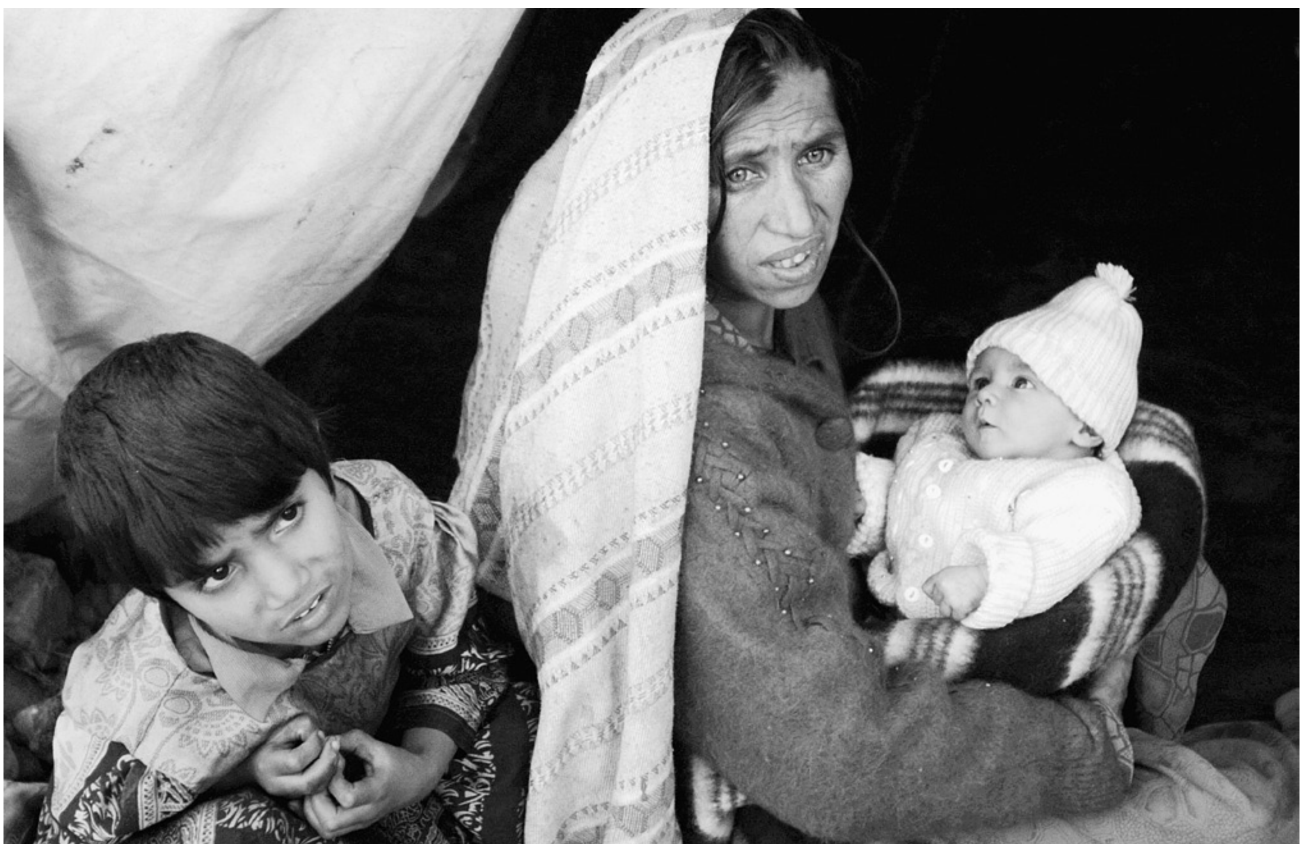
For example, a number of Arab charities are suspected of channeling money to terrorist groups. In 2001, a group calling itself the Holy Land Foundation for Relief and Development (HLFRD) was found to have given more than $12 million to Hamas after receiving some of its funding from the U.S. Agency for International Development (USAID). The group also engaged in tax fraud by underreporting its income to the Internal Revenue Service (IRS) by more than $20 million. In 2003, Enaam M. Arnaout was convicted of fraudulently telling donors that the nonprofit group he represented—Benevolence International Foundation—would use donations for humanitarian purpose.

The U.S. government alleged that the funds went to support violent terrorist organizations, including al Qaeda and Hezb-e-Islami. U.S. federal agents raided and shut down the Islamic American Relief Agency (IARA) in 2004 after wiretaps indicated the charity was funneling money to people in Sudan and Pakistan who had ties to the Taliban and al Qaeda. IARA was also charged with illegally sending money to Iraq prior to the U.S. invasion and with stealing from a USAID grant that was intended to fund development efforts in Mali. Lashkar-e-Taiba, a Pakistani terrorist group, received funds collected among the Pakistani expatriate community in Great Britain to aid victims of the 2005 Kashmir earthquake and used them instead to fund terrorism.

Terrorists may also create businesses or shell companies to raise, transfer, or launder monies. Terrorists evade money transfer regulations by moving amounts that do not exceed the reporting thresholds, or by using couriers to move cash, money grams, and prepaid value cards. One strategy for bypassing regulatory scrutiny is to engage in "structuring" (also known in the banking industry as smurfing)—breaking large transactions up into amounts less than $10,000. Financial regulators are aware of this strategy, and thus laws in the United States and many other countries criminalize structuring.

Nonetheless, terrorists and organized crime groups have developed strategies to evade detection and enforcement. The "starburst" technique involves a deposit of money in a bank with instructions to disburse the deposit by sending multiple wire transfers in small amounts to a large number of other bank accounts worldwide. This makes law enforcement interdiction extremely difficult because any investigation will need to involve multiple agencies in jurisdictions worldwide. Starbursts can be chained together to end up in an obscure offshore holding company. Investigations can take years and wind up in a blind alley.

An alternative is to transfer gold, diamonds, or gemstones via couriers. Deposits of such goods do not trigger international reporting regulations. Dubai is one of the largest and least regulated



A Pakistani mother and her children huddle at the Dewan Tent Village in Muzaffarabad, Pakistan, after a devastating earthquake struck the region on October 8, 2005. Lashkar-e-Taiba, a Pakistani terrorist group, collected funds from Pakistani expatriates in Great Britain, purportedly to aid earthquake victims like these. Instead, they used it to fund terrorism. Using front organizations to solicit "charitable" contributions allows terrorists to operate with less tax-agency scrutiny and even qualify for government and nonprofit grants.

gold markets. When the United States attacked Afghanistan, al Qaeda is believed to have smuggled gold out through Pakistan and then to Dubai for deposit. Although moving gold works well to legally evade reporting requirements, it is risky in the sense that gold can be stolen or appropriated from the couriers before it reaches its final destination. However, the rise of bullion-backed online e-currencies removes such risks.

Hawala

Another technique is to use informal value transfer systems (IVTS). These are commonly known as *hawala*, an informal economy of money brokers ensconced in a network that spans the Middle East, northern Africa and the Horn, and South Asia, with outposts in Europe and the United States. The institution of hawala dates back over a thousand years. Brokers, known as *hawaladars,* transfer value from one location to another on an honor system by means of telephone conversations, leaving no traceable records of money movement. Because such transfers depend on honor instead of formal contracts, hawala functions as an underground banking and money transfer system. It remains largely outside legal and juridical controls.

Since 9/11, larger hawala organizations have had their accounts frozen in counterterrorist initiatives, had their brokers indicted, and been named on United Nations terrorist watch lists. Al Barakat was a global hawala network run by an Osama bin Laden associate, with nearly 200 offices in at least 40 countries. The United States froze its funds after labeling it a global terrorist organization. In a series of federal cases brought in Virginia in 2002, the defendants were charged with money laundering, structuring more than $4 billion on behalf of their many clients. They sent $6 million in fees they had collected for their money laundering services to the Al Barakat hawala network in the United Arab Emirates—also structuring the transfers of their own funds to Al Barakat in increments of less than $10,000.

Front Businesses

Legitimate businesses can also obscure transnational fund transfers by engaging in countervaluing of goods they import or export, often in conjunction with a hawaladar. The companies in some circumstances will engage in legitimate business activities in addition to working on behalf of terrorism. Legitimate profits can be hidden by means of accounting tactics and then used to support terrorism. For example, illegitimate revenues can be laundered through shell companies by means of false invoices that are paid for nonexistent products or services. Using this technique, a business in the United States might import goods worth $10,000, but the offshore exporter would overvalue the goods at $20,000. This permits the U.S. firm to send the extra $10,000 out of the country without attracting regulatory attention. Buying and selling nonexistent items on eBay is a simple way to accomplish the same end.

In a case brought by federal prosecutors in New York in 2001, the defendants created false identities using fake birth certificates and Social Security cards that they had purchased on the black market. They then established a computer sales shell company in New York. Next, they created accounts with banks and credit card clearing agencies. In the final step, the defendants created fictitious sales charged to legitimate credit card numbers they had stolen from neighbors and collected the proceeds in a bank account held by the shell company. They also created new credit card accounts using their false identities, with the intent to max out their credit lines, spend the money, and then disappear without paying the debt. This is known in law enforcement circles as a “bust-out” scheme.

In 2006, InfoCom Corporation, a U.S. firm that sold computers and Web hosting services to Middle Eastern customers, was convicted on charges of aiding terrorist groups. During the 1990s, Texas-based Infocom hosted about 500 Web sites in Arabic. High-profile clients included the nation of Iraq, an Al Jazeera television station, and Holy Land Foundation for Relief and Development, the fraudulent charitable organization referenced above for its own ties to terrorist organizations such as al Qaeda and Hamas. Infocom also illegally sold computers and computer parts to Libya and Syria, countries that had been designated as state sponsors of terrorism. Infocom evaded U.S. regulations by routing the computers through Italian shipping countries and falsely stating that the shipment to Syria did not require a special license.

The Darkazanli Import-Export Company is another example of how a legitimate business can be used to aid terrorist operations by means of a variety of white-collar crimes. Mamoun Darkazanli's enterprise had several convenient locations in Europe and the United States. He opened joint bank accounts with several al Qaeda members and, over a four-year period in the mid-1990s, transferred more than $600,000 through these accounts. In 1994, Darkazanli helped Osama bin Laden's personal assistant to purchase a ship on bin Laden's behalf. Darkazanli also transferred monies to the Global Relief Foundation in Europe, a nonprofit charitable organization suspected of supporting al Qaeda.

In 2012, federal prosecutors in the United States charged a Lebanese bank and two Lebanese money exchange firms with colluding with 30 auto dealers in the United States. The government alleged that the bank laundered illicit drug profits for South American cocaine cartels, mixing the drug money with the profits made by the U.S. auto dealers by buying used cars in the United States and selling them in Africa. The cash was flown to Lebanon, deposited first in the exchange houses, and then ultimately in the bank. Hezbollah—a Lebanese political organization—took a cut of the proceeds. The United States and other nations consider Hezbollah to be a terrorist organization because of Hezbollah's historical connections and political positions.

These examples demonstrate that terrorist organizations and their sympathizers rarely limit themselves to a single white-collar crime. Instead, a common pattern is to combine several white-collar crimes.

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See Also: Bank Fraud; Bush, George W.; Charity Fraud; Computer Hacking; Credit Card Fraud; Daisy Chains; Globalization; Human Trafficking; Identity Fraud or Theft; Insurance Fraud; Internet Fraud; Iran-Contra Affair; Iraq War; Justice, U.S. Department of; Money Laundering; Nigerian 419 Scam; Offshore Entities; Political Assassination; State Crime Theory; Tax Evasion; Tobacco Industry; War on Terror.

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Thalidomide Case

Chemie Grunenthal, a West Germany–based pharmaceutical company, created thalidomide in 1953. Patients took this pill to help them sleep or to prevent morning sickness during pregnancy. The drug did not require a prescription and was deemed completely safe. Grunenthal heavily advertised that the drug produced no side effects, touting it as a "miracle drug." Eventually, the German manufacturer began to license the distribution of thalidomide in more than 50 other countries. Yet the drug was not safe. Numerous women who used thalidomide during pregnancy bore children with extreme congenital abnormalities. Many of the children were born with no arms or legs, or if they had developed, their extremities were attached in odd places. For example, toes were attached to the hips, or hands and feet were attached directly to the torso. Finally, after the many birth defects were observed by doctors around the world, thalidomide was banned, but it was too late for thousands of babies. It has been estimated that between 8,000 and 80,000 children in nearly 50 counties were born deformed because thalidomide had been marketed as being safe to use by pregnant women. Because of this, it became known as "the drug that deformed."

Shoddy and Shady Research

Grunenthal did not have a strong reputation for thorough research. It did conduct laboratory tests, but the clinical trials were conducted by doctors on its payroll, thus creating a major conflict of interest. Some of the patients experienced various side effects, including giddiness, nausea, constipation, and loss of feeling in their fingertips and toes. These were recorded and sent to the company. Grunenthal had knowledge that thalidomide was not "perfectly safe" with "no side effects," yet it chose to ignore these results and continued to advertise the drug as completely safe. In fact, Grunenthal conducted a powerful marketing campaign. It placed advertisements and circulars and sent letters to doctors touting the safeness of its miracle drug. It even went as far as to have positive reports published, establishing the drug's effectiveness.

Negative reports of the drug's true side effects began to surface. Thalidomide was making an enormous amount of money, so as negative reports surfaced, Grunenthal attempted to discourage these through strong-arm tactics. Nevertheless, the medical journals did not give in to Grunenthal's tactics, and the negative reports continued to be published about the very disturbing results. Doctors who had been told that the drug was completely safe started contacting Grunenthal about the negative findings and questioned it about the results of its clinical trials. Grunenthal not only refused to release the data from its clinical trials but also constantly defended its product and continued to emphasize the favorable reports (which it had paid for).

The problems of thalidomide would soon be known globally thanks to the tenacity and courage of one scientist at the U.S. Food and Drug Administration (FDA). William S. Merrell Company wanted to distribute thalidomide in the U.S. market. On September 12, 1960, the FDA received a New Drug Application (NDA) from Merrell requesting approval for thalidomide. The NDA filed by Merrell contained glowing claims that the drug was safe. Animal and human tests had been conducted, and there were no known problems. Dr. Frances Kelsey, the FDA's newest medical officer, reviewed the NDA along with an FDA pharmacologist and chemist. She noticed many inconsistencies and omissions within the data. Dr. Kelsey sent Merrell a letter stating that she was concerned about the drug. Dr. Kelsey was also especially concerned about the drug's use by pregnant women. Dr. Kelsey raised these questions and ordered more testing. Merrell responded by putting intense pressure on Dr. Kelsey to approve the drug, but she did not yield—she refused to grant approval and distribution of thalidomide in the United States. American women and their unborn children averted tragedy. The women outside the United States, unfortunately, were not that lucky.

Facing numerous medical journal articles and news reports of the devastating effects of thalidomide plus Dr. Kelsey's insistence on more testing, Grunenthal was finally forced to withdraw thalidomide from the global market in 1962. Upon further investigation, much of Grunenthal's behavior prior to withdrawal of the drug from the marketplace came under scrutiny. Because of the overwhelming effects of thalidomide on pregnant women and their children, the public prosecutor's office in West Germany began an investigation into Grunenthal's conduct.

Nine Grunenthal managers were criminally tried for committing bodily harm and for involuntary manslaughter. Grunenthal did not cooperate with the investigation and continually refused to surrender documents. After two and a half years, the company agreed to an out-of-court settlement. The criminal hearings were suspended, and Chemie Grunenthal agreed to pay 114 million German marks into a victim's compensation fund and 50 million German marks to the government. This was equivalent to about $31 million in U.S. dollars.

Thalidomide is still available on a limited basis in the United States for the treatment of leprosy. It cannot be handled by woman of childbearing age and cannot be prescribed to any woman who is capable of bearing children. The shocking and devastating case of thalidomide brought to light the way pharmaceutical companies operate. Pharmaceuticals are big business. Given that tragedies can and do occur, it is imperative that pharmaceutical companies adequately test all their drugs and products and operate in an ethical manner. No drug is 100 percent safe, and accurate and ethical testing is crucial before human trials and especially marketing and worldwide distribution take place. There is a thin line between corporate responsibility and corporate crime. It is understandable that the pharmaceutical companies need to make a profit, but a human's life is worth more than the bottom line. If not for Dr. Kelsey in 1962 and the current FDA procedures, many more tragedies could befall the American public.

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See Also: Ethics; Food and Drug Administration, U.S.; Medical Malpractice; Negligence; Pharmaceutical Industry; Research Fraud.

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Three Mile Island Disaster

Three Mile Island (TMI) was one of several environmental devastations that occurred in the 1960s and 1970s that shaped the foundation of environmental law, policy, and regulation in the United States. Much like the incidents at Love Canal and Times Beach, events that transpired at TMI made concerns about pollution and environmental degradation evident to the public. TMI distinguishes itself, however, from these other catastrophes in that the TMI accident occurred at a nuclear power plant, and it remains to be regarded as the most serious accident to ever to have occurred at a nuclear power plant in the United States.

TMI consisted of two units constituting the Three Mile Island Nuclear Generating Station in Middletown, Pennsylvania, on the Susquehanna River. The two units were often referred to as TMI-1 and TMI-2, respectively; TMI-1 began operating in 1974, and TMI-2 started operations in 1978. The TMI facilities were property of the General Public Utilities Corporation and were operated by GPU's three subsidiary organizations, the Metropolitan Edison Company, Jersey Central Power and Light Company, and Pennsylvania Electric Company. The reactors at TMI were used to produce electricity for northeastern Pennsylvania and New Jersey, and during normal operations, TMI employed approximately 500 people. The construction cost of the two units was estimated at about $1 billion.

The TMI facilities were developed in Pennsylvania during a time of national debate surrounding the safety of nuclear energy. In spite of this, TMI faced little resistance in Middletown, where residents were bombarded by GPU's massive campaign promoting nuclear technology. However, problems with TMI-2 became evident from its inception. For example, before TMI-2 began producing energy, one of the reactor's coolant pumps failed. TMI-2 experienced issues with major valves, feed water pumps, and emergency core cooling systems, in addition to at least 20 malfunctions resulting in immediate shutdowns of the reactor. Though failures in the start-up weeks of nuclear facilities are common, TMI-2 remained off line for 71 percent of its testing phase, establishing the facility as below average in terms of efficiency.

The failures that pushed TMI into notoriety, however, began at 4:00 A.M. on March 28, 1979, in TMI-2. At this time, for reasons still unknown, main feedwater pumps stopped running. Steam generators became unable to remove heat, causing the reactor to shut down. This led to an increase in pressure within the nuclear portion of the plant. To maintain desirable pressure, operators opened a relief valve on top of the pressurizer. When pressure decreased, the valve should have closed, but it failed to do so. Signals also failed to notify operators that the valve was open. Consequentially, coolant flowed out of the open valve, and the core of the reactor overheated. Operators understood failures were occurring but were unaware the core was overheating. This caused operators to reduce the flow of coolant to the core, worsening the meltdown. These actions culminated in TMI-2 enduring a severe core meltdown.

By 11 A.M., nonessential personnel were ordered off TMI premises and local and federal emergency response teams were notified. Respondents immediately attempted to regain control of the reactor, and by evening, the reactor appeared stable. However, the extent of damage to residents remained unclear. On the morning of March 30, officials became concerned about a significant release of radiation from the plant's auxiliary building. Conflicting information was released to the press concerning the seriousness of the incident at TMI, and confusion, fear, and anxiety began to mount among the public. The governor of Pennsylvania, Richard L. Thornburgh, recommended that pregnant women and young children within a five-mile radius of the plant evacuate the area until further notice. Schools within a five-mile radius of TMI were closed. The population within a five-mile radius of TMI consisted of approximately 38,000 residents.

Saturday, March 31, brought new concerns as a hydrogen bubble began to form in the dome of the pressure vessel. It was feared that the hydrogen bubble could catch fire or explode and result in a breach of containment. Fortunately, this did not occur. Experts established on Sunday, April 1, that because of lack of oxygen in the pressure vessel, explosion or fire did not pose a threat. Furthermore, by this time, the bubble had shrunk in size. Finally, on Wednesday, April 4, Thornburgh called off the advisory for women and children to evacuate and reopened local schools, marking a slow return to normal operations in the communities surrounding TMI.

Immediately following the meltdown at TMI, public support for nuclear technology appeared to diminish. A number of antinuclear demonstrations were held across the country, including one in Washington, D.C., that attracted approximately 65,000 people. After the incident at TMI-2, it was reported that mental health concerns emerged among residents, including cases of post-traumatic stress disorder.

Long-term consequences of TMI include overhauls to the nuclear technology industry and regulation of atomic energy. Upgrades to plant

A folk singer performs at an anti-nuke protest at the capitol in Harrisburg, Pennsylvania, April 9, 1979. The rally at Three Mile Island was an unusual merging of radical activists and local, average citizens, all protesting Metropolitan Edison.

design and equipment, the formation and expansion of regulatory groups, and training in emergency preparedness are a few examples of such changes. Controversy surrounds the health effects of the TMI incident, with some studies evincing elevated rates of cancer and infant mortality, and other studies not finding these increases to reach statistical significance. TMI-2 was permanently shut down after the accident. Cleanup of the site lasted approximately 14 years and is estimated to have cost $1 billion. TMI-1, despite local opposition, remained in operation and continues to operate today.

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See Also: Carter, Jimmy; Clean Water Act; Corporate Dumping; Environmental Protection Agency, U.S.; Grassy Narrows First Nations Reserve; Hazardous Waste; Love Canal Disaster; Pollution, Water; Times Beach Contamination.

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Times Beach Contamination

On the Meramec River in Missouri, Times Beach was primarily a small resort community with a population just over 1,000 citizens. Sadly, it became emblematic of the discovery of the hazardous waste problem characterizing the 1980s and, as such, was rendered a "ghost town" in the early part of the decade due to contamination by dioxin, a cancer-producing chemical.

The tortured journey for this community began when Northeastern Pharmaceutical and Chemical Company Inc. (NEPACCO), while manufacturing hexachlorophene (an antibacterial agent), leased a production facility from Hoffman-Taff. Hoffman-Taff (which was later acquired by Syntex Corporation) was the manufacturer of the notorious defoliant Agent Orange, created to aid ground-based troops in their combat operations in the Vietnam War. The by-products of these manufacturing processes produced both dioxin and TCP (trichlorophenol) carcinogens. NEPACCO and Independent Petrochemical Corporation (IPC) arranged for disposal of these wastes with Russell Bliss, a St. Louis–based waste oil hauler and operator of Bliss Waste Oil Company.

Deadly Road Spray

Bliss mixed these chemical wastes with waste oil at his Frontenac, Missouri, facility and hauled away five truckloads between February and October 1971; each load contained between 3,000 and 3,500 gallons of dioxin- and TCP-laced oil. The cash-strapped community of Times Beach contracted with Bliss (for six cents per gallon of waste oil sprayed) to spray numerous roads for dust control over several miles in and around Times Beach. Bliss also sprayed the same contents on parking lots, truck terminals, several horse stables, as well as a horse ring owned by Bliss.

Over 60 horses died as a result of exposure to the dioxin, as did other livestock, dogs, and birds. Several adults and children were also sickened as a result of their exposure, with symptoms ranging from diarrhea, headaches, nausea, and skin lesions to hospitalizations for kidney and bladder bleeding. At least one death from soft-tissue sarcoma (a rare form of cancer) was tied to dioxin exposure. In total, Bliss sprayed the dioxin-laced waste oil at 28 sites throughout eastern Missouri.

The full extent of contamination in Times Beach became apparent in the early 1980s as the nearby Meramec River flooded the city, further spreading the dioxin over a larger area and forcing residents to evacuate their homes. The Centers for Disease Control and Prevention recommended in December 1982 that those who were evacuated should be permanently relocated in what was dubbed the Christmas Message: "If you are in town it is advisable for you to leave and if you are out of town do not go back." Police erected roadblocks, and the town was effectively closed to all persons (eliminating all businesses and employment opportunities). The Environmental Protection Agency (EPA) transferred approximately $30 million to the Federal Emergency Management Agency (FEMA) for permanent relocation of residents and businesses in 1983 (and all were relocated permanently by 1986). Those facing relocation complained bitterly about not receiving fair market value for their homes and about the manner in which they were portrayed in the media as "greedy" for seeking compensation for their losses. Some of the displaced homeowners moved to other locations in Missouri only to find that those locations were also contaminated with dioxin linked to Bliss's disposal practices, thereby necessitating yet another move.

$100 Million Cleanup

These events led the EPA to place these sites on its initial National Priorities List, under the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (1980). This act was designed to remedy the ravages of hazardous waste contamination common to locales such as Times Beach and Love Canal (New York) and led to an eventual cleanup funded by parties responsible for the generation and transportation of the wastes as well as the state of Missouri and the EPA. The costs for the cleanup were in excess of $100 million. After contentious litigation involving parties responsible for the generation and disposal of the dioxin wastes (Bliss, NEPACCO, Syntex, IPC, and others) as well as citizens contesting the EPA's disposal methods and possibility of additional contamination, these wastes were incinerated in Times Beach.

Although dioxin contamination was spread over numerous locations because of Bliss's spraying over such an extensive range, Times Beach was selected for the incineration site because of its small size, the largest concentration of contaminated waste, prior evacuation, and because it was not yet cleaned and restored. Upon completion of all cleanup activities, in 1999, Times Beach became Route 66 State Park and has been hailed as an "environmental success story"; it offers visitors a history of the contamination as well as hiking, fishing, and camping (ironically, a large mound in the park comprises all the remains of buildings and property that once formed the town of Times Beach). Other eastern Missouri communities contaminated by the dioxin-based materials have become upscale housing developments. However, as a legacy of its polluted past, the failure of realtors to fully disclose the extent of dioxin contamination in eastern Missouri to seven potential home buyers culminated in a jury award in excess of $500,000.

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See Also: Clean Water Act; Corporate Dumping; Environmental Protection Agency, U.S.; Grassy Narrows First Nations Reserve; Hazardous Waste; Love Canal Disaster; Pollution, Water; Three Mile Island Disaster.

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Tobacco Industry

The tobacco industry has been linked to several instances of criminality, with the overwhelming focus of such activity connected to illicit tobacco smuggling. This can occur in a number of ways, and the tobacco industry has been described as having been both proactive and passive in its involvement or its lack of intervention in tobacco smuggling. The following are some typical examples of instances in which the tobacco industry appeared to have some involvement in the dynamics of large-scale tobacco smuggling.

One of the most frequent and systematic ways in which tobacco manufacturers have used cigarette smuggling to fulfill their own corporate objectives is by using the perceived harms of smuggling to lobby governments for lower taxation of their products. Tobacco companies are said to propose that high levels of smuggling are a direct consequence of high prices (which are driven by the high levels of taxation put on the product). The tobacco industry suggests that the obvious remedy to smuggling is to lower tobacco taxation levels and, by consequence, prices. In direct contradiction of these claims, however, research has found that there is little or no correlation between smuggling levels and prices. For example, Scandinavian countries such as Sweden and Norway experience a low level of smuggling despite their high prices in comparison to the rest of Europe. Meanwhile, despite relatively low tobacco prices in Spain, the level of smuggling in this southern European state has been described as high.

Examples of Tobacco Industry Complicity

Elsewhere, tobacco producers have been found to be implicitly involved in strategic smuggling of cigarettes to fulfill corporate objectives. In July 2008, two Canadian tobacco producers admitted their involvement in facilitating the smuggling of cigarettes into Canada and consequently faced fines of $1.15 billion Canadian. This development came after allegations were made in 2000 that Canadian manufacturers were exporting Canadian cigarettes to the United States despite there being little apparent consumer market, as American smokers overwhelmingly tend to prefer American brands. The same cigarettes were then allegedly smuggled back into Canada, leading some to estimate that a proportion as high as 80 to 85 percent of the exports to the United States were reentering Canada. In this instance, it appears that the tobacco industry was, at the very least, certainly complicit in the illicit smuggling activity by supplying the cigarettes in the first place.

Further, in 1998, the European Community requested assistance from the U.S. government as part of its investigation into the role of tobacco manufacturing giants R. J. Reynolds and Phillip Morris in the attempt to smuggle 80 million cigarettes into a Spanish port. In 2000, a civil action suit was filed against Phillip Morris and R. J. Reynolds in New York by the European Community, which boldly alleged an ongoing global scheme to smuggle cigarettes, launder the proceeds of narcotics trafficking, obstruct government oversight of the tobacco industry, fix prices, bribe foreign public officials, and conduct illegal trade with terrorist groups and state sponsors of terrorism. Although careful to note that its response was not an admission of guilt, in 2004 Phillip Morris agreed to sign a legally enforceable agreement that required the tobacco manufacturer to introduce new measures to combat tobacco smuggling and pay the European Community $1 billion in return for the civil suit against the company being dropped.

Imperial Tobacco, meanwhile, has also been alleged to have been complicit in illegal activities, adding to the body of evidence to suggest that the tobacco industry actively engages in large-scale smuggling. In 2001, Her Majesty's Customs and Excise (HMCE) in the United Kingdom identified the disproportionate representation of Superkings and Regal (two brands belonging to Imperial Tobacco) in the domestic illicit cigarette market compared to their relatively low representation in the licit market. It is alleged that the same two brands had been exported legally by Imperial Tobacco to countries with a local market showing little demand for these brands or the volume of the product. Among these exports were 3 billion cigarettes sent to five locations: Latvia, Kaliningrad (Russia), Afghanistan, Moldova, and Andorra. The latter of those countries in fact received 84 million cigarettes in the period 2000 to 2002 despite its mere 68,000 population at the time. Similarly, 934 million cigarettes were exported to Kaliningrad and its population of 430,000.

HMCE figures showed its belief that 65 percent of Imperial Tobacco brands were being smuggled into the UK compared to just 16 percent of other brands. Although Imperial Tobacco subsequently denied any complicity in smuggling enterprises during public hearings with the Parliamentary

Public Accounts Committee, it discontinued a number of trading agreements between 1999 and 2002 that appeared to affect chiefly the exportation of Superkings and Regal cigarettes. Parallel to this development, the rate of Imperial Tobacco cigarettes found in the illicit cigarette market is alleged to have dramatically fallen in the following years. Such was the impact of the Imperial Tobacco affair in sustaining the belief in tobacco manufacturers' complicity with cigarette smugglers that the British government introduced the UK Finance Act in 2006. The act legally obliges manufacturers to take steps against smuggling of their products and outlines possible fines of 5 million pounds sterling for failure to act against smuggling.

British American Tobacco and Asian Markets

Meanwhile, British American Tobacco (BAT) has been accused of complicity or perhaps willful neglect concerning tobacco smuggling as part of its attempts to penetrate the Asian market. Academic research has examined previously confidential internal BAT documents and appears to have found striking data regarding the management of illicit tobacco markets by one of the leading global manufacturers. It has been argued that BAT undertook detailed oversight of illicit trade and that smuggling in various Asian countries was driven in part directly by BAT according to its corporate objectives. For example, BAT's documents are said to assert that it sought to displace Phillip Morris as the market leader in Asia and saw the contraband marketplace as a vehicle upon which to achieve this objective. Specifically, the documents appeared to target China, Cambodia, and Laos as attractive but as yet unattainable markets and explicitly sought to use illicit tobacco smuggling as the conduit via which to generate consumption of BAT brands.

Involvement in smuggling also offered BAT the opportunity to enter closed markets. For instance, despite a ban in 1990 in Thailand against transnational tobacco companies, a BAT report in 1988 found that the company had achieved a monthly transit volume of approximately 22 million cigarettes in the country, earning the manufacturer a total annual profit of 1 million pounds sterling. This was achieved, it is argued, thanks to the volume of cigarettes illegally imported into the region.

Another way in which BAT allegedly utilized tobacco smuggling to its advantage was by pressuring Asian-based governments to abolish import bans. BAT's documents appeared to show that exploitation of contraband was presented as part of a broader strategy to undermine Thailand's ban on imports. Presenting the legalization of tobacco trading as the antidote to illicit smuggling, BAT effectively sought to maximize its profit-making by taking a controlling and decisive role in a delicate sociopolitical situation across a number of jurisdictions, including Thailand, Burma, and Bangladesh.

New Threat

In recent years, the rise of Jin Ling, a previously unknown cigarette brand apparently flooding the illicit market, has further raised questions as to the role of the tobacco industry in organized criminal activities. Legally produced in Kaliningrad by the Baltic Tobacco Factory (BTF), Jin Ling has been described as a tobacco product designed and manufactured exclusively with the implicit intention for it to be smuggled rather than exported legally. Research has found links between BTF and both British American Tobacco (BAT) and Japan Tobacco Industries (JTI).

As recently as 2008, a subsidiary of BAT is alleged to have supplied BTF with 21 tonnes of high-quality Western-style tobacco. JTI's involvement pertains to the apparent links between BTF and R. J. Reynolds and Gallaher (another major tobacco manufacturer), which were subsequently purchased by JTI. Vladimir Kazakov, BTF's director general, is a former employee of R. J. Reynolds, and the same company previously owned and operated a number of BTF's factories. Gallaher, meanwhile, is said to have previously operated alongside BTF and, indeed, a JTI spokesman was forced to concede that BTF may have been involved with Gallaher as a third-party contractor in the past. As an interesting aside, it can be noted that the rise of Jin Ling has seemingly coincided with increased regulation of leading tobacco manufacturers and is, arguably, therefore connected to stricter oversight of the tobacco industry.

It appears, therefore, that recent additional oversight by various jurisdictions has, in a very real sense, strong-armed the tobacco industry into reducing its alleged or admitted involvement at various stages in the tobacco-smuggling process. Massive financial penalties as well as strict regulatory agreements made between national/supranational bodies and the tobacco industry appear to have reduced the volume of branded tobacco in the illicit cigarette marketplace. This increased accountability of export practices has forced the tobacco industry to reconsider whether it views its involvement in facilitating tobacco smuggling as a sound financial investment given the potential penalties. It is argued, however, that governments and antismuggling agencies must continue to ensure that tobacco manufacturers are held accountable for their actions, as the industry's powerhouses will undoubtedly continue to lobby for lower taxation in their unrelenting and never-ending pursuit of greater profits.

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See Also: Antitrust, U.S. Department of Justice; Bribery; Brown Lung; Cigarette Advertising; Creative Compliance; Green, Mark; Market Manipulation; Marketing Fraud; Money Laundering; Predatory Practices; Price Fixing; Public Citizens Health Research Group; Research Fraud; Tariff Crimes; Terrorism.

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Toxic Substances Control Act

The Toxic Substances Control Act (15 U.S.C. § 2601 et seq.) was enacted by Congress in 1976. It provides legal authority for the Environmental Protection Agency (EPA) to require records, reporting, testing requirements, and restrictions relating to the use and/or discharge of chemical substances or compounds. Pesticides, cosmetics, items qualifying as food, and pharmaceutical products are excluded from this act and from the jurisdiction of the EPA. Companies that intend to produce or manufacture new chemical mixtures or compounds are required to notify the EPA prior to conducting initial production. Additionally, if a chemical or compound has been labeled as a "substance of concern" and is being used in a manner not originally intended, the new use, discharge, release, or exposure must be recorded and filed with the EPA.

The intent of the law was to prevent human harm and to eliminate or mitigate potential environmental harm. In 2011, the EPA issued, via its Office of Enforcement and Compliance Assurance, a compliance and monitoring strategy for the Toxic Substance Control Act. Significant portions of this document related to lead-based paint, asbestos, and polychlorinated biphenyls (PCBs). The applied focus of the EPA's enforcement unit appears to be on well-known and established hazards that historically have compromised workers' health. The EPA's documents indicate the enforcement for compliance encompasses potential field inspections, informational request letters, and paper-based inspections that entail paper audits of reports sent by manufacturing and distribution companies.

Although it is important to address these lingering issues, the compliance efforts seem to ignore or disregard chemical compounds that pose substantial risks to both human and environmental health. Furthermore, the practice of paper audits is often an inefficient method of monitoring. Dioxin, a chemical substance known to be carcinogenic and persistently toxic in water and animals throughout the food chain, highlights the inadequacies and failures that result from focusing on a finite few, well-known chemicals.

This paper milling site in Puget Sound, Washington, began as the Puget Sound Pulp and Timber company in 1931. It eventually became Kimberly-Clark Worldwide (K-C), which continued to produce paper products such as bleached sulfite pulp and paper towels. It ceased operations in April 2012. Samples collected in marine sediments were found to contain contaminants covered under the Toxic Substances Control Act, including polychlorinated biphenyls (PCBs) and dioxins. K-C agreed to a cleanup operation on 56 acres.

Dioxin: One of the "Dirty Dozen"

According to the World Health Organization, dioxins are a class of compounds well known to be carcinogenic, with the additional label of being members of the "dirty dozen." This title is applied to a category of "dangerous chemicals known as persistent organic pollutants," according to the World Health Organization. Compounds placed under the "dirty dozen" label are those that are highly toxic, are stored in fatty tissue usually for periods of seven to 11 years, and have the capacity to accumulate in the food chain, thereby concentrating in an interminable manner. They disrupt the endocrine, reproductive, and immune systems and interfere with fetal development. Most human exposure occurs via consumption of meat, dairy products, and seafood. PCBs share a chemical structure and toxicity similar to dioxins; however, the EPA has precluded strict regulations and monitoring of the most profound dioxin—tetrachlorodibenzo para dioxin (TCDD).

Most TCDD exposure occurs through the chlorination of paper products and release of incinerator emissions from solid and hospital waste. Although the creation and inappropriate discharge may occur in a local site, the impact is often global because the stability of the chemical compound stimulates a prolonged half-life. Initially, in the 1950s, the EPA claimed that the general population routinely received unacceptable levels of dioxin exposure. Dozens of scientific studies were conducted on dioxins over three decades (1970s–1990s). All studies revealed similar results—that dioxins cause cancer in mammals and taint ecological systems. Yet the EPA, under immense pressure from the U.S. paper industry, claimed in 1991 that dioxin exposure had to be studied. This led to an expense of $4 million over four years that resulted in the determination that dioxin was indeed as toxic as all other studies indicated. During this protracted study, only those scientists whose grants were funded by the chemical and paper industries presented information at congressional hearings. This blatant manipulation of governmental scrutiny result from corporate financial inducements. Pressure levied by industries that profit from the use and discharge of dioxins is directed routinely against government officials. It seems unlikely that publicly supported environmentally protective measures such as the

Toxic Substances Control Act could garner the impact originally intended. Ultimately, the costly taxpayer-funded study demonstrated that scientific evidence could be actively ignored and misrepresented in order to accommodate the intentions of profitable industries and corporate entities.

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See Also: Asbestos; Clean Air Act; Clean Water Act; Corporate Dumping; Environmental Protection Agency, U.S.; Hazardous Waste; Occupational Carcinogens; Pesticides; Pollution, Air; Pollution, Water; Pure Food and Drug Act; Times Beach Contamination.

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Trademark Infringement

Trademarks are words or symbols used by businesses to differentiate their goods or services from those of other companies. These marks help establish brands and competition among companies that provide the same product or service. Trademark infringement is the practice whereby one company uses, replicates, or closely mirrors the trademark of a competing company. This can result in consumers being confused about product representation and companies losing or gaining customers based on the illegal act. This practice can have devastating effects, as product marks that are used illegally and inappropriately can impact the health and wellness of consumers and significantly impact the reputation and viability of a company.

Trademarks

Starting a business requires the development of a name and/or a symbol that will represent that company. Trademarks can include a word or a group of words. Symbols, colors, and design can also be included in a trademark. Marks that meet governmental standards of being inherently distinctive can be registered and protected. Registration gives the owner exclusive rights to the mark (except in noncompeting industries) and provides greater creditability in trademark lawsuits. The golden "M" arches of the McDonald's Restaurant franchise is an example of a trademark. Even domain names can be trademarked, though the .com or .org part of the address cannot be trademarked, so all businesses may use them in their mark.

The U.S. Patent and Trademark Office provides the requirements and guidelines to have a mark federally registered to afford legal protections. Registered marks are available in a database for public access, though most companies hire attorneys who specialize in this field to ensure success in the process. A trademark is not required to be registered, but protecting its uniqueness will be seriously lessened if not registered. The same holds true for the World Intellectual Property Organization (WIPO), which devised a one-application system for international protection of trademarks.

Trademark Infringement

Trademark infringement occurs when a company uses a mark that causes a likelihood of confusion between the products or a misperception between companies that make the goods or provide the service. The key issue is the "likelihood of confusion" possibly experienced by consumers. Coca-Cola and Pepsi both have red and white on their soft drink cans, but the amount, design, lettering, and logos are quite different, so people do not confuse the products.

Infringements also include any unauthorized use of a valid or registered trademark. Once a mark is registered, a company must obtain approval in order to use the mark for advertising or other purposes. For example, Web sites that display the Facebook logo or trademark on their sites should have permission from Facebook to do so. If permission is not sought or given, using the registered trademark is an infringement that could result in a civil lawsuit.

Counterfeiting a mark also represents trademark infringement. This is similar to copyright infringement in that there is illegal use of a mark, typically done to deceive consumers into thinking the mark or product is legitimate. In recent years, there is heightened concern about the illegal use of trademarks on goods like pharmaceuticals, electronics, batteries, and automobile parts. For example, if a pill has a counterfeit mark on it, the consumer believes the medication is legitimate and has met federal regulations when in fact the pill may not have met any requirements and could be harmful or deadly to the user. As more products are being made in countries that allow this practice, and prices for these items are low, these infringements will continue.

A similar illegal practice is trademark dilution, which is the lessening of the capacity for a "famous" mark to be identified with a specific good or product. There is federal protection against the use of famous marks by parties trying to dilute the reputation, quality, or practices of the original trademark. Although dilution has a different focus from infringement, both are fought to protect trademarks and what the marks represent.

Combating Infringement

The globalization of the Internet and expansion of business ventures plague many companies with trademark infringements. The Internet allows businesses to sell products that can easily deceive or confuse consumers because of trademark infringements. Domain names or Web site addresses, which can be trademarked, can also complicate the online purchasing of products when they are copied to resemble a specific mark. The World Wide Web allows businesses to broaden exposure of their products, which also allows people worldwide to have information to illegally use a trademark for their own benefit.

Although there is international recognition of registered trademarks, there are great challenges in enforcing the illegal use of trademarks because of cultural and legal values. Intellectual property disputes can be brought to civil court or a specialized court. These processes require attorneys and time, which are costly to companies, large or small. Trademark infringements are not limited to those of large corporations, which may have greater resources; small companies are also protected with governmental mark recognition.

Trademark infringements have the capability to impact the public through the illegal replication of marks used to confuse consumers into purchasing a product or using a service. On the surface, this may appear to be strictly a business issue, but current practices of using counterfeit marks on electronics or prescription drugs can significantly impact the health and welfare of the public as well.

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See Also: Copyright Infringement; Counterfeiting; Globalization; Industrial Espionage; Patent Infringement; Unfair Trade Practices.

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Troubled Asset Relief Program

The Troubled Asset Relief Program (TARP) was created with the passage of the Emergency Economic Stabilization Act (EESA) on October 3, 2008. The program represents one of several emergency measures taken by the federal government in response to the crisis that hit the U.S. economy and the financial sector, in particular, that year. Congress authorized $700 billion to rescue homeowners at risk of foreclosure, automakers, and, significantly, several banks and investment companies on the verge of bankruptcy when the housing market collapsed in 2007–08. The program is run by the Office of Financial Stability, a division of the Treasury created by EESA.

Financial institutions were the key recipients of the bailout funds (and received the bulk of the authorized monies). Many of the largest banks and investment companies were among the targeted companies, including Bank of America, Citicorp, JPMorgan Chase, Wells Fargo, American Express, State Street, Merrill Lynch, Morgan Stanley, and Goldman Sachs. These loans, of varying amounts and under various targeted initiatives, were provided to the troubled financial sector and were given to these financial institutions to enable them to improve public confidence and expand their ability to lend money.

Multibillion-Dollar Bailout

The total amount of the funds, almost $370 billion, could give the government a voice in the management of these entities. These banks had faced unprecedented losses (because of their exposure to declines associated with residential-based mortgage securities [RBMS] and RBMS derivatives). Several key financial institutions had collapsed (most notably Lehman Brothers) or were under the management of government (such as the previously independent Federal National Mortgage Association [Fannie Mae] and Federal Home Loan Mortgage Corporation [Freddie Mac]).

Many officials, including Treasury Secretary Henry Paulson and Federal Reserve Chairman Ben Bernanke, compared the crisis facing the financial sector to the crisis that triggered the Great Depression. They claimed that TARP was necessary to restore stability to this sector as well as to the entire economy; in fact, Paulson (in soliciting support of congressional action leading to the passage of TARP) claimed that, without action, both the U.S. and the global financial systems would collapse. The language of EESA gave the Treasury very broad discretion in determining both "financial institutions" and "troubled assets" (such that $84.84 billion in TARP funds were allocated for the bailout of the Chrysler and General Motors automotive companies).

Many factors contributed to the financial crisis that led Congress to create TARP. Most experts agree that the problems facing the financial sector were set in motion by the expansion of subprime lending in the mortgage industry and the increasing popularity of treating mortgages as commodities to be traded. Mortgage lending has provided millions of Americans with the money needed to buy homes since the 1930s. As the housing bubble grew in the 1990s and 2000s, mortgage lenders increasingly offered mortgages to individuals who did not typically qualify for traditional mortgages.

In many cases, individuals could secure a subprime loan without providing the down payment (or documentation of income) that banks had traditionally required. Subprime loans typically offered low-interest "teaser" rates to entice prospective homeowners, but these rates later increased beyond the homeowners' ability to pay. Thousands of Americans took advantage of the easy money that subprime lenders offered to buy homes. Estimates suggest that more than half of the increase in lending volume during the housing bubble could be attributed to subprime and other predatory forms of lending (such as adjustable-rate mortgages). At the same time, housing prices also increased dramatically, further fueling subprime lending. Attendant to this growth in subprime lending by mortgage-lending firms such as Countrywide, from 2003 to mid-2007, $3 trillion in RBMS (and their derivatives) were developed. The "bundling" of packages of thousands of mortgages into these RBMS quickly exceeded the capacity of ratings agencies such as Moody's.

The ratings agencies themselves were financially compensated by the very financial institutions to whom they provided these ratings, thereby increasing the probability of fraud. The artificially inflated ratings given to these bundled subprime mortgages as AAA-grade, coupled with their perceived profitability by investment firms such as Goldman Sachs, led to the expansion of the bubble and then fed into the bubble's collapse as these banking and financial institutions attempted to clean these "toxic assets" from their balance sheets. The dramatic and visible collapse of Lehman Brothers illustrated how toxic assets could both profit and bankrupt these firms as well as companies such as American International Group (AIG) that were providing insurance against losses tied to mortgage-based securities.

To curb fraud associated with the TARP program, EESA authorized a special independent inspector general (SIGTARP) and allocated $50 million for antifraud enforcement. To date, SIGTARP has established regional enforcement offices in New York, Los Angeles, Atlanta, and San Francisco. SIGTARP has secured 18 criminal convictions for TARP-related crimes, and 54 other individuals have been charged either civilly or criminally. The recovery of fraudulently obtained monies and the prevention of financial losses for TARP is approximately $700 million. Some have suggested that homeowners have been doubly victimized under TARP and its enforcement in that homeowners have had far fewer funds allocated to offset their risk of foreclosure as a by-product of predatory lending schemes as well as artificially soaring home values. To this end, the protection of homeowners was to be a cornerstone of TARP, yet the Home Affordable Modification Program (HAMP) was allocated only $50 billion; of the estimated 3.5 million homes lost because of the crisis, fewer than 800,000 had received meaningful assistance under HAMP as of 2012.

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See Also: American International Group; Bank Fraud; Bank of America Corp.; Countrywide Financial Corp.; General Motors Co.; Goldman Sachs Group Inc.; Legacy Lending; Lehman Brothers Holdings Inc.; Mortgage-Backed Securities; Pay It Back Act; Subprime Loans.

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Truman, Harry S.

Harry Truman (1884–1972), a former Democratic senator from Missouri and vice president under Franklin D. Roosevelt (FDR), succeeded to the presidency in the spring of 1945 after Roosevelt's death. Having served as Roosevelt's vice president only a few months, Truman was thrust into the presidency ill prepared, as he was not included in Roosevelt's inner circle of advisors. Truman, who initially continued many of Roosevelt's policies such as attempts to end corruption in government contracts and war profiteering during World War II, soon introduced his own initiatives such as the Fair Deal program, and he provided crucial leadership in foreign affairs at the end of the war and during the postwar years.

Though following Roosevelt in the presidency was no easy task, Truman had previously built up a distinguished record in the Senate during his tenure of 10 years. Truman developed a reputation as an individual-minded senator, frequently challenging the Democratic Party bosses. Senator Truman was the driving force behind the establishment of the Senate Committee to Investigate the National Defense Program, actively enlisting his colleagues' support in its creation. In response to alerts from several sources regarding waste and corruption among contractors and subcontractors, this soon-to-be-called Truman Committee scrutinized records of defense-related businesses, resulting in $15 billion in savings. Truman's actions on this committee are what mainly attracted Roosevelt's notice and drew him to select Truman as his running mate.

The Truman Presidency

Once president, Truman governed along lines very similar to those of Roosevelt, carrying on many of his postwar policies for the United States. In assuming the reins of control, however, Truman carved out his own leadership style and enacted several new programs. In terms of World War II, Truman made the controversial decision to drop two atomic bombs on Japan in August 1945, effectively ending the war. Thus, he helped situate the United States as a superpower in a new global era, leading the way in establishing the United Nations and, in 1949, the North Atlantic Treaty Organization (NATO).

In continuing another of Roosevelt's important policy aims, Truman pursued the former president's war on white-collar crime, attempting to stamp out fraudulent government contracts as well as war profiteering. As World War II drew to a close, the U.S. Department of Justice began focusing on prosecuting abuses arising from the postwar era. Federal prosecutors, however, were hindered by statements and activities emanating from the House Committee on Un-American Activities regarding alleged communist infiltration of government. Pursuing actual white-collar crimes versus alleged crimes reported by the committee provided a delicate balancing act for prosecutors.

In the 1948 presidential elections, Truman proved victorious after campaigning on his own performance in office in the postwar years. Truman had dealt with a recalcitrant Republican Congress, highlighting its unyielding stance toward his initiatives as a centerpiece of his campaign. Truman also pledged to launch his Fair Deal program, extending the governing philosophy of Roosevelt's New Deal initiatives instituted during the Great Depression. The Fair Deal involved government reforms via some 30 initiatives targeting four significant categories: civil rights, social welfare, housing, and labor.

In the civil rights arena, initiatives focused on racial inequalities in the political, social, and economic realms. These included the elimination of barriers to voting as well as lynching laws, and the establishment of fair employment/housing policies as well as a Civil Rights Commission to supervise enactment of the civil rights agenda. The social welfare policies sought to maintain New Deal initiatives through a more equitable tax system, an extension of Social Security coverage, and creation of national health insurance and unemployment compensation programs. In addition, the Fair Deal established programs to address housing shortages via government subsidies for low-moderate housing. Finally, labor policies sought to increase the minimum wage (from 40 to 75 cents per hour) and to protest the Taft-Hartley Act (which prohibited federal workers from striking).

The Taft-Hartley Act, officially called the Labor Management Relations Act, was passed by Congress in 1947 over Truman's veto. Among other things, the legislation barred closed shops, oversaw strikes, and held unions accountable for lawsuits encountered during strikes. In the midst of the Korean War several years later, Truman threatened to take over the railroads during a labor dispute, and he nationalized steel mills in order to prevent a strike that would have halted the manufacture of this critical war resource. By authorizing this latter action via an executive order, Truman failed to follow proper procedure as laid out in the Taft–Hartley Act for presidential intervention. Thus, the Supreme Court overturned Truman's executive order, ruling it unconstitutional.

In addition to initiating American involvement in the Korean War during his second term, Truman witnessed China's fall to communism, managed the Berlin Airlift that kept communism from spreading to West Germany, and fortified U.S. national security in reaction to the Cold War with the Soviet Union. The growing scare of communism in the United States, exploited by Senator Joseph McCarthy, resulted in the establishment of the President's Commission on Employee Loyalty and the Loyalty Oath. All government workers were obliged to sign this oath, pledging they had never been associated with the Communist Party in any manner.

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See Also: Antitrust, Federal Trade Commission; Defense Industry Fraud; Government Contract Fraud; Justice, U.S. Department of; Roosevelt, Franklin D.; Unions; United States; World War II.

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Truth in Labeling Act

The Truth in Labeling Act of 1966, also known as the Fair Packaging and Labeling Act, is U.S. law that requires manufacturers and retailers to properly label and fully disclose the contents of their products. Specifically, manufacturers are required to declare the characteristics of their products. They are also to state the name and location of the firm producing the products. In addition, the net quantities of the contents of the product are to be declared on the package. The declared contents of the product must be labeled in both metric and U.S. customary units. The goal of this law is the protection of the consumer from any possible deceit and exploitation of manufacturers, as manufacturers and retailers alike have been known to use tricky packaging and labeling techniques to misrepresent the quantity and quality of their products for maximum profits.

The Truth in Labeling Act is the U.S. government's effort to regulate the operations of the food, drugs, and cosmetic industries. Underlying this act is the assumption that the consumer lacks the resources and capacity to police the manufacturers' claims but is entitled to safety, to be properly informed, and to the right to be in a position to exercise his or her right to choose and to be heard. The Truth in Labeling Act also mandates manufacturers' advertising to be truthful and not in any way deceptive. Advertisers must also support all claims with verifiable evidence about their products. Advertisements must also be fair.

One of the earliest attempts by the U.S. government to regulate the operations of manufacturers and retailers to protect consumers from abuse and exploitation was the 1906 Pure Food and Drug Act that made it an offense for manufacturers and retailers to falsely and misleadingly label their products. Although this act failed to compel manufacturers to provide accurate information on the ingredients and accurate measure of their products, it was clear that government, through this act, was interested in protecting consumers from abuse and exploitation by manufacturers and retailers.

Another early attempt to regulate the operations of manufacturers and retailers was in 1938, with the introduction of the Federal Food, Drug, and Cosmetic Regulation Act of 1938. The purpose of this act was to provide stronger control against

During the public education campaign "Read the Label, Set a Better Table," which was initiated following the passage of the 1966 Truth in Labeling Act, a U.S. Food and Drug Administration consumer affairs specialist teaches a classroom of children about the new food label that was mandated under the act. The goal of the law was to protect the consumer from deceit and exploitation, as both manufacturers and retailers alike have been known to misrepresent their product through tricky packaging and labeling techniques.

slack fill and deceptive packaging by manufacturers and retailers. Specifically, businesses were prohibited from participation in interstate commerce of food, drugs, and cosmetics that were packaged or filled in such a manner as to be misleading to consumers and that could lead to their abuse and exploitation for the profit maximization of the manufacturers and retailers. Further attempts to protect consumers from the abuse and exploitation of manufacturers and retailers were made in the 1960s and 1970s with the creation of the Consumer Product Safety Commission. This was followed with the passing of the Truth in Labeling Act and the Fair Labeling and Packaging Act during this period.

Additional Recent Labeling Acts

The 2004 Food Allergen Labeling and Consumer Protection Act mandates manufacturers and retailers of food products to disclose the ingredients in their products by their commonly known or usual names. This is intended to protect the more than 2 percent of adults and 5 percent of infants and young children in the United States who suffer from food allergies.

The most recent action by the U.S. government to regulate the operations of manufacturers and retailers in the interest of consumers was on December 21, 2010, when President Barack Obama signed into law H.R. 2480, the Truth in Fur Labeling Act, which came into force on March 18, 2011. The goal of this law is to close the loophole that existed in the six-decade-old federal fur labeling act. The old law permitted the producers of garments the option of not disclosing whether the garment was faux or animal fur if the value was $150 or less. This made it difficult for consumers to determine whether they were purchasing animal or faux fur. The new law is intended to protect both consumers and animals. The new law also mandates the labeling of all fur products notwithstanding their value; the full contents of the products must be disclosed. In addition, the new law stipulates that the name and place of business of the manufacturer, packer, and/or distributor also must be stated.

With the new Truth in Labeling Act, consumers are no longer left to the mercy of manufacturers, as was the case during the "caveat emptor" regime. Consumers' rights to safety and to be informed of the net quantity of the products they purchase are guaranteed. Consumers' right to know overrides the businesses' right to profit through deceit and manipulation of facts.

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See Also: Advertising Fraud; Bureau of Consumer Financial Protection, U.S.; Caveat Emptor; Cigarette Advertising; Consumer Product Safety Commission, U.S.; Consumer Product Safety Commission Act; Creative Compliance; Food and Drug Administration; U.S.; Food Fraud; Infant Formula; Meat Inspection Act; Pure Food and Drug Act; Reform and Regulation.

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Truth in Lending Act

The Truth in Lending Act (TILA) originally was created as part of a larger piece of federal legislation known as the Consumer Credit Protection Act (CCPA). The TILA was included as Title I of the CCPA when it became law in 1968. The CCPA was passed in 1968, but the provisions of the TILA were not fully implemented until the following year. The CCPA was passed during a time when the use of consumer credit was increasing and perceptions began to grow that existing laws did not do enough to provide transactional oversight and consumer protection. The original purpose of the CCPA was to provide a basic level of regulation relating to consumer transactions, especially those related to borrowing money. It was thought that the legislation would provide the type of oversight and consumer protection for members of the public that previously had been lacking. As part of the CCPA's oversight mission, the TILA was a means of providing individual consumers with the information they would need to help them make better-informed decisions regarding the terms and use of credit and the risks associated with this usage.

Departure From Tradition

In some respects, the passage of the CCPA and its TILA provisions represented a departure from tradition in regard to the way consumer transactions were treated by the U.S. government. Prior to this legislation, most issues concerning consumer rights and consumer transactions were regulated at the state level rather than by the federal government. With the passage of the CCPA with its TILA provisions, the federal government became progressively more involved in the regulation of consumer affairs. This federal legislative presence and the accompanying oversight functions continue to have a substantive influence on consumer credit transactions to the present day. This is not to say that state legislation is entirely lacking in regard to consumer credit. Rather, provisions of both federal and state legislation provide a patchwork of sometimes overlapping regulation with regard to the management of consumer transactions, especially those concerning the borrowing of money.

The Truth in Lending Act was originally fairly narrow legislation that was limited in terms of both its scope and its application. More specifically, the provisions of the TILA were intended only to provide information to members of the public regarding the terms and conditions of consumer loans. However, subsequent federal legislation resulted in a series of substantive revisions to the TILA. As a result, the scope and significance of both the TILA and the CCPA were expanded, and they have taken on increasing importance with regard to the regulation of a broader segment of consumer financial transactions. For example, subsequent federal legislation has ensured that the TILA is now applicable to real estate transactions and the distribution of unsolicited credit cards. As a result of changes that have taken place, the TILA's original purpose of ensuring consumer awareness and understanding regarding basic terms and conditions has grown to include providing certain rights for consumers during the course of the lending process and preventing predatory lending practices. A number of past lending practices are now prohibited or controlled as a result of the provisions of the TILA and the CCPA. For example, the TILA has resulted in the regulation or prohibition of mandated prepayment penalties, post-default interest rate increases, and hidden changes in loan terms and conditions. It should be noted that the TILA was developed with the intent of protecting private consumers and providing private individuals with the knowledge necessary to make informed decisions regarding consumer financial transactions. However, the TILA does not cover all types of lending transactions. For example, it does not apply to loans made to business organizations for commercial purposes, loans made to government agencies, or government-backed student loans.

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See Also: Bureau of Consumer Financial Protection, U.S.; Credit Card Fraud; Financial Industry Regulatory Authority; Mortgage Fraud; Mortgage Modification Fraud; Mortgage Reform and Anti-Predatory Lending Act; Nader, Ralph; Predatory Lending; Reverse-Mortgage Fraud.

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Tyco International

Tyco International, a global conglomerate, experienced a crisis in leadership and credibility in September 2002 when Chief Executive Officer Dennis Kozlowski and Chief Financial Officer Mark Swartz were arrested for misappropriating $170 million of the company's earnings and obtaining $430 million through fraudulent sale of stock. They each received a prison sentence of eight and one-third to 25 years. Although later acquitted, former general counsel Mark A. Belnick had also been arrested for accepting a bonus from Kozlowski to falsify records to conceal $14 million in improper loans.

After the arrests, several conflicts of interest and other improprieties by certain members of the board of directors were discovered, most notably Frank Walsh's receipt of $10 million for himself and another $10 million for a charity he then directed, for helping facilitate Tyco's acquisition of the financial group CIT. After its acquisition for $9.2 billion, shareholders learned that CIT's worth was only $4.1 billion and that Kozlowski had owned stock in CIT.

Kozlowski's scheming was not limited to Tyco. He was also arrested on June 4, 2002, for tax evasion involving $1 million in New York state sales tax he avoided on $13 million worth of art he had purchased and shipped to Tyco's New Hampshire office (although the paintings were actually for his Manhattan apartment). The Kozlowski scandal came at a time when a wave of white-collar crimes by executives at Enron, WorldCom, and other major companies appeared to be occurring.

During revelations surrounding Kozlowski's illegal activities, Tyco stock fell from its December 2001 share price of $60 to its December 2002 price of $18. The stock price had already begun falling in late January 2002 after the announcement was made that Tyco was splitting into independent, publicly traded entities. A week later, the stock price fell further when the Walsh payoff for the CIT deal was disclosed to the Securities and Exchange Commission. The following day, the *New York Times* reported on a 2001 covert sale by Kozlowski and Swartz of more than $100 million of their own Tyco stock.

Factors that led up to the crisis at Tyco include both the prevailing economic climate and personal characteristics of Kozlowski. The "bull" market of the 1990s provided the backdrop to the aggressive acquisition strategy adopted by Kozlowski. From 1994 until 2002, Tyco reportedly spent $63 billion to acquire 1,000 companies, 700 of which were acquired in just three of those years. The decentralized corporate structure of Tyco, in which top-level executives and board members were handpicked by the chief executive officer (CEO), along with blurred boundaries between finance and operations management, contributed to governance failure.

With very little board oversight, Kozlowski was able to intermingle Tyco's funds with his own and to commit his crimes from 1999 until detected in 2002. Kozlowski, a man with drive and ambition, had started at Tyco in 1976 at age 27 as an assistant comptroller (internal auditor). He quickly moved from finance to operations to become CEO by 1992 and, eventually, the second-highest-compensated CEO in the country. At his trial, prosecutors pointed to his extravagant lifestyle, for example, his palatial homes, with furnishings such as a $6,000 shower curtain, that were paid for by shareholder earnings.

Struggle to Regain Confidence

After Kozlowski's departure, the new leadership moved quickly to restore the confidence of shareholders. Governance reform began with Kozlowski's replacement, Ed Breen, a new board of directors elected by shareholders (with an independent chair), and new senior executives. Breen was determined to go beyond mere compliance with the Sarbanes-Oxley Act of 2002. Among other provisions, Sarbanes-Oxley bans personal loans to top executives by their companies and requires disclosure to shareholders when senior executives sell their stock in the company. Tyco went further by creating a "Guide to Ethical Conduct," an ombudsman's office, and a position of vice president of corporate governance that reports directly to the board.

Tyco continues to be one of the largest industrial and electronics conglomerates in the United States and the world's largest provider of electronic components, fire protection systems, electronic security services, and specialty valves. Its stock price eventually rebounded, and employees no longer are ashamed to be associated with the company, whose disgrace was caused by only a few individuals.

After years of maintaining his innocence, in April 2012, the 65-year-old Kozlowski begged for parole and apologetically admitted to having committed theft. No longer was he asserting that Phil Hampton, the now-deceased head of Tyco's compensation committee, had authorized the bonuses and loans that were in question. Instead, he insightfully attributed his crimes to greed and a strong sense of entitlement that led him to rationalize that the money he had taken from shareholders had been earned by him from the profits he helped bring into Tyco. Denied parole, Kozlowski continued his work-release furlough at an e-learning company, an improvement over his previous job of prison laundry porter but a far cry from his $100+ million-per-year position as Tyco. Having sold his assets to pay restitution, Kozlowski is truly a broken man and an example of where unbridled avarice can lead.

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See Also: Enron Corp.; Misappropriation Theory; Securities and Exchange Commission, U.S.; Tax Evasion; WorldCom Inc.

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Tying Arrangements

Tying arrangements are a marketing tactic in which one product or service is tied to a separate product or service such that the consumer is required to buy both in order to get one. Such arrangements can violate U.S. antitrust laws, which are intended to protect competition by forbidding unreasonable mergers and business practices that unreasonably restrain trade in a free and efficient market. Antitrust laws in the United States began with the Sherman Antitrust Act of 1890, which outlaws contracts, combinations, or conspiracies in restraint of trade, and improper efforts to monopolize markets. The United States has enacted a number of subsequent antitrust laws, including the Clayton Act of 1914 and the Robinson-Patman Act of 1936. In addition to these federal laws, there are a number of state laws that are also designed to curb anticompetitive conduct, and these state laws tend to track the federal laws. The European Union, Australia, Japan, Canada, and a number of other nations also have their own antitrust laws governing those doing business in those nations.

Under the laws of the United States and many individual states, what is an unreasonable restraint so as to violate the law is not specified with detail in the statutory language. Instead, the types of conduct deemed to violate such laws have been developed by judicial decisions and by regulatory action. The actions deemed to violate the antitrust laws include agreements among competitors to fix prices for their products, agreements to rig bids for contracts, and some mergers among competitors.

An Anticompetitive Tactic

Tying arrangements can also be an anticompetitive tactic, as such arrangements can unreasonably impair competition in the market. A tying violation can arise where one product or service is sold only as part of a transaction in which the purchaser is required to also purchase a separate product or service. These arrangements impair competitive markets by requiring a consumer to purchase a product that would otherwise either not be purchased or might have been purchased on different terms from a competitor of the entity demanding the tie between the products. Thus, the ability for fair competition in the tied product can be unreasonably impaired.

To envision a tying arrangement, imagine that a seller has a product, Product A, which is highly desirable and the seller has market power so as to substantially control consumer access to that product. Imagine further that the manufacturer of Product A will sell this wildly popular product only as part of a package in which the purchaser must also buy a separate product, Product B, that may (or may not) be related to Product A. By tying the sale of the popular Product A to Product B, there is a reduction in the ability of competing sellers of Product B (or equivalent products) to compete in the market for Product B or its equivalents based on quality and price of their service.

The proof that is required in a case alleging an illegal tying arrangement can vary somewhat from jurisdiction to jurisdiction, but commonly the following essential elements must be shown: (1) that there are two separate products or services involved, (2) that the purchase of the tying product is conditioned on the additional purchase of the tied product, (3) that the seller has sufficient market power in the market for the tying product, and (4) in federal cases, that a not insubstantial amount of interstate commerce in the tied product market is affected.

Prosecution

In the current era, the vast majority of tying arrangements (as well as most other violations of antitrust laws) that are challenged are litigated in civil rather than criminal proceedings. Such civil enforcement proceedings can be undertaken either by private parties who claim to have been injured by the tying arrangement or by the responsible government enforcement agency in an action for civil enforcement of the antitrust laws. Antitrust violations can be criminally prosecuted, but criminal enforcement is less common than enforcement by private or governmental civil enforcement. Criminal prosecutions of antitrust violations tend to be limited as a matter of prosecutorial discretion to cases where the prosecutorial authority finds an intentional and clear violation, and typically to cases involving collusive cartel activity among multiple conspiring defendants.

Most criminal prosecutions of antitrust laws involve bid rigging, price fixing, or conspiracies to allocate markets. Criminal prosecutions of tying arrangements are rare, but they do exist. In one notable case, General Motors Corporation (GM) and other defendants were charged with conspiring to restrain trade by requiring motor vehicle dealerships selling GM vehicles to utilize General Motors Acceptance Corporation financing in their sales transactions. The evidence showed that dealers who did not use General Motors Acceptance Corporation financing suffered various forms of retaliation, including termination of their franchise to sell GM vehicles. The corporate defendants were convicted, and on appeal, the convictions were affirmed. This prosecution took place in the 1930s to early 1940s. A case like this today would more likely be prosecuted by civil enforcement measures, but that would be a product of prosecutorial discretion rather than a result of any clear legal barrier to criminal prosecution.

In a more recent example of a criminal prosecution under New Jersey law, there were several different kinds of violations charged, including an alleged tying violation in which a franchisor of lawn care maintenance services required its franchisees to purchase necessary seeds and chemicals from the franchisor or its approved sources. The franchisor corporation and its president were convicted and fined, and the president was also sentenced to six months of imprisonment. On appeal, the New Jersey Supreme Court held that the trial court had erred in finding the tying arrangement shown by the evidence to be illegal per se. Instead, and at least in criminal prosecutions, the court ruled that tying arrangements should be subject to a rule of reason analysis and not deemed to be illegal on a per se basis. A rule of reason analysis involves consideration of whether the challenged act imposes an unreasonable restraint upon trade that harms competition, and whether the restraint might be justified by its effective promotion of competition, which can serve to justify the restraint. As the prosecution had not introduced evidence sufficient to prove illegality under a rule of reason analysis, the convictions were reversed.

A criminal violation of the Sherman Act, which includes coercing or conspiring to make illegal tying arrangements, is punishable as a felony. Upon conviction, and as the statute is worded as of this writing, such offenses are punishable by a fine not exceeding $100 million if the defendant is a corporation, or by a fine not exceeding $1 million if the defendant is not a corporation, or by imprisonment not exceeding 10 years, or both, in the discretion of the court (15 U.S.C. §§ 1, 2, 3).

The amounts of the fines have been gradually increased since the original enactment of the act, by congressional amendment. The court's discretion in imposing sentences is normally subject to the sentencing guidelines, which provide a range for the amount of the fine and for any sentence of imprisonment depending on factors that include whether there is any prior criminal record and the volume of commerce affected. However, the guidelines manual currently provides only for price fixing, bid rigging, and market allocation violations, in recognition that the U.S. Department of Justice has not criminally prosecuted other antitrust violations in recent years. Punishments of antitrust violations under state or foreign law will vary and depend upon the particular laws of the jurisdiction.

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See Also: Antitrust, Federal Trade Commission; Antitrust, U.S. Department of Justice; Bid Rigging; Clayton Antitrust Act; Conspiracy; General Motors Co.; Market Manipulation; Price Fixing; Robinson-Patman Act; Sentencing Guidelines; Sherman Antitrust Act.

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UBS

UBS, a Swiss global financial services company, was formed in 1997 by a merger of the Swiss Bank Corporation and the Union Bank of Switzerland, in 1998 becoming UBS.

The Swiss Bank Corporation was established in 1854, with its headquarters in Zurich and Basel, formed from six private banks that merged to form a consortium that could operate more easily. In 1917, its name (in English) was the Swiss Bank Corporation, and it did well until World War I, when it lost many of its investments. However, it recovered, and by 1920 it employed 2,000 people. After weathering the stock market crash of 1929, the devaluation of the Swiss franc in 1936 hurt its business, but soon afterward, with the outbreak of World War II imminent, there was a large influx of foreign money when the bank opened a branch in New York. Soon, the Swiss government became one of its major clients. During the 1950s and 1960s, the company continued to grow by acquiring, absorbing, or taking over other companies.

The Union Bank of Switzerland was formed from the merger of the Bank in Winterthur (established in 1862) and the Toggenburger Bank (established in 1863). It gradually expanded and, as with the Swiss Bank Corporation, suffered from the 1936 devaluation of the Swiss franc. During World War II, it became a repository for gold, securities, and other assets, some of which were clearly stolen during the war. In December 1996, a new Swiss law ordered the preservation of records of its wartime activities to try to discover the origin of some of the bank's assets. However, the following month, Christoph Meili, a night watchman at the bank, spotted employees shredding large numbers of documents that seemed to be connected to the war. He complained and was immediately suspended from his job, after which he sought political asylum in the United States.

On December 8, 1997, the Swiss Bank Corporation and the Union Bank of Switzerland announced a full stock merger. These banks were, respectively, the third- and second-largest banks in the country; the new bank created by this merger was the UBS Bank, which had assets of $590 billion.

The new bank was regarded as very solid, being one of the major retail banks in the country, and also offered extensive commercial banking services. UBS did, controversially, allow funds to be transferred to Iran, Cuba, and other countries in violation of rules of the U.S. Federal Reserve, which led to UBS being fined $100 million for breaking a U.S. trade embargo.

Then there were even greater problems because UBS had established the Dillon Read Capital Management (DRCM) division, which was a large internal hedge fund that initially had been very successful making, a profit of $720 million for the bank in 2006. UBS then took over the positions held by DRCM and removed some of the hedges. With the subprime mortgage crisis in the United States, with the failure of many financial institutions there and the downgrading of many others, UBS suddenly discovered a major decline in its asset base, with losses from DRCM initially being $124 million but then increasing as UBS continued to allow its subprime risk to expand throughout the second quarter of 2007, optimistically expecting a financial recovery.

However, gradually it became clear that the global financial crisis was going to last for some time, and UBS was forced to announce in April 2008 that it would write down some $19 billion of subprime and other mortgages. In February 2009, the company announced that its trading losses in 2008 were 20 billion Swiss francs (CHF) ($17.2 billion), more than any other company in the history of Switzerland. By that time, UBS had had to cut 11,000 jobs and write down a total of $50 billion in subprime mortgage investments. In 2007, the bank received a large injection of capital from the Government of Singapore Investment Corporation, the third-largest sovereign wealth fund in the world, estimated to be worth as much as $330 billion. The Swiss government also injected money through equity offerings.

"I Need a Miracle"

UBS had only started to rebuild when, on September 15, 2011, it became aware that Kweku Adoboli, a 31-year-old trader on the Delta One desk of the investment bank arm of UBS, had lost an estimated $2 billion. Adoboli, the son of a senior United Nations official from Ghana who had grown up in Israel and then lived in Britain, was arrested the same day at the UBS office in Finsbury Avenue, London, just after posting an Internet message, "I need a miracle." He was later charged with fraud and false accounting over the previous three years. The total losses were $2.3 billion, and the reckless trading was discovered, it appeared, just before Adoboli was to take out new positions that could have wrecked the bank entirely. It did cause an immediate fall in the value of the UBS share price, wiping $4 billion from the value of the company. The legal case resulting from this continues, with suggestions made in court that UBS had tolerated the actions of Adoboli while he was making large profits.

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See Also: Accounting Fraud; Bank Fraud; Bid Rigging; Bond Fraud; Subprime Loans; World War II.

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Unfair Trade Practices

Unfair trade practices are often thought of as causing disparities in trade between a foreign country and the United States, without a balance of importation of American-made goods.

The Example of China

The example of China arises frequently in the discussion of unfair trade practices. There are barriers between the two countries that create the imbalance, such as protectionist measures employed by the Chinese government, which include an undervalued currency. The manipulation of the value of the Chinese yuan generates a disparity of approximately 40 percent between the sales of Chinese goods and the importation of goods from Western countries. Although there are legitimate contentions based on this and other protectionist measures, the benefits derived by Chinese-based manufacturing are not caused solely through Chinese efforts. American corporations such as Walmart and Caterpillar, as well as lobbying groups such as the American Corn Refiners Association, heavily influence Congress to enact laws that would provide them with tax benefits to relocate their business operations offshore. Walmart in particular routinely exerts pressure on its vendors to produce in China, threatening to no longer carry their products if they continue to manufacture in the United States. When antidumping or other trade violations are filed in federal court, Walmart executives consistently submit legal briefs that support Chinese manufacturers rather than U.S.-based manufacturers.

A coffee farmer in rural Brazil tends to his coffee trees in 2008. The Brazil Responsible Sourcing Global Development Alliance trains farmers and seeks out coffee-growing cooperatives to help smallholder farmers increase exports that are fair-trade certified.

In 1987, Chinese political leaders endorsed a comprehensive program for economic, political, and social reform passed by the 13th Party Congress platform. However, only the economic reforms were implemented. As it joined the international market economy, China created an advantage in the global marketplace by producing goods cheaply, paying its citizens on average $200 per month to work six days per week, 10 hours per day. The goods the manufactured by the Chinese initially were low-technology demand items such as clothing, bicycles, and toys. Today, China is one of the top leaders in the production of green technologies such as solar arrays used to generate solar power.

Internal policies require that foreign-based companies, such as the Japanese-based Toshiba, turn over documents that reveal technology development and specifications. This enables Chinese officials to rapidly learn and implement similar technologies without the initial investments in research and development. Although some argue that this will enable China to surpass foreign competition, it does not provide a foundation for innovation. Manufacturers in China are able to copy and improve upon technologies the nation acquires, such as high-speed transportation, but this does not provide China with a significant labor force that is prepared to create substantial novelties within these higher-skilled work areas.

Although American manufacturers enjoyed the idea of paying substantially lower wages to their employees, they were equally if not more pleased to enter the domestic Chinese market for goods. American manufacturers strategized that if their factories were situated in China, they would be able to sell their goods to a 1.2 billion population that would be able to consume their products in high volume. However, their ambitions were misguided, as China is not a consumer society in the same manner as the United States and Britain. Nearly all of the goods manufactured in China are exported; very little is consumed domestically. This left the American manufacturers with a low-wage, low-skilled workforce in a country that would absorb the intellectual property initially developed in the United States. Once the Chinese acquire the intellectual property necessary for creating their own manufacturing enterprise, they no longer need American companies for the creation and direction to develop and export goods. Therefore, an American manufacturer could sell American manufacturing for short-term benefit to itself and tremendous benefit to the Chinese. It took 20 years for the Americans to complain to the World Trade Organization about unfair trade practices.

The Cost of Doing Business in China

There is little oversight of manufacturing plants within China. Estimations of costs of workplace injuries and illness amount to $13 billion each year in the country. Chinese workers suffer tremendous health problems and workplace injuries in a system that does not have consistent worker's compensation laws. Additionally, the environment has been ravaged by rapid and unregulated development. The demand for freshwater fish exceeds supply, as the Pearl River Delta, once the most fertile place on Earth, is now the most industrialized. China's industrial center of Guangzhou sits within the river delta, and many manufacturing plants producing the inexpensive clothing and toys imported by America create toxins that are freely dumped into rivers. The release of manufacturing waste has led to so much pollution in the river systems that the fish population has been negatively impacted to a significant degree. Chinese farmers must use twice the pesticides and fertilizers used in Western countries to compensate for soil and water degradation from industrial pollutants like cadmium and chrome, which are used in the tanning of leather.

Although China is hardly unique in this circumstance—industrialization in the United States and England created the same impacts to air and water quality—the difference is a matter of scale. China has 20 percent of the world's population and only 7 percent of the arable land. The impact of its rapid industrialization has greater consequences for its population and the world.

Fair Trade

American consumers attempting to acquire goods in an ethical manner often look for goods that are labeled as "fair trade." This label implies that the originator of the good, such as a coffee grower in Ethiopia, will receive a fair price for his or her efforts and production. As there are several layers of importers, brokers, distributors, and buyers, and multiple layers of sales, the originator of the raw material is usually paid a small fraction of the final retail cost. An Ethiopian farmer is paid 24 cents to 65 cents per pound of coffee that, after going through buyers, processors, and other middlemen, ultimately retails at Starbucks Coffee in America for $12 to $14 per pound. The Ethiopian farmer is forced to sell to a large buyer such as Starbucks or risk not selling to any buyer at all. At less than $1 per pound, the farmer cannot become successful and is not likely to cover the cost of his operations. As globalization of markets has expanded and trade unions have been disbanded or inexorably reduced, the number of commodities buyers, manufacturers, and producers has shrunk decisively. Corporations such as Walmart and Starbucks have crowded out smaller-scale importers, traders, and sellers.

The use of the "fair trade" label was established to bring greater payment directly to the producer. Unfortunately, this has not taken place in ways that consumers would hope. The Ethiopian farmer who is able to sell to a fair trade buyer may earn enough money to be profitable. However, in order for a single farmer to enter into a fair-trade agreement, he or she must be part of a cooperative that will comingle his or her crop with dozens of others. This is the only method by which a single farmer can enter the global market.

Manipulating Trade Patterns

Wealthy nations consistently have manipulated trade patterns to their benefit, starting with the East India Trading Company, established by Britain in the 17th century. The East India Trading Company was established by English aristocrats to purchase and export opium, tea, silk, saltpeter (used to make gunpowder), and salt from India to Britain. The company was so wealthy that it had its own private army and had taken over most of the Indian subcontinent. The workers were employed as indentured servants while the English monopolized the nation's raw materials and land. The East India Trading Company ensured that those who produced the goods would derive no profit, while the British derived all benefit. To this day, India's trade is imbalanced, and England still relies on the importation of foodstuffs to sustain its population and its national drink: tea.

The World Trade Organization has customarily supported recommendations by wealthy nations to institute regulations that impede poor nations' ability to derive financial benefit from the production and distribution of their goods. In 2007, the European Union demanded that African, Caribbean, and Pacific countries remove 80 percent of tariffs placed on imported goods from Europe so that European dairy products can be sold competitively against goods produced in Africa, the Caribbean, and the Pacific. This demand would incapacitate local farmers, who could not compete against a heavily subsidized competitor. Farmers from poor countries do not receive government-supported subsidies and thereby bear all costs of production and losses. Many European and American farmers receive consistent subsidies that cover their cost of production.

In contrast to these scenarios, the criticism against China may reflect the first imbalance where the wealthy are not assured of their historical wins against the world's poorest populations.

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See Also: Employee Safety; Fisher-Price Inc.; Globalization; Industrial Revolution; Illegal Competition; Industrial Espionage; Labor Crimes; Pesticides; Pollution, Air; Pollution, Water; Trademark Infringement; Unions; Unsafe Working Conditions.

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Unions

American labor unions demonstrate, in the broadest text, a uniting of two or more workers for a common purpose of collective bargaining and determining how "work" will be conducted and valued. Labor unions had their origins in the craft guilds of early America, including carpenters, cabinet makers, and cord wainers and cobblers (cord wainers made soft leather shoes, and cobblers repaired them). Labor unions throughout history have largely been concerned about working conditions and pay.

Through the mid-1800s, the main concerns of the labor movement were wages, child labor exploitation, the length of the workday, and conditions of work. As the factory system replaced the house workshop, many workers were concerned that the dire conditions of British labor would invade and prevail in America. With the emancipation of the slaves grew another fear, of a labor glut that would depress wages in America. This glut never materialized. However, early labor unions, including the National Labor Union, did persuade Congress to pass an eight-hour workday in the mid-1800s.

As the years progressed in the late 1870s and onward, strikes intensified, including the Haymarket Square Riots, the Pullman Strike of 1894, and the Coal Miner's Strike of 1902. Of the many strikes during this time period, these strikes provide some interesting developments. Of particular note is the heavy-handedness, or even violence, of the state and federal governments in dealing with the striking workers.

In the Haymarket Square Riots in Chicago, a bomb was thrown at police officers trying to break up the strike. In the Pullman Strike of 1894, the interplay of economic downturn and low wages played a major role. Of course, adding to the conundrum of the Pullman Strike was the fact that African Americans feared losing their jobs altogether if they joined the strike, so they went to work, which added race to the already volatile mix. Oddly, the outcome of this strike was the proclamation of Labor Day in September, which is still celebrated today. (Note that, to avoid any socialist or Marxist connections, it is not observed in May.)

The Coal Miner's Strike of 1902 saw progress in the way that unions were treated, eventually leading to the Clayton Act of 1914, which is discussed below. Prior to this strike, in general, labor had lost its humanity given the fact that it was easily replaced with new immigrant labor, mainly from Europe. The Coal Miner's Strike was important because the leader of the Coal Miner's Union, John Mitchell, had power to negotiate with owners given that coal was used as a major source of electrical generation on the East Coast. Union membership increased after this strike because of the union's power.

Employer and Employee Power

The need for unions comes from the need to balance power between the worker and the employer. Since private property is the foundation of capitalist systems, the one who owns the property possesses an inordinate amount of power. This problem of power distribution is seen in many of Adam Smith's arguments, which implore government to create universal education of a certain level. As technology encourages a division of labor, these divisions become so acute that when technology makes some occupations obsolete, without a certain level of education, many workers don't have sufficient education to draw upon to get additional training and thereby change career fields. In the United States, this basic level of education is graduation from secondary education, embodied in the high school diploma.

Earnings for those with an associate degree or higher average out at twice the level of the high school graduate. Additionally, unemployment rates for those with less than a secondary education run about 1.5 times greater than the unemployment rate, while those with baccalaureate degrees run at half the national unemployment rate. The more education and training a worker has, the more value and power that worker has in the marketplace.

Based on a master-servant body of common law, if a specific work contract is not signed, then the employment is considered "at-will." At-will employment works both ways. If the employer needs to downsize its workforce, the employees are simply laid off. Some of this may be seasonal (production decreases because of changes in demand), and some may be systemic (jobs moving to another location). In this setup, unions balance out the power to make sure that employees are not simply discarded as one would discard trash. The discarding of employees was brought to light in the 1906 Upton Sinclair novel *The Jungle*. The fictional tale demonstrated that those workers injured at a meatpacking plant could simply be discarded as new immigrants took their places. With immigration continuing in earnest at the turn of the 20th century, the supply of immigrant labor far exceeded the demand for that labor.

In recent times, globalization has decreased the need for blue-collar factory labor in the United States. Globalization accelerated at the turn of the 21st century with the rise of Chinese capitalism (low-cost manufacturing labor) and the ability of the Internet to offshore communications and data-driven jobs. Additionally, the World Trade Organization (WTO) and North American Free Trade Agreement (NAFTA) have proven an accelerant to globalization's fire because of a reduction of trade tariffs. Therefore, the power of collective bargaining of private manufacturing or private semi-skilled labor decreased. This decrease in power can be seen in the fact that private-sector unions are down to about 6.9 percent of the labor force while government-sector unions make up 50 percent of all unions. The southern labor force in the United States historically has been averse to union membership and has the three lowest participation rates in the private-sector unions (North Carolina, Georgia, and Arkansas).

Alternative to Labor Unions

Employee representation plans (ERP) were early alternatives to unions. Some unions thought (probably correctly) that these plans were actually subverting attempts to form a union by giving the employees a sense of power. The first employee representation plan was conceived by William Filene in 1898 with the help of his employees. The best-known employee participation plan of the era was the Rockefeller Plan at the Colorado Fire and Iron Company. The ERP was an outgrowth of the Ludlow Massacre (1914), in which many striking miners and their families were killed when they took refuge underneath their tents' floorboards. The tents had been set on fire by opposing forces and many perished, including women and children. While some improvements were made (a recreation center was built, and employees had a grievance process), over time, the effectiveness of the plan waned. Eventually, the United Mine Workers Union took over, and the Wagner Act, section 8(a)(2), made these types of plans effectively illegal.

Major American Labor Union Legislation

There have been several significant pieces of labor union legislation in the United States, including the Clayton Antitrust Act (1914), the National Labor Relations Act of 1935 (Wagner Act), the Taft-Hartley Act (1947), and the Teamwork for Employees and Managers (TEAM) Act of 1994.

Clayton Act (1914): While a very small start forward, the Clayton Act, Section 6, defines human labor as "not a commodity or article of commerce." Up until this time, the use of heavy-handed union-busting activities described above was justified under the Sherman Act of 1890's anticollusion clauses. While not a magnum opus of labor legislation, it did humanize the workforce and made them less "interchangeable parts," as could be depicted in an automotive assembly line or in *The Jungle*.

National Labor Relations Act of 1935 (Wagner Act): This act codified the rights of employees as a class (preventing them from being fired for joining a union) and the rights of employees to collectively bargain and form unions so that the voice of the employee could be heard. The act was a follow-up to the Norris-LaGuardia Act of 1932, which prevented "yellow dog" contracts. A yellow dog contract is one in which the terms of the employment contract preclude the employee from joining a union. The Wagner Act established the National Labor Relations Board as the enforcement mechanism of the Wagner Act by granting it power to bring violations to court and to act as an intermediary between large unions and management should collective-bargaining contracts break down. The act forced employers to bargain with employees over work contracts/conditions, but the employees were forced to have one union represent them. Section 8(a)(2) made employee representation plans effectively illegal, as they were seen as strong-arming of employees by employers in the guise of giving the employees power. Since most European labor unions had their foundation in socialist doctrine, many conservatives feared that the legislation carried the country in a far left direction. To some extent, this direction did occur, but it was eventually cleaned up in the 1950s. As a result of the Wagner Act, union membership in the United States skyrocketed.

Taft-Hartley Act (1947): This act was a modification of the Wagner Act to lessen the power of employees in their rights as a class. Of particular concern was the mobilization of union employees as a political force that could change the outcomes of political elections. Having the ability to influence large blocs of voters, especially voters who were far-left leaning, was troublesome to many conservatives. The act (and subsequent adjacent acts/amendments) allowed states to make "right to work" laws, preventing closed, union shops. Closed shops are those places of employment that hire only union employees. After the Wagner Act of 1935 was enacted, employee strikes had grown both in time and in intensity. The Taft-Hartley Act established notification periods of 80 days before strikes could occur. Also, it clarified the role of supervisors in unions. Supervisors were not to be considered the same as rank-and-file union workers in the company.

Teamwork for Employees and Managers (1994): The TEAM legislation of 1994 was vetoed by President Bill Clinton, and his veto was not

Bernard Spindel, a professional wiretapper, whispers to James R. Hoffa during their December 1957 trial for wiretapping the conversations of union agents. A federal district court barred Hoffa from taking power unless he was acquitted. When the trial ended in a hung jury, Hoffa assumed the presidency in 1958.

overridden by Congress. As stated previously, employee representation plans as seen in the Rockefeller Plan were essentially outlawed by the Wagner Act of 1935. In order to ensure the health of a profit-making enterprise and the ability to compete globally, employees and the employer had to work together to improve the business. At the company Electromation, it appeared that such a committee to improve business performance had taken on a life and mission that could be interpreted as an employee representation plan. The Dunlop Commission was formed and chartered to look into the problem so that appropriate legislation could be drafted to account for the new cooperation between business and employees. The legislation drafted was panned by unions, and the vote for passage by Congress fell along party lines, with a new Republican majority in the House of Representatives. Although defeated, it demonstrated that labor/management relations were changing to the point that employee input is needed to improve operations.

Labor Unions and the Mafia

In 1978, the Federal Bureau of Investigation prepared for Congress a report on infiltration by the Mafia in unions. The unions provide a lucrative source for the Mafia to run "rackets" and "racketeering activities." An example of a racket is for Mafia thugs to provide "protection" to legitimate business owners for a fee. Obviously, the local police force provides protection for the general public and local businesses. The Mafia, from its background in unions, can ensure that large government contracts are given to firms that are mostly or all union members. The outcome of this racket is that the government pays more than required, and open bidding, which would result in the work being done for the lowest price, doesn't occur. Also, instead of dealing with honestly elected labor leaders, management negotiates with Mafia leaders who have the muscle to force their wishes on management.

Additionally, the union pension fund can be used by the Mafia for "loans" to Mafia members. Also, union funds provide a nice way to money-launder the local Mafia's ill-gotten gains. The Teamsters Union and the Longshoremen's Union were two of the most Mafia-infiltrated unions. Since these two unions are involved with the movement of goods, the Teamsters in trucking and the Longshoremen in off-loading goods ships, local Mafia leaders can be on the payrolls of these unions while in reality working for organized crime. Additionally, Mafia gangs can "shake down" incoming ships' crews. The 1954 movie *On the Waterfront,* from the book of the same name by Bud Schulberg, provides a gripping account of Mafia infiltration of the Longshoremen's Union in New Jersey near New York City.

Labor Unions and Politics

As discussed above, American labor unions have left-leaning, even socialist roots from such writers as Karl Marx. Eugene Debs, the leader of the Industrial Workers of the World, headed the American Socialist Party at the turn of the 20th century. Throughout the 20th century, labor unions generally supported Democratic candidates. The union influence on elections as a whole declined, along with union membership, from the 1980s onward. The first curtailment of unions' political influence through monetary donations was in the Taft-Hartley Act of 1947.

Within the last decade, the issue of unions in political activity concerns whether unions should express their "voice" as a whole given that large unions have a wide political viewpoint and many members may not support the union-endorsed candidate at all. Moreover, in the last few years, private unions have lost membership because of offshoring activities, while membership in unions of public workers, including teachers (and professors), firefighters, and police, have remained strong. Very public fights in Wisconsin and New Jersey have questioned the rights of public unions to exist at all, since members are hired to serve the public and generally have better collective bargaining arrangements than the average private-sector worker—public-sector jobs can rarely be offshored (i.e., you cannot offshore a New Jersey state trooper job to China).

Some labor theorists state that the government should be the employer of last resort. Therefore, providing government jobs that are better in pay and benefits goes counter to these theories. Moreover, many teacher retirement accounts are noncontributory. The teacher simply teaches for so many required years and receives a pension. Because life expectancy has increased 15 to 20 years since 1940, the burden on local communities of paying these retirement costs increases tax burdens with no tangible benefits (the teacher has stopped teaching once he or she has retired). Politicians have called for reforms so that public-sector workers all have contributory (aka 401k) plans so that local government is not burdened with retirement payments when the teacher or other government worker retires.

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See Also: Coal Mining; Corruption; Employee Safety; Globalization; Industrial Revolution; Kickbacks; Labor Crimes; Organized Crime; Public Corruption; Racketeering; Sinclair, Upton; Teamsters Pension Fund; Unsafe Working Conditions; Workplace Deaths.

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Unisys Corp.

Unisys Corporation is an American provider of information technology (IT) services, software, and technology. One of Unisys's predecessor companies is credited with the creation of the world's first large-scale digital computer, the Electronic Numerical Integrator and Computer (ENIAC). Unisys has repeatedly been involved in allegations that it punished employees who complained about charging inflated costs, that it provided substandard goods, and that it bribed officials when engaging in government procurement operations. Although Unisys has engaged in multiple efforts to provide ethics training to its employees, allegations have persisted related to government procurement fraud, bribery, accounting fraud, and other criminal acts, some of which have cost the company extensions of contracts with various municipal, state, and national government agencies.

Background

Unisys was formed in 1986 when Burroughs Corporation purchased Sperry Corporation, combining two pioneers that had dominated in both the technology field and the development of business machines. Both Burroughs and Sperry had been part of the nine companies that dominated the global computer industry through the 1960s, the other companies being International Business Machines Corporation (IBM), Control Data Corporation, General Electric Company, Honeywell International, the National Cash Register Corporation (NCR), Digital Equipment Corporation (DEC), and the Radio Corporation of America (RCA). In addition to expertise in the manufacture and maintenance of mainframe computers, Unisys has a history of working on contracts with the U.S. government. Unfortunately, for the past 30 years, allegations of fraud, bribery, overcharging, and the delivery of inadequate services have plagued Unisys. As a result of these allegations, Unisys has seen its overall capitalization fall and the company lose out on opportunities to provide services to certain government agencies.

Allegations of Illegal Activity

Soon after the merger between Burroughs and Sperry, Unisys and its business partner Rockwell Shuttle Operations Company were sued by two former employees who alleged that Unisys and Rockwell had engaged in a series of punitive actions that were in retaliation for the employees' complaints about inflated prices charged to the federal government on projects. Though the amount the two employees sought ($5 million) was relatively small, the allegations brought Unisys a great deal of national attention and worsened relations between the corporation and various government agencies with which it worked.

For example, Operation Ill Wind represented a three-year investigation by the Federal Bureau of Investigation into the activities of Unisys and federal employees. Operation Ill Wind resulted in the conviction of multiple Unisys employees for bribery, fraud, and illegal campaign contributions that were used to procure government contracts worth billions of dollars. Operation Ill Wind resulted in mandated ethics training for all Unisys employees and passage of the Procurement Integrity Act, which regulates the pay of former government employees for a year after leaving government service. Additionally, during the 1990s, Unisys was alleged to have supplied refurbished or reworked computers and related components to various civilian and military agencies in contravention of sales agreements that stated that new equipment would be supplied. The various agencies also alleged that the market prices for the reworked or refurbished equipment Unisys supplied were less than the price for the new components for which the U.S. agencies had contracted and paid. After the U.S. Department of Justice sued Unisys for this alleged breach of contract, Unisys agree to pay $2.25 million to settle the government's claims.

The allegations of misbehavior on the part of Unisys's agents continued. It was disclosed that before 1993, Unisys had made a series of payments totaling over $125,000 to Armand D'Amato, the brother of U.S. Senator Alfonse D'Amato, in exchange for access to the senator. As a result of these payments, Armand D'Amato was convicted of mail fraud. In 1998, Unisys was again charged with committing government contract fraud and inflating prices related to a NEXRAD Doppler radar system supplied by Unisys and its partner Lockheed Martin, the successor to Martin Marietta Corporation. Specifically, Unisys was alleged to have charged the U.S. Department of Commerce inflated prices for replacement parts for the Doppler radar system. During 2003 and 2004, Unisys also paid the infamous lobbyist Jack Abramoff over $600,000 for his lobbying services, payments that occurred before Abramoff's indictment for various crimes related to his lobbying efforts. Although none of Abramoff's alleged violations were related to Unisys, the corporation's name was mentioned frequently by the media in association with him.

In 2005, Unisys was alleged to have overbilled the Transportation Security Administration (TSA) by over 170,000 hours. As a result of these allegations, in 2008 the TSA elected not to use Unisys for the second phase of procurement for an ongoing project. As a result of this decision, the Unisys board of directors expressed a vote of "no confidence" in chairman and chief executive officer Joe McGrath, leading to his resignation. The allegations of criminal behavior on the part of Unisys thus proved costly both to individuals' reputations and to the company's bottom line.

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See Also: Accounting Fraud; Bribery; Contractor Fraud; Government Procurement Fraud; Lockheed Corp.

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United American Bank

Banks can be major arenas and instruments for the perpetration of white-collar crimes. United American Bank (UAB), until its demise in 1983, was a major commercial bank in America. Like all bank institutions, it provided financial services to the public, including the acceptance and management of monies through deposits and/or investments. Banks also provide personal and business loans to individuals or organizations through the issuing of credit and debit cards. The primary function of banks is the facilitation of money through the economy.

Bank operations are regulated by the government. The government, in addition to regulating the banks, provides insurance on depositors' money in those banks. As a result, the public invests monies in the banks with confidence. However, some banks violate the trusting relationships they have with their clients by engaging in illegal financial practices that may cause the banks to become insolvent.

A bank is said to be insolvent when its liabilities exceed its assets. The United American Bank suffered this fate in the 1980s. Before its collapse, the United American Bank occupied the 27-story building known as Plaza Tower, which at the time was the tallest structure in Knoxville, Tennessee. The United American Bank, managed by Jacob Franklin (Jake) Butcher, failed on February 14, 1983, because its management engaged in fraudulent practices.

In its examination of the United American Bank records, the Federal Deposit Insurance Corporation (FDIC), the banks' oversight institution, dicovered that the bank had violated banking rules by providing loans to insiders and to distant consumers who were not in its trading area. It was found that UAB used deceitful and malicious accounting. Through its investigation, the FDIC further detected that United American Bank was a massive vehicle or hub for the perpetration of white-collar crime. It concluded that the United American Bank was operating an empire built on a "string of papers." Many found the FDIC discovery rather strange, as it had been known over the years within the banking community that the bank was characterized by bad loans and insider dealings.

At the head of the fraudulent banking practices were Jesse Barr, a known embezzler who became the Butcher brothers' (Jake and C. H.) financial consultant, and David Crabtree, a so-called whiz accountant, who managed the daily operations of the bank. These bank operatives were known to have spearheaded the maneuvering of fraudulent loans from bank to bank. For example, Crabtree provided direction to numerous corporations and partnerships who were the recipients of millions of dollars in loans from the Butcher brothers' banks, including United American Bank. One of the companies that benefited from the racket was West Knoxville Investment, which borrowed $22.6 million from the Butchers' banks, including $7.9 million from United American Bank. Although these loans were secured at the time the money was borrowed, the security used for the loans was bogus.

After the failure of United American Bank in 1983, the First Tennessee Bank, which took control of the United American Bank, claimed that the financial institution was a fraud and sued to recover its losses. The takeover of the UAB by the FDIC marked the first time the Garn-St. Germain Depository Institutions Act of 1982 was invoked. One of the purposes of this law was to deregulate savings and loan associations to enable them to provide their clients adjustable-rate mortgage loans. The FDIC, in response, placed the United American Bank on the list of troubled banks in January 1983 and declared the bank insolvent. The FDIC further demanded that the bank's $90 million of bad loans be written off, and that Jake Butcher, the bank's chief executive officer, be removed from this position. The UAB board members contested the FDIC's decision and moved instead to raise the capital of the bank by $30 million. Part of the new capital was to be raised through the merger of the bank with the Chattanooga and Knoxville banks. Jake Butcher himself was to raise $10 million of the new capital.

The UAB's plan to raise additional capital was rejected by the FDIC. The UAB rejected the FDIC directive and went to court to enforce its rights. In an unprecedented move, the details of the suit were sealed. However, many financial experts familiar with the bank's resources knew the suit was a bluff, as the bank did not have the capital to back up its demands. The bank had actually been borrowing money from the Federal Reserve Bank in Atlanta to meet depositors' demands. As a matter of fact, the UAB by February 11 owed the Federal Reserve about $55 million. As expected, news of the bank's insolvency was now common knowledge, and depositors rushed to withdraw their money from the bank. The bank's coffin was sealed after Knoxville banks and other merchants refused to honor the bank's checks and depositors withdrew $25 million from the bank. Two other banks in quick succession severed their lines of credit with the UAB.

The United American Bank was auctioned in line with the Emergency Interstate Banking Acquisition Law that Congress had passed 90 days prior. On February 14, 1983, the UAB was ordered closed by the state's bank regulatory authority. The failure of the bank managers to operate according to banking principles and rules led to the insolvency and closure of the United American Bank in Chattanooga, United Southern in Nashville, and City and County Banks in Knoxville, Rockwood, and Oak Ridge on May 27, 1983. It was the first time since 1936 that so many banks failed in the United States in one day. Many blame the failure of the banks on the regulatory neglect by the FDIC and the state of Tennessee. The cost of the UAB's collapse to the FDIC was estimated to be about $382.6 million.

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See Also: Bank Fraud; Barings Bank; Butcher Brothers; Federal Deposit Insurance Corp.; NatWest Markets Ltd.

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United Fruit Co.

The United Fruit Company, established in 1899, was a tropical fruit importer based in Boston, Massachusetts. It controlled half the bananas in the world and 75 percent of the American banana market. The bananas were grown in Central America, particularly Costa Rica, on plantations owned by United Fruit. The start of the banana importation into the United States was an incidental business decision. A New Yorker named Minor Copper Keith went to work in 1871 for his uncle, Henry Meiggs, in Costa Rica. Meiggs was constructing a railroad from San Jose to Puerto Limon. Banana plantations were planted along the railroad lines as a way to feed the rail line workers. The railroad was completed but did not have enough passengers to become profitable. Keith then decided to use the rail line to transport the bananas that had been growing successfully along the construction sites. This line then became the primary source of transportation for fruit for export out of Costa Rica. With the profits from the banana exports, Keith expanded his business enterprise by purchasing a large portion of the Snyder Banana Company, based in Panama. Keith was thus able to control much of the bananas being exported from Central America to the United States.

Keith then traveled to Boston to strike a deal with America's largest fruit importers. He arranged a deal with Andrew Preston, a large tropical fruit distributor. Joining forces, Keith and Preston formed the United Fruit Company, which controlled production, export, and import of most of the bananas consumed in the United States. Preston, as president of United Fruit, signed a contract with Samuel Zemurray from Selma, Alabama, a successful fruit importer running his own business called Cuyamel. In 1903, Zemurray was selling 574,000 bananas a year, an unprecedented number at that time.

Once Zemurray was partnered with United Fruit, the company started to acquire more fruit plantations and greater control of produce imports. One of the acquisitions was 50 percent of Elders and Fyffe, a British company that was responsible for importing Jamaican-grown bananas into Great Britain and Europe. This acquisition was quickly followed by several others, including plantations operated on the Canary Islands and in Honduras and Panama.

United Fruit wasn't content with its plantation holdings. In each country it entered, it sought tax relief, land grants, and relaxation of labor laws. By the early 20th century, bananas had become the fourth-largest food source after rice, wheat, and milk. With its control of crop production and export logistics, United Fruit pioneered public relations coups by publishing reports that extolled the virtues of bananas as essential for human health and for mitigating nutrition-based ailments such as celiac disease.

Bad Apple

Aside from being ahead of its time in worldwide expansion, organized logistics, tax relief for corporations, and unlimited self-promotion and marketing, United Fruit was equally adept at espousing some of the worst characteristics with which American corporations would become notoriously associated. As United Fruit expanded its physical presence in Central America, it ran up against workers' strikes and local politicians who believed that United Fruit was given too many unfair advantages. As these problems developed, the wealth and influence of United Fruit became more transparent.

In 1953, Guatemalan president Jacob Arbenz ordered the return to local peasants of more than 200,000 acres of uncultivated land owned by United Fruit. In return, the company would receive government bonds reflecting the value of the land. Unhappy with this decision, executives of United Fruit called upon congressional members with attachments to the company to place pressure on the Guatemalan government to reverse its decision.

Bananas are packaged at a United Fruit Company packing warehouse in 1948. By the 1950s, the fruit giant's increasing wealth and influence in Central America pitted it against workers' unions and local politicians who resented its unfair advantages.

In order to influence members of Congress who were without connections to United Fruit, the company helped create a text that reported that Arbenz's decision was initiated in Moscow, Soviet Union, capitalizing on the Cold War fears of communism. This text, titled "Report on Guatemala," was distributed to Congress.

Concerned about the spread of communism in Guatemala, President Dwight Eisenhower approved a covert Central Intelligence Agency operation to supply weapons and funding for paramilitary groups to oppose Arbenz. This so-called liberation war was led by Guatemalan colonel Carlos Castillo, who was successful in overthrowing Arbenz on July 2, 1954, and casting him into exile. The first order of business by Castillo was to cancel the orders against United Fruit and to revoke the Agrarian Reform Law that had been established to return peasants to the land. At the time, a young Argentinian was in Guatemala and witnessed the U.S.-backed coup; his name was Ernesto Guevara, also known as Che Guevara. He would later escape from Guatemala to Mexico and become close friends with another political refugee: Cuban Fidel Castro.

Unfortunately, United Fruit's skill in garnering and exploiting government influence was not limited to Guatemala. "United Fruit had possibly launched more exercises in regime change on the banana's behalf than had ever been carried out in the name of oil," according to P. Chapman. Guns and ships owned by United Fruit were used at the Bay of Pigs. The epic tale of United Fruit is detailed in Gabriel Garcia Márquez's *One Hundred Years of Solitude*. Márquez's father was a laborer for United Fruit, as was Ángel Castro, the father of Fidel, who was educated in United Fruit Company's schools operated on sugarcane fields in Cuba.

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See Also: Antitrust, Federal Trade Commission; Kickbacks; Marketing Fraud; Multinational Corporations; Public Corruption; State Crime Theory; Terrorism; Unfair Trade Practices; War Crimes.

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United States

Though white-collar crime is, of course, not endemic to the United States, the term was first introduced and explored by American sociologist Edwin H. Sutherland in 1939. The newly elected president of the American Sociological Association (ASA), he delivered an address to the ASA on December 27, 1939, titled "The White-Collar Criminal." It was a concept of critical importance not only in sociology but also in criminology: the general belief still prevailing at the time (and persisting in rhetorical corners today) was that criminals were inherently a lower class. Poverty was often considered a principal motive for monetary crimes. Having previously published major works on lower-class criminals (1936's *Twenty Thousand Homeless Men* and 1937's *The Professional Thief*), Sutherland now shed light on the criminal who, already wealthy, acts to acquire still more. He specifically defined white-collar crime as "a crime committed by a person of respectability and high social status in the course of his occupation," entering into a discussion of unscrupulous businessmen and businesses, as well as professional fraudsters.

The Work of Edwin H. Sutherland

Other aspects of his work could have been embraced by those who wanted to see criminals as exclusively lower-class—Sutherland had introduced in 1924 the principle of differential association, incorporated into his 1939 general text *Principles of Criminology*—the idea that habitual criminality results from associating with criminals more than with noncriminals. Sutherland was adamant that there was no social class more prone to crime than another and that, instead, social class impacted the type of crime most likely to be committed. This was not universally well received. When his book-length study *White Collar Crime* was published in 1949, he was successfully sued by the corporations he named as guilty or accused of various criminal actions, and the book remained expurgated until it was reissued in 1983, 33 years after his death.

Today, the main school of thought differing from Sutherland's view of white-collar crime (though not wholly opposed to it) is that of criminologist Christie Husted, who in her 2008 doctoral thesis proposed the model of organi-cultural deviance. Whereas Sutherland depicted white-collar crime as committed by individuals driven by their own motives (even if encouraged by their businesses and the environment in which they worked), the organi-cultural deviance model is one of a cluster of processes—behavioral, social, and environmental—from which emerge deviant criminal behaviors in an organizational context. Husted's model finds cultural and organizational similarities between corporations guilty of white-collar crime and criminal organizations like the Mafia and other crime families, street gangs, and cults. In all cases, the combination of behavioral, environmental, and social factors and employees' need to survive (to retain their position in the organization, to advance, to prove loyalty and value) leads to emergent deviant behaviors, including criminal ones.

One fact that remains true and that was originally pointed out by Sutherland is the disparity in the prison population, which is disproportionately made up of blue-collar criminals. There are a number of reasons for this: white-collar criminals have greater financial resources to hire lawyers, are less likely to have committed violent crimes, and are more likely to come from a privileged racial and class background.

Even after Sutherland's work, it was a rarity for crimes committed by corporations and their officers to result in arrests. More often, such crimes have been handled by the regulatory agency relevant to that corporation's industry, which may result in actions ranging from fines (or merely warnings) to restrictions on business activity, the most famous modern example of which is the breakup of AT&T into the "Baby Bells" when it was found to be in violation of antitrust law. The breakup was initiated in 1974 and finalized in 1984, when AT&T's local operations were distributed among seven independent Regional Bell Operating Companies. AT&T, now worth about a third of its predivestiture value, retained control of its long-distance services.

The Sherman Antitrust Act

Modern federal corporate crime originates with the 1890 Sherman Antitrust Act, which was passed in response to the emergence of numerous monopolies in the 19th century as American business concerns—enabled by the modern banking system, a financial industry that made it easier to attract investors in order to fund rapid growth, and the explosive growth of the transportation industry (railroads and steamships)—began to operate on the national level rather than on the local level. Barring perhaps the outlawing of slavery, the antitrust law was the greatest federal restriction on business activity that had been enacted at that point in American history. It was opposed by many on exactly those grounds. The technological achievements of the 19th century had created an economic environment that could not have been foreseen at the nation's founding. The argument furthered by trustbusters like Theodore Roosevelt was that criminalizing monopolistic behaviors might be a constraint on business activity and growth, but it preserved competitive balance in the market, an important capitalist value. Monopolies were not outlawed because of the perceived possibility of abuse, after all, but because of the realities the public faced: businesses that were free to set prices as high as they liked because they faced no competition, and cartels that colluded to fix high prices by agreeing not to compete with each other.

The Sherman antitrust law was on the books for 23 years before it yielded the first prison sentence, and in its first 50 years it yielded only 24 prison sentences. Even among those prison sentences, only 11 were awarded to businessmen—the main target of the law—and the rest were given to union leaders. Because of the 1886 Supreme Court decision in *Santa Clara v. California*, which determined that a private corporation is a "natural person," punishing corporations for crimes is a difficult process because they have the same rights as individuals. Creating legal mechanisms by which people can be found culpable for corporate crime in the United States, and face real punishment, has been a complicated process, one often stymied by the American free-market tradition and its advocates, who worry that restrictions intended to deter or punish criminal behavior may constitute or invite government overreaching into the free market—and may constrain economic growth and the minimally restricted capitalistic behavior that is an important part of the American national identity. Even laws that successfully reduce corporate fraud and other wrongdoing, and their impact on the economy or on consumers, continue to face criticism for discouraging innovation in the marketplace or for creating an economic environment hostile to job creators.

Corporate Welfare

The 1980s helped popularize the term *corporate welfare* after a series of white-collar crimes in the financial industry required federal bailouts of institutions for the sake of the American economy. The deregulation of the savings and loan industry enabled widespread fraud and other criminal activity, which came to a head at the end of the decade when the Federal Deposit Insurance Corporation (FDIC) referred over 7,000 cases of savings and loan fraud to the U.S. Department of Justice. Among the criminals were Lincoln Savings and Loan Association chairman Charles H. Keating, Jr., whose political connections led to a political scandal and ethics investigation.

Five senators—Alan Cranston of California, Dennis DeConcini and John McCain of Arizona, John Glenn of Ohio, and Donald Riegle, Jr., of Michigan—were accused of improper behavior in intervening on Keating's behalf and persuading regulators to leave him alone. Keating eventually served five years of a prison sentence, and his criminal investigation and Lincoln's failure led to an investigation of the senators to whom he had contributed significant sums of money and the actions they may have taken on his behalf. McCain had not only received significant contributions from Keating but also was the only one of the senators who was among Keating's close friends, and his wife Cindy was a major investor in a Keating commercial development project. McCain came under considerable scrutiny in the press, but both he and Glenn were cleared of impropriety by the Senate Ethics Committee (though they were told they had shown poor judgment). Riegle and DeConcini were criticized for improper behavior, and only Cranston—who had received more than $1 million from Keating—received any real punishment, in the form of a formal reprimand. Only Glenn and McCain sought reelection at the end of their terms, and both were reelected.

The large number of criminals exposed and the relatively light sentences many of the earliest convicted received led to stricter federal sentencing guidelines in 1991. The guidelines were a compromise of sorts by the George H. W. Bush administration, mandating the highest maximum financial penalties for corporate crime that had yet been enacted in federal law, but at the same time creating a system of self-policing for corporations, allowing them to adopt ethics training courses and an internal compliance framework. The self-policing capacity essentially enabled corporations to make it easier to blame specific employees for wrongful actions, rather than taking responsibility as an organization. Those individuals then became scapegoats, facing criminal prosecution while the corporation itself continued doing business—and in many cases continued promulgating the culture that led to those criminal actions.

Insider trading is the illegal use of information unavailable to the public concerning stocks, securities, and transactions related to them, and it is a federal crime. As securities fraud and insider trading became bigger concerns in the 1970s and 1980s, the Insider Trading Sanctions Act was passed in 1984, defining insider trading as a crime for which financial penalties could be levied; prior to this time, the only punishment was the forfeiture of profits. This proved an insufficient deterrent, however, and the 1988 Insider Trading and Securities Fraud Enforcement Act provided much broader penalties, including jail sentences. It also empowered the Securities and Exchange Commission (SEC) to bar guilty individuals from the securities industry, require guilty organizations to make structural or personnel changes, and provide other civil remedies.

One of the largest white-collar crimes in history at the time it was committed was that of Michael Milken. Earning $250 million a year, then a record for American incomes, Milken was head of the high-yield bond (junk bond) department at Drexel Burnham Lambert, where he had been watched by the SEC since 1979 because of its suspicion of his unethical actions. When arbitrageur Ivan Boesky pled guilty to securities fraud in 1986 following a large-scale insider trading investigation, the SEC finally was provided with solid leads on Milken. Three years later, Milken was indicted on 98 counts of securities fraud and racketeering. Though he was not convicted of insider trading, he pled guilty to securities violations and served just under two years in prison, and he was permanently barred from the securities industry.

Harm to Employees

Corporate crimes include more than fraud. A perpetual problem has been reducing the harm done to workers by their employers. The widespread deceit of the mining industry in the 19th and early 20th centuries regarding the risks faced by miners was one of the motivating factors in the creation of miners' labor unions, which used their collective voice to lobby for mining companies to face legal consequences for such deceit. Such harms are not limited to the distant past, either. In 1991, 25 employees of Imperial Food Products died in a fire at a chicken-processing plant because management had locked the exit doors because of suspected theft. The building had not been inspected by the state regulatory agency and was found after the fact to violate numerous relevant building codes, including the state of the sprinkler system and the insufficient number of windows and exits. Although the fire led to the passage of 12 new North Carolina workplace safety laws, the owner, who pled guilty to 25 counts of manslaughter, was paroled after less than three years in prison, which to many was an unthinkable outcome for a crime resulting in 25 deaths.

Punishments for some white-collar crimes became stricter after the Sarbanes-Oxley Act of 2002, also known as the Public Company Accounting Reform and Investor Protection Act. Sarbanes-Oxley raised the standards of behavior for the boards, management, and accounting firms of public companies in the United States in response to a series of accounting crimes that cost billions of dollars. The most infamous of these accounting scandals are the October 2001 Enron scandal, which bankrupted both the Houston-based energy company Enron and the Arthur Andersen accounting firm. Enron's bankruptcy was the largest bankruptcy reorganization in American history at the time and followed a period of years in which corporate officers hid billions of dollars of debt in order to misrepresent the company's economic health to investors.

Even this record was broken the following year, when WorldCom—the second-largest telecommunications company—declared bankruptcy amid revelations of fraudulent attempts to boost the company's stock price. Worldcom's ignominious record would, in turn, be broken by Lehman Brothers and Washington Mutual when they collapsed in 2008 in the global financial crisis.

Even apart from the Big Two, the turn of the century was marked by accounting scandals that would have been just as infamous had they not been so overshadowed. Software company Peregrine Systems was the subject of parallel investigations by both the Federal Bureau of Investigation (FBI) and the SEC, leading to the 2004 indictment of eight Peregrine executives and three outsiders for a multibillion-dollar securities fraud. Sentences ranged from a civil penalty of $60,000 to seven executives serving prison sentences. Former chief executive officer (CEO) Stephen Gardner was sentenced to eight years and a month, a sentence of rare length by the standards of only a few years earlier. Meanwhile, Tyco International lost dozens of billions of dollars in assets because of its mismanagement, and the fifth-largest cable company, Adelphia, went bankrupt after executives committed wire fraud both to hide their mismanagement of the company and to steal $100 million of its assets.

Notably, Title IX of Sarbanes-Oxley, the White Collar Crime Penalty Enhancement Act, criminalizes failure to certify corporate financial reports and increases the criminal penalties for conspiracies and other corporate crimes. Greater penalties were enacted for attempting to influence the investigations of federal agencies and for retaliation against whistleblowers in an attempt to rein in the deviant behavior of corporate culture. Sarbanes-Oxley faced, and continues to face, criticism from free-market fundamentalists like Newt Gingrich and Ron Paul, who blame the act for constraining American business growth, especially after the financial crisis. The *Wall Street Journal* has been particularly critical of Sarbanes-Oxley since late 2008 as well.

Consumer Protection

A number of the key acts criminalizing or enhancing the penalties of various corporate behaviors in the United States fall in the area of consumer protection. As with the Sherman Antitrust Act, this is an area where opponents frequently accuse the law of going too far in interfering with the free market. The key articles of legislation, still frequently used by liberals as an example of government protecting Americans from private-sector

Americans wave flags from the National Mall in Washington, D.C., during the 57th Inauguration Day events as President Barack Obama is sworn in for a second term on January 21, 2013. Based on the legislation passed during Obama's first term, his second term was poised to usher in continued federal regulation and oversight to curb white-collar crime in the United States.

misbehavior, are the Pure Food and Drug Act and the Meat Inspection Act, signed into law by President Theodore Roosevelt on the same day in 1906. Decades of muckraking journalism and consumer advocacy activism had led to the two acts, each of which requires certain basic levels of safety and honesty. The Pure Food and Drug Act is the United States' main "truth in labeling" law, requiring the disclosure of specific dangerous ingredients, and that a food or drug product contain what it claims to contain. It was succeeded by the 1938 Federal Food, Drug, and Cosmetic Act, which remains the statutory basis for federal regulations in these areas. The Meat Inspection Act similarly required safe procedures in the packing and selling of meat products.

Passing these two statutes was a significant victory for progressives. The patent medicine industry had become powerful in the 19th century, selling pseudoscientific health remedies ranging from the merely ineffective to the toxic to the alarming (opiates were often used in children's medicines, for instance, available over the counter). Many of the ills these patent medicines claimed to remedy were themselves completely fictional, with vague symptoms like "malaise" or "nervousness." The Pure Food and Drug Act led to the creation of the Food and Drug Administration (FDA), the regulatory agency overseeing these matters.

At the time of the Pure Food and Drug Act, drugs such as cocaine, marijuana, and heroin were legally available without prescription—they were simply required to be properly labeled. The fact that usage of opiates is estimated to have declined by as much as a third after the act was passed has been touted by drug legalization advocates.

In 1914, the Federal Trade Commission Act created the Federal Trade Commission (FTC), a bipartisan commission of five presidentially appointed members serving seven-year terms. The FTC was created in conjunction with the Clayton Antitrust Act, which further developed the body of federal antitrust law that began with the Sherman act, notably creating safe havens for labor unions to prevent them from being prosecuted as monopolies, while criminalizing a number of anticompetitive business practices. The kernel of the Clayton Act is the desire to stop anticompetitive practices as they develop rather than wait for the point at which they lead to a monopoly.

The FTC oversees trade in the United States in the interest of consumer protection and healthy competition. It enforces federal laws related to consumer affairs (including privacy matters, advertising and marketing, telemarketing fraud, and financial products) and is empowered to conduct investigations in that area, through its Bureau of Consumer Protection. The FTC staff act as prosecutors if they file an administrative complaint or initiate federal legislation. The FTC is empowered with the ability to enact rules about industry-wide practices, known as trade rules.

The areas of concern of the FTC have developed over time in response to changes in American culture. For instance, today it is very concerned with identity theft, a crime little known when the FTC was created. It also maintains and enforces compliance with the Do Not Call List for the telemarketing industry.

Three major federal acts passed in a 10-year period provide the basic form of consumer credit rights for Americans. The Truth in Lending Act was passed in 1968, mandating and standardizing consumer credit disclosures and fees. In 1970, the Fair Credit Reporting Act was passed in response to the growing popularity of credit cards. It regulates the use of consumer credit information. The Fair Debt Collection Practices Act was passed in 1978 as part of the Consumer Credit Protection Act, which created restrictions on wage garnishment and extortionate credit transactions.

The Consumer Protection Safety Commission (CPSC) was created in 1972 by the Consumer Product Safety Act in response to a new wave of muckraking drawing attention to safety concerns in areas ranging from lead-based paints to toys that present choking hazards to children. The CPSC specifically has jurisdiction only over products not covered by another federal agency (for instance, the FDA has jurisdiction over food and drugs, and the Department of Transportation has jurisdiction over motor vehicles). Though it involved a motor vehicle—not covered in the CPSC's jurisdiction—one of the key cases raising public concern and leading to the CPSC's creation was the Ford Pinto, which was introduced in 1970. Ford allowed the car to be released despite knowing that the location of the gas tank made explosions a likely result of rear-end collisions, because a recall and redesign was more expensive than the expected cost of wrongful death lawsuits. (Ford was again implicated in 2001, along with Firestone tires, when the Ford Explorer proved to be especially accident prone because of design flaws in the tires.)

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See Also: Anderson, Jack; Bank of America Corp.; Bank Secrecy Act; Bernard L. Madoff Investment Securities LLC; Boesky, Ivan; Class-Action Lawsuits; Clayton Antitrust Act; Computer Fraud and Abuse Act; Credit Card Fraud; Defense Industry Fraud; Dodd-Frank Wall Street Reform and Consumer Protection Act; Insider Trading; Milken, Michael; Mortgage Reform and Anti-Predatory Lending Act; Predatory Lending; Predatory Practices; Racketeer Influenced and Corrupt Organizations Act; Sherman Antitrust Act; Sinclair, Upton; Teapot Dome Scandal.

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United States Steel Corp.

The United States Steel Corporation (U.S. Steel) produces steel products in the United States, Canada, and central Europe. In 2010, it was the largest domestically owned steel producer and 13th-largest globally. At various times during its existence, the company has been the focal point of legal action. Although best known for its anti-union labor policies and their importance to the development of organized labor, U.S. Steel has also played an important role in the evolution of U.S. antitrust law.

In 1901, J. P. Morgan and Elbert H. Gary combined three existing companies into U.S. Steel. When founded, U.S. Steel was the world's first billion-dollar company and accounted for over two-thirds of domestic steel production. The 1940s and early 1950s represent the company's heyday. During World War II (1939–45), the company employed more than 340,000 workers, and in 1953 production peaked at 35 million tons. In the late 1950s and 1960s, the company's fortunes began to decline. By the 1970s, foreign low-wage production and U.S. "mini-mills" had eroded the company's ability to compete effectively. The "steel crisis" of that decade caused U.S. Steel to diversify its holdings into energy. During the 1980s, steel became a secondary focus as the company acquired energy producers like Marathon Oil and Texas Oil and Gas, a move that eventually resulted in the reorganization of U.S. Steel into USX Corporation. In 2002, USX spun off its steel-related holdings and U.S. Steel reemerged as an independent company.

Labor Unrest

U.S. Steel has experienced legal controversy since its founding. The company's early emphasis on low wages and opposition to unionization resulted in violent labor unrest during the 1892 Homestead and 1901 Steel Recognition Strikes and again throughout the 1920s. It was not until 1937, when then U.S. Steel president Myron Taylor agreed to recognize the Steel Workers Organizing Committee, an arm of the Congress of Industrial Organizations (CIO), that the company's relationship with its workers improved. For the most part, relations between U.S. Steel and its workers remained stable until the mid-1980s, when the steel industry's overall decline caused the company to resume lockouts and ask for federal intervention against strikes.

To contemporary observers and historians, U.S. Steel's willingness to request federal assistance in resolving its labor disputes is ironic given its early adversarial relationship with federal authorities and the latter's attempts to dismantle the company through antitrust litigation. Because U.S. Steel was organized as a trust with assets including mines, railroads, and shipping, its antitrust problems began with its founding. In 1907, an economic recession reduced domestic and global demand for steel. Instead of cutting prices, however, then chairman Elbert Henry Gary attempted to stabilize prices through what the U.S. Department of Justice later described as anticompetitive business practices. Gary met with steel producers publicly from 1907 until 1911 (the so-called Gary Dinners) in an attempt to promote policies of cooperation rather than competition. Initially, Gary's strategy worked, with major steel producers agreeing to use the "Pittsburgh plus pricing system," a system by which all steel product prices were quoted on the basis of the cost to manufacture a product and transport it from Pittsburgh, regardless of where it was actually made. Eventually, U.S. Steel's competitors adopted not only the Pittsburgh plus system but also the additional costs the company charged its customers.

Because the company continued to acquire companies between 1902 and 1908, its actions attracted first private and then public scrutiny. Despite this increased scrutiny, the company managed to forestall an antitrust lawsuit in 1907 because of Gary's close friendship with President Theodore Roosevelt, even though U.S. Steel acquired its largest competitor, the Tennessee Coal, Iron, and Railroad Company. By 1911, however, extensive investigations of the company by the U.S. Bureau of Corporations and U.S. House of Representatives' Stanley Committee made antitrust litigation inevitable, and in October of that year Attorney General George Woodward Wickersham filed suit. The federal government charged U.S. Steel with violations of the Sherman Antitrust Act, specifically, monopolizing markets through its acquisition of competing firms, and price fixing.

Dismissal of Antitrust Case

Much to the surprise of contemporary observers, in June 1915 the government's case was dismissed. New Jersey District Judge Joseph Buffington explained that the ruling stemmed from the lack of acceptable evidence of a monopoly. Ignoring the well-documented public discussions between Gary and U.S. Steel's competitors, the majority decision focused instead on the company's declining market share and the existence of more than

80 other steel-producing companies. The U.S. Supreme Court upheld the lower court's decision in March 1920. In a majority opinion very similar to that of the lower court, Chief Justice Joseph McKenna slighted evidence of outright collusion. Instead, the court focused on U.S. Steel's declining market share (from a high of 80 percent in 1910 to roughly 40 percent in 1920) and testimony from the company's rivals, which praised the company's willingness to let them prosper, as evidence of free enterprise.

The ruling occurred during the Supreme Court's longest lapse in antitrust enforcement (1915–36), exposed the Sherman Act's weakness as a merger control device, and represented the federal government's first major antitrust prosecutorial failure. U.S. Steel's victory proved hollow, however. Eager to avoid further antitrust litigation, the company ceased expanding after 1920, paving the way for the mergers that in 1922 resulted in the founding of the North American Steel Company, the assets of which were just slightly smaller than those of U.S. Steel. Additionally, the Clayton Antitrust and Federal Trade Commission Acts specifically outlawed U.S. Steel's Pittsburgh plus pricing system, further eroding the company's dominant position in the domestic steel industry.

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See Also: Antitrust, U.S. Department of Justice; Carnegie, Andrew; Clayton Antitrust Act; Corporate Raiding; Federal Trade Commission Act; Industrial Revolution; Morgan, John P.; Oligopoly; Price Fixing; Robber Barons; Roosevelt, Theodore; Sherman Antitrust Act; World War I.

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Unnecessary Surgery

Surgery plays a crucial role in the medical treatment of pathological conditions caused by disease or injury. The term *necessary surgery* refers to inevitable or logically necessary operations that are required to sustain personal health and life. In contrast, the term *unnecessary surgery* defines a situation in which the benefit of the operation is outweighed by the risk of morbidity or mortality, to the point that the surgery itself may be termed useless. Using this definition, it is thought that approximately 12,000 deaths every year can be attributed to unnecessary surgery in the United States alone.

Numerous factors have been identified as contributing to unnecessary surgeries. For example, a surgeon may select the expediency of an operation over more conventional treatments, or a surgeon may misdiagnosis a disease or condition, and that in turn leads to an unnecessary surgery. The key consideration is whether the discretionary medical judgment made by the surgeon misdirected the course of care for the patient, particularly for the goals of financial gain or surgeon convenience. One should note that elective surgery is generally not included in these descriptions. Often performed for cosmetic reasons, these elective surgeries can even be scheduled in advance for convenience. Common elective surgeries include liposuction, rhinoplasty (nose job), and rhytidectomy (facelift).

The earliest method for identifying unnecessary surgery relied upon differences in geographic location. During the 1960s and 1970s, public health researchers began examining geographical variations in rates of tonsillectomies performed in 42 health service areas in Maine. Studies revealed that some areas had tonsillectomy rates that were over 11 times greater than neighboring areas. Comparable studies revealed geographical differences of one to two times for inguinal hernia surgeries and three to four times for appendectomies. The methods used were termed small-area analysis, although identical findings were found when comparing larger geographical areas as well (e.g., state comparisons).

In 1976, congressional hearings focused on the issue of Medicaid fraud, with attention devoted to the estimated two million unnecessary operations that appeared to be occurring in the United States every year. Additionally, a repeated theme of the congressional hearings involved discussion of "tonsil mills," in which a subset of surgeons appeared to be practicing high rates of tonsillectomies.

A patient with tonsillitis typically manifests with a sore throat and fever. This inflammation can be caused by a viral or bacterial infection and is often treated with antibiotics. However, if the inflammation progresses to the point that a patient has difficulty swallowing, then the physician may recommend the removal of the tonsils (i.e., tonsillectomy). Tonsillectomies may also be performed to treat sleep apnea, snoring, abscess, and nasal airway obstructions.

The decision to use surgery takes place in private dialogue between surgeon and patient, so little is known about the legitimacy of individual surgeries. When one compares geographical variation there is statistical evidence that surgical rates for tonsillectomy are correlated with both the number of hospital beds and the number of surgeons available at the time. In other words, the presence of medical resources appeared to influence the surgical decisions of surgeons, perhaps more than the patient's condition or disease.

Factors Leading to Unnecessary Surgery

In a modern context, there continue to be a number of controversial areas of medical decision making that could lead to unnecessary surgery. One example is lower back pain. Chiropractor-based journal studies support the notion that there is currently an epidemic of lower back pain in society, but chiropractors often question the high rates of back operations conducted by surgeons. Many chiropractors believe that less than 1 percent of all back pain patients actually require surgery. They add that health insurance companies and worker's compensation agencies are more likely to pay for back surgery and usually reject treatment options that involve chiropractic care. Alternative strategies that could be used to address lower back pain include traction, massage, biofeedback, acupuncture, injections into the back, back corsets, and ultrasound. Thus, there is a suggestion that for-profit, cost-plus incentives are driving up the rates of back surgery in lieu of less invasive forms of treatment.

Another example involves cataract surgery. This surgery is needed when a patient develops opacification, or a cataract over the eye. Symptoms begin with strong glare from lights at night, though manifest along a continuum from minor impairment to complete blindness. Surgery is utilized in order to remove the natural eye lens and replace it with a synthetic lens. This is a very common procedure, with 2.8 million cataract surgeries performed in the United States each year. One method used to decide if cataract surgery is necessary is testing the threshold of visual dysfunction in the patient. This test provides a measure of how well a person can see, with 100 indicting that the patient has "no difficulties" seeing. When these scores are compared, one finds that doctors in countries like the United States, Spain, Canada, Denmark, the United Kingdom, and Sweden are apt to recommend surgery when the scores are in the 63 to 76 percent range of dysfunction. In comparison, scores in Canada, Australia, and Scotland reveal a dysfunction threshold range of 73 to 84 percent. This suggests that an increase in rates of cataract surgery is the result of simply reducing the threshold measurement of eye dysfunction, leading to suspicions that some of these procedures are unnecessary.

A final example centers on hysterectomies. This surgery is usually performed by a gynecologist and involves the surgical removal of the uterus. The patient is typically in need of the surgery because of reproductive system cancers, severe cases of endometriosis, chronic pelvic pain, and fibroid bleeding. This is another common procedure, with 600,000 hysterectomies performed in the United States in 2003 alone. Small area analysis reveals that hysterectomy-prone surgeons conduct the procedure at twice the rate of other comparable surgeons. Because hysterectomies are among the most frequently performed major surgical procedures in North America, there remains controversy over their use.

In the majority of patient cases, the underlying medical condition is benign, and therefore the recommendation to operate is based on numerous considerations. Certainly, there is more criticism when the presence of uterine fibroids leads to a supporting decision to perform a hysterectomy, with hormones, medications, and conservative surgeries being recommended before hysterectomy. Comparatively, there is little criticism when surgeons recommend hysterectomy in cases when cancer affects the pelvic organs. In all these examples, there are also complex decision-making processes that are affected by the patient's mental status and emotional constitution, the patient comorbidity with other illnesses, and the patient's support structure (i.e., family structure, living situation, etc). Usually, the more severe a patient medical need, the more likely it is that a surgery will be recommended.

Ethical Practices of Surgeons

Distinct from legal considerations, thought certainly related, is consideration of the ethical practices of surgeons. A principal maxim of medical ethics is "First, do no harm" and certainly unnecessary surgery would meet the conditions of harm or unnecessary risk. More specifically, the statements of ethical principles held by many governing medical bodies condemn acts of unnecessary surgery. A statement by the American College of Surgeons (2012) reads as follows:

> Whether due to repeated ineptness, lack of knowledge, or willful failure to apply acceptable indications for operations or other procedures, the performance of unnecessary surgery is an extremely serious violation of ethical principles for which disciplinary action is indicated. Committees in hospitals are organized to guard against such violations or repeated mistakes.

This suggests that governing bodies may not only sanction the surgeon for unnecessary surgery but also may partner with law enforcement to report egregious acts of unwarranted surgery and malfeasance. In practice, the reporting of unnecessary surgery by governing boards occurs only in very egregious cases and often includes other white-collar crimes like insurance fraud.

Detection and Prosecution

In terms of the detection and prosecution of physicians for unnecessary surgery, there are many challenges for criminal justice professionals. Unfortunately, the overwhelming majority of research has relied solely on the method of geographical variation to identify that unnecessary surgery is taking place. Although geographical differences provide interesting estimates, they cannot justify the prosecution of an individual surgeon. Such efforts are stymied by the privilege of the doctor-patient relationship. The surgeon presents the patient with a medical interpretation based on his/her training and experience and provides the recommendation of surgery where appropriate. The patient must then make an informed judgment as to the perceived benefits and risks of the surgical procedure. Thus, the decision to operate is socially created through dialogue within a private medical office and ultimately is made by the patient. A surgeon may suggest surgery, but ultimately the patient is responsible for his or her own health care decisions. This may involve the patient conducting further research on his/her own to further develop medical knowledge or selecting alternative treatments or seeking a second opinion from another physician.

Of note, there have been several attempts to initiate second-opinion programs in which the patient receives medical recommendations from multiple physicians. These varied opinions are then compared by a third party for consistency. To date, second-opinion programs have largely been neglected as a viable option for detecting unnecessary surgeries, mostly because second-opinion programs were not intentionally designed to measure the reliability of judgments among physicians for purposes of identifying unethical or illegal behavior. Barring the research on geographical variation in surgery rates, there is negligible other research on the topic of unnecessary surgery. This is not likely to change, because discussions that occur between doctor and patient are private, privileged, and protected by law.

If current research were to applied to unnecessary surgery in a courtroom scenario, it would be deemed "circumstantial" at best. At the center of the issue is the notion that some physicians create or augment the degree of a medical problem in order to increase their rates of surgery. This, in turn, produces higher income for the surgeon (and hospital or practice) and may also have the added benefit of simply being a more convenient option than alternative treatments. Rates of surgery have grown exponentially all over the world, and the U.S. medical system features a very high surgery rate. Despite these trends, experts and empirical research cannot calculate what proportion of these surgeries may be considered unnecessary. This makes policing and prosecuting unnecessary surgery very unlikely. Perhaps the greatest challenge to the problem of unnecessary surgery involves the tautology of the definition. As the American College of Obstetricians wrote in 1983, "the question of unnecessary hysterectomies is difficult to evaluate because of the lack of agreement over the definition of necessary."

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See Also: Breast Implants; False Claims Act; Dalkon Shield Case; Fertility Fraud; Health Care Fraud; Insurance Fraud; Medical Malpractice; Medicare and Medicaid Fraud; National Medical Enterprises Inc.; Negligence; Public Citizen Health Research Group; Research Fraud.

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Unsafe Working Conditions

Historically, laborers have worked long hours and under hazardous conditions. Since the Industrial Revolution, laborers have strived to gain a better working environment, such as the eight-hour workday, higher wages, health benefits, and laws that protect workers from unsafe conditions. Under the Occupational Safety and Health Act of 1970 (OSHA), employers are obligated to provide a safe working environment for employees. Despite the laws protecting workers, unsafe conditions are found in practically every setting. Factory workers still must work with ill-maintained or broken machinery; some employers are still resistant to installing proper firefighting equipment; mine workers still must work in mines filled with water, coal dust, and gas; and oil rig workers continue to suffer when oil companies refuse to install safety measures. From 2003 to 2010, approximately 11.7 million injuries or illnesses occurred that required days away from work, according to the Bureau of Labor Statistics. Further, over 43,000 fatal occupational injuries occurred during this time frame.

This article addresses unsafe working conditions. It begins with the current laws concerning worker safety. Examples of unsafe working conditions and their consequences are then discussed. The article ends with policy implications of unsafe working conditions.

Workers' Rights

The OSHA holds employers responsible for violating safety laws. An employer can be held criminally liable if a death occurs because of a willful violation of an OSHA safety law. A willful violation is an act that is knowingly committed without regard, or with obvious indifference, to OSHA standards and policies. The OSHA indicates that employers must provide a workplace free from known hazards that are likely to result in death or severe harm. Penalties can include fines and/or imprisonment. In addition to criminal and civil penalties for employers who defy safety laws, OSHA also provides for worker protections, especially if its staff believes that death or serious harm is imminent.

According to the OSHA, the law does not protect workers who simply refuse to work because of unsafe conditions in general. However, if an employee believes, in good faith, that he or she faces imminent danger, then that worker is protected. The term *good faith* means that, even if an investigation fails to reveal impending danger, the employee had grounds to believe otherwise. The OSHA requires that four elements exist before refusing a task: (1) an employer failed to resolve the issue after being informed, (2) the employee must reasonably believe that his or her life is in danger, (3) a rational worker would concur that imminent danger exists, and (4) there is not enough time for OSHA to inspect and resolve the problem. In addition to the right to refuse to work, whistleblowers are also protected.

The federal government provides for protection for those who blow the whistle on employers who are violating worker safety laws. Some employers have retaliated against such employees, and federal laws protect workers against reprisals. If an employee faces repercussions for reporting a safety violation, it must be reported within 30 days. Appropriate information for the Whistle Blower Protection Program is available at www.osha.gov.

Fatal Occupational Injuries

Table 1 shows the number of fatal occupational injuries that occurred in an eight-year period, according to the Bureau of Labor Statistics. It represents fatalities from all job sectors, public and private. Although from 2003 to 2010 the number of deaths fluctuated annually, the data reveal an overall decrease in fatal occupational injuries. The only racial category with an increase in fatalities is among those who indicated that they were of mixed race. This is a very small number of deaths, however, and workplace fatalities for this group peaked in 2006 and have declined since then.

History of Unsafe Conditions

Historically, dangerous working conditions have existed in factories. Some of these hazards include inadequate ventilation, improperly maintained equipment, a lack of safety shields and personal protective equipment, exposure to toxins, excessive dust, and little or no firefighting equipment. In certain cases, workers have been unable to escape a fire because of locked or blocked exits. For example, hundreds of garment workers were killed in a fire at the Triangle Shirtwaist Factory in the early 20th century in New York. The factory lacked a sprinkler system, had adequate exits, and had certain doors locked or blocked. The same problem occurred years later at the Imperial Food Products chicken-processing plant in North Carolina. Twenty-five workers were killed when a fire broke out in the plant—the workers died inside because the exits were locked. Besides such visible hazards, factory workers have also been exposed to invisible dangers like asbestos.

Asbestos has been the cause of numerous deaths. In an enclosed factory setting, asbestos fills the air and necessitates some form of respiratory equipment. Previously, employers did not provide this equipment to workers. As early as the 1930s, asbestos was associated with lung cancer. According to David Simon, a worker exposed to asbestos over a period of time can expect to develop lung cancer at a rate seven times greater than normal. Workers are exposed to asbestos not only in factory settings but also in government facilities. In January 2012, OSHA cited the St. Cloud, Minnesota, veteran's administration for 19 unsafe working conditions. Among those violations were eight

Table 1 Fatalities from 2003 to 2010

	Deaths by year							
Race	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
Whites	3,988	4,066	3,977	4,019	3,867	3,663	3,204	3,363
Blacks	543	546	584	565	609	533	421	412
Hispanics	794	902	923	990	937	804	713	707
American Indian or Alaskan Native	42	28	50	46	29	32	33	32
Asian, Hawaiian, or Pacific Islander	158	180	163	159	172	152	148	149
Multiple races	3	4	-	11	10	6	7	8
Other races not reported	47	38	35	50	33	24	25	19

recurring violations, including obstructed exits and asbestos exposure. Asbestos is not the only substance, however, that causes disease. Coal dust has caused much suffering to miners.

Historically, mining has been one of the leading violators of employee safety. Lack of ventilation and firefighting equipment has been commonplace, as have explosions. Some unsafe conditions cause slow deaths, however. For example, mine workers have consistently been subjected to a form of asthma known as black lung. This disease is contracted because of unprotected exposure to coal dust. Over 4,000 mine workers die every year from black lung. Other hazards consist of mine explosions resulting from gas buildup and unsafe electrical wires.

In April 2010, the Upper Big Branch Mine in West Virginia suffered a severe explosion, killing 29 miners. Some claim that, until this explosion, the United States had not yet been subjected to such a mine disaster in this century. Some of the violations included allowing the buildup of coal dust and dangerous gases. This buildup led to a state of combustion because of improperly maintained equipment. Mine owners have been routinely cited for unsafe conditions. For example, a Colorado mine has received over 1,000 citations in approximately a 20-year period, and a Utah power company was cited for 34 violations. Mine workers suffer an injury rate of more than three million per year. The oil industry has also subjected its employees to dangerous conditions.

In April 2011, the BP (formerly British Petroleum) oil rig Deepwater Horizon exploded. Prior to the incident, over 25 members of the House of Representatives demanded the cessation of the rig's drilling activities. The big concern, among many, was the possibility of a blowout (an underwater leak). Because of engineering flaws, the rig suffered a massive explosion, killing 11 workers. Among OSHA's top 10 enforcement cases, BP holds the top two positions. In 2005, BP was fined $21.4 million, and in 2009 BP received an additional penalty of $81.3 million. New trends in unsafe working conditions are emerging. Occupations that were once inherently unsafe have joined the ranks of those occupations whose executives disregard unsafe conditions. These areas include medical workers and the correctional system.

Registered nurses (RN), licensed practical nurses (LPN), and nursing aides are subjected to unsafe conditions when appropriate staffing is not provided. A common claim in the medical field is that a safe nurse-to-patient ratio is approximately 1:6. Currently, it is common to find a ratio of 1:9 or greater. With a low nurse-to-patient ratio, nurses and aides feel rushed, leading to mistakes. When this happens, they are more prone to injuries. A common type of injury in the medical field is a musculoskeletal disorder. According to the U.S. Department of Labor, this is a soft-tissue injury, typically involving the muscles and joints. Over 320,000 musculoskeletal disorders were reported from 2003 to 2010. The medical industry, however, is not alone with a low staff-to-client ratio. Correctional officers are also subjected to working under such conditions.

The criminal justice field is inherently unsafe. However, officers assume that they will receive proper support and safety equipment. When officers fail to receive such measures, they are subjected to further unsafe conditions. For example, officers at the Mt. Pleasant correctional facility in Iowa claimed that the overcrowding of prisons had resulted in attacks on officers that could have been avoided with acceptable levels of staffing. Another example comes from the Atwater federal penitentiary. Since 2001, officers have noted that short-staffing of officers was a common occurrence at the prison. On June 20, 2012, a correctional officer working alone was stabbed to death when he was supervising 100 inmates.

In addition to low staffing, officers at Atwater were not provided with proper protective equipment, and purchasing one's own stab-resistant vest was a violation of prison policy. Thirteen years earlier, in 1999, OSHA inspectors cited the U. S. Immigration and Naturalization Service (INS) in Manhattan for 10 serious violations, among them failing to provide proper body armor for correctional officers.

Conclusion

Although fatal workplace injuries have declined over the years, unsafe working conditions continue. Factory and mine owners persist in disregarding dangerous conditions for their employees, and new areas of labor, such as the medical field and the criminal justice system, have entered the sphere of unprotected workers. Under the Occupational Safety and Health Act, employers are obligated to protect their workers, and, under certain conditions, employees may refuse to perform unsafe tasks. Further, workers have the right to report any unsafe condition, and employers cannot legally retaliate against employees who file such reports. The continued harm to laborers implies that some employers are not deterred from committing safety violations.

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See Also: Asbestos; BP PLC; Brown Lung; Canadian Mining Scandals; Class-Action Lawsuits; Coal Mining; Employee Safety; Extortion; Human Trafficking; Labor Crimes; Mine Safety and Health Act; Negligence; Occupational Carcinogens; Occupational Safety and Health Act; *Ocean Ranger* Disaster; Prostitution; Racial Discrimination; Unions; Upton, Sinclair; Whistleblowers; Workplace Deaths.

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V

Vatican Bank

The Institute for Works of Religion, or *Istituto per le Opere di Religione*, was founded by Pope Pius XII in 1942 for the purpose of administering accounts held by cardinals, bishops, priests, and religious orders. It is better known by most people as the Vatican Bank. The bank has a turbulent history, embroiled in scandal and subjected to claims of involvement in money laundering and corruption. The bank has also faced charges of being in league with Mafia elements. Among the prominent scandals to have rocked the Vatican Bank is its role in the collapse of Banco Ambrosiano in 1982 and links to Banco Ambrosiano's head Roberto Calvi, widely labeled God's Banker. More recently, the Vatican Bank was subject to a lawsuit filed by Holocaust survivors and the seizure of 23 million euros of the bank's funds in 2010. In 2012, the bank's president, Ettore Gotti Tedeschi, was sacked over allegations of corruption.

Throughout modern history, the Holy See has had to deal with controversy after controversy. However, the financial practices of the Vatican Bank in particular have come under close scrutiny. Accusations of money laundering and Mafia connections have tainted the bank's reputation. The infamous Roberto Calvi episode was significant in damaging the bank's character and the Vatican more widely. Calvi, president of Banco Ambrosiano, was found dead on June 18, 1982, hanging from scaffolding under Blackfriars Bridge in London. Speculation has endured concerning whether Calvi took his own life or was murdered by the Mafia. Prior to this, rumors had circulated about Banco Ambrosiano's connections to Mafia groups and the Freemasons, and the Vatican Bank's involvement was cited given its status as a major shareholder in Banco Ambrosiano. Calvi had even been dubbed God's Banker because of his ties to the Vatican Bank, and the Italian authorities and press claimed that he had been involved in laundering Mafia money.

Robert Cornwell, a former *Financial Times* correspondent in Italy at the time, produced a notable book on the episode, titled *God's Banker: Account of the Life and Death of Roberto Calvi*. More recently, Cornwell appeared in a radio documentary in 2012, describing a meeting with Calvi back in 1982 in which Calvi expressed fears for his own safety, claiming that people were out to get him, a view shared by those close to Calvi who believe that he was indeed silenced.

The bank was embroiled in more controversy when, in 1999, a lawsuit was filed against it by Holocaust survivors in California (*Alperin v. Vatican Bank*). The prosecutors claimed that the bank had been complicit in the theft of victims' valuables by Nazi sympathizers in Croatia, Yugoslavia, and

Ukraine. The case eventually proved unsuccessful despite appeals, but the episode served to raise further questions about the bank.

Then again in 2010, accusations of money laundering and corruption intensified when Italian courts seized 23 million euros of Vatican Bank funds in light of suspicious transactions. An investigation followed. This was trailed in 2012 by the sacking of the bank's chief. In fact, it was in an effort to shake off its tainted reputation that the bank appointed Ettore Gotti Tedeschi president in 2009. However, his acrimonious departure in May 2012 only served to further blacken the bank's name. Tedeschi's removal came after a unanimous vote of no confidence from bank overseers, who claimed that he represented an obstacle to transparency. Tedeschi has also been accused of seeking to launder Mafia money. Another theory considers Tedeschi as a possible scapegoat, after he flagged suspicious transactions and Mafia links to the bank.

Vatileaks Scandal

Tedeschi's sacking came at a time when the Vatican had also been rocked by the "Vatileaks scandal" in early 2012, with documents leaked and reported in the Italian press that supposedly proved corruption within the Vatican. This Holy See faced further controversy in 2012 when Father Ninni Treppiedi was relieved of his duties as a cleric in Sicily after anti-Mafia investigators queried his activities. Treppiedi was accused of laundering funds for the Mafia godfather Matteo Messina Denaro. In the same year, JPMorgan Chase shut down the Vatican's bank account in its Milan branch following suspicious transactions.

In light of the recent turmoil, Moneyval, a European group of experts on money laundering, conducted a review to determine how the bank was progressing in implementing best practices and preventing improper financial practices. Moneyval reported on its work in July 2012, highlighting serious failings within the Vatican Bank, particularly in relation to its management. The report did praise some reforms implemented since 2010. New financial transparency processes were drafted by the Vatican, including the establishment of a new body to scrutinize practice, the Financial Information Authority (FIA). However, the Moneyval report noted a lack of clarity regarding the exact role and powers of this body. The Vatican wanted to be placed on a coveted international "white list" of those working to prevent malpractice, but the report noted that there is still some way to go.

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See Also: Banco Ambrosiano; Corruption; Money Laundering; NatWest Markets Ltd.; Organized Crime; Political Assassinations.

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Vaughan, Diane

Diane Vaughan (1939–) is a leading white-collar crime scholar. She has been a professor of sociology and international and public affairs at Columbia University since 2005. Before moving to Columbia, she was successively assistant professor (1984–86), associate professor (1986–96), and professor (1996–2005) in the Department of Sociology at Boston College in Boston, Massachusetts. Prior to her service at Boston College, she was a research associate (1982–84) at the Wellesley College Center for Research on Women, having moved there from a position as a postdoctoral fellow in the sociology of social control at Yale University (1979–82).

Vaughan was educated at Ohio State University, where she successively took degrees: B.A., 1973; M.A., 1974 (sociology); and Ph.D., 1979 (sociology). She graduated from Ohio State summa cum laude and is a member of Phi Beta Kappa and Phi Kappa Phi. Subjects she has taught include organizational analysis/analogical theorizing; mistake, misconduct, and disaster; organization theory; deviance and social control; organization failure; sociology senior seminar; science, knowledge, and technology; and the sociological craft. Her published articles are very numerous and span her areas of interest, which include analogical theorizing; cultural sociology; deviance and social control; field methods; science, knowledge, and technology; and social/formal/complex organization.

Early in her career, Vaughan gained experience with legal organizations. She was a visiting fellow at the American Bar Foundation, Chicago, Illinois (1988–89); and visiting fellow at the Centre for Socio-Legal Studies, Wolfson College, University of Oxford, England (1986–87). Between 1979 and 1982, she published research titled "Sociology of Social Control" as a National Institute of Mental Health postdoctoral fellow in the Department of Sociology at Yale University.

In addition to a busy teaching career, Vaughn has served on the editorial boards of major sociological journals, including *Sociological Theory* (2007–); the *American Journal of Sociology*, consulting editor; the *American Sociological Review*; and *Sociological Discoveries*. She has also served as a reviewer for a number of journals, including *Crime, Law, and Social Change*.

Investigating Organizational Social Controls

In 1983, Vaughan published *Controlling Unlawful Organizational Behavior: Social Structure and Corporate Misconduct*. In this book, she reconstructed the Ohio Revco case. In 1979, Revco was found guilty of defrauding the Ohio Department of Public Welfare and Medicare of half a million dollars though a double billing scheme. The use of computers for corporate purposes was growing, and, with their use, the beginnings of computer crimes. To answer how the corporation had come to such a depraved state of affairs, she investigated its social control system as well as other features of emerging corporate crime. Her research methods were theoretically advanced, and her conclusions were counterintuitive. She found that corporate misconduct would be lessened by decreasing regulations and increasing bureaucratic sensitivity.

In 1986, Vaughan published *Uncoupling: Turning Points in Intimate Relationships*. The book was subsequently published abroad in more than a half-dozen countries. It arose out of her divorce experiences after 20 years of marriage. She found a pattern to the ending of relationships.

Following the *Challenger* space shuttle disaster (1986), she investigated the organizational culture at the National Aeronautics and Space Administration (NASA). She found that although neither safety rules nor policies were broken, the decision-making process in the political structure at NASA made it vulnerable to failure. The technology of space and the organization were defective. The technological defects had been known for years; however, the organizational culture was allowed to prevail despite arguments to abort the mission. These were ignored or dismissed because the risks were believed to be "normalized deviation." She subsequently published the book *The* Challenger *Launch Decision: Risky Technology, Culture, and Deviance at NASA* (1996). It described deviance in organizations and the dangers that arise.

The examination and analysis of NASA and the *Challenger* disaster won several prizes, including the Rachel Carson Prize, the Robert K. Merton Award, and Honorable Mention for Distinguished Contribution to Scholarship by the American Sociological Association. It was also nominated for the National Book Award and Pulitzer Prize. After the *Columbia* shuttle disaster (2003), she served as a consultant in the subsequent investigations.

Vaughan's work as a sociologist of organization is being used by criminologists. One of her articles on behaviors associated with crime was published in *Crime, Law, and Social Change* (2002). Another is titled "The Macro/Micro Connection in 'White-Collar Crime' Theory," published in *White-Collar Crime Reconsidered* (1992). She is currently investigating organizational misconduct in what she calls "the dark side of organizations."

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See Also: *Challenger* Disaster; Morton Thiokol Inc.; Negligence; Organizational Compliance Programs; Revco Medicaid Scandal.

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Victim and Witness Protection Act

In 1982, Congress passed the first federal legislation to protect victims' rights in the criminal justice system, the Victim and Witness Protection Act (VWPA). The purpose of the VWPA was to improve the treatment of victims and witnesses in the criminal justice system by protecting them from harassment and retaliation, keeping them informed about the status of ongoing cases, providing them opportunities for greater participation in the case proceedings, referring them to appropriate resources for financial and emotional assistance, and, in some cases, providing them with restitution.

The impetus for the law began in the 1960s and 1970s, when many victims' rights advocates raised serious concerns about the criminal justice system's negligence in protecting victims' rights. President Ronald Reagan commissioned the Task Force on Victims of Crime to investigate these concerns. The task force released its final report in 1982. The report supported the concerns of victims' rights advocates and claimed that crime victims were often marginalized by the criminal justice system. Prosecutors rarely notified victims of the status of ongoing cases or consulted them about dismissals or plea bargains. Furthermore, few resources were available to help victims cope with the financial and emotional consequences of victimization.

In the VWPA, Congress recognized that the cooperation of victims and witnesses is essential to the proper functioning of the criminal justice system. Congress passed the VWPA to protect crime victims and witnesses throughout criminal proceedings, assist crime victims and witnesses without infringing on the constitutional rights of defendants, and provide a model for legislation for state and local governments.

President Ronald Reagan in Minneapolis, Minnesota, February 8, 1982. While signing the Victim and Witness Protection Act eight months later, he said, "It is high time the legal system showed the honest citizen as much concern as it does the criminal."

The VWPA provided a number of legal protections to victims and witnesses of federal crimes. The law provided protective measures to help victims and witnesses avoid harassment by offenders as well as penalties for offenders' acts of retaliation against those who testify against them in court. The law required criminal justice personnel to notify victims of major events in the criminal proceedings, including the arrest of the accused, the dates and times of court appearances, and the release or detention of the accused.

The law also recommended that federal officials consult with victims and witnesses to obtain their views on proposed dismissals and plea negotiations. It allowed victims to provide victim impact statements in sentencing hearings to provide judges with information regarding the harms they suffered. It also required some offenders to pay restitution to victims for property loss or personal injury. The law furthermore protected the privacy of victims and witnesses. Finally, it served as a model for state and local governments, as most criminal cases are prosecuted through state and local courts.

The provisions of the VWPA were further expanded in subsequent legislation, including the Victims of Crime Act of 1984, the Victims' Rights and Restitution Act of 1990, the Victim Rights Clarification Act of 1997, and the Justice for All Act of 2004. Through these laws, Congress established a list of victims' rights, commonly referred to as the victims' bill of rights, which was codified in the Crime Victims' Rights Act of 2004. Congress instructed the U.S. Department of Justice to try to ensure that these rights are upheld for all victims of crime. The "victims' bill of rights" includes the following eight rights:

- The right to be reasonably protected from the accused.
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, [or] sentencing, or any parole proceeding.
- The reasonable right to confer with the attorney for the government in the case.
- The right to full and timely restitution as provided in law.
- The right to proceedings free from unreasonable delay.
- The right to be treated with fairness and with respect for the victim's dignity and privacy.

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See Also: Bankruptcy Fraud; Corruption; Employee Safety; Reagan, Ronald; Whistleblowers.

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Volcker Plan

The Volcker Plan, or the Volcker Rule, is a section of the Dodd-Frank Wall Street Reform and Consumer Protection Act that was signed into law on July 21, 2010. The rule was designed to prevent banks from speculating with customer funds in ways that benefited only the banks themselves. Paul Volcker, an economist, was appointed as chairman of the Federal Reserve Board by President Jimmy Carter in 1979 at a time when inflation had reached a staggering 13.3 percent. Volcker continued to work under President Ronald Reagan until 1987. During the administration of President Barack Obama, Volcker took on the role of chairing the President's Economic Recovery Board. He maintains that the financial crisis of 2007–10 was largely the result of unchecked speculation by commercial banks.

On January 30, 2010, in an opinion piece published in the *New York Times,* Volcker laid out the specifics of his plan, stating that it was created to "prevent banks from owning hedge funds and other proprietary trading vehicles" and to provide the government with the necessary resolution authority to intervene whenever commercial banks, investment banks, mortgage lenders, or insurance companies appeared to be headed for trouble. Stockholders, management, and bondholders rather than taxpayers, he argued, should be required to accept responsibility for financial failures. Volcker asserted that his plan was capable of fixing the persistent problems with financial institutions that had been labeled as "too big to fail," which implied that the federal government had a responsibility to intervene to save large financial institutions from ruin. He contended that this particular mentality had contributed to the most serious financial crisis since the Great Depression.

The Volcker Rule was considered to be in direct contrast to a more moderate plan proposed by Secretary of the Treasury Timothy F. Geithner, who believed that the key to reining in banks was holding capital in reserve as a means of covering losses and reducing profits made by banks. However, in January 2010, President Obama announced his support for the Volcker Rule. The following month, W. Michael Blumenthal, Nicolas Brady, Paul O'Neill, George Schultz, and John Snow, five former secretaries of the Treasury who had served under presidents of both parties, endorsed the Volcker Rule in an open letter in the *Wall Street Journal*. The Volcker Rule also received the approval of the governors of the Federal Reserve Board. The only dissenter was Sarah Bloom Raskin, who argued that in limiting only federally insured banks and their subsidiaries from speculative investment, the rule left loopholes that allowed investment banks, hedge funds, and other such institutions to continue the status quo.

Volcker believed in his plan, and he set out to promote its merits, lobbying Congress and traveling around the world to convince other countries that banks needed to be prevented from engaging in conflicts of interest with their customers. Volcker succeeded in winning the support of such financial luminaries as John Reed, a former head of Citigroup, and Mervyn King, a governor of the Bank of England.

Interference and Criticism

In Congress, competing interests succeeded in weakening the impact of the Dodd-Frank Act by granting numerous exceptions to the Volcker Rule. Many of those exceptions had been the result of lobbying by Wall Street firms. Even so, what had begun as a 10-page proposal grew to 298 pages that were difficult to comprehend. Volcker was unhappy with the final result and blamed the interference of banks for the expansion of his rule. He insisted that the Volcker Rule should have comprised no more than four pages.

Final passage of the bill generated a round of criticism, particularly within the financial world, with critics arguing that it was likely to interfere with getting financial backing for commercial debts and with commercial paper and exchange services. Republican critics argued that rather than "fixing" the economy, the Volcker Rule and the Dodd-Frank Act only served to produce tepid economic growth. Even some Democrats who had supported the bill insisted that ultimately the Volcker Rule had become too complex to be effective. Financial observers argued that it was unlikely to solve the "too big to fail" syndrome because banks had continued to grow. Financier Henry Kaufman pointed out to *New York Times* reporter James Stewart that the 10 largest banks in the United States went from holding 10 percent of total assets in 1990 to holding 70 percent in 2008.

The July 21, 2010, date set for the implementation of the Volcker Rule was delayed by two years. The final provisions authorized the Federal Reserve to regulate nonbank broker-dealers that are affiliated with bank holding companies. The Securities and Exchange Commission was assigned responsibility for overseeing other broker-dealers, and the comptroller general of the United States was charged with regulating national banks. In May 2012, the Federal Reserve extended implementation until July 21, 2014.

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See Also: Bank Fraud; Carter, Jimmy; Dodd-Frank Wall Street Reform and Consumer Protection Act; Hedge Fund Fraud; Obama, Barack; Reform and Regulation.

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War Crimes

War crimes are those crimes that take place in the course of war. These crimes can be committed by governments, soldiers, and even civilians and corporations but are designated as war crimes because of their occurrence during wartime or in the preparation for war. The designation of a war crime is usually reserved for activities above and beyond the acceptable level of violence and destruction associated with war. War crimes typically fall into three categories: crimes against humanity, crimes against peace, and crimes based on the opportunities of war, which often provide personal or economic gain to an individual or group.

The definition and use of war crimes as a way of punishing military and governmental officials has expanded since World War II and has also been applied to nondeclared and internal conflicts, where no formal declaration of war had been issued, but resultant fighting reached the scale of identifiable warfare or civilian casualties were identified as similar in scope to a war crime. Because war crimes can have this economic element and can be charged against governmental and corporate entities, war crimes are well suited to a discussion of white-collar crime.

Every war since ancient times has included actions that in today's interpretation would be considered war crime. However, war crime, as it is understood and prosecuted today, is a rather new phenomenon. For some, the idea of war crimes has been inherent in the Geneva Conventions, first drafted in 1864 and revised after most major conflicts since. However, the Geneva Convention is designed to ensure the ethical and humane treatment of soldiers, prisoners of war, and, to a certain extent, civilians, especially as it pertains to access to health and medical services. The first formal and international definitions of war crimes were the result of the military tribunals in Nuremberg following World War II. Prior to that, any claim of war crime or its prosecution was handled internally, such as in the military tribunals held for members of the Young Turks Party who participated in the Armenian genocide during World War I. These trials used only existing Turkish penal codes rather than an international or external judiciary, in direct contrast to the Nuremberg Trials and other international court tribunals that would follow. The war crimes designations and international tribunals called for the hearing of war crimes are based in the United Nations Charter and upheld by the International Criminal Court in The Hague, when it was established in 2002 as a permanent hearing body for war crimes.

The most prevalent war crime that is applied to nations and military personnel without a formal declaration of war is an accusation of crimes against humanity. The phrase *crimes against* *humanity* predates the Nuremberg Trials; however, these trials are considered the first instance where individuals stood trial for this type of crime. In most cases, this means the widespread and wholesale murder of a civilian population or a segment of said population. Though in some cases this is also referred to as genocide, the international community has avoided the term in certain cases, attempting to distinguish between widespread and indiscriminate killing of civilians or political detractors versus the planned and systematic killing of a specific ethnic, social, or religious group.

Genocide

The best-known occurrences of crimes against humanity are genocides or "ethnic cleansings," especially the systematic marginalization via removal of rights and privileges from the target group in preparation for later acts of violence and execution. Variations of genocide have included wide-scale killings, enslavement, and death through labor and/or neglect, allowing disease and unhygienic conditions to expand unchecked, examples being the genocide of the Jews in Germany during World War II and the targeted extermination of other ethnic and religious groups, political opponents, and social undesirables of the Third Reich. The war crimes of Germany encompassed other crimes beyond crimes against humanity: the systematic liquidation of the finances and personal property of the targets of the genocide, forced labor, experimentation, enslavement, and profiteering within the same series of actions. Likewise, war crimes indictments of the Japanese in the International Tribunal for the Far East, the Khabarovsk War Crime Trials, and the Nanjing War Crimes Tribunal examined treatment and execution of prisoners of war (POWs) and civilians but also looting, the use and development of biological weapons, scientific and medical experimentation, and the forced prostitution of women.

The Nuremberg Trials and the extensive indictments against individuals for crimes against humanity have become the standard to which later trials of war criminals and the criminals themselves have been compared. Other examples include the attacks of the Khmer Rouge on Muslims, Chams, Buddhist monks, and ethnic Vietnamese in Cambodia in the 1970s; the genocide of the Kurds in Iraq in the late 1980s; the genocides in Bosnia against Muslims and Croats, first in Bosnia proper in the early 1990s and later in Srebrenica in 1995 in eastern Bosnia, an area previously declared as safe; the Rwandan genocide of the Tutsi in 1994; and the genocide against ethnic Albanians in Kosovo in the late 1990s. Beyond mass killings, the charge of crimes against humanity has also been applied to situations of widespread sexual assault, mutilation, and barbarism, as seen and prosecuted in war crimes trials for governmental and military officials in Sierra Leone.

Crimes against humanity do not have a statute of limitations; individuals accused of crimes committed during World War II and during the regime of the Khmer Rouge have gone to trial or been remanded for trial decades after the end of the war or conflict. Further, some individuals have stood trial in absentia for crimes against humanity and other war crimes. One primary concern about war crimes is that those charged with or accused of war crimes are typically members of the government, civilian population, or armed forces of the losing side of the conflict.

Military Misconduct

Although some nations have admitted misconduct by their military, international criminal courts or military tribunals are usually called only against the losing side, unless there is a vast international outcry, and even in those situations, the prevailing nation will opt to conduct any military tribunal within its own system rather than subject the accused to an international tribunal. This distinction maintains the perception that war crimes tribunals are a tool of the victors in conflict and that those who lose a war are guiltier of war crimes than the victors. This being said, any nation can accuse another of war crimes or any subset thereof. Not all war crimes trials of the past have been considered equal, nor have they been conducted with full disclosure. The Japanese argued in the war crimes tribunals set up for the Far East that they were being persecuted because of the actions of their German allies, whereas others through recent history, despite evidence, have argued that they have done nothing worse than the actions of their accusers and that the process of a war crimes trial is simply an act of vengeance or is criminal in its own right.

Remains of victims found in at a mass grave site near Mosul, Iraq, July 15, 2003, are investigated by the U.S. Army Criminal Investigation Command and Department of Defense forensic pathologists as evidence of possible war crimes. Hundreds of thousands or Iraqis are thought to be in mass graves resulting from major atrocities committed by Saddam Hussein's regime, including the attacks against Kurdish citizens during the period from 1983 to 1988, the 1991 massacre of Shia Muslims, and the 1991 Kurdish massacre.

Crimes Against the Peace

The one type of war crime that stands out in this judicial standard is crimes against the peace. This designation is used as an international attempt to prevent wars of conquest by presenting legal ramifications for aggressors in armed conflict. Although not interfering with a nation's right or ability to declare war, definitions of crimes against the peace highlight that since the formation of the United Nations (UN), nations at war should follow the UN mandate and/or regional processes for declaring war. These wars are not to be incited for national gain of land or resources but in defense of national interests and preservation. Crimes against the peace include charges of conspiracy to perpetrate acts of war or aggression, invasion of a country without due declaration of war, and nonadherence to treaties of nonaggression or peace. This segment of war crimes designation was enacted in order to prevent or discourage future wars of annexation after World War II.

On the other side of war crimes are those that result in financial gain, either through privateering, profiteering, looting, or outright theft and scams focused on the opportunities offered by war. Privateering is one of the oldest recognized war crimes, predating the war crimes tribunals and the establishment of an international definition of the term. Privateering is simply legalized piracy, where an individual owner or the crew of a private vessel is given the right to attack private, governmental, and/or military vessels flying the flag of an enemy nation during times of war. In order to be a privateer, an individual needed official government papers identifying the vessel and its crew as legitimate privateers so that, should they be captured, they would be subject to treatment as prisoners of war rather than punishment as pirates. The benefits of privateering varied, but the privateers were granted either all ships and cargo captured to liquidate as they pleased or a percentage of the proceeds after the government auctioned the vessel and cargo, essentially payment for the privateering mission. Privateering was outlawed in 1856, though it was already on the decline after the War of 1812. Many nations engaged in privateering as an expansion of their naval strength, such as in the case of the Americans during the Revolutionary War and the War of 1812, or as a way to increase financial gain for the country issuing the privateering letter of marque, such as the British in the failed Bermuda colony. The United States did not adhere to the international ban on privateering until the American Civil War, using it as a means to combat the use of privateers by the Confederacy as blockade runners.

War Profiteering

War profiteering, on the other hand, is still prevalent. The term refers to the practice of making money from war or conflict. Sometimes used as a derogatory term for actions of legitimate companies involved in the production of armaments, war profiteering from a war crimes perspective deals more with international arms dealers, war commodities dealers, black marketers, and mercenaries. To a certain extent, any individual or corporation that provides services as part of war can be said to be profiting from war. These profits can enter into the realm of war crimes when the individual or corporation uses slave labor, as in the case of many German corporations in World War II, including Audi, BMW, Daimler-Benz, Siemens, Leica Camera, and Volkswagen, or those whose activities assisted in the commission of crimes against humanity, such as subsidiaries of IBM that assisted in the statistical calculations and census compilation necessary to identify the Jews for arrest, deportation, and extermination during the Holocaust in Germany.

Arms dealers are usually not governmentally sanctioned and often seek out areas of high conflict so as to gain higher profits from the weapons provided, as each side attempts to build a better arsenal than the other. War commodities, any good or service needed for the maintenance of a military force, open many avenues for war profiteering or a subset of war crimes and violations, such as giving aid to the enemy or doing business with an enemy nation in time of war, especially if declarations of war have included trade embargos with that country. Further, this can also include the trading in natural resources to fund a conflict, such as the market in conflict diamonds from Sierra Leone, as combatants sought to fund their conflict through the valuable stones and the slave labor used in their acquisition. Black marketeers are individuals who sell legitimately acquired or stolen goods, typically in short supply during wartime, for a profit within a shadow economy; also used for luxury items or illicit items during peace, black market economies have thrived during most major world conflicts.

Mercenaries, or soldiers for hire, fight for profit only and have no connection other than financial to the country that hires them. Because of the position of a mercenary as outside a legitimate military force, the actions of mercenaries are subject to increased scrutiny and are against the law under the United Nations Mercenary Convention, which prohibits the recruitment, use, financing, or training of mercenaries. Other countries have specific antimercenary legislation, preventing their own citizens from hiring themselves out as mercenaries as well as the use of mercenaries by their military forces.

If an individual who has been brought before a tribunal is identified as a mercenary, he/she is given the status of unlawful combatant and immediately remanded for trial, stripped of the ability to repatriate to his or her home country, and subject to treatment as a common criminal. This renders any casualties associated with the mercenary effectively homicide. Mercenaries are often punished by imprisonment but, depending on the situation, can receive the death penalty. Mercenary status has raised concerns for civilian contractors, whose position can be rather tenuous in court proceedings if not properly documented.

Looting, or the theft of items of value from private individuals, banks, historic sites, churches, private and public collections, and museums, has been common in most armed conflicts since the origins of war. Looting can be perpetrated by individual soldiers, full companies of soldiers, or private individuals. To a certain extent, looting has grown out of the previously accepted idea of the "spoils of war." That is to say, the victors of an armed conflict considered it their right to take anything of value from the conquered territory. This is now seen as a violation of the laws of war. Looted artwork and other items of value are often difficult to trace and likewise difficult to return to their rightful owners, especially if the original owner is a casualty of the war or if records are damaged or destroyed over the course of the conflict. In some cases, the looted valuables are damaged or destroyed, as in the case of gold melted down to create bullion or bars for a national reserve.

War opens many opportunities for fraud. During World War II, Marcel Petoit used a fraudulent escape organization to systematically murder and rob individuals fleeing Nazi-occupied Paris. Others have opted to fraudulently identify themselves as beneficiaries of government or private benefits for veterans or victims of war. Likewise, companies seeking to profit from wartime measures, preparations, and the needs of a military force have submitted fraudulent bills and invoices, overcharging for goods and services.

The crimes associated with war, declared or undeclared, leave an indelible mark on the social, political, and cultural landscape of the nations involved. Governments and corporations, as well as individuals, both soldier and civilian, have opted throughout history to profit from the machinations of war. Although the international community has condemned these actions in law and in action, as long as there is war, there will be crimes against humanity and against peace, and that seek illegal gains from the misfortunes of conflict.

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See Also: Alien Tort Statute; Antiquities Theft; Boycott; Human Trafficking; Iraq War; Iran-Contra Affair; Terrorism; United Fruit Co.; World War I; World War II.

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War on Drugs

The term *war on drugs* refers to a series of initiatives that have been adopted to address illegal drug use and associated activities within the United States and among several countries of Central and South America and the Caribbean that have been classified as producers of or transit points for illegal drugs. The terminology has been used as a metaphor by the U.S. government to describe a serious commitment to address a specific problem, such as the war on poverty or war on terror. This activity is included within the parameters of white-collar or corporate crime because although the government was justified in its stance to address illegal drug use, the measures that were implemented, such as mandatory minimum sentencing and discriminatory sentencing, have been argued to unfairly marginalize poor and ethnic minorities, resulting in extraordinarily high proportions of offenders being incarcerated for nonviolent offenses.

The war on drugs was officially declared by President Richard Nixon in 1971 after identifying drug abuse as a "public enemy and a major threat to society." After this declaration, the president supported the creation of the Drug Enforcement Administration (DEA) by an executive order. The DEA was established as the lead agency with the sole responsibility to coordinate drug-related investigations and to provide technical support associated with drug trafficking through training and the sharing of operational techniques and enforcement methods.

Although President Nixon is credited with the war on drugs, his policies and strategic approach to the issue of illegal drug use was a continuation of the U.S. government's commitment to address illegal drug use as far back as the early 20th century. All subsequent presidents have openly endorsed the commitment to the war on drugs.

In the 1980s, President Ronald Reagan introduced mandatory minimum sentencing and seizure of drug-related assets. Also under his administration, the Comprehensive Crime Control Act, Anti-Drug Abuse Act, and Anti-Drug Abuse Amendment Act were passed. His tenure also saw increased penalties for federal marijuana offenses, increased funding for drug control activities, and improved coordination of federal drug controls. When drug use among schoolchildren became a national concern, First Lady Nancy Reagan proposed the "Just Say No" slogan. Presidents George H. W. Bush, Bill Clinton, and George W. Bush each acknowledged their commitment to the war on drugs.

The national commitment to the war on drugs was justified based on the tremendous negative personal as well as societal implications of illegal drug use and its operations. In the 1970s, it became evident that the use of illegal drugs was becoming more extensive based on the media and on public reports such as the Federal Government's Household Survey on Drug Abuse. The use of illegal drugs increases risk of addiction, overdose, and health complications that may result in premature death. Based on the nature of drug use, there is also the increasing risk of the transmission of infectious diseases such as human immunodeficiency virus (HIV) and Hepatitis B and C, all of which contribute to increasing morbidity and mortality. Illegal drug abuse also increases the risk of many negative social consequences, such as crime and violence, broken family relationships, and poor economic productivity. The use of illegal drugs is a crime, but it also contributes to accidents and risky behaviors, all of which contribute to increased involvement in the criminal justice system, resulting in overcrowding in prisons and increasing costs in all areas of the criminal justice system.

Although the initiatives of the war on drugs are interrelated, the following sections focus on international collaboration, legal and policy development, control measures for production and distribution of drugs, and strengthening of criminal justice systems to regulate dealers and offenders.

International Collaboration

The war on drugs involved collaboration between countries in Central and South American and the Caribbean. The goals of this collaboration included a commitment to international cooperation and the development of diplomatic initiatives and bilateral and multilateral agreements between the United States and other countries. International collaboration and cooperation also included institutional strengthening of judicial and law enforcement institutions by the provision of anticorruption training. The countries were also coerced into compliance by the threat of sanctions, including threat of reduction in foreign assistance, threat to local financial systems, curtailment of air transportation, and denial of entry of suspected individuals. The war on drugs resulted in considerable seizure of drugs and other assets that may be associated with the drug trade in countries such as Colombia, Panama, Nicaragua, Jamaica, and other transshipment ports. Another collaborative agreement associated with the war on drugs was the deportation to their native countries of persons who were convicted of drug offenses.

Legal and Policy Development

The war on drugs entailed development of legal and policy frameworks. One of the principal initiatives was the Drug Enforcement Administration, which was created for the purpose of coordinating and unifying war on drug operations. The DEA sought to identify persons involved in the illegal drug trade, provide support for criminal investigations, oversee compliance with international obligations, and address drug trafficking. The DEA played a pivotal role in the war on drugs, and it facilitated specialized training for large numbers of law enforcement officers and justified the provision of finances to fight the illegal drug trade. During the 1980s, the following laws were adopted in support of the war on drugs: the Comprehensive Crime Control Act, the Anti-Drug Abuse Act, and the Anti-Drug Abuse Amendment Act. Clear goals were outlined to establish policies, priorities, and objectives to eradicate illicit drug use, manufacturing, and trafficking; drug-related crime and violence; and drug-related health consequences in the United States.

Interception and Control

In order to reduce and control the supply of illegal drugs to the United States, interception strategies were employed. One of these was Operation Intercept, which attempted to curtail the transportation of cannabis across the Mexican border. Operation Intercept entailed extensive search of all traffic across the Mexican border. This strategy was also extended to numerous other locations and included search of individuals and cargo, whether by land, sea, or air.

In 1989, during the administration of President George H. W. Bush, Operation Just Cause, which involved the invasion of Panama, was also expedited. This operation attempted to address drug trafficking and money laundering, as Panama was viewed as a major transit point for drug trafficking to the United States and other parts of the world. The Mérida Initiative was another collaborative partnership between the United States and its southern neighbors that attempted to combat drug trafficking. The initiative allocated financial resources for military aircraft and drug interdiction equipment and also provided training and technical support.

More generalized approaches to interdiction and control are transportation checks on inbound conveyances such as buses, commercial aircraft, passenger and freight trains, and marine craft. Marine patrols along the coastal waterways of the United States and Puerto Rico as well as along interior waterways between the United States and Canada also provide opportunities for interdiction and control.

Zero tolerance is another policy initiative that was associated with the war on drugs. This policy was a strong deterrent and provided harsh penalties for persons who use drugs. Its application has resulted in drug-testing programs that allow employers, school administrations, and some criminal justice programs to enforce zero-tolerance policies. Another strategy that was adopted during the 1990s and is associated with the war on drugs was the stop-and-frisk policy. It was characterized by police officers stopping and searching innocent persons. This program resulted in the arrest of large numbers of people, particularly among ethnic minority groups and the poor.

Strategies were also adopted to destroy the cultivation of coca, opium, and marijuana and the production of other illegal drugs. One of the principal strategies was the aerial application of herbicides to fields for the destruction of the drug crops. Specially trained dogs were also used to sniff out drugs at ports of entry.

Strengthening the Criminal Justice System

The war on drugs provided financial and other resources to improve and strengthen the criminal justice system through technical support, financial resources, and the provision of training programs. With the introduction of crack cocaine in 1986, the Anti-Drug Abuse Act established drastically different mandatory minimum sentencing for the use of different types of cocaine. The practice of imposing longer prison sentences on repeat offenders was drastically expanded by the introduction of "three strike laws." The war on drugs also resulted in the suspension of driver's licenses and revocation of government permits for persons convicted of drug crimes.

Evaluation of the War on Drugs

President Bush reported on the successes of the war on drugs initiatives. As a result, increased funding was made available for greater financial assistance to drug-free communities and to strengthen youth programs. Another benefit of the war on drugs was the provision and promotion of rehabilitation and drug courts as an alternative to long prison sentences. The national drug advisor, Gil Kerlikowske, reported that the Say No to Drugs campaign as introduced by Nancy Reagan was one of the successful initiatives of the war on drugs. The war on drugs has also benefited several of the smaller drug-producing countries of the Caribbean and Central and South America not only by providing resources and training but also by providing diplomatic and strategic support against the wealthy and powerful drug dealers.

The war on drugs initiatives also attracted some harsh criticism, particularly based on increasing costs. Although no precise figure is available, it was reported that over $22 billion was spent up to 2009. In 2010, it was estimated that the federal government spent approximately $500 per second. Additionally, the nature of drug dependency and addiction cannot always be accurately evaluated based on money that was expended. It has also been argued that the war on drugs threatens religious freedom of different ethnic and religious groups under the Fifth and Fourteenth Amendments. This is based on the fact that some religious groups require the use of certain illegal drugs for their spiritual or religious activities. Another criticism is that the seizure and confiscation of assets associated with illegal drug activity assumes guilt and therefore is a violation of due process. Another criticism is that aerial spraying of drugs also destroys legitimate crops and has subjected small farmers to economic loss and undue hardship. A major criticism has been that the war on drugs has tremendously increased arrest rates and incarceration based on mandatory minimum sentencing and disproportionate sentencing for the poor and for members of ethnic minority groups. Attempts have been made to address this issue; however, the disparity is still quite evident.

President Barack Obama acknowledged support and commitment for the war on drugs by calling for a reduction of the crack/cocaine sentencing disparity, ending the ban on syringe access programs through federal funding, and prioritized drug treatment alternative courts. His administration also lifted the ban on financial aid for students who have been convicted of drug crimes. He subsequently signed the Fair Sentencing Act, which reduced the sentencing disparity that affected minorities and the poor. Gil Kerlikowske reported that the criticism that the war on drugs has failed was not accurate because the savings from health care and productivity far outweighs the expenditure of tax funds. Although President Obama has confirmed commitment to the war on drugs, his advisor has called for an end to the use of the terminology. He suggests a rebranding of antidrug efforts and placing more emphasis on treatment.

Conclusion

Through the war on drugs, the U.S. government has aggressively addressed illegal drug use and drug trafficking operations in the Caribbean and the Americas over the past 50 years. A diverse range of initiatives were used, including policy development, military assistance, asset seizure, training, searches and interdiction, destruction of drug farming, international and bilateral collaboration, and changes in the criminal justice regulations. Although the war on drugs has been considered costly, it has provided valuable assistance through training and support to many poorer drug-producing nations, and the precise benefits to people cannot be easily quantified. President Bush as well as the current national drug advisor to President Obama have reported that although there have been challenges, there have also been successes from economic, health, and productivity standpoints. The suggestion by the Obama administration to rebrand antidrug efforts by discontinuing the use of the term *war on drugs* will place greater emphasis on treatment.

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See Also: Bush, George W.; Civil Forfeiture; Financial Crimes Enforcement Network, U.S.; Money Laundering; Nixon, Richard M.; Obama, Barack; Organized Crime; Police Corruption; Racial Discrimination; Reagan, Ronald; State Crime Theory; Terrorism; War on Terror.

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War on Terror

The term *war on terror* refers to a series of counterterrorism measures authorized and enacted by the U.S. government following the terrorist attacks of September 11, 2001. Occasionally also capitalized as War on Terror and sometimes referred to as the War on Terrorism and the Global War on Terror, the expression is sometimes used and understood more generally to refer to a relatively broad range of counterterrorism measures and has sometimes also been adopted, in various meanings, by non-U.S. governments and agencies. In its origins, however, the term is distinctly tied to certain counterterrorism policies that began during the presidency of George W. Bush and that have been continued, albeit it in occasionally altered form, following the election of Barack Obama as the 44th president of the United States. The war on terror is only one, albeit an extremely important, component in the broader reality of counterterrorism.

9/11 and the Primacy of the Military

As a program initiated by U.S. authorities in the wake of the events of 9/11, the war on terror originated in the special address that then president George W. Bush delivered before a joint session of the U.S. Congress on September 20, 2001. In his speech, Bush introduced military terminology by referring to the perpetrators of 9/11 as enemies who would have to be brought to justice because they had committed, in Bush's words, an "act of war against our country." The adequate response, Bush argued, would have to be a "war on terror" against al Qaeda, its leader Osama bin Laden, its allies, and the countries and governments that offer aid to these groups. This war would have to be extended globally wherever terrorist groups were hiding and would also involve a lengthy campaign rather than a confined series of attacks with a distinct moment of victory. In that respect, the use of the term *terror* rather than terrorism is not coincidental, inasmuch as terror denotes a general condition requiring constant vigilance, whereas terrorism implies a more identifiable activity that can be terminated at a specific point in time.

As introduced by President Bush and subsequently enacted by the various branches of his administration, the war on terror was not a metaphorical expression but instead involved various strategies of a military nature and, additionally, implied the notion that other counterterrorism measures would be directed by, and thus secondarily placed to, military operations under U.S. command. Attributing the attacks of 9/11 to al Qaeda was readily accomplished because of the group's prior involvement in the World Trade Center bombing of 1993, the U.S. embassy bombings in Kenya and Tanzania in 1998, and the attack against the Navy's ship USS *Cole* in 2000.

Specifying counterterrorism actions against al Qaeda in terms of actual warfare was primarily enabled by connecting the terrorist organization to certain nations and governments that were seen to harbor affiliated groups and individuals. The first military action in the war on terror was the U.S.-led invasion of Afghanistan that began

A boat with a mock "dirty bomb" on board is detected by the New York City and Perth Amboy, New Jersey, police departments as part of a multiagency antiterrorism drill on April 7, 2011. In addition to military, legal, and policy measures, counterterrorism is also carried out by police and other law enforcement agencies. Modern police institutions are oriented toward fighting crime on the basis of the professional standards of police expertise. They can also cooperate internationally, which is an important advantage.

on October 7, 2001. As the central part of Operation Enduring Freedom (which also involves other regions, such as the Philippines and the Horn of Africa), the invasion of Afghanistan was justified by the fact that al Qaeda had been using the country as a base and training ground. The invasion was also a continuation of military operations authorized during the presidency of Bill Clinton, who had ordered Cruise missile strikes against terrorist targets in Afghanistan (and Sudan) shortly after the U.S. embassy bombings in Africa in 1998.

The U.S.-led invasion of Iraq on March 20, 2003, was less clearly connected to the war on terror but was nonetheless justified as an essential part of it. Again, the Bush administration to some extent mimicked prior actions of President Clinton, who had authorized military strikes against Iraq's Ba'athist government in December 1998. Additionally, the inability to track down Osama bin Laden as the infamous leader of al Qaeda in the months after 9/11 led to a shift of attention toward the then president of Iraq, Saddam Hussein, whose brutal regime demonstrated an evil similar to that of bin Laden. Additionally, members of the Bush administration and other Western leaders had made allegations of operational ties between al Qaeda and the Ba'athist regime. Such ties were never demonstrated and eventually also denied, even by President Bush.

Concrete execution of the war on terror was greatly enabled by the congressional passage, a mere week after the events of 9/11, of the Authorization for Use of Military Force, which allowed the president of the United States to use all necessary and appropriate force against nations, organizations, and individuals involved in the attacks of September 11 or any nation or group harboring the same. This authorization not only enabled the planning and implementation of a whole series of military and emergency measures but also to sometimes do so without judicial approval or congressional oversight. The specific programs of the U.S. war on terror included the detention of terrorist suspects in Guantanamo Bay, Cuba, the suspension of the Geneva Convention for captured terrorists; the use of so-called enhanced interrogation techniques; and the use of military tribunals without the protection of due process guarantees granted in civilian courts.

Within the territory of the United States, the war on terror involved various efforts as well, including legally approved surveillance measures as well as secret domestic spying operations in the form of the so-called Terrorist Surveillance Program. Conducted by the National Security Agency, this program involved the interception, without formal court approval, of communications involving an overseas party and a domestic party whereby one of the two parties was suspected of being associated with al Qaeda or related terrorist groups. The program had been secretly ordered by President Bush, who, once the program was revealed in 2005, justified it as critical to national security and legal under the provisions of the congressionally approved Authorization for Use of Military Force. Critics argued that the surveillance program violated the Fourth Amendment protection against illegal search and seizure.

Counterterrorism: Policy, Law, and Police

The war on terror is only one dimension of counterterrorism, which entails a very broad range of legal, policy, and security measures and strategies. Historically, counterterrorism measures have relied primarily on international agreements between governments to develop appropriate laws and policies. Dating back to the League of Nations and its successor, the United Nations, such international accords have traditionally suffered from a lack of enforceability.

Within nations, legal measures and related policies against terrorism have developed as well, typically in the form of measures oriented at terrorist-related behavior, such as bombings, and gradually entailing more comprehensive antiterrorism laws. Prototypical for the latter case in the United States, for example, are the Antiterrorism and Effective Death Penalty Act of 1996 and the USA PATRIOT Act of 2001. Related policies have primarily involved attempts by national governments to coordinate and centralize the multiple activities of counterterrorism agencies. Following the events of 9/11, the U.S. government again took the lead in this respect by establishing the Department of Homeland Security, with the primary mission of coordinating and strengthening various counterterrorism strategies and related security measures, such as customs and immigration control.

Besides military, legal, and policy measures, counterterrorism is also carried out by police and other law enforcement agencies. Importantly, the police approach to the problem of terrorism follows a logic quite distinct from that of the military and related programs in the war on terror. Most critically, police institutions in modern democratic states are oriented toward fighting crime on the basis of the professional standards of police expertise. To the extent that such efficiency standards are shared among police agencies of different nations, they can also cooperate internationally, an important advantage given the oftentimes international nature of contemporary terrorism.

As a result of the emphasis on efficiency in dealing with terrorism, police institutions have developed special capabilities to target the financial assets of terrorist organizations and various white-collar crimes associated with terrorism, most notably money laundering. For example, the Federal Bureau of Investigation oversees a specialized Terrorism Financing Operations Section to undercut the monetary support of terrorist groups. Similarly, at the international level, the international police organization Interpol also oversees a specialized monetary crimes office, the Financial and High-Tech Crimes Sub-Directorate, and has since 9/11 paid particular attention to money-laundering crimes and the financing of terrorism.

In confrontation with the war on terror, police officials have argued that they fulfill a valuable counterterrorism role that has certain advantages over the military approach. Police agencies are argued to be better placed to collect information from local communities and can more readily share information among agencies around the world. Irrespective of the relative advantages and disadvantages of military and police in counterterrorism, several differences can be observed between the war on terror and the police model of counterterrorism. Whereas police institutions conceive of terrorists as criminal suspects who have to be brought to trial, military forces target terrorist groups and individuals as enemies. Whereas enemies of war can be killed without trial for the duration of war, suspects need to be found guilty in a court of law before they can be punished. Because of the differences between the military and police models of counterterrorism, police officials generally avoid the expression *war on terror*. Interestingly, military officials have at times also voiced concerns over the rhetoric because it places military forces in charge of security tasks they are not always trained or equipped to take on as well as they can deal with traditional military objectives. The killing of Osama bin Laden by Navy SEAL forces in May 2011 could therefore be hailed as a great military success because of its exceptional and unique merits.

When Barack Obama took office as president of the United States in January 2009, there were some indications that the Obama presidency would turn more toward law enforcement rather than the military in its counterterrorism policies. The Obama administration was even reported to seek to abandon the term *war on terror* in favor of its own expression, overseas contingency operations. Over the years, President Obama has continued to use the original military-laden term in public speeches. The Obama presidency also reneged on its plan to bring terrorist suspects to trial in civilian courts, specifically in the case against 9/11 mastermind Khalid Sheikh Mohammed and four co-conspirators who Attorney General Eric Holder in 2010 announced would be tried in a U.S. District Court in New York but who were a year later returned to a military court in Guantanamo Bay. Most infamously, President Obama did not fulfill his campaign promise to end the detention of terrorist suspects at Guantanamo Bay.

Moreover, while withdrawing U.S. troops from Iraq, the Obama administration stepped up U.S. military involvement in Afghanistan, a military operation U.S. forces have been engaged in for a longer period of time than any other war. During the Obama presidency, further, U.S. forces have engaged more intensely in drone attacks against members of al Qaeda, a practice justified on the basis of the Authorization for Use of Military Force passed under Bush. Domestically, moreover, the Obama administration has continued many of the counterterrorism policies initiated during the Bush presidency, including several reauthorizations of the USA PATRIOT Act.

There is no indication that the Obama administration can or would be inclined to abandon the war on terror in favor of a counterterrorism approach based on police activities and other counterterrorism measures such as diplomacy, law, and cultural and economic cooperation. Many governments and organizations around the world, likewise, continue to apply the expression *war on terror* in variable meanings to suit their specific counterterrorism objectives. At the same time, the past decade has witnessed a proliferation of multiple counterterrorism measures of a nonmilitary nature, involving policy, law, police, and other security organizations. For better or for worse, it is to be expected that these multiple components of counterterrorism will continue to coexist in some relative measure of cooperation and tension.

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See Also: Academi; Bush, George W.; Charity Fraud; Computer Hacking; Globalization; Human Trafficking; Internet Fraud; Iraq War; Justice, U.S. Department of; Money Laundering; Obama, Barack; Offshore Entities; Political Assassinations; State Crime Theory; War Crimes.

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Waste Management Inc.

Waste Management Inc. (WM), the nation's largest waste transporter, is based in Houston, Texas. It is the largest waste disposal company in the world, with a revenue stream of over $10 billion annually. It markets itself as an environmental service company that is the largest handler of solid and chemical waste, an asbestos abatement company, a private wastewater treatment company, and the largest administrator of medical waste. With these services and its size, it has privatized waste collection throughout the United States. It owns and operates more than 100 landfills throughout the nation.

According to Peter Montague, Ph.D., executive director of the Environmental Research Foundation, "many, if not all, WM landfill sites seem likely to become Superfund sites in the future." The Environmental Protection Agency (EPA) often has to hire a contracting agency to remediate landfill and waste sites, at sizable costs to the taxpayer. One of the foremost selected contracting companies employed to remediate Superfund sites is Waste Management Inc. Nothing prevents the company that created the Superfund site from being awarded the contract to clean up the same site. In fact, the EPA has awarded several contracts to WM to remediate areas that WM itself contaminated.

Superfund is the name given to the environmental program established to address abandoned hazardous waste sites. It is also the name of the fund established by the Comprehensive Environmental Response, Compensation and Liability Act of 198, 42 U.S.C. 103 §§ 9601–75.

In 1986, a study of the waste hauling industry was conducted by the Council on Economic Priorities. Its report indicated that WM was the most egregious law violator among waste haulers in the United States. Its record of environmental violations was highest among disposal companies. Between 1970 and 1991, more than $36 million in fines were levied against the company, some of which directly reflected its creation of Superfund sites.

One of the more famous cases against WM relates to the Pottstown Landfill located in Pottstown, Pennsylvania. The landfill leaks radioactive gas and is filled with asbestos, medical waste, residual waste, radioactive slag, toxic and radioactive sewage sludge, incinerator ash, construction and demolition debris, and other hazardous chemicals that continue to break down and leach into gases and water that leak from the site. According to statistics from the Pennsylvania Cancer Registry Statistics in 2003, the rate of childhood cancers in Pottstown was 92.5 percent above the national average, and rates of leukemia were double the state average.

WM attempted to ameliorate environmental concerns by conducting internal investigations. Multiple violations were discovered by WM employees. One was the confession of a chemical service employee who revealed that between autumn 1986 and June 1987, he had disconnected the chemical incinerator's carbon monoxide monitor in order to feed waste faster than was legally allowed. The company claimed that its investigation concluded that no damage had been incurred from the violation. Unfortunately, the investigation occurred in 1988, a year after the carbon monoxide monitor was reconnected to the incinerator.

Savvy to public relations, the company attempted to offset its environmental record by donating to various environmental organizations, such as the Nature Conservancy, Natural Resource Defense Council, Wilderness Society, Audubon Society, and National Wildlife Federation. Despite the efforts to promote its environmental stewardship, WM's donations have not been effective at reducing negative publicity. In 1996, the nonprofit organization Corporate Accountability International inducted WM into its Corporate Hall of Shame for what it described as "manipulating public policy at the expense of the environment and people's health. It had a long history of garnering environmental fines, investigations for bribing public officials, and evidence of improper accounting practices." WM did not reverse its financial practices, as it was fined $457 million for securities violations in 2001.

According to Melissa Jarrell, WM engages in environmental crimes in the same way that other large corporations do:

> Corporations place the value of money over public health. Criminal pollution is an economic crime committed to escape costs of dealing with things properly . . . environmental

crime is the result of corporate and political decision-making that appears to benefit a few at a substantial cost to many.

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See Also: Arthur Andersen LLP; Asbestos; Clean Water Act; Corporate Dumping; Environmental Protection Agency, U.S.; Hazardous Waste; Pollution, Water; Revolving Door.

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Watergate

Early in the morning of June 17, 1972, five men were caught burglarizing the national headquarters of the Democratic Party in the Watergate Hotel. Connections to the White House and the Committee to Re-Elect the President (CREEP) immediately became apparent from the evidence. One of the burglars—James McCord—was on the payroll of CREEP. Two other burglars were found with address books that had White House personnel and White House phone numbers listed in them. The burglary itself was part of a larger web of corruption that threatened the basic principles of democracy and the United States.

The burglary was part of a larger plan within the Richard Nixon administration to place loyal Nixonites at the head of the government agencies that dealt with surveillance. Then, loyal Nixonites in agencies like the Central Intelligence Agency (CIA), and the Federal Bureau of Investigation (FBI), the Internal Revenue Service (IRS) would use the tools of government to damage political opponents, to ensure that Nixon's successor would be the next president. The Nixon administration referred to this plan as "the perpetual presidency." Watergate was more than a burglary, and became part of what is referred to as "big-time corruption" in white-collar crime studies.

When J. Edgar Hoover, then director of the FBI, would not go along with one of the plans of the perpetual presidency called the Huston Plan, the Nixon administration began to establish its own illegal espionage teams. The White House leadership did not stop at establishing political espionage teams; they began setting up other clandestine cabals as well. Select personnel from CREEP and the White House began to form a team to conduct political sabotage against Nixon's opponents and "enemies." This became known as the "dirty tricks campaign." To fund the espionage and sabotage cabals, select personnel from CREEP and the White House began to form a team to deal with money laundering.

Watergate Burglary

The organization of the Watergate burglary itself got its start with the Pentagon Papers. Daniel Ellsberg, an employee of the RAND Corporation, which provided research for the Pentagon, photocopied over 41,000 classified documents about the Vietnam War and turned the documents over to the *New York Times*. Nixon feared that if he could not stop the "leaks," then he would lose control of his presidency. To stop the leaks, the White House established a team called the Special Investigations Unit that was supposed to investigate classified information given to the press.

This Special Investigations Unit's action morphed into illegal covert activity. The unit that carried out illegal covert activity is known as the Plumbers. One of the Plumbers, G. Gordon Liddy, created a plan to engage in illegal espionage against political opponents. Liddy began to draw up plans to bug the Democratic National Headquarters in the Watergate Hotel.

Liddy was authorized $250,000 to finance the plan. When he went to get cash to pay his espionage team, the manager at CREEP took the cash out of the wrong pile of bills. One pile of bills had been "washed" through a bank in Mexico, an illegal action. Another stack of cash had not yet been laundered. By accident, the CREEP manager gave Liddy money from the wrong pile—the bills he handed Liddy could all be traced back to CREEP.

Because the original plan had been rejected, Liddy was behind schedule and had to move fast to assemble a team. He hired James McCord as an electronics expert for the Watergate job—he did not have enough time to find someone else. McCord was also on CREEP's payroll as a security consultant. Once inside the Watergate Hotel, McCord taped the door's deadbolt to keep the door unlocked so the other burglars could get in. A security guard noticed the door taped open and discovered the burglary in process.

An organizer of the burglary unit, E. Howard Hunt, believed the team committing the burglary should be "taken care of," like spies are when they are caught by a foreign government—their families should be taken care of financially to honor their service to their country. Hunt demanded payment for keeping quiet about White House and CREEP funding of the burglary. Nixon saw this as blackmail. The White House saw Hunt's demands as extortion.

"Hush money" was paid to Hunt and then dispersed to the burglars. Campaign funds kept at CREEP were used for hush money. Dorothy Hunt, the wife of E. Howard Hunt, was used as a conduit for funds. Tony Ulascewicz (an ex–New York City cop), William Bittman (E. Howard Hunt's attorney), and Fred LaRue served as conduits as well. Dorothy Hunt died in a plane crash in Chicago carrying hush money to the burglars.

On March 20, 1972, the burglars were found guilty. Initial sentences by Judge John Sirica were harsh. Sirica gave Barker, Sturgis, Gonzalez, and Martinez 40-year prison sentences. Hunt received a 35-year prison term. McCord feared prison and wrote a letter to Judge Sirica saying that "higher ups" in the White House were involved in the burglary, that the burglars were not the only conspirators, and that the burglary was not part of a CIA operation.

The U.S. Senate Committee began hearings on Watergate. John Dean, legal counsel to the office of the president, testified that Nixon had approved the hush money and other attempts to cover up the conspiracy.

The committee then asked another witness—James Butterfield—if he was aware of any listening devices in the White House. Butterfield answered that he was. The committee then subpoenaed the tapes. Nixon originally refused to turn the tapes over, but the U.S. Supreme Court ruled that he must.

When the committee listened to the tapes, they heard a conversation on June 23, 1972, between President Nixon and Chief of Staff H. R. Haldeman in which Nixon and Haldeman conspired to order the CIA to tell the FBI to stop investigating the Watergate case because it would jeopardize CIA covert operations. The taped conversation between Nixon and Haldeman was the so-called smoking gun of Watergate—the president and his chief of staff were caught on tape plotting to use government agencies to halt a criminal investigation.

There was also an 18 and one-half minute gap on the tape of a meeting between Haldeman and Nixon held on June 23, 1972. The president claimed that what occurred was that his secretary was transcribing the conversation when the phone rang. As she turned to answer the phone, her foot accidentally pushed the record pedal located on the floor, activating the recording mechanism and erasing the tape. The president claimed that this action by his secretary caused the 18 and one-half minute gap on the tape. Almost no one believes the president's account.

As impeachment proceedings progressed, Republican leaders in the Senate told Nixon there were enough votes against him to remove him from office if he stood trial in the Senate. To preempt his impeachment, Nixon resigned the presidency on August 9, 1974. President Gerald R. Ford pardoned Nixon on September 8, 1974.

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See Also: ABSCAM; Anderson, Jack; Bribery; Campaign Finance; Carter, Jimmy; Economic Espionage; Ethics Reform Act; Ford, Gerald R.; Gulf Oil Corp.; Legal Malpractice; Nixon, Richard M.; Public Corruption; State Crime Theory.

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Weisburd, David

David Weisburd (1954–) is a criminologist who became known initially as a scholar on white-collar crime. Early perceptions of white-collar crime reflected a novel theory that crime was not a matter reserved for the lower classes but also was undertaken by those in the highest socioeconomic classes.

Preliminary discussions relating to white-collar crime reflected how offenses had been committed by the elite. Weisburd, along with Elin Waring, proposed the notion that white-collar crime could result from the actions undertaken by individuals in the middle class through the course of their occupation. In particular, Weisburd focused on mid-level bankers, accountants, and administrators. Weisburd and his colleagues understood well before the largest and well-publicized failures of bank executives and investment managers that crime was committed not just at the highest level but also required the facilitation, participation, and complicity of management down to the lowest-level supervisors.

Starting in the mid-18th century and through the mid-20th century, criminological studies and theories focused primarily on the lower classes, as crime was perceived as a biological, psychological, or environmentally induced characteristic. Many policy makers and broader sociological theorists believed that those in positions of authority and privilege engaged in criminal activity in rare and isolated instances. Those seldom-reported incarcerations or prosecutions of white-collar offenders reflected the notion that there were some individual deviants, but overwhelmingly, those who engaged in chronic and problematic illegal behavior existed in impoverished neighborhoods. Crime was considered a problem of the poor. Contemporary emphasis on policing, juvenile delinquency, gang activity, drug use and distribution, prostitution and vice, homicide, and theft continue to garner the attention of the public, policy makers, and academic theorists.

Fraud and environmental crimes have long been considered irrelevant or inconsequential. Most government and law enforcement resources have been directed toward the prosecution and punishment of the aforementioned crimes rather than toward white-collar offenses. Weisburd and his colleagues Kip Shlegel, Stanton Wheeler, Francis Cullen, Sally S. Simpson, and Michael L. Benson, among others, published articles detailing how white-collar offenders produce grave consequences for society, including the collapse of the savings and loan industry and the explosion of the space shuttle *Challenger*. These events, which transpired in the 1980s, garnered short-term media attention but not the notice of academicians who had made their careers studying crimes that generated fear and trepidation in the public's imagination, namely, those that occurred on public streets, endangered private property, or required weapons.

Weisburd, in his coauthored text *White-Collar Crime and Criminal Careers*, outlined how many white-collar offenders had established criminal histories and patterns of behavior that were similar to those of common criminals. In another published work, *Combating Corporate Crime*, Weisburd, along with Michael Benson, Francis Cullen, and Kip Schlegel, outlined the legal and procedural restrictions as well as limited punishments applied to white-collar offenders as reasons for the nominal amount of criminal prosecutions.

In Weisburd's third published text, titled *White-Collar Crime and Criminal Careers*, he uncovered that white-collar offenders are not different in their characteristics from street-crime offenders. The common notion that there is a distinction between criminal and noncriminal was disproved by the findings presented in this text. Weisburd and his coauthor, Elin Waring, revealed the importance of understanding the circumstances that can lead any person to violate the law.

Weisburd's contribution to the understanding of white-collar crime is the persistent generation of dialogue on what it means to be a white-collar offender. Weisburd wrote with Schlegel that much of what we understand about crime comes from the victim, and in the case of white-collar crime, victimization is diffuse: "injuries often occur much later than the actual act. . . . the crimes are often not singular or isolated acts, but part of a sequential chain of events." Furthering the argument, Weisburd claimed that the offender's position of authority creates disparity, as the victim can be persuaded that no crime transpired or that some other intervening action contributed to the event. Weisburd consolidated and contributed significantly to white-collar crime studies.

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See Also: Benson, Michael; Cullen, Francis T.; Simpson, Sally; Wheeler, Stanton.

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Wells Fargo Mortgage

Wells Fargo Bank began on March 18, 1852, when Henry Wells and William Fargo incorporated the Wells, Fargo & Company (joint stock). They began business on May 20, 1852, offering both banking and express delivery services to pioneers in the California gold rush. Previously, in 1850, both Wells and Fargo had been organizers of the American Express Company in New York and would continue to be its president and vice president.

In its early western days, Wells Fargo's express business grew into a legend. Its stagecoaches and cargo wagons were to be incorporated into the westerns that Hollywood has since produced in abundance. It even had its own detectives, like James B. Hume, to fight crime against its business. Today, Wells Fargo's logo is a stagecoach.

Wells, Fargo & Company continued its growth in the banking and express business until 1905, when it separated from its express business. That same year, Wells Fargo merged with Nevada National Bank to become the Wells Fargo Nevada National Bank. It survived the Panic of 1907 and in 1920 merged with the Union Trust Company to become the Wells Fargo Bank & Union Trust Company. Prudent financial management positioned it to survive the Great Depression. In 1960, it merged with the American Trust Company to become Wells Fargo Bank & American Trust Company. In 1962, the name was shortened to Wells Fargo Bank. It became a federally chartered bank in 1968. It grew significantly in the 1970s through credit card activity and passbook savings accounts.

The bank experienced a downturn in the 1980s. It also was hit by a major white-collar crime when it was learned in 1981 that Lloyd Benjamin Lewis, an operations officer, had embezzled $21.3 million. Lewis worked at the Beverly Drive Branch (one of four Beverly Hills branches) and had padded the accounts of cronies, receiving $300,000 in return. Other cases of white-collar crime have also hit Wells Fargo. From the 1980s until the mid-2000s, Wells Fargo continued to grow from deposits, profits, and acquisitions. With the economic troubles that accompanied the subprime crisis of 2008, it acquired Wachovia to become a superbank with assets of over $1 trillion.

Acquisition of the subprime mortgages of Wachovia and its own participation in subprime lending have tarnished Wells Fargo's reputation. Among the charges leading to court cases was the claim that Wells Fargo had knowingly made loans based upon inflated real estate evaluations. The home loans were subsequently foreclosed when the values of homes were less than the amounts of the loans. In the case of Wachovia, it had acquired a number of deficient subprime loans when it acquired World Savings Inc. When Wells Fargo acquired Wachovia in 2009, its home mortgage unit was handed massive debt. The foreclosure methods of all banks arising from the subprime crisis were called into question as all 50 state attorneys general began inquiries into complaints of abusive practices.

The foreclosure practices of Wells Fargo were accused of being inadequate in giving notice or proper warning about the effects of "pick-a-payment" adjustable-rate mortgages. Borrowers were given a low monthly payment mortgage that did not even cover interest payments in order to get buyer(s) into the home and to sell the home for the builder or previous owner. When the mortgage rate was later adjusted, it was more than the mortgagee could pay, which led to foreclosures. Often, the mortgagees had been told deceptive stories and then encouraged to sign the agreement without understanding its financial implications. In some states, the business model was held to be designed to be a fraud.

The actions of the attorneys general did not, however, stop the foreclosures. Political promises of loan modifications to be instituted by Wells Fargo and other banks under new, stricter loan guidelines (to replace the extremely lax rules that led to the subprime crisis) in many cases did not help. Clearly identified as a greater credit risk than previously revealed, some consumers were either foreclosed on or ended up with higher mortgage payments, which sparked claims of fraud.

Eventually, Wells Fargo paid $24 million to eight states, and it also made more than $772 million in mortgage adjustments in order to resolve allegations of fraud in the adjustable-rate mortgages practices of companies it had acquired. In the agreement, it admitted no wrongdoing and denied ever engaging in fraud. However, complaints continued because foreclosures continued even if a mortgage was in loan modification because payments were not being made.

In 2012, Wells Fargo paid $175 million to the U.S. Department of Justice in order to end charges that it had discriminated against African American and Hispanic borrowers seeking home loans. The loans had been made through mortgage brokers. The claim of the government was that Wells Fargo, through its brokers, had made loans with interest rates, fees, and costs that were based only on race rather than matching the creditworthiness of the borrowers.

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See Also: Foreclosure Fraud; Justice, U.S. Department of; Mortgage Fraud; Mortgage Modification Fraud; Subprime Loans.

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Wheeler, Stanton

Stanton Wheeler was born in California on September 27, 1930, and died in Connecticut on December 7, 2007. Upon graduating from Pomona College in 1952, he received a master's and a doctoral degree in sociology from the University of Washington in 1956 and 1958, respectively. He thereupon held academic positions at Harvard University, the University of Washington, the University of Oslo, the Russell Sage Foundation, and Yale University, where he became professor of law and sociology in 1968.

Following a two-year term as president of the Amateur Athletic Foundation of Los Angeles (1985–87), he returned to Yale as the Ford Foundation Professor of Law and the Social Sciences until his retirement in 2002. A fan of music and sports throughout his life, Wheeler was an avid golfer and an accomplished trumpet player in several jazz bands.

Wheeler's scholarship was essentially geared toward the integration of social science and law. In that respect, he fulfilled an important role in the establishment of the sociology of law. As part of his professional activities, he also mentored many scholars and held a multitude of academic service positions in the field of law and society. The substantive interests of his research included delinquency, prisons, sports and law, music and law, and white-collar crime.

The Yale White-Collar Crime Project

In the area of white-collar crime, Wheeler is best known for his leading role in the Yale White-Collar Crime Project, a large-scale research enterprise first funded in 1976 by the Law Enforcement Assistance Administration in the U.S. Department of Justice, an office that in 1979 was absorbed into the National Institute of Justice. Between the late 1970s and early 1990s, several dozen monographs, research articles, and doctoral dissertations were produced as a result of this research effort. The central goal of the Yale Project was to conduct research on the social control of white-collar crime on the basis of appropriate social-science methods. The white-collar offenses that were subject to analysis included securities fraud, antitrust offenses, bribery, bank embezzlement, mail and wire fraud, tax fraud, false claims and statements to the government, and credit fraud. The research at Yale yielded many insights into both the experiences of white-collar offenders and the conduct of the legal players in charge of their adjudication.

The publications derived from the Yale Project include two important monographs, which Wheeler coauthored. The 1988 book *Sitting in Judgment: The Sentencing of White-Collar Criminals* drew on the results of in-depth interviews to focus on the values of judges involved in sentencing white-collar criminals. Irrespective of formal rules, a judicial culture was found to exist that justified sentencing practices in terms of the societal harm caused by white-collar crime, the knowledge and intentions of the individual offenders, and the impact of the sentences judges impose on offenders. Disparities in sentencing outcomes were nonetheless discovered because of differences in specifying general principles in concrete cases.

The 1991 monograph *Crimes of the Middle Class: White-Collar Offenders in the Federal Courts* was an important study because it showed that, contrary to popular belief, many white-collar criminals are not drawn from the very rich, upper classes but instead tend to be members of the middle class who are not financially well off. Analysis of U.S. federal court data revealed that the relatively ordinary people who commit white-collar crimes enjoy access to certain resources that relate to their position in organizational settings. Thus, not economic but organizational standing serves as a weapon in white-collar crime. The study also found that white-collar criminals are generally punished less severely than are common criminals, even though the same formal legal rules of responsibility and guilt apply. White-collar criminals tend to receive fines or prison sentences of shorter duration than common-crime offenders.

The Yale White-Collar Crime Project and the efforts of Stan Wheeler therein remain influential until this day, both because of the insights revealed about the complexities of white-collar crime and because of the contribution offered to the development of the sociology of law and, especially, the effort to bridge social science, law, and social policy. Centered on the beliefs and practices of white-collar offenders and relevant judges, rather than being concerned merely with the formal rules of law, Wheeler's work has contributed critically to a truly sociological understanding of white-collar crime and its control.

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See Also: Sentencing Guidelines; Sutherland, Edwin H.; Weisburd, David.

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Whistleblowers

A whistleblower is an individual with knowledge of crime or fraud who reports this information to appropriate authorities in an effort to make the transgressions apparent. Whistleblowing is an important remedy to white-collar fraud, corporate crime, and governmental deceit or schemes. Consequently, a variety of laws have been enacted to protect whistleblowers from retaliation. However, history and actual cases have shown that whistleblowers do not always emerge as heroes. This article discusses the reasons for uneven upholding of whistleblower rights, along with issues related to whistleblower legislation. Several well-known whistleblower cases are discussed. Finally, resources to support further investigation of the phenomenon of whistleblowing are provided.

Whistleblowing—To Do or Not to Do

The origin of the word *whistleblower* is unclear; some sources point to English police blowing whistles to signal illegal acts, and others note the practice in sports of referees calling out infractions by blowing their whistles. Over the years, reliance on whistleblowers has highlighted circumstances of private, public, and government wrongdoing. Nevertheless, opinions about whistleblowing vary according to one's perspective; to an accused perpetrator, the whistleblower is seen as a snitch or tattletale, but to the unknowing public, a whistleblower can seem to be a hero.

The Association of Certified Fraud Examiners (ACFE) refers to whistleblowers as sentinels and since 2003 has presented an annual award to honor someone who has taken on the whistleblowing challenge. The award is named the Cliff Robertson Sentinel Award in honor of the actions taken by actor Cliff Robertson. In 1977, Robertson exposed forgeries on the part of Columbia Pictures president David Begelman. The award inscription reads "for choosing truth over self."

Whistleblowing can yield financial benefits, such as the possible reward that can be claimed by an individual who reports a tip to a crimestoppers program. Another example is the action of turning in individuals or organizations who have cheated on taxes; that action may yield an award. The Internal Revenue Service has an office devoted to whistleblowing and explains on its Web site that the service has enacted the most encompassing changes to informant awards in 140 years.

However, there can be many negative outcomes for those who choose to act as an informant. The price of taking a stand can be huge and may include retaliation, ostracism, loss of reputation, and being branded as disloyal or a troublemaker. Many whistleblowers are removed from their positions or demoted. One example is Marta Andreasen, who went public in 2002 about fraud in the European Commission budget and was terminated from her position. Another example is Bunny Greenhouse, who once was the top civilian in charge of contracting and procurement for the U.S. Army Corps of Engineers. When she expressed her concerns about no-bid contracts prior to the Iraq War being sole-sourced to a Halliburton subsidiary, she was quickly demoted. Both Andreasen and Greenhouse are recipients of the above-mentioned Cliff Robertson Sentinel Award from the ACFE. Although they have benefited to some extent from recognition by an international fraud-fighting organization, not every whistleblower receives a benefit to offset the costs of such a stance.

Many lawsuits filed in the last decade by whistleblowers were for termination or other uneven treatment. One study by Patricia Patrick (2010) indicated that only 22 percent of the 95 randomly sampled cases were won, and 85 percent of the cases involved issues of public health, safety, or interest. The moral of the story for an individual who seeks retribution by taking matters to court is that one must be very well informed and prepared before initiating such activity in order to be successful. Because of myriad laws related to whistleblowing, being adequately informed about the options to pursue is not an easy matter, and a potential whistleblower must consider the cost, time, and energy involved with taking an ethical stand.

Federal and State Legislation

There is extensive legislation that relates to whistleblowing, and uncovering the appropriate jurisdiction for the offense is a first concern. For example, all 50 states in the United States have some form of legislation to protect public employees from retaliation. Most states have laws to cover private-sector workers, although many of the private-sector laws are related to workplace safety. A problem ensuing from these realities at the state level is that individuals who wish to invoke the law must first become informed of the relevant law and appropriate action. Instances have occurred in which uninformed whistleblowers filed their cases but lost those cases because of a technicality in terms of the way they reported the wrongdoing or the time frame in which they reported it or their choice of specific law or venue where they filed. For example, some state laws preclude multiple venues.

Qui tam actions, translated from Latin as "who as well," date back to 13th-century Britain,when a private citizen filed on behalf of the government for misdeeds noted. Under qui tam, the citizen might be entitled to a remedy. Qui tam was still upheld in the United States under the False Claims Act, which dates back to the Civil War, but in 2010 qui tam was declared unconstitutional within some provisions of U.S. legislation but possibly still relevant in other U.S. laws. The U.S. Whistleblower Protection Act of 1989 protects those who work for the federal government only.

The Water Pollution Act in 1972, an initial protection in the private sector, was followed by other environmental acts. Contract law, labor laws, and workplace safety laws are all viable options. Even the First Amendment of the U.S. Constitution, citing free speech, may be successful, but the Supreme Court has up held certain precedents that may impact rulings in the various circumstances pertaining to specific cases.

With many corporate frauds surfacing at the turn of the millennium, the enacted Sarbanes-Oxley Act of 2002 (SOX) yielded whistleblower protection. Its Section 806 and Section 1107 impose criminal penalties for interference with investigations and retaliation against whistleblowers. Some individuals feel that SOX provisions have made it difficult for companies to deal internally and independently with internal claims.

Because of the SOX internal control and executive certification requirements, corporations installed anonymous reporting mechanisms for violations. One perspective is that the very act of publicizing the internal expectations of reporting whistleblowing within a company can itself serve to deter the need to go public with accusations. Yet drafting whistleblower guidelines can also present a variety of issues: for one, whistleblowers may use the guidelines to get even with superiors and present nonfactual information. Alternatively, whistleblowers may use the guidelines to target others because of their race, gender, or ethnicity. These are only two such examples.

The Dodd-Frank Act signed in 2010 is 850 pages of law enacted in response to the 2008 recession and regulates many financial sectors of the economy. This act includes whistleblower provisions, set forth in Section 922. The Securities and Exchange Commission (SEC) revealed final rules in May 2011 related to the whistleblower provisions; these are summarized by the American Institute of CPAs. An undermining of the act's provisions occurred in a case in April 2012 that involved an SEC lawyer who inadvertently allowed a whistleblower to be identified in an investigation of Pipeline Trading Systems LLC. The identification occurred when the lawyer showed the company executive notebooks prepared by the whistleblower, and the executive acknowledged that he recognized the whistleblower's handwriting. The whistleblower, Peter C. Earle, has since made himself public, but this event is still under discussion as to how much such an error will harm the credibility of this program.

Three Whistleblowing Cases

Sherron Watkins was a vice president at Enron and an internal whistleblower who sent anonymous memos to Chief Executive Officer Kenneth Lay and other Enron executives; eventually, she testified against her bosses. Cynthia Coopers was an internal auditor at WorldCom who persisted with her team in endeavors to research and uncover fraudulent journal entries that were unable to be explained; the extent of this fraud was billions of dollars. Coleen Rowley, a Federal Bureau of Investigation (FBI) special agent, wrote a critical memo to the FBI director pertaining to the bureau's failures to aggressively investigate Zacarias Moussaoui, a co-conspirator of September 11, following his arrest several weeks prior to September 11, 2001. These three whistleblowers were named Persons of the Year by *Time* magazine in 2002 and were featured together on the magazine cover.

A decade later, none of the three women were doing the same kind of work they did at the time they blew the whistle. The experience clearly changed their lives. Over the last decade, at least two major pieces of legislation indicate more expectations and incentives to blow the whistle, when necessary. Whistleblowing requires preparation, strength of conviction, and courage.

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See Also: Accounting Fraud; Contract Fraud; Defense Industry Fraud; Dodd-Frank Wall Street Reform and Consumer Protection Act; Employee Safety; Enron Inc.; False Claims Act; Government Contract Fraud; Government Procurement Fraud; Halliburton; Investigation Techniques; Iraq War; Kickbacks; Labor Crimes; Securities and Exchange Commission, U.S.; Sexual Harassment; Tailhook Scandal; WorldCom Inc.

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Whitewater Scandal

"Whitewater" was the moniker given to the wide-ranging investigations of President Bill Clinton that ultimately led to his impeachment by the U.S. House of Representatives and his trial in the U.S. Senate on charges unrelated to the original Whitewater. This name was derived from the place-name of the original controversy, which arose before his election to two terms as president. In 1978, Bill Clinton, his wife Hillary, and James and Susan McDougal borrowed money to purchase a large tract of land in Arkansas. They then formed the Whitewater Development Corporation for the purpose of developing the land as a real estate investment.

In 1982, James McDougal bought a savings and loan and named it Madison Guaranty. Within a few years, federal regulators were closely monitoring Madison Guaranty because of its speculative land deals, insider lending, and hefty commissions paid to the McDougals. McDougal hired the Rose Law Firm, where Hillary Clinton was a partner, to help the floundering institution. Despite that attempt at staying afloat and a $60 million bailout, Madison Guaranty was shut down by the federal government. In 1992, the Federal Resolution Trust Corporation named both Bill and Hillary Clinton as "potential beneficiaries" of alleged illegal activities at Madison Guaranty.

Interest in the fate of the Whitewater land development corporation and Clinton's possible involvement in its illegal activities was rampant during Clinton's 1992 presidential campaign. Less than a month after a Clinton campaign Whitewater team was assembled to address reporters' inquiries, the *New York Times* and the *Washington Post* ran lengthy articles chronicling the Whitewater matter and questioning the Clintons'

President Bill Clinton and First Lady Hillary Clinton at Andrews Air Force Base, Maryland, November 27, 1996. In 1978, the pair borrowed money, along with James and Susan McDougal, to form the ill-fated Whitewater Development Corporation.

investments as well as Hillary Clinton's legal representation of Madison Guaranty.

The Whitewater story continued to gain headlines when White House Deputy Counsel Vincent W. Foster, Jr., was found dead of a gunshot wound in a park just outside Washington, D.C. Foster had been a close friend of the Clintons and during the 1992 campaign had been charged with oversight of Whitewater issues. Though the death was ruled a suicide, Foster's possible involvement in Whitewater gave rise to myriad conspiracy theories and wild speculation about his death. As a result, he was the focus of much media attention, particularly in the *Wall Street Journal*. A suicide note was found in his office in the White House saying he was not cut out for the spotlight that was Washington, D.C., where "ruining people is considered sport." Dark theories circulated that the Clintons had Foster murdered because he might have to reveal Whitewater secrets.

In January 1994, barely a year after he took office, Clinton charged Attorney General Janet Reno with opening an investigation into the Whitewater matter. Reno appointed Robert B. Fiske to lead the investigation as special counsel. In August, Fiske was removed from his post because of accusations that he was not being aggressive enough in his investigations of the Clintons, especially because he found that Foster had, in fact, committed suicide and was not murdered, as some had alleged. He was quickly replaced by a U.S. Court of Appeals panel led by Kenneth Starr.

Starr reopened the investigation into the cause of Foster's death and issued new subpoenas for documents. At the same time, the Senate appointed the Special Whitewater Committee to look into all the Whitewater-related matters, and both the House and the Senate banking committees began extensive hearings on Whitewater and Madison Guaranty Savings and Loan Corp. Both Clinton administration officials and associates of the Clintons from Arkansas were subpoenaed to testify. Hearings in both the House and the Senate continued for more than a year, yet no illegalities were found. Additionally, Starr—like Fiske—concluded that Foster indeed had committed suicide.

Despite, or perhaps because of, the lack of findings, Starr expanded the Whitewater investigations into a wide-ranging investigation of the Clintons. Though none of these investigations of Whitewater and the business, political, and governmental practices of the Clintons and their aides uncovered proof of any wrongdoing by the president or his wife, Starr kept up the pursuit. He deviated from the original course of the investigation and used a sexual harassment charge brought against Clinton by Paula Corbin Jones as justification to have Federal Bureau of Investigation agents search for evidence of other infidelities by Clinton.

This eventually led to the discovery of Clinton's affair with Monica Lewinsky, a White House intern at the time of the alleged events. In fact, Starr received special permission from the U.S. Department of Justice to expand the Whitewater investigation to include the Lewinsky affair. Though Starr had recordings of Lewinsky describing the affair, Clinton said—under oath, in the Paula Jones harassment case—that he had not had sexual relations with Lewinsky. He later acknowledged that he had had intimate relations with her, but he insisted his testimony in the Jones case was technically accurate. Starr delivered a report to Congress on September 9, 1998, citing 11 possible impeachable offenses, though they dealt with Lewinsky rather than Whitewater. On December 19, the House of Representatives impeached Clinton on two articles: perjury and obstruction of justice. A few months later, on February 12, the Senate rejected both articles.

The active investigation of Whitewater ended in 2001, though it was not technically closed until May 2004. The Whitewater investigation cost more than $70 million.

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See Also: Clinton, William J.; Corruption; Justice, U.S. Department of; Legal Malpractice; Madison Guaranty Savings and Loan Association; Perjury; Public Corruption; Real Estate Investments; Revolving Door.

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Wilpon, Fred

Fred Wilpon has, on two occasions, been both the victim and the beneficiary of a large Ponzi scheme. A Ponzi scheme (named after Charles Ponzi) is an investment that consistently pays larger than normal dividends because it takes the money from some investors and uses that money to pay dividends to others—there are no real investments.

Wilpon was born in Brooklyn, New York, on November 22, 1936, and graduated from the University of Michigan with a bachelor of arts degree in 1958. In 1972, Wilpon teamed up with his brother-in-law Saul Katz to form an investment firm called Sterling Equities, a real estate development company. The firm was so successful that in 1986, Wilpon and Katz were able to purchase 50 percent of the New York Mets baseball team. Sterling Equities' success continued, and in 1997, Wilpon began placing Sterling Equities' revenue, as well as his personal funds, in a new brokerage firm run by Bernie Madoff. The investments with Madoff paid such a high return that Wilpon and Katz, in 2002, were able to purchase the remaining 50 percent ownership in the New York Mets for $135 million. By then, the vast majority of Sterling Equities' revenue, both Wilpon and Katz's personal funds, and much of the deferred salaries from the contracts of the Mets baseball players and management were under the control of Bernie Madoff's brokerage firm.

In 2002, in an attempt to diversify their investments, Wilpon and Katz partnered with Peter Stamos to create a hedge fund called Sterling Stamos. In the spring of 2003, the Sterling Stamos group invested $15.7 million into the Bayou Group hedge fund, founded by Samuel Israel III, and in the following year, they invested another $14 million, bringing their total investment in the Bayou Group to $29.7 million. In February 2005, after reviewing two investigative reports on the Bayou Group and meeting with Israel, its founder, Sterling Stamos became wary of the hedge fund but failed to report its concerns to the Securities and Exchange Commission (SEC).

On February 11, 2005, Sterling Stamos withdrew its entire investment with the Bayou Group, recouping $28.9 million, of which $367,000 was considered profit. By July 2005, the $450 million Bayou Group hedge fund had closed and declared bankruptcy. Investigations into the Bayou Group's bankruptcy revealed that Samuel Israel III (by his own admission) had been running a Ponzi scheme for the past eight years. Bayou Group's creditors then sued Sterling Stamos, stating that it knew or should have known about the Bayou Group's fraud when it withdrew its entire investment four months prior to the bankruptcy. In 2009, Sterling Stamos decided not to fight the charges in a jury trial and instead opted to pay $12.9 million to the court while not admitting any wrongdoing.

As Wilpon and the Sterling Stamos group were in the process of settling on the charges from the Bayou Group Ponzi scheme, Wilpon's Sterling Equities firm was caught up in another one. In December 2008, Bernie Madoff was arrested for running a $65 billion Ponzi scheme. It was originally reported that Wilpon had lost about $700 million in investments in the Madoff firm, but it was later discovered that Wilpon had made more than $300 million above his losses over the years with Madoff. This placed Wilpon in the unique position of being both a beneficiary and a victim of Madoff.

In December 2010, Irving Picard filed a lawsuit on behalf of the victims of the Madoff Ponzi scheme, and Wilpon and Katz were named both as plaintiffs (because of the millions that they earned from the scheme) and defendants (because of the losses they incurred). Picard, the victim trustee, originally sought $1 billion from Wilpon and Katz but later lowered it to $303 million. In March 2012, just prior to the beginning of the trial, Wilpon and Katz settled with Picard, agreeing to pay $162 million. However, the payments were to come from the money that Wilpon and Katz would receive as victims of the Madoff Ponzi scheme. Thus, Wilpon and Katz will pay no out-of-pocket money to settle the lawsuit.

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See Also: Hedge Fund Fraud; Madoff, Bernard L.; Picard, Irving; Ponzi Schemes.

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Wire Fraud

The federal wire fraud statute, enacted in 1952, is codified under 18 U.S.C. § 1343 and has two essential elements: (1) using, or trying to use, signal transmission that occurs in interstate or foreign commerce, and (2) transmission that is in furtherance of defrauding someone. The law has been utilized against virtually every new electronic method of fraud as well as less sophisticated schemes. Federal jurisdiction over wire fraud originates in the Constitution under Article 1, Section 8, and is based on Congress's right to make laws affecting interstate and foreign commerce. It is titled "Fraud by wire, radio, or television," and reads as follows:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or

> both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. §5122]), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

Many of the legal theories associated with the application of the mail fraud statute (18 U.S.C. §1341) are also applicable to wire fraud. One major difference between wire and mail fraud is that the federal government can criminalize any use or intended use of the mails, both interstate and intrastate, according to its right to regulate the post office, which it owns and operates. In contrast, the federal government does not own the wires over which fraud is conducted and therefore is not allowed to criminalize intrastate wire use. It is restricted by the commerce clause to criminalize only wire transmissions that affect interstate and foreign commerce.

Statute Revisions and Interpretations

Four years after its passage, Congress changed the statute to explicitly reflect the federal jurisdictional criterion and to eliminate any challenges to the law based on constitutionality. The change involved substituting "transmitted by means of wire, radio, or television communication in interstate or foreign commerce" for the original statutory wording of "transmitted by means of interstate wire, radio, or television communication." The next major revision of the statute occurred in 1989, when the clause related to effects on a financial institution was added and for which the maximum punishment was increased to 30 years (from 20 years) in 1990. The general penalty for wire fraud was raised from five to 20 years (Section 903 of the Sarbanes-Oxley Act) in 2002, and wire fraud for a disaster relief scheme was declared to be 30 years when such offenses were added in 2008.

The underlying legal crime of wire fraud is not that associated with the fraud but rather the crime in using wires or signals in interstate or foreign commerce, or trying to use them, as an instrument of crime. This allows extremely distinctive enforcement interpretations. First, the statute does not consider the harm inflicted by the fraud. Rather, it cares only about how many times signals were used, or were tried, through interstate or foreign wires to in any way further the fraud.

Second, the statute allows merely a "scheme" to be prosecuted, regardless whether the fraud actually took place. The interpretation is in this sense similar to a "conspiracy" to commit a crime, but a conspiracy necessitates at least two participants; there need be only one participant in the scheme to be prosecuted under wire fraud. Further, whereas conspiracy can be charged only once regardless of the number of separate overt acts committed as a result of the conspiracy, wire fraud law punishes each act of signal transmission as a separate count.

In 2003, the intent to violate §1343 only needed to involve a broadly interpreted "foreseeable" use of wires or radio/television signals, and the offender need not even have foreseen their use in interstate or foreign commerce. In one case, for instance, there was a fraud-related Western Union communication between two small cities in Texas, but the message happened to be routed, as were all such communications, through West Virginia. Even though the defendant did not "foresee" the use of wires in interstate or foreign commerce, he should have foreseen its possibility, which is enough to convict. This broad interpretation of "foreseeing" is especially idiosyncratic to both mail and wire fraud statutes, because most offenses require that the perpetrator has knowledge of the commission of the act and also intends its commission.

Wire fraud must go beyond obtaining something under false pretenses and include harm to victims. An illustrative case involved employees of an office-supply company who lied to potential customers when they sold stationery over the telephone by stating that they were physicians who needed to dispose of unwanted supplies, or that the goods to be sold belonged to a "friend" who had died. Because the goods were delivered as promised for the agreed price, no harm—and therefore no fraud—was found, despite the creative false pretenses under which the sales were made. Wire fraud, then, must involve the use of false pretenses that leads to an identifiable harm.

For many years, §1343 was interpreted as covering bribe-taking by officials and private citizens who used wires or signals in interstate commerce to effect the bribery scheme. The legal basis was that the bribe-takers were depriving others of their intangible right for honest services. This prosecutorial basis for wire fraud was overturned by the Supreme Court in 1987 because the fraud did not necessarily involve intent to deprive a person of property or property rights. In 1988, Congress responded by passing 18 U.S.C. §1346, which explicitly defined wire and mail fraud in terms of depriving a person of his/her intangible right to honest services. Great legal confusion followed the passage of 18 U.S.C. §1346 because the idea of an intangible right to be protected from "dishonest services" was vague.

In 2010, the U.S. Supreme Court finally put the §1346 controversies to an end in *Skilling v. United States* (554 F.3d 529, 2010) by allowing both mail and wire fraud charges in cases involving bribery and/or kickbacks by public employees and private persons. There remain legal questions associated with *Skilling*, especially about what constitutes a bribe or a kickback aside from the offender receiving things of obvious value. More generally, there will always exist some question about whether certain things defrauded constitute property.

Certain kinds of wire and signal misuse have prompted the need for additional statutes. In 1994, Congress passed 18 U.S.C. §2326, which added as many as five years to the punishment of federal wire and mail frauds associated with a telemarketing scheme, including the unauthorized use of identity, credit card, or bank information gained from telemarketing. If the telemarketing either victimized more than 10 persons over 55 years of age or generally targeted those seniors, then the penalty for these federal frauds could be increased by as many as 10 years.

Another statute related to wire fraud, 18 U.S.C. §1029, was passed in 1984 and concerns the use of any card, device, or code that is used in fraudulent credit card or bank account schemes, many of which involve wire or signals in interstate commerce. Using electronic scanners to intercept signals for fraudulent purposes and using equipment to receive unauthorized telecommunication services are also punishable under §1029. Penalties under §1029 are as high as 20 years for repeat offenders and in all cases involve forfeiture of any property used to commit the offense(s).

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See Also: Adelphia Communications Corp.; Computer Hacking; Corporate Criminal Liability; Credit Card Fraud; Daisy Chains; Direct-Mail Fraud; Dream Homes Scam; Enron Corp.; Internet Fraud; Keating Five; Mail Fraud; Marketing Fraud; Mortgage Modification Fraud; Nigerian 419 Scams; Operation Malicious Mortgage; Ponzi Schemes; Predatory Practices; Telemarketing Fraud.

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Workplace Deaths

Whereas the industrial age was defined by workplace deaths that were in most cases a consequence of the labor being performed or the conditions under which it was undertaken, the postindustrial age has been defined by workplace deaths in many cases occurring as a result of criminal violence—including at the hands of other workers. In spite of countless reforms, workplaces today remain dangerous places that now harbor a more unpredictable and insidious threat, one that has traversed the once perilous factories and foundries of the last century to include the traditionally safe and comfortable middle-class office.

On March 25, 1911, what experts suggest was the biggest game changer in terms of workplace safety rules in the United States began with an unauthorized smoke break resulting in a discreetly discarded cigarette butt. On that day, at

23-29 Washington Place in New York City—now a part of the New York University Campus—at least 146 mostly immigrant workers ranging in age from 14 to 48 were either burned, suffocated, or trampled to death in the now defunct Triangle Shirtwaist Factory as a result of one worker's carelessness and their employer's callousness.

The Triangle Shirtwaist Factory Tragedy

A sweatshop by all definitions, the Triangle Shirtwaist Factory was from the outset concerned with its financial bottom line ahead of workplace safety or dignity. The wastebasket where the smoldering remnant of a cigarette was determined to have been thrown had not been emptied in at least two months, and so had accumulated at least eight weeks worth of fabric and other flammable materials that quickly accelerated what began as a small trash fire into a towering inferno in less than 15 minutes.

The factory's workers had not dared to complain to the factory's owners—Max Blanck and Isaac Harris—about the volume of materials accumulating in the container over the preceding weeks, nor the fact that some staff were smuggling cigarettes into the building against company policy. In fact, by that time, the working conditions had already grown so draconian that the doors to the eighth, ninth, and 10th floors were routinely padlocked and chained shut to barricade workers inside, ostensibly to prevent internal theft. These loss-prevention measures ultimately turned the garment factory into a tomb for nearly a third of its workforce, with some leaping to their deaths while others were burned alive once the fire erupted and then gutted the purportedly fireproof Asch Building—now a designated landmark. More tragically, the fire alarm was sounded just before 5:00 P.M., not by a factory manager but by a passerby on the street. Blanck and Harris, both of whom were on site at the time, escaped out a roof hatch, leaving their employees behind. Both owners were later tried—and acquitted—of manslaughter. A subsequent civil suit resulted in their paying out about $400 per life lost.

Today, the Triangle Shirtwaist fire endures as the worst industrial accident nationally—and the single worst workplace mass casualty incident in New York City prior to 9/11. It also ushered in sweeping reforms in workplace safety and fire code regulations and inspired the expanded role of labor unions across diverse areas of manufacturing, specifically, the creation of the International Ladies' Garment Workers' Union.

In spite of public outrage in cases of workplace deaths, especially preventable deaths, the industrial period was nonetheless defined by certain attitudes about the inevitable perils of labor among the working classes in the name of progress. It was also defined by prevailing attitudes about the expendability of those same classes among the wealthy industrialists and entrepreneurs of the time, including the unscrupulous Blanck and Harris.

The countless workers who died building America's skyscrapers, railroads, ships, and bridges are today often eulogized as blue-collar martyrs whose sacrifices ensured that America could prosper and become the world's industrial giant. Certainly, there have always been occupations that are by design extraordinarily dangerous and that require working under routinely unpredictable conditions. Coal mining, for example, saw an average of nearly 3,400 deaths per year over the course of the 20th century. Today, however, it is people rather than the elements or faulty equipment that rank among a worker's greatest threats, regardless of the occupation.

Modern Incidents

Workplace shootings, as something of a modern epidemic, are a complex area of study that encompasses a number of disciplines but is seldom referred to in the historical context of workplace deaths. Although the police and the media as well as academics and labor activists tend to focus on the psychology of the shooters, the motive behind the shootings, or lax gun laws, a larger dialogue on the expanded dangers of the modern workplace has proven elusive. It was not until the dramatic surge in shootings at U.S. Postal Service offices in the 1980s and 1990s that concerns were raised about the issue of workplace deaths at the hands of colleagues.

By the mid-1990s, the term *going postal* had been widely and somewhat irreverently adopted as a popular turn of phrase to describe the propensity for workplace violence by mail workers, with anyone exhibiting aggression in the workplace thought to be emulating this "postal" condition. The term's origin was in reference to a series of well-publicized and seemingly disproportionate spree killings and mass murders by letter carriers in the workplace, beginning with the massacre of 14 employees of a post office in Edmond, Oklahoma, in August 1986; the trend briefly resurfaced in 2006.

Since 1997, the retail, hospitality, and government sectors have had a disproportionate number of fatal workplace shootings—typically, with two or more victims. Heavy manufacturing, construction, and outdoor occupations, such as farming and forestry, that were historically dangerous workplaces in terms of on-the-job deaths are now among the least represented areas. These figures reflect the fact that many of these shootings are the result of robbery-homicides targeting institutions open to the public—gas stations, convenience stores, bars, and restaurants—and are committed by strangers. That said, since 2005, nearly one-quarter of all workplace shootings have been committed by workplace associates such as current and former employees, clients, business partners, and subordinates, most of these being murder-suicides.

For a variety of reasons, in part because of the reforms implemented after the Triangle fire, occupational fatalities have been declining steadily across all sectors for nearly a century. Workplace shootings have been similarly declining steadily since 1993, though questions linger as to whether this latter trend reflects, and is proportionate to, overall drops in violent crime nationwide or whether employers have—like in the mass casualty disasters of the industrial era—responded appropriately by instituting revised safety policies. As background check services on employees have emerged as a cottage industry in the era of digital records management and social media, and as workplaces become increasingly fortified and governed by pedantic codes of conduct, one might ask whether these measures are concerned principally with protecting the employees or with protecting the interests and assets of the employer. A more critical analysis of these incidents may reveal that it is not only the people but also the nature of the work and the culture of the workplace that simultaneously play a role in both enabling and motivating these acts of violence.

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See Also: Brown Lung; Canadian Mining Scandals; Class-Action Lawsuits; Coal Mining; Employee Safety; Film Recovery Systems Inc.; Imperial Food Products Inc.; Industrial Revolution; Labor Crimes; Mine Safety and Health Act; Negligence; Occupational Carcinogens; Occupational Safety and Health Act; *Ocean Ranger* Disaster; Public Citizen Health Research Group; Upton, Sinclair; Unions; Unsafe Working Conditions; Whistleblowers.

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World War I

The war in Europe began in 1914, and the United States officially joined the war in 1917. From the beginning of the war, U.S. corporations profited from the European devastation. The United States was a very resource-rich and wealthy country at the time, although the world was primarily European centered. President Woodrow Wilson ran a reelection campaign on continued neutrality of the United States in order to maintain the U.S. world shipping trade.

The governments of France and Britain had set up naval blockades to block all ships from delivering supplies (even food) to Germany. This was a threat to American companies that were supplying both sides of the war; to get around this, the companies utilized international law that allowed neutral countries to trade with other neutral countries. Ports in neutral Sweden were used as staging areas to transport American goods across the European continent. America had joined the war in an economic capacity to capitalize on wartime-inflated profits.

Commissioner Joseph Hartigan of the Bureau of Weights and Measures during his summer 1914 investigation of food prices in New York City at the beginning of World War I. The investigation found no "war" rise in prices, although the New York Times *reported on September 19 that retail prices were expected to have been much higher if not for the "popular agitation against higher prices" and the opening of four free markets, which "frightened the retailers who would have used the war as a pretext to acquire greater profit."*

Corporate Capitalism

American businesses had to adapt to the changing economic climate created by the war in Europe. No longer were ideals and ethics in business centered on a capitalistic free-market trading system with limited to no government intervention. The war created a need for large enterprises with government-approved monopolies and subsidies. Industry had to change from mercantilism to industrialism, and this meant the consolidation of companies into larger industrial war manufacturing systems. J. P. Morgan and Company was a major financer of Allied contracts to these newfound large corporate entities. Businesses craved more contracts, and eastern companies encouraged and supported America's entry into the war. The U.S. government was a proponent of this "new order" mercantilism with its combined imperialistic and nationalistic form. The government had to propel this new ideological propaganda as a benefit to the overall society compared to the old standard, laissez-faire capitalism. Government interaction was a new form of liberalism, a middle ground between extreme leftist Marxist socialism and the Right's libertarian hands-off approach that had been the standard of the previous century. The new-order business model forged strong business ties with Britain and France, creating a larger American economic machine.

Corporate War Profits

The United States had three main reasons to enter the war: there were many people who still held strong ethnic ties to their ancestral lands, the German sinking of the *Lusitania*, and huge corporate monetary gains. Large corporations could foresee economic advantages of U.S. entry into the war. Large amounts of money entered the marketplace through the federal government's war spending, from $477 million in 1916 to $8,450 million in 1918 (12 percent of the gross national product [GNP]). Many corporations used the war for inflating prices and dramatically increasing profits. The federal government tried unsuccessfully to limit corporate profits by submitting a bill written by William McAdoo in 1915 that would have implemented a two-cent tax on the production of gunpowder, nitroglycerine, and dynamite.

By 1916, the government foresaw the need to streamline and organize the national defense industrial spending contracts. The Committee on Industrial Preparedness (CIP) that derived from the Industrial Preparedness Committee of the Naval Consulting Board (IPCNCB) was the first public-private organization consisting of industrial consultants to assist the government in procuring government war supply contracts. The CIP remained an independent entity of the federal government, with its operating budget derived from private contributions and the board members volunteering their time so that they could continue to remain in their private positions and receive their salaries. Chairman of the CIP was Howard E. Coffin, who was the vice president of the Hudson Motor Company of Detroit. Coffin was able to mobilize most of U.S. industry to be geared toward the war effort with the promise of lucrative contracts from the federal government.

The Great Industrial Complex

By the end of 1916, the CIP was transformed into the governmental Council of National Defense (CND), with its board consisting of private industrialists. The Advisory Commission of the CND established systems for food control, purchasing war materials, and censorship of the media. The CND had various industries combine to form committees based on similar manufactured products in order to conduct sales transactions with the federal government and to fix the prices of these goods. President Woodrow Wilson stated that the purpose of the CND was to organize "the whole industrial mechanism . . . in the most effective way." William McAdoo, who was secretary of the Treasury and the son-in-law of the president, was the influential driving force in establishing the CND. McAdoo was formerly a Wall Street promoter for the Hudson and Manhattan Railroad and was very well connected on Wall Street. McAdoo helped fill the CND board with representatives of many industrial powerhouse companies, such as the head of the advisory committee Walter S. Gifford, who was chief statistician of the American Telephone and Telegraph Co. Other industrial members included Wall Street financier Bernard M. Baruch; Julius Rosenwald, president of Sears and Roebuck Co.; Daniel Willard, president of the Baltimore and Ohio Railroad; Samuel Gompers, president of the American Federation of Labor (AF of L); and Howard E. Coffin.

Collectivism

The goal of a centralized mobilization of war supplies was not proceeding at a respectable pace for the war efforts because of federal bureaucracy, so the U.S. Chamber of Commerce suggested to the Congress that the CND director "should be given power and authority in the economic field analogous to that of the chief of state in the military field." By July 1917, the supplies, munitions, and raw materials departments were transformed into the War Industries Board (WIB), with Frank A. Scott, the president of the Warner & Swasey Company, as its chairman. The WIB was the central agency for wartime collectivism, with such functions as allocation of commodities, coordination of purchases, and fixing of prices. The WIB was overcome with problems and favoritism, and a new powerful autocratic chairman was recommended by Treasury Secretary McAdoo; Bernard Baruch was appointed in March 1918. With the appointment of Baruch, the WIB created an extensive apparatus that connected to the vast industrial war suppliers.

Heads of large U.S. industrial companies infiltrated the WIB, from the commodity divisions on up to the governing board. Vice chairman Alexander Legge was from the International Harvester Company; George N. Peek had been vice president of Deere & Co.; businessman Robert S. Brookings had been pivotal in instituting price fixing; Robert S. Lovett was chairman of the board of the Union Pacific Railroad; and J. Leonard Replogle was the former president of the American Vanadium Company. Because the WIB comprised prominent business leaders and was given unchecked powers by the federal government, there was no competitive bidding for federal contracts. The industry-influenced WIB doled out contracts to whichever companies it deemed worthy. Individualistic firms that did not comply with the WIB lost out on lucrative contracts with fixed pricing in their favor. The WIB even went so far as to crush those businesses that disliked its mandates. The Price-Fixing Committee of the War Industries Board's mission was to determine the maximum prices at which goods would be sold to the public and to the federal government. The committee set the prices of goods in each industry, not to offset wartime inflation (how it was sold to the public), but to set the price to guarantee a "fair profit" for businesses with high production costs. This gave larger, more efficient businesses a greater profit, while smaller, less streamlined companies suffered. WIB chairman Robert S. Brookings addressed the nickel industry with a statement of his position on price controls: "We are not in an attitude of envying you your profits; we are more in the attitude of justifying them if we can. That is the way we approach these things."

Corporate Cartels

The steel industry became one of the major corporate cartels to embrace price fixing; with cooperation between the steel industry and the government, the new policies for the steel industry were written, implemented, and policed by the industry itself. U.S. Steel, Bethlehem, and Republic, the big three steel producers, sought to capitalize on the high market rate of steel by fixing prices at a wartime inflationary high and maintaining them at this rate to stabilize the market and ensure continued enormous profits throughout and after the war. Profits achieved during this period were historically high and averaging about 25 percent per year.

Herbert Clark Hoover, the U.S. "food czar," controlled the Food Administration (FA) with unchecked power. Through the use of propaganda, Hoover was able to convince the American public that price fixing was in the consumers' best interest—although the goal was to cartelize the industry by controlling what companies paid for raw materials such as wheat and sugar, what products sold for, and even what sizes bread had to be. If a rogue competitor wanted to try to make more profits by entering the market with larger bread or discounted prices, the FA, through revocation of its license to sell and/or produce, soon walled it off. Many in the industry did not complain because the government guaranteed to buy excess or unsold stock and profits were greatly inflated while wages were kept low.

Hoover formed the International Sugar Committee and appointed Earl Babst, the president of the American Sugar Refining Company (ISC), as its chairman. Babst immediately reduced the price of sugar, since America was not a sugar producer but rather a sugar importer. The ISC's largest supplier was Cuba, and it refused to sell sugar at such diminished prices. To force Cuba's cooperation, the ISC revoked all Cuban import licenses for importing American goods and thus created a shortage of such basic necessities as coal and wheat in Cuba. The Cubans relented in January 1918; with the new agreement came American control of all Cuban sugar exports. Eventually, Babst would testify before Congress to defend himself and his American Sugar Refining Company from accusations by competing refineries of special treatment and extra bonuses to his own company. Babst profited greatly at the expense of Cuban and American consumers.

Neomercantilism Continues Today

After the war, corporations wanted the neomercantilism "mixed economy" market to continue so that huge profits could flow continuously with the support of government-imposed fixed pricing. Senator Albert Cummins (R-Iowa) proposed the Cummins Bill that, had it passed, would have consolidated the railroads, set prices at a "fair" fixed return rate based on capital investment, banned strikes, and required compulsory arbitration for settlement of labor disputes. The bill was blocked in the House of Representatives, which was influenced by a powerful shipping lobby. A compromise was reached, and the Transportation Act of 1920 was passed, returning railroads to prewar private operation status.

With this bill came an end to wartime collectivism and price fixing for huge profits. The spirit of this wartime model continued to influence Herbert Hoover and other future presidents into the New Deal era and World War II. Much of what is seen today in corporate and political America (kickbacks, no-bid contracts, government procurement fraud, and price fixing) has its roots entrenched deeply in the monopoly-state model that World War I corporate and political leaders created.

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See Also: Corporate Criminal Liability; Economic Espionage; Federal Trade Commission Act; Government Contract Fraud; Hoover, Herbert; Iraq War; Kickbacks; Price Fixing; United States Steel Corp.; War Crimes; World War II.

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World War II

December 7, 1941, marked America's official entrance into World War II, with an official declaration of war coming the next day. Prior to Japan's attack on Pearl Harbor on that date, the U.S. government took an isolationist stance with respect to the fighting that had begun in Europe two years earlier. What was not abundantly apparent to many is that major American corporations of the time were already involved with and profiting from the conflict in Europe. In fact, a number of industries provided the Nazi regime with materials, munitions, banking, transportation, gasoline, and innovative technologies to support its war effort. It was during this war that the corporate-military relationship was firmly established, a relationship that Dwight Eisenhower would later call "the military-industrial complex." High-ranking military officials became involved in the affairs of large corporations while the top executives of these same corporations were permitted to exert their influence in military decision making. This collusion is what ultimately allowed the profiteering to continue unabated as the military-industrial complex became firmly entrenched in the fabric of American society.

Corporate crimes during the war occurred both at home and abroad. In the United States, as in other countries during the war, commodities were rationed and restrictions were put into place along with price controls. Laws were created to prevent profiteering off wartime conditions, something that was a common practice during previous conflicts. Despite the criminalization of profiteering, the United States saw a pervasive black market develop that proliferated through numerous industries. While businesses were illegally profiting from the war at home, various industries were profiting abroad through business associations with Nazi Germany. Some scholars argue that the Holocaust could not have occurred were it not for the support of Wall Street financiers and American corporations. Rather than refer to the Holocaust as simply a massive state crime, it may be more appropriate to label it a form of state-corporate crime.

IG Farben

IG Farben was the German chemical industry conglomerate that created the Auschwitz concentration camp. In 1925, six companies merged to form the IG Farben trust; among them was Bayer, a chemical and pharmaceutical company. War crimes committed by IG Farben include the production of poisonous chemicals used to kill an untold number of people, the use of slave labor, and medical experimentation on human subjects. After the war, IG Farben was seized by the Allies and 24 directors were placed on trial at Nuremberg. Thirteen of them were convicted of war crimes and received prison sentences, yet they obtained early release and most were able to return to their original positions or continue as business leaders after the war. Directors of the American subsidiary of IG Farben included individuals from the Federal Reserve Bank of New York, Ford Motor Company, the Bank of Manhattan, and Standard Oil of New Jersey. American directors and affiliates of IG Farben were not brought to trial for their roles in the war.

Scholars contend that the war could not have occurred without the assistance of IG Farben and IG Farben would not have existed without the support of Wall Street financers. In addition, chemicals used in Farben's production of the lethal gases used to commit mass murder were purchased from Dow Chemical. Farben's alliances extended far and wide. Through a partnership with Farben, the synthetic petroleum needed to literally fuel Germany's war efforts was produced by Standard Oil of New Jersey, a large corporate trust controlled by the Rockefeller foundation. Standard Oil, under the direction of Farben, also assisted in the perpetration of economic warfare by establishing a monopoly on synthetic rubber production in the United States, discouraging competitors from producing their own rubber and keeping secret key production processes.

Standard Oil

The collusion of Standard Oil and IG Farben hindered U.S. war defense efforts while assisting Germany. Standard Oil was accused of treason during the war yet managed to continue its alliances and assistance to the German side. In addition to its monopoly on synthetic rubber and the production of synthetic petroleum mentioned above, Standard Oil provided the Germans with ethyl lead, a crucial antiknock compound necessary for war-vehicle engine efficiency. Jointly owned by Standard Oil and General Motors, the Ethyl Gasoline Corporation was founded in New York in 1924. The company's technologies were shared with Germany during its rearmament phase, and when it came to the attention of the U.S. government, the company was warned to stop disclosing these secrets. The company denied the transfer of any such knowledge, then proceeded to enter into an agreement with IG Farben to form another company in order to carry out the same process. After the war, confiscated files of IG Farben provided evidence of the importance of this sharing of technology, with correspondence documenting Germany's reliance on the production of these materials.

Chase National Bank and the Rockefellers

Chase National Bank, which later became Chase Manhattan Bank and is currently known as JP Morgan Chase, was owned by the Rockefellers. At the time of the United States' entrance into the war, it was the most powerful financial institution in the country. In 1998, the Nazi War Crimes Disclosure Act was passed. This allowed public access to archived information that documented the U.S. government's policies regarding Nazi war crimes and criminals both during and after the war. It was through review of these records that the full scope of the Rockefellers' and Chase Bank's involvement with Nazi Germany came to light. From 1936 until 1941, the Germans earned millions of dollars to aid their war effort with the assistance of Chase, and Chase, in turn, also profited handsomely. The bank received commissions through the sale of special German marks, called *rückwanderer*, to Germans who were residing in America. The German government paid these commissions for the sale of blocked marks from the seizure of assets of Jews who were fleeing Germany. Chase was fully aware of this and pushed for more business in 1938, after Kristallnacht, when more Jews than ever before attempted to flee the increasing violence and persecution.

An ongoing investigation by the Federal Bureau of Investigation (FBI) led to federal charges that included violations of the Johnson Debt Act of 1939, the Espionage Act of 1917, and the Foreign Agents Act of 1938. A clever Chase lawyer threatened to reveal sensitive information regarding the American armed forces in open court if the prosecution continued. It did not, and those associated with Chase and the profiteering from mass murder and war crimes were never held accountable. The Rockefeller family remained unscathed and continued its profiteering with its other associations and its company Standard Oil.

General Electric, ITT, and Ford Motor Co.

General Electric (GE), the long-standing American conglomerate well known for its appliances and lighting products, directly financed Adolf Hitler's prewar political campaign and profited greatly from the conflict. GE also conspired with Krupp, a German munitions firm, with results that led to Germany's rearmament and additional financing during the war. At the same time, defense preparations in the United States were hindered by GE's monopoly on a hard metal necessary for the production of various tools. Through carefully orchestrated steps, GE and Krupp managed to keep other companies from obtaining licenses to manufacture this ingredient, thereby limiting production and causing restrictions in the United States while aiding Germany.

International Telephone and Telegraph (ITT) was a multinational corporation founded in 1920. By 1924, ITT was financially supported by J. P. Morgan and grew exponentially, leading to the control of telephone companies and manufacturing plants in Germany. The ITT subsidiary in the United States was responsible for controlling and contributing to Nazi slush funds, specifically, providing funds to Heinrich Himmler, the head of Hitler's security service, the SS (Schutzstaffel). The payment of these monies ensured ITT's investment in the manufacturing firm that was providing fighter planes used in the war and particularly against the United States.

Almost two decades before the war, the *New York Times* reported that Henry Ford was supporting Hitler's rise in Germany. This was not difficult to believe because Ford had already proclaimed himself an anti-Semite. In fact, in the 1920s, a periodical owned by Ford published a series of anti-Semitic articles, one of which carried the headline, "The International Jew: The World's Problem." Hitler had a large picture of Ford hanging in his office, and Ford was one of the few people who received praise in Hitler's book *Mein Kampf*. Additionally, a Nazi youth leader and convicted war criminal who testified at the Nuremberg Trials stated that Ford's anti-Semitic writings strongly influenced him and friends. It was apparent that Ford's support of the Nazi regime existed long before the world war broke out, and when it when it did begin in earnest, Ford was there to provide additional support. Ford's son Edsel served on the board of the American IG Farben, and both father and son, through their established alliances with Germany, further assisted the war effort by providing financing and military trucks while refusing to produce aircraft engines for England.

The U.S. Black Market

While many companies were profiting from the war abroad, there was also much profit to be made domestically. In a time of rationing and price controls, savvy, profit-minded businesses understood that this was the perfect opportunity for exploitation. According to Congress, violations of these regulations constituted socially injurious crime, specifically white-collar crime, even though at the time most violators were not imprisoned. Black market crimes permeated some important markets, including gasoline, food, cigarette, coffee, used cars, scrap metal, rent, liquor, apparel, lumber, building and industrial materials, and tires.

Food, Gasoline, and Rent

With wartime rationing firmly in place during World War II, the food industry was hit especially hard with black market violations. Meat was an especially prized commodity because Americans have traditionally enjoyed meat and many were used to consuming it on a regular basis. In addition, meat comprised the bulk of the food supply for American troops. The government had in place a number of restrictions to aid in price control. Increased demand for meat led to massive violations of regulations, including those placed on slaughters, price ceilings, and rationing. It is estimated that upwards of 90 percent of the meat trade was operating within the black market. Meat was being sold at well above ceiling prices, and quality standards were continually violated. Quality violations alone are estimated to have cost consumers approximately $35 million per year. Ration restrictions were circumvented in many ways, including direct falsification of reports regarding the amount of meat sold and the number of patrons.

The rationing of gasoline was a complicated endeavor and ripe for violation. A huge amount of investigative resources was poured into the monitoring of such violations because the gasoline supply was vital to U.S. military forces as well as to civilians. The gasoline black market was run by professional criminals with assistance from dealers, retailers, and public officials. Price ceiling and rationing violations were common, in addition to the theft and counterfeiting of ration currency or coupons.

Rent control was established in 1942 as a result of rent violations that occurred during wartime, but the subsequent violation of regulations continued through the end of the war. The majority of violations involved direct and indirect overcharges, illegal evictions, fraudulent recordkeeping and reporting, and failure to return security deposits when tenants moved out. The government was able to handle these violations effectively and, as a result, guilty landlords faced sanctions and criminal charges.

Conclusion

White-collar and corporate crime is an unfortunately familiar feature of life in modern society. It is important to note that it is not new. It is also important to note that it did not start during World War II. Nevertheless, the growth of American and international corporations during this time seemed to escalate what observers are seeing today: corporations apparently running unfettered, resisting regulations and restrictions of law, and continuing an insatiable appetite for profits beyond what anyone would have dreamed.

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See Also: Economic Espionage; Eisenhower, Dwight D.; Industrial Espionage; Ethics; Ford Motor Co.; General Electric Co.; International Business Machines Corp.; International Telephone & Telegraph Corp.; Price Fixing; Standard Oil Co.; State Crime Theory; War Crimes; World War I.

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WorldCom Inc.

In July 2002, WorldCom Inc., headquartered in Clinton, Mississippi, declared bankruptcy—then the largest in U.S. history and exceeding Enron's the previous December. WorldCom was the second-largest long-distance phone company after AT&T. WorldCom's scandal was one of a set in 2002, including Adelphia Communications, following the 2001 Enron bankruptcy. In April 2004, WorldCom emerged from bankruptcy reorganization as MCI, with a reduced workforce. The entire industry of service providers and equipment suppliers was affected. In December 2005, Verizon Communications acquired MCI/WorldCom and SBC Communications acquired AT&T.

The WorldCom scandal was major accounting fraud directed by Chief Executive Officer (CEO) Bernie Ebbers and Chief Financial Officer (CFO) Scott D. Sullivan, a certified public accountant. A postbankruptcy audit concluded that WorldCom had overvalued a number of acquisitions by about $5.8 billion and likely had a loss for the period from 2000 to 2002 of about $73.7 billion. Former U.S. attorney general Richard Thornburgh expressed the opinion that there had been a broad failure of internal controls, corporate governance, and individual responsibility amounting to a culture of misconduct.

Bernard J(ohn) Ebbers, born in Canada and graduated from Mississippi College in the United States, operated a motel chain in Mississippi. In 1983, Ebbers helped develop the business concept that became WorldCom. Two years later, he became CEO of Long Distance Discount Services Inc. (LDDS), which in 1995 became WorldCom after multiple acquisitions. Between 1991 and 1997, WorldCom spent about $60 billion in acquisition of some 65 companies and accumulated about $41 billion in debt. WorldCom acquired MFS Communications, which included UUNet, a major supplier of Internet services to business. In late 1997, British Telecommunications made a $19 billion bid for MCI, a large provider of telephone services to businesses and consumers. Ebbers made a counteroffer of $30 billion in WorldCom stock. He agreed to assume $5 billion in MCI debt, making the overall deal about 1.8 times the value of the British offer. In June 1999, WorldCom's shares traded at $64, and Ebbers was a billionaire. In 1999, U.S. and European Union antitrust regulators blocked an attempted acquisition of Spring Communications.

Jack B. Grubman, lead research analyst at Salomon Smith Barney for the global telecommunications industry, made strong buy recommendations for telecommunications firms while advising Global Crossing. Stock prices of several firms then tanked. In August 2002, Grubman resigned from Salomon, where he had made as much as $20 million a year. In April 2003, the U.S. Securities and Exchange Commission (SEC) banned Grubman from the financial industry for life for misconduct and levied a $15 million fine.

An internal auditor, Cynthia Cooper, quietly and persistently uncovered details of the accounting fraud at WorldCom. Cooper become one of *Time* Magazine's 2002 Persons of the Year and received the 2003 Accounting Exemplar Award. Cooper has reported that for two years following the departure of Ebbers and Sullivan, her salary was frozen, her authority reduced, and her budget cut. Although assigned responsibilities in operational auditing, Cynthia and other colleagues grew suspicious of a number of peculiar financial transactions and went outside their assigned responsibilities to investigate. Cooper worked in secret and often late at night. Her investigation was kicked off by a complaint in March 2002 from a senior line manager that Sullivan, for whom Cooper worked, had usurped a $400 million reserve.

In spring 2002, Ebbers resigned as CEO and then Sullivan was fired as CFO. In August 2002, Sullivan and former controller David Myers were arrested on charges of securities fraud. In March 2004, Sullivan pleaded guilty to criminal charges. Ebbers was then formally charged with various counts concerning conspiracy to committee securities fraud, securities fraud, and fraud related to false filings with the SEC. In May 2004, Citigroup settled for about $1.6 billion and JPMorgan Chase & Co. for about $2 billion to settle claims by investors. In March 2005, Ebbers was found guilty of all charges, and in July, at age 63, he was sentenced to 25 years in prison. In August 2005, Sullivan was sentenced to five years in prison as part of a plea bargain in which he cooperated with prosecutors as the main witness against Ebbers. Sullivan testified that he discussed the fraud directly with Ebbers. There were also unusual loans and guarantees to senior executives.

To effectuate the fraud, WorldCom's top executives liberally interpreted accounting rules for preparation of financial statements. One alleged procedure was to write down assets acquired and include future expenses. The approach made the profit picture appear to be improving. In the MCI acquisition, WorldCom reduced the book value of some MCI assets and increased the value of goodwill by the same amount. The approach permitted spreading expenses over decades rather than years, making the MCI acquisition appear more lucrative than it was.

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See Also: Accounting Fraud; Adelphia Communications Corp.; Arthur Andersen LLP; AT&T; Corporate Capture; Enron Corp.; Financial Accounting Standards Board; Global Crossing Ltd.; Insider Trading; Salomon Smith Barney Inc.; Whistleblowers.

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Y

Yellow-Cake Forgery

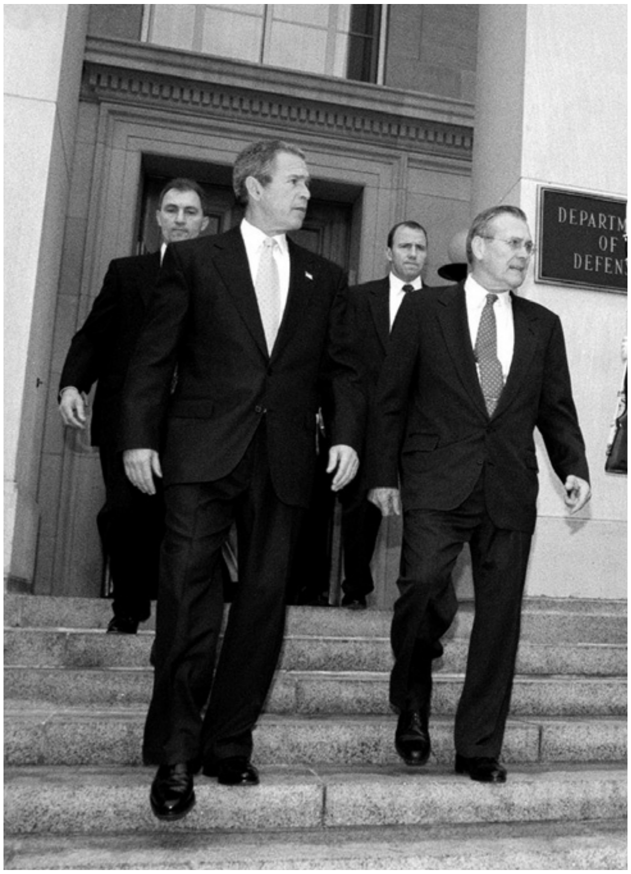
The yellow-cake forgery (also referred to as the Niger uranium forgery) centered on a series of documents brought to light by Servizio per le Informazioni e la Sicurezza Militare (SISMI), an Italian intelligence group, during the war in Iraq. Whereas U.S. citizens had been led to believe that Iraq's possession of nuclear materials was one of the reasons for the U.S. military invasion of the country in March 2003, the documents showed that Iraqi leader Saddam Hussein had in fact bought yellow-cake uranium powder from Niger. Based on the information contained in the SISMI documents (along with other confirming intelligence), the United States and United Kingdom (UK) went public in their claims that Hussein had been working toward developing potential weapons of mass destruction. Such intentions directly violated sanctions that had been previously leveled against Iraq by the United Nations.

Intelligence

In October 2001, the U.S. government became aware of the documents when they emerged in a Central Intelligence Agency (CIA) senior executive intelligence brief titled "Nuclear Related Procurement Efforts." Little effort was expended to determine how factually correct the report was. Less than a year later, SISMI Chief Nicolo Pollari brought the story up to a deputy national security advisor while visiting the White House. Between the report and the Pollari's comments, the claims that Hussein was seeking to purchase nuclear materials from Niger were even more likely to be viewed as true. In response, the Defense Intelligence Agency and the National Security Council started to work on determining how President George W. Bush could best broach the topic publicly—yet cautiously, in the event the information was found to be incorrect or misleading. Ultimately, the CIA decided upon the following verbiage for Bush's first discussion with the American public:

> Iraq has made several attempts to buy high-strength aluminum tubes used in centrifuges to enrich uranium for nuclear weapons. And we also know this: Within the past few years, Iraq has resumed efforts to obtain large quantities of a type of uranium oxide known as yellow-cake, which is an essential ingredient of this process.

By the one-year anniversary of September 11, 2001, President Bush was working to garner support for military action in Iraq aimed at removing Hussein from power. Looking to establish a coalition of the willing, Bush forwarded the intelligence they gathered to leaders in ally nations (mainly the United Kingdom, France, and Italy)



Secretary of Defense Donald H. Rumsfeld and President George W. Bush at the Pentagon, January 10, 2002. By this time, a series of documents claiming that Saddam Hussein had purchased yellow-cake uranium from Niger were appearing suspect.

to show how Hussein had worked with African leaders in Somalia, the Democratic Republic of Congo, and Niger to acquire the materials necessary to develop weapons of mass destruction. When Congress began questioning the administration prior to authorizing action in the region, both Secretary of State Colin Powell and CIA Director George Tenet directly referred to the Niger data as one of the reasons to move forward.

The Skepticism

The United States push forward was in part based on this information, but many intelligence analysts—even within the American government—were concerned about the factuality of the yellow-cake reports. Even in early 2002 (prior to Bush working on his coalition), both the CIA and the State Department had analysts claiming the documents were inaccurate. Three American officials were eventually sent out to determine the validity of the information. Marine General Carlton W. Fulford was sent to Niger to meet with President Tandja Mamadou. He found that there was little chance of any of Niger's uranium making its way to Iraq based on the strict controls within the country. This information was forwarded to Chairman of the Joint Chiefs of Staff General Richard Myers.

Ambassador Joseph Wilson was also sent by the CIA to investigate the reports. Wilson had a large network of contacts in the country because of his previous time as ambassador there and his career on the continent generally. He met with Ibrahim Mayaki—the former prime minister—who claimed to have no knowledge of any attempts to sell to Iraq. What he was able to recall, however, was a conversation a few years prior to the September 11 attacks, in which Iraq had desired an expansion of commercial relations between the two countries. Such an expansion was assumed to represent the sale of yellow-cake. Wilson concluded that Niger was incapable of producing the amount of uranium needed to prove a threat and that it would have been too difficult to hide the exportation of such large quantities without raising red flags. Upon his return to the United States, Wilson told the CIA that the previously published reports that had been used to formulate American strategy toward Iraq were wholly inaccurate.

In a similar vein, the International Atomic Energy Agency (IAEA) expressed serious concerns regarding the authenticity of documents provided to the United Nations Security Council. It had taken the IAEA only hours to determine the documents were forgeries. One of its investigative methods was a Google search that uncovered indications of forgery through such evidence as incorrect names listed for Nigerian officials. After using the documents to gain support for attacking Hussein, President Bush found out merely days before the invasion was scheduled to begin that this evidence was counterfeit.

The findings of these reports did not, however, dissuade the Bush administration from moving forward, as there were also other important reasons given, such as unseating a tyrannical despot who had used warfare and genocide against his own people in a battle for control. When giving his 2003 State of the Union Address, President Bush said the following words: "The British government has learned that Saddam Hussein recently sought significant quantities of uranium from Africa." Not until much later would the administration acknowledge that those words were improperly included in the speech.

No one has been convicted of the forgery, and there is still no clear answer as to what country or party is to blame for the entire ordeal. In 2008, the United States did facilitate the shipping of large amounts of yellow-cake out of Iraq, which apparently had been collected and stored by Hussein's regime prior to the original Gulf War. It was eventually shipped to Canada.

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See Also: Bush, George W.; Forgery; Investigation Techniques; Iraq War.

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Young, Andrew

Whether he is portrayed as a money-hungry opportunist or as the hapless victim of an ambitious politician, Andrew Young, former aide to presidential candidate John Edwards, generated a good deal of media attention between 2008 and 2012. Young admittedly lied to cover up both Edwards's sins and his own, going so far as to claim paternity of a child by Rielle Hunter, Edwards's mistress. Young also spent a good deal of the money given to Edwards to make the scandal go away to build a $1.5 million, 5,400 square foot home near the Edwards mansion in Chapel Hill, North Carolina. Though his tell-all book *The Politician: An Insider's Account of John Edwards' Pursuit of the Presidency and the Scandal That Brought Him Down* sheds considerable light on Young's version of the scandal, information disclosed after its 2010 publication indicates that Young did not always tell the truth in his book, for which he received $250,000 in royalties. Accounts of the scandal vary among the participants. In her tell-all version of events in 2012, Hunter insists that it was Young—not Edwards—who came up with the idea of Young claiming paternity of her child.

Covering Up the Affair

There is no doubt that Andrew Young raked in massive profits while working with John Edwards. As money designated for covering up the affair poured in from Bunny Mellon, the heiress to the Mellon fortune, and Fred Baron, a Texas billionaire, the Youngs added a bedroom, a $100,000 swimming pool, a $100,000 home theater, and various other luxuries to their house plans. In an interview with ABC News reporter Bob Woodruff in January 2009, Andrew and Cheri Young offered Young's take on the scandal, including a detailed outline of events.

The son of a Methodist minister, Andrew Young was born on March 23, 1966. He began working for Edwards in 1998 as a low-level staffer. He also worked for Edwards at the newly created Center on Poverty, Work, and Opportunity at the University of North Carolina Law School. Moving on to work as a senior political aide, Young drew an annual salary of $70,000. In 2007, he claimed $350,000 of the funds received from Bunny Mellon and moved from Raleigh to the exclusive section of Chapel Hill known as the Governor's Club. The following year, Young claimed $375,000 from a Mellon gift and another $345,000 from Fred Baron.

According to Young, the Edwards-Hunter affair began in February 2006, when she was traveling with the Edwards team, ostensibly to create a series of online documentaries. When the story of the scandal broke in the *National Enquirer* in 2007, the Youngs, their three children, and Hunter went into hiding to escape the media, going first to Florida and later to California. Expense reports submitted during that period included costs of family excursions to the San Diego Zoo, LEGOLand, and a Disney cruise.

With his bid for the presidency dead in the water, John Edwards finally admitted to the affair in 2008, and by 2010, he had admitted to fathering Hunter's child. During the 2012 trial in which Edwards faced six criminal counts, including four charges that he had used campaign funds to cover up his affair with Hunter, the defense focused many of its attacks on Young, offering evidence that Young had deposited money not in his own account but in a special account created under Cheri Young's maiden name (Pfister) to make it more difficult to trace if an investigation arose. On the stand, Young described a final meeting with Edwards that took place in an isolated area of Chapel Hill, insisting that he feared for his life, not from Edwards, but from Edwards's associates. He insists that he informed Edwards during the meeting that he would tell the truth about everything if Edwards refused to do so. He reportedly told Edwards that he had kept incriminating evidence, including the Edwards-Hunter sex tape that Hunter had filmed.

After successfully arguing that both Bunny Mellon and Fred Baron had given the money to Edwards to cover up the affair and not for campaign use, John Edwards was cleared on one charge; prosecutors decided not to pursue the case against him after the jury announced that it was deadlocked on the other five charges.

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See Also: Bribery; Campaign Finance; Edwards, John; Hunter, Rielle; Public Corruption.

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Glossary

ABSCAM: A sting operation by the Federal Bureau of Investigation in which government officials were offered money in return for doing favors for a fictional person named Kambir Abdul Rahman. Six U.S. congressmen were convicted of bribery and conspiracy as a result of the sting.

***Actus reus*:** Latin for an illegal act; either an act of commission (such as stealing money) or failing to do something (such as not exercising proper precautions when storing a firearm).

Adware: Computer programs that self-install on a user's computer and bombard the user with advertising.

Alien: A person who is physically within a country but is not a citizen.

Alien conspiracy theory: A theory that organized crime in the United States was imported by Europeans and that individual crime cartels, as a rule, allow only members of their own ethnicity to become part of the cartel.

Appellate court: A court that hears appeals of cases that have already been tried in a lower court.

Asylum and refugee status: A status granted to noncitizens in the United States who can show that they have been prosecuted, or have a well-founded fear of prosecution, in their homelands.

Back door: A pre-existing security weakness in a computer or computer system through which a virus or other exploitative software may enter.

Bait and switch: A form of fraud in which a customer is attracted by an advertised bargain, but the good in question is not available and the salesperson tries to get the customer to buy a higher-priced item instead.

Black box accounting: Keeping accounting records in a deliberately confusing and opaque manner in order to make them difficult to interpret. Black box accounting is not technically illegal if U.S. generally accepted accounting principles (GAAP) guidelines are followed, but they may be considered unethical if the intention is to mislead.

Blackhat: A computer hacker who uses his or her skills for criminal purposes, such as stealing credit card numbers.

Blue sky laws: State rules governing the issuing, sale, and trading of securities.

Boiler room: A business that sells dubious, valueless, or nonexistent goods, generally through the use of high-pressure sales tactics and often over the telephone. The term was popularized in a 2000 feature film of the same name.

Bookie: An individual or organization who takes bets on sporting events and similar activities. Bookmaking is not necessarily illegal, depending on state and regional laws.

Botnet: A number of hijacked computers controlled by a single individual.

Bribe: To offer an individual in a position of trust (such as a government official) money or other valued goods or services in order to influence that person to do something.

Bucketing: An illegal act by which a broker confirms an order but does not execute it. If the price goes down in the interim, the customer pays the higher price and the broker takes the difference.

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF): The federal agency that has jurisdiction over the sale and distribution of alcohol, tobacco products, firearms, and explosives.

Case law: Law based on judicial precedent.

Check kiting: A type of fraud in which a person writes a check on one bank for more than he or she has in the account, deposits a check from a second bank (for more than is in the account) to cover the first check, and so on. Check kiting relies on the float time that is required for a check to clear.

Churning: Making numerous stock trades in order to collect fees rather than to benefit the client whose money is used to buy the stocks.

Civil law: Law that does not concern criminal offenses, including commercial law, property law, contract law, and torts.

Common law: The basis of the criminal legal system in the United States, common law derives from English law practice and is based on the body of court decisions and precedents.

Con game: Any of a number of tricks, some quite elaborate, that require a criminal to gain the confidence of victims before stealing from them.

Corporate crime: Crime intended to benefit a corporation rather than an individual.

Crimes of the powerful: Crimes permitted by senior executives, such as those holding high positions in government, as opposed to crimes of the powerless, which are committed by those on the bottom of the social order.

Customs Bureau and Border Protection: A component of the U.S. Department of Homeland Security, responsible for securing America's borders, enforcing immigration and drug laws, and ensuring that international trade is carried out lawfully.

DDoS: Distributed denial of service, a type of computer hacking attack in which a target is bombarded with requests by many computers at once in order to flood the bandwidth and make the target site temporarily unavailable.

Division of markets: An anticompetitive practice, outlawed by the 1890 Sherman Antitrust Act, in which firms divide a geographic area into regions and agree not to compete in each other's regions.

Drug Enforcement Administration, U.S. (DEA): An agency within the U.S. Department of Justice responsible for enforcing laws regarding controlled substances (illegal drugs).

Economic crime: A crime whose chief purpose is to increase the wealth of the individual committing it.

Embezzlement: Exploiting a position of trust to appropriate the assets of another person or of a business.

Enron Corp.: An energy company based in Houston, Texas, that went bankrupt in 2001. Following the bankruptcy, the company was found to use a number of deceptive practices to appear more profitable than it actually was.

Environmental crime: A crime that violates regulations meant to protect the environment, such as illegal dumping of waste chemicals.

Exclusionary rule: A legal principle that evidence obtained illegally can't be admitted in a trial.

False Claims Law: A 1863 law encouraging individuals to report on fraud occurring within federal programs by allowing them to claim a portion of the recovered damages.

Forensic accounting: Accounting that takes place in order to produce evidence for a trial or other legal proceeding, such as claims of fraud.

Fraud: Taking money or other possessions from a person or entity through deception.

Front running: An illegal stock trading maneuver in which a broker places a personal order for a stock in the knowledge that a customer will soon place an order and drive the price up.

Fundamental fairness: A basic legal principle that all people should be treated equally before the law.

Generally accepted accounting principles (GAAP): A series of standards and conventions used to create financial statements.

Index crimes: The crimes included in the Uniform Crime Reports of the Federal Bureau of Investigation: murder, rape, assault, robbery, burglary, arson, larceny, and motor vehicle theft.

Influence peddling: Using influence gained through connections or employment to obtain preferential treatment.

Insider trading: Using information not available to the general public to make decisions about buying and selling stocks. Insider trading is not necessarily illegal when it involves stock in one's own company, although such trades must be reported to the U.S. Securities and Exchange Commission. However, insider trading that is considered a breach of fiduciary duty or the violation of a trust or confidence is illegal; this includes passing "tips" of confidential information about a company to friends or family, who then make trades based on that information.

Instrumental crimes: Crimes committed with the conscious intent of improving one's financial or social position.

Keylogger: A program that is installed, without the owner's knowledge, on a computer to log keystrokes and thus steal passwords and similar information.

Lawful permanent resident: A status granted to noncitizens who have long-term authorization to remain and work in the United States. In general, lawful permanent residents can become naturalized citizens by taking a test and fulfilling administrative requirements.

***Mala in se* crimes:** Illegal acts that violate basic human moral laws, such as robbery and murder.

***Mala prohibitum* crimes:** Acts whose illegal status is based on their conflict with social norms or standards, such as drug laws.

Malware: Malicious software. A general term for unwanted programs installed on a user's computer.

Mandatory sentencing: A legal requirement that convictions for specified offences carry specified penalties, thus limiting or eliminating judicial discretion.

Money laundering: A method of disguising money earned by an illicit business or occupation (such as drug trafficking) so that it appears to originate from a legal source.

Mortgage fraud: Falsifying or otherwise misrepresenting information (such as overstating one's income) on a mortgage application in order to obtain favorable terms (such as a lower interest rate or a larger loan) than one would otherwise qualify for.

National Crime Victimization Survey: An ongoing survey conducted by the U.S. Census Bureau and the U.S. Department of Justice to gather information about people who have been victims of crimes.

Naturalization: The process by which a person becomes a citizen of a country.

Numbers: A type of illegal lottery in which an individual places a bet and tries to pick the winning three-digit number. Today, similar lotteries are often available legally through state lotteries.

Obscene: Having the quality of appealing to prurient sexual interests. Defining obscenity has been a notoriously difficult task.

Phishing: A type of fraud in which e-mail messages, purportedly from a bank or similar institution, request confidential information in order to gain access to the victim's account.

Plea bargain: A negotiation between the counsel for an accused person and the prosecution, in which the accused agrees to plead guilty in return for a more lenient sentence or the dropping of some charges.

Point spread: A type of sports betting in which the bet is not simply on which team will win or lose but also how much the margin of victory will be.

Ponzi scheme: A type of swindle popularized in the early 1900s by Charles Ponzi, who claimed to be making a quick fortune by reselling postal reply coupons. The essence of any Ponzi scheme is that there is no business producing income—the only money coming into the scheme is that invested by new members, drawn in by promises of large profits in a short period of time. Because there can never be enough money to pay everyone off, the scheme will eventually collapse.

Price fixing: An anticompetitive practice, outlawed by the 1890 Sherman Antitrust Act, in which firms conspire to set the price of a commodity rather than letting the marketplace determine the price.

Protection racket: An illegal scheme in which money is extorted from individuals or businesses in exchange for protection from crimes that would otherwise be committed against them by the individuals selling the protection.

Pump and dump: A type of fraud in which the price of a stock is artificially inflated (pump) before it is sold (dump).

Racketeer Influenced and Corrupt Organizations Act (RICO): A 1970 federal law facilitating the prosecution and conviction of those involved in organized crime.

Racketeering: Engaging in an illegal scheme, usually in the context of organized crime.

Regulatory offenses: Crimes that involve breaking regulations meant to protect health, safety, and/or the environment.

Restitution: A type of sentencing in which the convicted person is required to "pay back" the victim or community for his or her crimes, sometimes literally (such as by returning stolen money) and sometimes more figuratively (such as by doing community service).

Sarbanes-Oxley Act: A 2002 federal law creating new standards for corporate accounting, auditing, and financial disclosure. The act was prompted in part by the unexpected collapse of Enron Corp.

Secret Service, U.S.: A federal agency originally created to combat counterfeiting, now better known for providing protection for the U.S. president and vice president and their families.

Securities Act of 1933: A federal law governing the issuance of securities by companies.

Securities Act of 1934: A federal law governing the sale, purchase, and trading of securities issued by companies.

Securities fraud: A crime in which a person misrepresents information about securities, thus misleading investors. Examples include withholding information, providing false information, and deliberately offering bad investment advice to a client.

Sentencing disparity: A condition in which people convicted of similar crimes receive markedly different sentences.

Sentencing guidelines: Guidelines meant to reduce disparities in sentencing and generally call for longer sentences for more serious crimes and repeat offenders.

Shell game: A type of street con game in which a dealer hides an object under one of three cups, shuffles the cups on a table, and invites passersby to identify which cup hides the object. The trick is that the dealer switches the location of the object through sleight of hand so the victim will never win.

Sherman Antitrust Act: An 1890 federal law prohibiting certain activities that would otherwise restrict competition in the business marketplace.

Shoulder surfing: Stealing a phone or bank personal identification number (PIN) code by watching a person type it into the machine.

Spanish prisoner: A type of advance-fee fraud dating back to the early 20th century, in which a con man claims to be in touch with a wealthy individual being held prisoner in Spain. The victim is invited to make an investment toward freeing the prisoner, with the promise of great financial returns when he or she is freed.

Spyware: Malware intended to steal confidential information from a computer user.

Temporary Protected Status: A short-term status allowing nationals of some countries to remain in the United States for a specified period of time due to turmoil in their home countries. Among the countries whose residents have been granted Temporary Protected Status in the past are Bosnia, El Salvador, Honduras, Kuwait, Lebanon, Liberia, Nicaragua, Rwanda, and Somalia.

Three-Card Monte: A type of street con game in which the dealer shuffles three cards (usually two black and one red, or the other way around) and challenges passersby to identify the odd card (the red, if two are black and one is red). The trick is that the dealer can switch the cards through sleight of hand, thus ensuring that the victim will never be able to identify the card correctly. The shell game is an older version of a similar game.

Trojan: A malicious message or program that carries a computer virus or other type of malware.

Tying arrangement: An anticompetitive practice, outlawed by the 1890 Sherman Antitrust Act, in which a corporation requires that customers who desire to purchase one of its services or products must also purchase other services or products.

Uniform Crime Reports: Official data on U.S. crimes published annually by the Federal Bureau of Investigation, based on data reported by law enforcement agencies.

Whistleblower Protection Act: A 1989 federal law intended to protect individuals who report misconduct within government agencies.

Zombie: A computer that has been hijacked and can be controlled from a distance by someone other than the legitimate owner or user.

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Resource Guide

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Criminal Justice
Criminal Justice Ethics
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Environmental Law Reporter
FBI Law Enforcement Bulletin
FDA Consumer
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International Journal of Cyber Criminology
International Journal of Social Economics
International Journal of the Economics of Business
Journal of Accountancy
Journal of Business Ethics
Journal of Contemporary Criminal Justice
Journal of Criminal Justice
Journal of Drug Issues
Journal of Financial Crime
Journal of Financial Economics
Journal of Human Rights
Journal of Insurance Fraud in America
Journal of Intellectual Property Law & Practice
Journal of Law, Economics, & Organization
Journal of Quantitative Criminology
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Journal of Substance Abuse
Justice Quarterly
Management Review
Review of Finance
Policing
Theoretical Criminology
Western Criminology Review

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American Demographics
Black Enterprise
Bloomberg Markets
Business 2.0
Businessweek
Corporate Crime Reporter
Crain's Chicago Business
Crain's New York Business
The Economist
Euromoney Far Eastern Economic Review
Fast Company
Financial Times
Forbes
Fortune
Harvard Business Review
Inc.
Industry Week
The International Herald Tribune
Investor's Business Daily
Kiplinger's
Money
New York Times
Smart Money
Wall Street Journal
Washington Post
White-Collar Crime Fighter
White-Collar Crime Reporter
Wired
Worth

Web Sites

American Institute of Certified Public Accountants
http://www.aicpa.org
Association of Certified Fraud Examiners
http://www.acfe.com
Better Business Bureau
http://www.bbb.org
Cornell University Law School Legal Information Institute, White Collar Crime
http://www.law.cornell.edu/wex/white-collar_crime
Department of Commerce, U.S.
http://www.commerce.gov
Department of Justice, U.S.
http://www.justice.gov
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Environmental Protection Agency, U.S.
http://www.epa.gov

Equal Employment Opportunity Commission
http://www. info@eeoc.gov
Federal Bureau of Investigation, White Collar Crime Reports
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Appendix: Law Summaries

False Claims Act (1863)
Title 31. Money and Finance
Subtitle III. Financial Management
Chapter 37. Claims
Subchapter III. Claims Against the United States Government

§ 3729. False claims

(a) Liability for certain acts. Any person who—

(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;

(3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

(4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or

(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than $ 5,000 and not more than $ 10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that—

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation; the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this sub-section shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Knowing and knowingly defined. For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information—

(1) has actual knowledge of the information;

(2) acts in deliberate ignorance of the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) Claim defined. For purposes of this section, "claim" includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(d) Exemption from disclosure. Any information furnished pursuant to subparagraphs (A) through (C) of subsection (a) shall be

exempt from disclosure under section 552 of title 5.
(e) Exclusion. This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.
§ 3730. Civil actions for false claims
(a) Responsibilities of the Attorney General. The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.
(b) Actions by private persons.

(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the parties to qui tam actions.

(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2) (A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to qui tam plaintiff.

(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [General] Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1)

or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) Certain actions barred.

(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

(2) (A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 101(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4) (A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [General] Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

(f) Government not liable for certain expenses. The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) Fees and expenses to prevailing defendant. In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

(h) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection.

§ 3731. False claims procedure

(a) A subpena [subpoena] requiring the attendance of a witness at a trial or hearing conducted under section 3730 of this title may be served at any place in the United States.

(b) A civil action under section 3730 may not be brought—

(1) more than 6 years after the date on which the violation of section 3729 is committed, or

(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.

§ 3732. False claims jurisdiction

(a) Actions under section 3730. Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

(b) Claims under state law. The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.

§ 3733. Civil investigative demands

(a) In general.

(1) Issuance and service. Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

(A) to produce such documentary material for inspection and copying,

(B) to answer in writing written interrogatories with respect to such documentary material or information,

(C) to give oral testimony concerning such documentary material or information, or

(D) to furnish any combination of such material, answers, or testimony. The Attorney General may not delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom

the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

(2) Contents and deadlines.

(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

(B) If such demand is for the production of documentary material, the demand shall—

(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(iii) identify the false claims law investigator to whom such material shall be made available.

(C) If such demand is for answers to written interrogatories, the demand shall—

(i) set forth with specificity the written interrogatories to be answered;

(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

(iii) identify the false claims law investigator to whom such answers shall be submitted.

(D) If such demand is for the giving of oral testimony, the demand shall—

(i) prescribe a date, time, and place at which oral testimony shall be commenced;

(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

(iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary. The Attorney General may not, notwithstanding section 510 of title 28, authorize the performance, by any other officer, employee, or agency, of any function vested in the Attorney General under this subparagraph.

(b) Protected material or information.

(1) In general. A civil investigative demand issued under subsection

(a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(2) Effect on other orders, rules, and laws. Any such demand which is an express demand for any product of discovery supersedes any in consistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) Service; jurisdiction.

(1) By whom served. Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

(2) Service in foreign countries. Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

(d) Service upon legal entities and natural persons.

(1) Legal entities. Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) Natural persons. Service of any such demand or petition may be made upon any natural person by—

(A) delivering an executed copy of such demand or petition to the person; or

(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) Proof of service. A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) Documentary material.

(1) Sworn certificates. The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

(A) in the case of a natural person, the person to whom the demand is directed, or

(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

(2) Production of materials. Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(g) Interrogatories. Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

(1) in the case of a natural person, the person to whom the demand is directed, or

(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) Oral examinations.

(1) Procedures. The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

(2) Persons present. The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) Where testimony taken. The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

(4) Transcript of testimony. When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

(5) Certification and delivery to custodian. The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(6) Furnishing or inspection of transcript by witness. Upon pay ment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

(7) Conduct of oral testimony.

(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18 [18 USCS §§ 6001 et seq.].

(8) Witness fees and allowances. Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States. (i) Custodians of documents, answers, and transcripts.

(1) Designation. The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

(2) Responsibility for materials; disclosure.

(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice, who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a United States district court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

(3) Use of material, answers, or transcripts in other proceedings. Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

(4) Conditions for return of material. If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—

(A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or

(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(5) Appointment of successor custodians. In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—

(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation

(j) Judicial proceedings.

(1) Petition for enforcement. Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(2) Petition to modify or set aside demand.

(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(3) Petition to modify or set aside demand for product of discovery.

(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(4) Petition to require performance by custodian of duties. At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(5) Jurisdiction. Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(6) Applicability of Federal Rules of Civil Procedure. The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

(k) Disclosure exemption. Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5. (l) Definitions. For purposes of this section—

(1) the term "false claims law" means—

(A) this section and sections 3729 through 3732; and

(B) any Act of Congress enacted after the date of the enactment of this section [enacted Oct. 27, 1986] which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

(2) the term "false claims law investigation" means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

(3) the term "false claims law investigator" means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

(4) the term "person" means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

(5) the term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

(6) the term "custodian" means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i) (1); and

(7) the term "product of discovery" includes—

(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

(C) any index or other manner of access to any item listed in sub-paragraph (A).

Sherman Antitrust Act (1890)
Title 15. Commerce and Trade
Chapter 1. Monopolies and Combinations in Restraint of Trade

§ 1. Trusts, etc., in restraint of trade illegal; penalty Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $ 10,000,000 if a corporation, or, if any other person, $ 350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

§ 2. Monopolization; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $ 10,000,000 if a corporation, or, if any other person, $ 350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

§ 3. Trusts in Territories or District of Columbia illegal; combination a felony

(a) Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $ 10,000,000 if a corporation, or, if any other person, $ 350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(b) Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce in any Territory of the United States or of the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia, and any State or States or foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $ 10,000,000 if a corporation, or, if any other person, $ 350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

§ 4 Jurisdiction of courts; duty of United States attorneys; Procedure The several circuit [district] courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act [15 USCS §§ 1 et seq.]; and it shall be the duty of the several district attorneys of the United States [United States attorneys], in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

§ 5. Bringing in additional parties

Whenever it shall appear to the court before which any proceeding under section four of this Act [15 USCS § 4] may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

§ 6. Forfeiture of property in transit

Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this Act [15 USCS § 1], and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

§ 6a. Conduct involving trade or commerce with foreign nations

This Act [15 USCS §§ 1 et seq.] shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

(1) such conduct has a direct, substantial, and reasonably foreseeable effect—

(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

(2) such effect gives rise to a claim under the provisions of this Act [15 USCS §§ 1 et seq.], other than this section.

If this Act [15 USCS §§ 1 et seq.] applies to such conduct only because of the operation of paragraph (1)(B), then this Act [15 USCS §§ 1 et seq.] shall apply to such conduct only for injury to export business in the United States.

§ 7. "Person" defined

The word "person," or "persons," wherever used in this Act [15 USCS §§ 1 et seq.] shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Clayton Antitrust Act (1914)
Title 15. Commerce and Trade
Chapter 1. Monopolies and Combinations in Restraint of Trade

§ 12. Words defined; short title
(a) "Antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety [15 USCS §§ 1 et seq.]; sections seventy-three to seventy-six, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four [15 USCS §§ 8-11]; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen [amending 15 USCS §§ 8, 11]; and also this Act.
"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: Provided, That nothing in this Act contained shall apply to the Philippine Islands.
The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.
(b) This Act may be cited as the "Clayton Act".
§ 13. Discrimination in price, services, or facilities
(a) Price; selection of customers. It shall be unlawful for any person en-gaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any per-son who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: Provided, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: Provided, how-ever, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account there-of unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: And provided further, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: And provided further, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.
(b) Burden of rebutting prima-facie case of discrimination. Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: Provided, however, that nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.
(c) Payment or acceptance of commission, brokerage or other compensation. It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, any-thing of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.
(d) Payment for services or facilities for processing or sale. It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.
(e) Furnishing services or facilities for processing, handling, etc. It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.
(f) Knowingly inducing or receiving discriminatory price. It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.
§ 14. Sale, etc., on agreement not to use goods of competitor It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale with-in the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.
§ 15. Suits by persons injured
(a) Amount of recovery; prejudgment interest. Except as provided in subsection (b), any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover three-

fold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether such person or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in it as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, such person or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(3) whether such person or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b) Amount of damages payable to foreign states and instrumentalities of foreign states.

(1) Except as provided in paragraph (2), any person who is a foreign state may not recover under subsection (a) an amount in excess of the actual damages sustained by it and the cost of suit, including a reasonable attorney's fee.

(2) Paragraph (1) shall not apply to a foreign state if—

(A) such foreign state would be denied, under section 1605(a)(2) of title 28 of the United States Code [28 USCS § 1605(a)(2)], immunity in a case in which the action is based upon a commercial activity, or an act, that is the subject matter of its claim under this section;

(B) such foreign state waives all defenses based upon or arising out of its status as a foreign state, to any claims brought against it in the same action;

(C) such foreign state engages primarily in commercial activities; and

(D) such foreign state does not function, with respect to the commercial activity, or the act, that is the subject matter of its claim under this section as a procurement entity for itself or for another foreign state.

(c) Definitions. For purposes of this section—

(1) the term "commercial activity" shall have the meaning given it in section 1603(d) of title 28, United States Code [28 USCS § 1603(d)], and

(2) the term "foreign state" shall have the meaning given it in section 1603(a) of title 28, United States Code [28 USCS § 1603(a)].

§ 15a. Suits by United States; amount of recovery; prejudgment interest

Whenever the United States is hereafter injured in its business or property by reason of anything forbidden in the antitrust laws it may sue therefor in the United States district court for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by it sustained and the cost of suit. The court may award under this section, pursuant to a motion by the United States promptly made, simple interest on threefold the damages for the period beginning on the date of service of the pleading of the United States setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether the United States or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(2) whether, in the course of the action involved, the United States or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings;

(3) whether the United States or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof; and

(4) whether the award of such interest is necessary to compensate the United States adequately for the injury sustained by the United States.

15b. Limitation of actions

Any action to enforce any cause of action under section 4, 4A, or 4C [15 USCS §§ 15, 15a, 15c] shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

§ 16. Judgments

(a) Prima facie evidence; collateral estoppel. A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: Provided, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken. Nothing contained in this section shall be construed to impose any limitation on the application of collateral estoppel, except that, in any action or proceeding brought under the antitrust laws, collateral estoppel effect shall not be given to any finding made by the Federal Trade Commission under the antitrust laws or under section 5 of the Federal Trade Commission Act [15 USCS § 45] which could give rise to a claim for relief under the antitrust laws.

(b) Consent judgments and competitive impact statements; publication in Federal Register; availability of copies to the public. Any proposal for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which such proceeding is pending and published by the United States in the Federal Register at least 60 days prior to the effective date of such judgment. Any written comments relating to such proposal and any responses by the United States thereto, shall also be filed with such district court and published by the United States in the Federal Register within such sixty-day period. Copies of such proposal and any other materials and documents which the United States considered determinative in formulating such proposal, shall also be made available to the public at the district court and in such other districts as the court may subsequently direct. Simultaneously with the filing of such proposal, unless otherwise instructed by the court, the United States shall file with the district court, publish in the Federal Register, and thereafter furnish to any person upon request, a competitive impact statement which shall recite—

(1) the nature and purpose of the proceeding;

(2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;

(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;

(5) a description of the procedures available for modification of such proposal; and

(6) a description and evaluation of alternatives to such proposal actually considered by the United States.

(c) Publication of summaries in newspapers. The United States shall also cause to be published, commencing at least 60 days prior to the effective date of the judgment described in subsection (b) of this section, for 7 days over a period of 2 weeks in newspapers of general circulation of the district in which the case has been filed, in the District of Columbia, and in such other districts as the court may direct—

(i) a summary of the terms of the proposal for the consent judgment,

(ii) a summary of the competitive impact statement filed under sub-section (b),

(iii) and a list of the materials and documents under subsection (b) which the United States shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection.

(d) Consideration of public comments by Attorney General and publication of response. During the 60-day period as specified in subsection (b) of this section, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposal for the consent judgment submitted under subsection (b). The Attorney General or his designee shall establish procedures to carry out the provisions of this subsection, but such 60-day time period shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments.

(e) Public interest determination. Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

(f) Procedure for public interest determination. In making its determination under subsection (e), the court may—

(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

(2) appoint a special master and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual, group or agency of government with respect to any aspects of the proposed judgment or the effect of such judgment, in such manner as the court deems appropriate;

(3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

(4) review any comments including any objections filed with the United States under subsection (d) concerning the proposed judgment and the responses of the United States to such comments and objections; and

(5) take such other action in the public interest as the court may deem appropriate.

(g) Filing of written or oral communications with the district court. Not later than 10 days following the date of the filing of any proposal for a consent judgment under subsection (b), each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any and all written or oral communications on behalf of such defendant, or other person, with any officer or employee of the United States concerning or relevant to such proposal, except that any such communications made by counsel of record alone with the Attorney General or the employees of the Department of Justice alone shall be excluded from the requirements of this subsection. Prior to the entry of any consent judgment pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this subsection have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

(h) Inadmissibility as evidence of proceedings before the district court and the competitive impact statement. Proceedings before the district court under subsections (e) and (f) of this section, and the competitive impact statement filed under subsection (b) of this section, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United States under section 4A of this Act [15 USCS § 15a] nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding.

(i) Suspension of limitations. Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, but not including an action under section 4A [15 USCS § 15a], the running of the statute of limitations in respect of every private or State right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: Provided, however, That whenever the running of the statute of limitations in respect of a cause of action arising under section 4 or 4C [15 USCS §§ 15, 15c] is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

§ 17. Antitrust laws not applicable to labor organizations The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

§ 18. Acquisition by one corporation of stock of another

See Celler-Kefauver Act 1950

§ 19. Interlocking directorates and officers

(a) (1) No person shall, at the same time, serve as a director or officer in any two corporations (other than banks, banking associations, and trust companies) that are—

(A) engaged in whole or in part in commerce; and

(B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws;

if each of the corporations has capital, surplus, and undivided profits aggregating more than $ 10,000,000 as adjusted pursuant to paragraph (5) of this subsection.

(2) Notwithstanding the provisions of paragraph (1), simultaneous service as a director or officer in any two corporations shall not be prohibited by this section if—

(A) the competitive sales of either corporation are less than $ 1,000,000, as adjusted pursuant to paragraph (5) of this subsection;

(B) the competitive sales of either corporation are less than 2 per centum of that corporation's total sales; or

(C) the competitive sales of each corporation are less than 4 per centum of that corporation's total sales.

For purposes of this paragraph, "competitive sales" means the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year. For the purposes of this paragraph, "total sales" means the gross revenues for all products and services sold by one corporation over that corporation's last completed fiscal year.

(3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus and undivided profits, exclusive of dividends declared but not paid to stockholders, of each corporation at the end of that corporation's last completed fiscal year.

(4) For purposes of this section, the term "officer" means an officer elected or chosen by the Board of Directors.

(5) For each fiscal year commencing after September 30, 1990, the

$ 10,000,000 and $ 1,000,000 thresholds in this subsection shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decrease) in the gross national product, as determined by the Department of Commerce or its successor, for the year then ended over the level so established for the year ending September 30, 1989. As soon as practicable, but not later than January 31 of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph.

(b) When any person elected or chosen as a director or officer of any corporation subject to the provisions hereof is eligible at the time of his election or selection to act for such corporation in such capacity, his eligibility to act in such capacity shall not be affected by any of the provisions hereof by reason of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatever cause, until the expiration of one year from the date on which the event causing ineligibility occurred.

§ 21. Enforcement provisions

(a) Commission, Board, or Secretary authorized to enforce compliance. Authority to enforce compliance with sections 2, 3, 7, and 8 of this Act [15 USCS §§ 13, 14, 18, 19] by the persons respectively subject thereto is hereby vested in the Surface Transportation Board where applicable to common carriers subject to jurisdiction under subtitle IV of title 49, United States Code [49 USCS §§ 10101 et seq.]; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject to the Federal Aviation Act of 1958 [49 USCS §§ 40101 et seq.]; in the Federal Reserve Board [Board of Governors of the Federal Reserve System] where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce to be exercised as follows:

(b) Issuance of complaints for violations; hearing; intervention; filing of testimony; report; cease and desist orders; reopening and alteration of reports or orders. Whenever the Commission, Board, or Secretary vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections 2, 3, 7, and 8 of this Act [15 USCS §§ 13, 14, 18, 19], it shall issue and serve upon such person and the Attorney General a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission, Board, or Secretary requiring such person to cease and desist from the violation of the law so charged in said complaint. The Attorney General shall have the right to intervene and appear in said proceeding and any person may make application, and upon good cause shown may be allowed by the Commission, Board, or Secretary, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission, Board, or Secretary. If upon such hearing the Commission, Board, or Secretary, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock, or other share capital, or assets, held or rid itself of the directors chosen contrary to the provisions of sections 7 and 8 of this Act [15 USCS §§ 18, 19], if any there be, in the manner and within the time fixed by said order. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission, Board, or Secretary may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission, Board, or Secretary may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission, Board, or Secretary conditions of fact or of law have so changed as to require such action or if the public interest shall so require: provided, however, That the said person may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

(c) Review of orders; jurisdiction; filing of petition and record of proceeding; conclusiveness of findings; additional evidence; modification of findings; finality of judgment and decree. Any person required by such order of the commission, board, or Secretary to cease and desist from any such violation may obtain a review of such order in the court of appeals of the United States for any circuit within which such violation occurred or within which such person resides or carries on business, by filing in the court, within sixty days after the date of the service of such order, a written petition praying that the order of the commission, board, or Secretary be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the commission, board, or Secretary and thereupon the commission, board, or Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the commission, board, or Secretary until the filing of the record, and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the commission, board, or Secretary and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the commission, board, or Secretary as to the facts, if supported by substantial evidence, shall be conclusive. To the extent that the order of the commission, board, or Secretary is affirmed, the court shall issue its own order commanding obedience to the terms of such order of the commission, board, or Secretary. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, board, or Secretary, the court may order such additional evidence to be taken before the commission, board, or Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission, board, or Secretary may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and shall file such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(d) Exclusive jurisdiction of Court of Appeals. Upon the filing of the record with it the jurisdiction of the court of appeals to affirm, enforce, modify, or set aside orders of the commission, board, or Secretary shall be exclusive.

(e) Liability under antitrust laws. No order of the commission, board, or Secretary or judgment of the court to enforce the same shall in anywise relieve or absolve any person from any liability under the antitrust laws.

(f) Service of complaints, orders and other processes. Complaints, orders, and other processes of the commission, board, or Secretary under this section may be served by anyone duly authorized by the commission, board, or Secretary, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (2) by leaving a copy thereof at the residence or the principal office or place of business of such person; or (3) by mailing by registered or certified mail a copy thereof addressed to such person at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered or certified mail as aforesaid shall be proof of the service of the same.

(g) Finality of orders generally. Any order issued under subsection (b) shall become final—

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the commission, board, or Secretary may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b); or

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed, or the petition for review has been dismissed by the court of appeals, and no petition for certiorari has been duly filed; or (3) upon the denial of a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed or the petition for review has been dismissed by the court of appeals; or

(4) upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the commission, board, or Secretary be affirmed or the petition for review be dismissed.

(h) Finality of orders modified by Supreme Court. If the Supreme Court directs that the order of the commission, board, or Secretary be modified or set aside, the order of the commission, board, or Secretary rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

(i) Finality of orders modified by Court of Appeals. If the order of the commission, board, or Secretary is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the commission, board, or Secretary rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the commission, board, or Secretary was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

(j) Finality of orders issued on rehearing ordered by Court of Appeals or Supreme Court. If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the commission, board, or Secretary for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the commission, board, or Secretary rendered upon such re-hearing shall become final in the same manner as though no prior order of the commission, board, or Secretary had been rendered.

(k) "Mandate" defined. As used in this section the term "mandate," in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(l) Penalties. Any person who violates any order issued by the commission, board, or Secretary under subsection (b) after such order has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $ 5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States. Each separate violation of any such order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the commission, board, or Secretary each day of continuance of such failure or neglect shall be deemed a separate offense.

§ 22. District in which to sue corporation Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

§ 23. Suits by United States; subpoenas for witnesses In any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: Provided, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

§ 24. Liability of directors and agents of corporation Whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding $ 5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

§ 25. Restraining violations; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States [United States attorneys], in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before

which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

§ 26. Injunctive relief for private parties; exception; costs Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections two, three, seven and eight of this Act [15 USCS §§ 13, 14, 18, and 19], when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: Provided, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49, United States Code [49 USCS §§ 10101 et seq.]. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

§ 27. Effect of partial invalidity

If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Federal Trade Commission Act (1914)
Title 15. Commerce and Trade
Chapter 2. Federal Trade Commission; Promotion of Export Trade and Prevention of Unfair Methods of Competition

§ 41. Federal Trade Commission established; membership; vacancies; A commission is created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed: Provided, however, That upon the expiration of his term of office a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified. The commission [President] shall choose a chairman from its own [the commission's] membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

§ 44. Definitions

The words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation. "Corporation" shall be deemed to include any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" includes all documents, papers, correspondence, books of account, and financial and corporate records.

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February 14, 1887, and all Acts amendatory thereof and supplementary thereto [49 USCS §§ 10101 et seq.] and the Communications Act of 1934 and all Acts amendatory thereof and supplementary thereto.

"Antitrust Acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890; also sections 73 to 76 inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894 [15 USCS §§ 8-11]; also the Act entitled "An Act to amend sections 73 and 76, of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February 12, 1913 [amending 15 USCS §§ 8, 11]; and also the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

"Banks" means the types of banks and other financial institutions referred to in section 18(f)(2) [15 USCS § 57a(f)(2)].

§ 45. Unfair methods of competition unlawful; prevention by Commission

(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade.

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

(2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 18(f)(3) [15 USCS § 57a(f)(3)], Federal credit unions described in section 18(f)(4) [15 USCS § 57a(f)(4)], common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958 [49 USCS §§ 40101 et seq.], and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 USCS §§ 181 et seq.], except as provided in section 406(b) of said Act [7 USCS § 227(b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.

(b) Proceeding by Commission; modifying and setting aside orders. Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require, except that (1) the said person, partnership, or corporation may, within sixty days after the service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section; and (2) in the case of an order, the Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part. The Commission shall determine whether to alter, modify, or set aside any order of the Commission in response to a request made by a person, partnership, or corporation under paragraph [clause] (2) not later than 120 days after the date of the filing of such request.

(c) Review of order; rehearing. Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the [circuit] court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Commission until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code [28 USCS § 1254].

(d) Jurisdiction of court. Upon the filing of the record with it the jurisdiction of the [circuit] court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

(e) Extension from liability. No order of the Commission or judgment of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

(f) Service of complaints, orders and other processes; return. Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or (c) by mailing a copy thereof by registered mail or by certified mail addressed to such person, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered mail or by certified mail as aforesaid shall be proof of the service of the same.

(g) Finality of order. An order of the Commission to cease and desist shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b).

(2) Except as to any order provision subject to paragraph (4), upon the sixtieth day after such order is served, if a petition for review has been duly filed; except that any such order may be stayed, in whole or in part and subject to such conditions as may be appropriate, by—

(A) the Commission;

(B) an appropriate court of appeals of the United States, if (i) a petition for review of such order is pending in such court, and (ii) an application for such a stay was previously submitted to the Commission and the Commission, within the 30-day period beginning on the date the application was received by the Commission, either denied the application or did not grant or deny the application; or

(C) the Supreme Court, if an applicable petition for certiorari is pending.

(3) For purposes of subsection (m)(1)(B) and of section 19(a)(2) [15 USCS § 57b(a)(2)], if a petition for review of the order of the Commission has been filed—

(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.

(4) In the case of an order provision requiring a person, partnership, or corporation to divest itself of stock, other share capital, or assets, if a petition for review of such order of the Commission has been filed—

(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.

(h) Modification or setting aside of order by Supreme Court. If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(i) Modification or setting aside of order by Court of Appeals. If the order of the Commission is modified or set aside by the [circuit] court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in

which event the order of the Commission shall become final when so corrected.
(j) Rehearing upon order or remand. If the Supreme Court orders a rehearing; or if the case is remanded by the [circuit] court of appeals to the Commission for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission had been rendered.
(k) "Mandate" defined. As used in this section the term "mandate," in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.
(l) Penalty for violation of order; injunctions and other appropriate equitable relief. Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $ 10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission. (m) Civil actions for recovery of penalties for knowing violations of rules and cease and desist orders respecting unfair or deceptive acts or practices; jurisdiction; maximum amount of penalties; continuing violations; de novo determinations; compromise or settlement procedure.

(1) (A) The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this Act respecting unfair or deceptive acts or practices (other than an interpretive rule or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of subsection (a)(1)) with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $ 10,000 for each violation.

(B) If the Commission determines in a proceeding under subsection (b) that any act or practice is unfair or deceptive, and issues a final cease and desist order, other than a consent order, with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice—

(1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and

(2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section.

In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $ 10,000 for each violation.

(C) In the case of a violation through continuing failure to comply with a rule or with section 5(a)(1) [subsec. (a)(1) of this section], each day of continuance of such failure shall be treated as a separate violation, for purposes of subparagraphs (A) and (B). In determining the amount of such a civil penalty, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) If the cease and desist order establishing that the act or practice is unfair or deceptive was not issued against the defendant in a civil penalty action under paragraph (1)(B) the issues of fact in such action against such defendant shall be tried de novo. Upon request of any party to such an action against such defendant, the court shall also review the determination of law made by the Commission in the proceeding under subsection (b) that the act or practice which was the subject of such proceeding constituted an unfair or deceptive act or practice in violation of subsection (a).

(3) The Commission may compromise or settle any action for a civil penalty if such compromise or settlement is accompanied by a public statement of its reasons and is approved by the court. (n) Definition of unfair acts or practices. The Commission shall have no authority under this section or section 18 [15 USCS § 57a] to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.
§ 45a. Labels on products
To the extent any person introduces, delivers for introduction, sells, advertises, or offers for sale in commerce a product with a "Made in the U.S.A." or "Made in America" label, or the equivalent thereof, in order to represent that such product was in whole or substantial part of domestic origin, such label shall be consistent with decisions and orders of the Federal Trade Commission issued pursuant to section 5 of the Federal Trade Commission Act [15 USCS § 45]. This section only applies to such labels. Nothing in this section shall preclude the application of other provisions of law relating to labeling. The Commission may periodically consider an appropriate percentage of imported components which may be included in the product and still be reasonably consistent with such decisions and orders. Nothing in this section shall preclude use of such labels for products that contain imported components under the label when the label also discloses such information in a clear and conspicuous manner. The Commission shall administer this section pursuant to section 5 of the Federal Trade Commission Act [15 USCS § 45] and may from time to time issue rules pursuant to section 553 of title 5, United States Code, for such purpose. If a rule is issued, such violation shall be treated by the Commission as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices. This section shall be effective upon publication in the Federal Register of a Notice of the provisions of this section. The Commission shall publish such notice within six months after the enactment of this section [Sept. 13, 1994].
§ 46. Additional powers of Commission
The commission shall also have power—
(a) Investigation of persons, partnerships, or corporations. To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 18(f)(3) [15 USCS § 57a(f)(3)], Federal credit unions described in section 18(f)(4) [15 USCS § 57a(f)(4)], and common carriers subject to the Act to regulate commerce, and its relation to other persons, partnerships, and corporations.
(b) Reports of persons, partnerships, and corporations. To require, by general or special orders, persons, partnerships, and corporations engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 18(f)(3) [15 USCS § 57a(f)(3)], Federal credit unions described in section 18(f)(4) [15 USCS § 57a(f)(4)], and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports, or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons, partnerships, and corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the

commission may prescribe, unless additional time be granted in any case by the commission.
(c) Investigation of compliance with antitrust decrees. Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.
(d) Investigations of violations of antitrust statutes. Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.
(e) Readjustment of business of corporations violating antitrust statutes. Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.
(f) Publication of information; reports. To make public from time to time such portions of the information obtained by it hereunder as are in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use: Provided, That the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential, except that the Commission may disclose such information to officers and employees of appropriate Federal law enforcement agencies or to any officer or employee of any State law enforcement agency upon the prior certification of an officer of any such Federal or State law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement purposes.
(g) Classification of corporations; regulations. From time to time to classify corporations and (except as provided in section 18(a)(2) of this Act [15 USCS § 57a(a)(2)]) to make rules and regulations for the purpose of carrying out the provisions of this Act.
(h) Investigations of foreign trade conditions; reports. To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.
(i) With respect to the International Antitrust Enforcement Assistance Act of 1994, to conduct investigations of possible violations of foreign antitrust laws (as defined in section 12 of such Act [15 USCS § 6211]).
Provided, That the exception of "banks, savings and loan institutions described in section 18(f)(3) [15 USCS § 57a(f)(3)], Federal credit unions described in section 18(f)(4) [15 USCS § 57a(f)(4)], and common carriers subject to the Act to regulate commerce" from the Commission's powers defined in clauses (a) and (b) of this section, shall not be construed to limit the Commission's authority to gather and compile information, to investigate, or to require reports or answers from, any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations, or industry which is not engaged or is engaged only incidentally in banking, in business as a savings and loan institution, in business as a Federal credit union, or in business as a common carrier subject to the Act to regulate commerce.
The Commission shall establish a plan designed to substantially reduce burdens imposed upon small businesses as a result of requirements established by the Commission under clause (b) relating to the filing of quarterly financial reports. Such plan shall (1) be established after consultation with small businesses and persons who use the information contained in such quarterly financial reports; (2) provide for a reduction of the number of small businesses required to file such quarterly financial reports; and (3) make revisions in the forms used for such quarterly financial reports for the purpose of reducing the complexity of such forms. The Commission, not later than December 31, 1980, shall submit such plan to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives. Such plan shall take effect not later than October 31, 1981.
No officer or employee of the Commission or any Commissioner may publish or disclose information to the public, or to any Federal agency, whereby any line-of-business data furnished by a particular establishment or individual can be identified. No one other than designated sworn officers and employees of the Commission may examine the line-of-business reports from individual firms, and information provided in the line-of-business program administered by the Commission shall be used only for statistical purposes. Information for carrying out specific law enforcement responsibilities of the Commission shall be obtained under practices and procedures in effect on the date of the enactment of the Federal Trade Commission Improvements Act of 1980 [enacted May 28, 1980], or as changed by law. Nothing in this section (other than the provisions of clause (c) and clause (d)) shall apply to the business of insurance, except that the Commission shall have authority to conduct studies and prepare reports relating to the business of insurance. The Commission may exercise such authority only upon receiving a request which is agreed to by a majority of the members of the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Representatives. The authority to conduct any such study shall expire at the end of the Congress during which the request for such study was made.
§ 47. Reference of suits under antitrust statutes to Commission In any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.
§ 49. Documentary evidence; depositions; witnesses For the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.
Such attendance of witnesses and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.
Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, partnership, or corporation, issue an order requiring such person, partnership, or corporation to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.
Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United

States shall have jurisdiction to issue writs of mandamus commanding any person, partnership, or corporation to comply with this Act or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided. Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

§ 50. Offenses and penalties

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce any documentary evidence, if in his power to do so, in obedience to an order of a district court of the United States directing compliance with the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $ 1,000 nor more than $ 5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person, partnership, or corporation subject to this Act, or who shall willfully neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such person, partnership, or corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such person, partnership, or corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such person, partnership, or corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $ 1,000 nor more than $ 5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any persons, partnership or corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $ 100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business. It shall be the duty of the various district attorneys [United States attorneys], under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $ 5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

§ 52. Dissemination of false advertisements

(a) Unlawfulness. It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

(1) By United States mails, or in or having an effect upon commerce, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of foods, drugs, devices, services, or cosmetics; or

(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce of food, drugs, devices, services, or cosmetics.

(b) Unfair or deceptive act or practice. The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in or affecting commerce within the meaning of section
5 [15 USCS § 45].

§ 53. False advertisements; injunctions and restraining orders

(a) Power of Commission; jurisdiction of courts. Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 12 [15 USCS § 52], and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 5 [15 USCS § 45], and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5 [15 USCS § 45], would be to the interest of the public, the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any Territory, to enjoin the dissemination or the causing of the dissemination of such advertisement. Upon proper showing a temporary injunction or restraining order shall be granted without bond. Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28, United States Code. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found.

(b) Temporary restraining orders; preliminary injunctions. Whenever the Commission has reason to believe

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond: Provided, however, That if a complaint is not filed within such period (not exceeding 20 days) as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect: Provided further, That in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction. Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28, United States Code. In addition, the court may, if the court determines that the interests of justice require that any other

person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found.
(c) Service of process of the Commission; proof of service. Any process of the Commission under this section may be served by any person duly authorized by the Commission—
(1) by delivering a copy of such process to the person to be served, to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served;
(2) by leaving a copy of such process at the residence or the principal office or place of business of such person, partnership, or corporation; or
(3) by mailing a copy of such process by registered mail or certified mail addressed to such person, partnership, or corporation at his, or her, or its residence, principal office, or principal place or business. The verified return by the person serving such process setting forth the manner of such service shall be proof of the same.
(d) Exception of periodical publications. Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals—
(1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and
(2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction.
§ 54. False advertisements; penalties
(a) Imposition of penalties. Any person, partnership, or corporation who violates any provision of section 12(a) [15 USCS § 52(a)] shall, if the use of the commodity advertised may be injurious to health because of results from such use under the conditions prescribed in the advertisement thereof, or under such conditions as are customary or usual, or if such violation is with intent to defraud or mislead, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than $ 5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, partnership, or corporation, for any violation of such section, punishment shall be by a fine of not more than $ 10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment: Provided, That for the purposes of this section meats and meat food products duly inspected, marked, and labeled in accordance with rules and regulations issued under the Meat Inspection Act approved March 4, 1907, as amended, shall be conclusively presumed not injurious to health at the time the same leave official "establishments."
(b) Exception of advertising medium or agency. No publisher, radio broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates, shall be liable under this section by reason of the dissemination by him of any false advertisement, unless he has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement. No advertising agency shall be liable under this section by reason of the causing by it of the dissemination of any false advertisement, unless it has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, or seller, residing in the United States, who caused it to cause the dissemination of such advertisement.
§ 55. Additional definitions
For the purposes of sections 12, 13 and 14 [15 USCS §§ 52, 53, 54]—
(a) False advertisement.
(1) The term "false advertisement" means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. No advertisement of a drug shall be deemed to be false if it is disseminated only to members of the medical profession, contains no false representation of a material fact, and includes, or is accompanied in each instance by truthful disclosure of, the formula showing quantitatively each ingredient of such drug.
(2) In the case of oleomargarine or margarine an advertisement shall be deemed misleading in a material respect if in such advertisement representations are made or suggested by statement, word, grade designation, design, device, symbol, sound, or any combination thereof, that such oleomargarine or margarine is a dairy product, except that nothing contained herein shall prevent a truthful, accurate, and full statement in any such advertisement of all the ingredients contained in such oleomargarine or margarine.
(b) Food. The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.
(c) Drug. The term "drug" means (1) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.
(d) Device. The term "device" (except when used in subsection (a) of this section) means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—
(1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them,
(2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or
(3) intended to affect the structure or any function of the body of man or other animals, and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.
(e) Cosmetic. The term "cosmetic" means (1) articles to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof intended for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such article; except that such term shall not include soap.
(f) Oleomargarine or margarine. For the purpose of this section and section 407 of the Federal Food, Drug, and Cosmetic Act, as amended [21 USCS § 347], the term "oleomargarine" or "margarine" includes—
(1) all substances, mixtures, and compounds known as oleomargarine or margarine;
(2) all substances, mixtures, and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter.
§ 57. Separability clause
If any provision of this Act or the application thereof to any person, partnership, corporation, or circumstance, is held invalid, the

remainder of the Act and the application of such provision to any other person, partnership, corporation, or circumstance, shall not be affected thereby.

§ 57b. Civil actions for violations of rules and cease and desist orders respecting unfair or deceptive acts or practices

(a) Suits by Commission against persons, partnerships, or corporations; jurisdiction; relief for dishonest or fraudulent acts.

(1) If any person, partnership, or corporation violates any rule under this Act respecting unfair or deceptive acts or practices (other than an interpretive rule, or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of section 5(a) [15 USCS § 45(a)]), then the Commission may commence a civil action against such person, partnership, or corporation for relief under subsection (b) in a United States district court or in any court of competent jurisdiction of a State.

(2) If any person, partnership, or corporation engages in any unfair or deceptive act or practice (within the meaning of section 5(a)(1) [15 USCS § 45(a)(1)]) with respect to which the Commission has issued a final cease and desist order which is applicable to such person, partnership, or corporation, then the Commission may commence a civil action against such person, partnership, or corporation in a United States district court or in any court of competent jurisdiction of a State. If the Commission satisfies the court that the act or practice to which the cease and desist order relates is one which a reasonable man would have known under the circumstances was dishonest or fraudulent, the court may grant relief under subsection (b).

(b) Nature of relief available. The court in an action under subsection (a) shall have jurisdiction to grant such relief as the court finds necessary to redress injury to consumers or other persons, partnership, and corporations resulting from the rule violation or the unfair or deceptive act or practice, as the case may be. Such relief may include, but shall not be limited to, rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or practice, as the case may be; except that nothing in this sub-section is intended to authorize the imposition of any exemplary or punitive damages.

(c) Conclusiveness of findings of Commission in cease and desist proceedings; notice of judicial proceedings to injured persons, etc.

(1) If (A) a cease and desist order issued under section 5(b) [15 USCS § 45(b)] has become final under section 5(g) [15 USCS § 45(g)] with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice, and (B) an action under this section is brought with respect to such person's, partnership's, or corporation's rule violation or act or practice, then the findings of the Commission as to the material facts in the proceeding under section 5(b) [15 USCS § 45(b)] with respect to such person's, partnership's, or corporation's rule violation or act or practice, shall be conclusive unless (i) the terms of such cease and desist order expressly provide that the Commission's findings shall not be conclusive, or (ii) the order became final by reason of section 5(g)(1) [15 USCS § 45(g)(1)], in which case such finding shall be conclusive if supported by evidence.

(2) The court shall cause notice of an action under this section to be given in a manner which is reasonably calculated, under all of the circumstances, to apprise the persons, partnerships, and corporations allegedly injured by the defendant's rule violation or act or practice of the pendency of such action. Such notice may, in the discretion of the court, be given by publication.

(d) Time for bringing of actions. No action may be brought by the Commission under this section more than 3 years after the rule violation to which an action under subsection (a)(1) relates, or the unfair or deceptive act or practice to which an action under subsection (a)(2) relates; except that if a cease and desist order with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice has become final and such order was issued in a proceeding under section 5(b) [15 USCS § 45(b)] which was commenced not later than 3 years after the rule violation or act or practice occurred, a civil action may be commenced under this section against such person, partnership, or corporation at any time before the expiration of one year after such order becomes final.

(e) Availability of additional Federal or State remedies; other authority of Commission unaffected. Remedies provided in this section are in addition to, and not in lieu of, any other remedy or right of action provided by State or Federal law. Nothing in this section shall be construed to affect any authority of the Commission under any other provision of law.

§ 57b-2. Confidentiality

(a) Definitions. For purposes of this section:

(1) The term "material" means documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony.

(2) The term "Federal agency" has the meaning given it in section 552(e) of title 5, United States Code.

(b) Procedures respecting documents, tangible things, or transcripts of oral testimony received pursuant to compulsory process in investigation.

(1) With respect to any document, tangible thing, or transcript of oral testimony received by the Commission pursuant to compulsory process in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, the procedures established in paragraph (2) through paragraph (7) shall apply.

(2) (A) The Commission shall designate a duly authorized agent to serve as custodian of documentary material, tangible things, or written reports or answers to questions, and transcripts of oral testimony, and such additional duly authorized agents as the Commission shall determine from time to time to be necessary to serve as deputies to the custodian.

(B) Any person upon whom any demand for the production of documentary material has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated in such demand at the principal place of business of such person (or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct pursuant to section 20(h) [15 USCS § 57b-1(h)]) on the return date specified in such demand (or on such later date as such custodian may prescribe in writing). Such person may upon written agreement between such person and the custodian substitute copies for originals of all or any part of such material.

(3) (A) The custodian to whom any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony are delivered shall take physical possession of such material, reports or answers, and transcripts, and shall be responsible for the use made of such material, reports or answers, and transcripts, and for the return of material, pursuant to the requirements of this section.

(B) The custodian may prepare such copies of the documentary material, written reports or answers to questions, and transcripts of oral testimony, and may make tangible things available, as may be required for official use by any duly authorized officer or employee of the Commission under regulations which shall be promulgated by the Commission. Notwithstanding subparagraph (C), such material, things, and transcripts may be used by any such officer or employee in connection with the taking of oral testimony under this section.

(C) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, tangible things, reports or answers to questions, and transcripts of oral testimony shall be available for examination by any individual other than a duly authorized officer or employee of the Commission without the consent of the person who produced the material, things, or transcripts. Nothing in this section is intended to prevent disclosure to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the owner or provider.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Commission shall prescribe—

(i) documentary material, tangible things, or written reports shall be available for examination by the person who produced the material, or by any duly authorized representative of such person; and

(ii) answers to questions in writing and transcripts of oral testimony shall be available for examination by the person who produced the testimony or by his attorney.

(4) Whenever the Commission has instituted a proceeding against a person, partnership, or corporation, the custodian may deliver to any officer or employee of the Commission documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony for official use in connection with such proceeding. Upon the completion of the proceeding, the officer or employee shall return to the custodian any such material so delivered which has not been received into the record of the proceeding.

(5) If any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony have been produced in the course of any investigation by any person pursuant to compulsory process and—

(A) any proceeding arising out of the investigation has been completed; or

(B) no proceeding in which the material may be used has been commenced within a reasonable time after completion of the examination and analysis of all such material and other information assembled in the course of the investigation; then the custodian shall, upon written request of the person who produced the material, return to the person any such material which has not been received into the record of any such proceeding (other than copies of such material made by the custodian pursuant to paragraph (3)(B)).

(6) The custodian of any documentary material, written reports or answers to questions, and transcripts of oral testimony may deliver to any officers or employees of appropriate Federal law enforcement agencies, in response to a written request, copies of such material for use in connection with an investigation or proceeding under the jurisdiction of any such agency. The custodian of any tangible things may make such things available for inspection to such persons on the same basis. Such materials shall not be made available to any such agency until the custodian receives certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. Such documentary material, results of inspections of tangible things, written reports or answers to questions, and transcripts of oral testimony may be used by any officer or employee of such agency only in such manner and subject to such conditions as apply to the Commission under this section. The custodian may make such materials available to any State law enforcement agency upon the prior certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes.

(7) In the event of the death, disability, or separation from service in the Commission of the custodian of any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony produced under any demand issued under this Act, or the official relief of the custodian from responsibility for the custody and control of such material, the Commission promptly shall—

(A) designate under paragraph (2)(A) another duly authorized agent to serve as custodian of such material; and

(B) transmit in writing to the person who produced the material or testimony notice as to the identity and address of the successor so designated.

Any successor designated under paragraph (2)(A) as a result of the requirements of this paragraph shall have (with regard to the material involved) all duties and responsibilities imposed by this section upon his predecessor in office with regard to such material, except that he shall not be held responsible for any default or dereliction which occurred before his designation.

(c) Information considered confidential.

(1) All information reported to or otherwise obtained by the Commission which is not subject to the requirements of subsection (b) shall be considered confidential when so marked by the person supplying the information and shall not be disclosed, except in accordance with the procedures established in paragraph (2) and paragraph (3).

(2) If the Commission determines that a document marked confidential by the person supplying it may be disclosed because it is not a trade secret or commercial or financial information which is obtained from any person and which is privileged or confidential, within the meaning of section 6(f) [15 USCS § 46(f)], then the Commission shall notify such person in writing that the Commission intends to disclose the document at a date not less than 10 days after the date of receipt of notification.

(3) Any person receiving such notification may, if he believes disclosure of the document would cause disclosure of a trade secret, or commercial or financial information which is obtained from any person and which is privileged or confidential, within the meaning of section 6(f) 15 USCS § 46(f)], before the date set for release of the document, bring an action in the district court of the United States for the district within which the documents are located or in the United States District Court for the District of Columbia to restrain disclosure of the document. Any person receiving such notification may file with the appropriate district court or court of appeals of the United States, as appropriate, an application for a stay of disclosure. The documents shall not be disclosed until the court has ruled on the application for a stay.

(d) Particular disclosures allowed.

(1) The provisions of subsection (c) shall not be construed to prohibit—

(A) the disclosure of information to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the owner or provider;

(B) the disclosure of the results of any investigation or study carried out or prepared by the Commission, except that no information shall be identified nor shall information be disclosed in such a manner as to disclose a trade secret of any person supplying the trade secret, or to disclose any commercial or financial information which is obtained from any person and which is privileged or confidential;

(C) the disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party; or

(D) the disclosure to a Federal agency of disaggregated information obtained in accordance with section 3512 of title 44, United States Code, except that the recipient agency shall use such disaggregated information for economic, statistical, or policymaking purposes only, and shall not disclose such information in an individually identifiable form.

(2) Any disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party shall be governed by the rules of the Commission for adjudicative proceedings or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section.

(e) Effect on other statutory provisions limiting disclosure. Nothing in this section shall supersede any statutory provision which expressly prohibits or limits particular disclosures by the Commission, or which authorizes disclosures to any other Federal agency.

(f) Exemption from disclosure. Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this Act or which is provided voluntarily in place of such compulsory process shall be exempt from disclosure under section 552 of title 5, United States Code.

Federal Food, Drug, and Cosmetic Act (1938)
Title 21. Food and Drugs
Chapter 9. Federal Food, Drug, and Cosmetic Act Definitions

§ 331. Prohibited acts

The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or

cosmetic in interstate commerce.
(c) The receipt in interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.
(d) The introduction or delivery for introduction into interstate commerce of any article in violation of section 404 or 505 [21 USCS § 344 or 355].
(e) The refusal to permit access to or copying of any record as required by section 412, 414, 504, 703, or 704(a) [21 USCS § 350a, 350c, 354, 373, or 374(a)]; or the failure to establish or maintain any record, or make any report, required under section 412, 414(b), 504, 505(i) or (k), 512(a)(4)(C), 512(j), (l), or (m), 515(f), or 519 [21 USCS § 350a, 350c(b), 354, 355(i) or (k), 360b(a)(4)(C), 360b(j), (l), or (m) 360e(f), or
360i] or the refusal to permit access to or verification or copying of any such required record.
(f) The refusal to permit entry or inspection as authorized by section 704 [21 USCS § 374].
(g) The manufacture, within any Territory of any food, drug, device, or cosmetic that is adulterated or misbranded.
(h) The giving of a guaranty or undertaking referred to in section 303(c)(2) [21 USCS § 333(c)(2)], which guaranty or undertaking is false, except by a person who relied upon a guaranty or undertaking to the same effect signed by, containing the name and address of, the person residing in the United States from whom he received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in section 303(c)(3) [21 USCS § 333(c)(3)], which guaranty or undertaking is false.
(i) (1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of section 404 or 721 [21 USCS § 344 or 379e].
(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit drug.
(3) The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.
(j) The using by any person to his own advantage or revealing, other than to the Secretary or officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this Act [21 USCS §§ 301 et seq.], any information acquired under authority of section 404, 409, 412, 414, 505, 510, 512, 513, 514, 515, 516, 518, 519, 520, 704, 708 or 721 [21 USCS § 344, 348, 350a, 350c, 355, 360, 360b, 360c, 360d, 360e, 360f, 360h, 360i, 360j, 374, 379, or 379e], concerning any method or process which as a trade secret is entitled to protection; or the violating of section 408(i)(2) [21 USCS § 346a(i)(2)] or any regulation issued under that section.[.] This paragraph does not authorize the withholding of information from either House of Congress or from, to the extent of matter within its jurisdiction, any committee or subcommittee of such committee or any joint committee of Congress or any subcommittee of such joint committee.
(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic, if such act is done while such article is held for sale (whether or not the first sale) after shipment in interstate commerce and results in such article being adulterated or misbranded.
(l) [Deleted]
(m) The sale or offering for sale of colored oleomargarine or colored margarine, or the possession or serving of colored oleomargarine or colored margarine in violation of sections 407(b), or 407(c) [21 USCS § 347(b) or (c)].
(n) The using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with section 704 [21 USCS § 374].
(o) In the case of a prescription drug distributed or offered for sale in interstate commerce, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable State law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved by the Secretary. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this Act [21 USCS §§ 301 et seq.].
(p) The failure to register in accordance with section 510 [21 USCS § 360], the failure to provide any information required by section 510(j) or 510k, [21 USCS § 360(j) or (k)], or the failure to provide a notice required by section 510(j)(2) [21 USCS 360(j)(2)].
(q) (1) The failure or refusal to (A) comply with any requirement prescribed under section 518 or 520(g) [21 USCS § 360h or 360j(g)], (B) furnish any notification or other material or information required by or under section 519 or 520(g) [21 USCS § 360i or 360j(g)], or (C) comply with a requirement under section 522 [21 USCS § 360l].
(2) With respect to any device, the submission of any report that is required by or under this Act [21 USCS §§ 301 et seq.] that is false or misleading in any material respect.
(r) The movement of a device in violation of an order under section 304(g) [21 USCS § 334(g)] or the removal or alteration of any mark or label required by the order to identify the device as detained.
(s) The failure to provide the notice required by section 412(c) or 412(e) [21 USCS § 350a(c) or (e)], the failure to make the reports required by section 412(f)(1)(B) [21 USCS § 350a(b)(1)(B), the failure to retain the records required by section 412(b)(4) [21 USCS § 350a(b)(4)], or the failure to meet the requirements prescribed under section 412(f)(3) [21 USCS § 350a(f)(3)].
(t) The importation of a drug in violation of section 801(d)(1) [21 USCS § 381(d)(1)], the sale, purchase, or trade of a drug or drug sample or the offer to sell, purchase, or trade a drug or drug sample in violation of section 503(c) [21 USCS § 353(c)], the sale, purchase, or trade of a coupon, the offer to sell, purchase, or trade such a coupon, or the counterfeiting of such a coupon in violation of section 503(c)(2) [21 USCS § 353(c)(2)], the distribution of a drug sample in violation of section 503(d) [21 USCS § 353(d)], or the failure to otherwise comply with the requirements of section 503(d) [21 USCS § 353(d)], or the distribution of drugs in violation of section 503(e) [21 USCS § 353(e)] or the failure to otherwise comply with the requirements of section 503(e) [21 USCS § 353(e)].
(u) The failure to comply with any requirements of the provisions of, or any regulations or orders of the Secretary, under section 512(a)(4)(A), 512(a)(4)(D), or 512(a)(5) [21 USCS § 360b(a)(4)(A), (4)(D), or (5)].
(v) The introduction or delivery for introduction into interstate commerce of a dietary supplement that is unsafe under section 413 [21 USCS § 350b].
(w) The making of a knowingly false statement in any statement, certificate of analysis, record, or report required or requested under section 801(d)(3) [21 USCS § 381(d)(3)]; the failure to submit a certificate of analysis as required under such section; the failure to maintain records or to submit records or reports as required by such section; the release into interstate commerce of any article or portion thereof imported into the United States under such section or any finished product made from such article or portion, except for export in accordance with section 801(e) or 802 [21 USCS § 381(e) or 382], or with section 351(h) of the Public Health Service Act [42 USCS § 262(h)]; or the failure to so export or to destroy such an article or portions thereof, or such a finished product.
(x) The falsification of a declaration of conformity submitted under section 514(c) [21 USCS § 360d(c)] or the failure or refusal to provide data or information requested by the Secretary under paragraph (3) of such section.
(y) In the case of a drug, device, or food—
(1) the submission of a report or recommendation by a person accredited under section 523 [21 USCS § 360m] that is false or misleading in any material respect;
(2) the disclosure by a person accredited under section 523 [21 USCS § 360m] of confidential commercial information or any trade secret without the express written consent of the person who sub-

mitted such information or secret to such person; or

(3) the receipt by a person accredited under section 523 [21 USCS § 360m] of a bribe in any form or the doing of any corrupt act by such person associated with a responsibility delegated to such person under this Act [21 USCS §§ 301 et seq.].

(z) The dissemination of information in violation of section 551 [21 USCS § 360aaa].

(aa) The importation of a covered product in violation of section 804 [21 USCS § 384], the falsification of any record required to be maintained or provided to the Secretary under such section, or any other violation of regulations under such section.

(bb) The transfer of an article of food in violation of an order under section 304(h) [21 USCS § 334(h)], or the removal or alteration of any mark or label required by the order to identify the article as detained.

(cc) The importing or offering for import into the United States of an article of food by, with the assistance of, or at the direction of, a person debarred under section 306(b)(3) [21 USCS § 335a(b)(3)].

(dd) The failure to register in accordance with section 415 [21 USCS § 350d].

(ee) The importing or offering for import into the United States of an article of food in violation of the requirements under section 801(m) [21 USCS § 381(m)].

(ff) The importing or offering for import into the United States of a drug or device with respect to which there is a failure to comply with a request of the Secretary to submit to the Secretary a statement under section 801(o) [21 USCS § 381(o)].

(gg) The knowing failure of a person accredited under paragraph (2) of section 704(g) [21 USCS § 374(g)] to comply with paragraph (7)(E) of such section; the knowing inclusion by such a person of false information in an inspection report under paragraph (7)(A) of such section; or the knowing failure of such a person to include material facts in such a report.

§ 332. Injunction proceedings

(a) Jurisdiction of courts. The district courts of the United States and the United States courts of the Territories shall have jurisdiction, for cause shown to restrain violations of section 301 [21 USCS § 331], except paragraphs (h), (i), and (j).

(b) Violation of injunction. In case of violation of an injunction or restraining order issued under this section, which also constitutes a violation of this Act, trial shall be by the court, or, upon demand of the accused, by a jury.

§ 333. Penalties

(a) Violation of 21 USCS § 331.

(1) Any person who violates a provision of section 301 [21 USCS § 331] shall be imprisoned for not more than one year or fined not more than $ 1,000, or both.

(2) Notwithstanding the provisions of paragraph (1) of this section, if any person commits such a violation after a conviction of him under this section has become final, or commits such a violation with the intent to defraud or mislead, such person shall be imprisoned for not more than three years or fined not more than $ 10,000 or both. (b) Imprisonment and fines.

(1) Notwithstanding subsection (a), any person who violates section 301(t) [21 USCS § 331(t)] by—

(A) knowingly importing a drug in violation of section 801(d)(1) [21 USCS § 381(d)(1)],

(B) knowingly selling, purchasing, or trading a drug or drug sample or knowingly offering to sell, purchase, or trade a drug or drug sample, in violation of section 503(c)(1) [21 USCS § 353(c)(1)],

(C) knowingly selling, purchasing, or trading a coupon, knowingly offering to sell, purchase, or trade such a coupon, or knowingly counterfeiting such a coupon, in violation of section 503(c)(2) [21 USCS § 353(c)(2)], or

(D) knowingly distributing drugs in violation of section 503(e)(2)(A) [21 USCS § 353(e)(2)(A)], shall be imprisoned for not more than 10 years or fined not more than $ 250,000, or both.

(2) Any manufacturer or distributor who distributes drug samples by means other than the mail or common carrier whose representative, during the course of the representative's employment or association with that manufacturer or distributor, violated section 301(t) [21 USCS § 331(t)] because of a violation of section 503(c)(1) [21 USCS § 353(c)(1)] or violated any State law prohibiting the sale, purchase, or trade of a drug sample subject to section 503(b) [21 USCS § 353(b)] or the offer to sell, purchase, or trade such a drug sample shall, upon conviction of the representative for such violation, be subject to the following civil penalties:

(A) A civil penalty of not more than $ 50,000 for each of the first two such violations resulting in a conviction of any representative of the manufacturer or distributor in any 10-year period.

(B) A civil penalty of not more than $ 1,000,000 for each violation resulting in a conviction of any representative after the second conviction in any 10-year period. For the purposes of this paragraph, multiple convictions of one or more persons arising out of the same event or transaction, or a related series of events or transactions, shall be considered as one violation.

(3) Any manufacturer or distributor who violates section 301(t) [21 USCS § 331(t)] because of a failure to make a report required by section 503(d)(3)(E) [21 USCS § 353(d)(3)(E)] shall be subject to a civil penalty of not more than $ 100,000.

(4) (A) If a manufacturer or distributor or any representative of such manufacturer or distributor provides information leading to the institution of a criminal proceeding against, and conviction of, any representative of that manufacturer or distributor for a violation of section 301(t) [21 USCS § 331(t)] because of a sale, purchase, or trade or offer to purchase, sell, or trade a drug sample in violation of section 503(c)(1) [21 USCS § 353(c)(1)] or for a violation of State law prohibiting the sale, purchase, or trade or offer to sell, purchase, or trade a drug sample, the conviction of such representative shall not be considered as a violation for purposes of paragraph (2).

(B) If, in an action brought under paragraph (2) against a manufacturer or distributor relating to the conviction of a representative of such manufacturer or distributor for the sale, purchase, or trade of a drug or the offer to sell, purchase, or trade a drug, it is shown, by clear and convincing evidence—

(i) that the manufacturer or distributor conducted, before the institution of a criminal proceeding against such representative for the violation which resulted in such conviction, an investigation of events or transactions which would have led to the reporting of information leading to the institution of a criminal proceeding against, and conviction of, such representative for such purchase, sale, or trade or offer to purchase, sell, or trade, or

(ii) that, except in the case of the conviction of a representative employed in a supervisory function, despite diligent implementation by the manufacturer or distributor of an independent audit and security system designed to detect such a violation, the manufacturer or distributor could not reasonably have been expected to have detected such violation, the conviction of such representative shall not be considered as a conviction for purposes of paragraph (2).

(5) If a person provides information leading to the institution of a criminal proceeding against, and conviction of, a person for a violation of section 301(t) [21 USCS § 331(t)] because of the sale, purchase, or trade of a drug sample or the offer to sell, purchase, or trade a drug sample in violation of section 503(c)(1) [21 USCS § 353(c)(1)], such person shall be entitled to one-half of the criminal fine imposed and collected for such violation but not more than $ 125,000.

(6) Notwithstanding subsection (a), any person who is a manufacturer or importer of a covered product pursuant to section 804(a) [21 USCS § 384(a)] and knowingly fails to comply with a requirement of section 804(e) [21 USCS § 384(e)] that is applicable to such manufacturer or importer, respectively, shall be imprisoned for not more than 10 years or fined not more than $ 250,000, or both.

(c) Exceptions in certain cases of good faith, etc. No person shall be subject to the penalties of subsection (a)(1) of this section, (1) for having received in interstate commerce any article and delivered it or proffered delivery of it, if such delivery or proffer was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the Secretary the name and address of the person from whom he purchased or received such article and copies of all documents, if any there be, pertaining to the delivery of the article to him; or (2) for having violated section 301(a) or (d) [21 USCS § 331(a), (d)], if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the article, to the effect, in case of an alleged violation of section 301(a) [21 USCS § 331(a)], that such article is not adulterated or misbranded, within the meaning of this Act, designating this Act, or to the effect, in case of an alleged violation of section 301(d) [21 USCS § 331(d)], that such article is not an article which may not, under the provisions of section 404 or 505 [21 USCS § 344 or 355], be introduced into interstate commerce; or (3) for having violated section 301(a) [21 USCS § 331(a)], where the violation exists because the article is adulterated by reason of containing a color additive not from a batch certified in accordance with regulations promulgated by the Secretary, under this Act, if such person establishes a guaranty or undertaking signed by, and containing the name and address of, the manufacturer of the color additive, to the effect that such color additive was from a batch certified in accordance with the applicable regulations promulgated by the Secretary under this Act; or (4) for having violated section 301(b), (c) or (k) [21 USCS § 331(b), (c) or (k)] by failure to comply with section 502(f) [21 USCS § 352(f)] in respect to an article received in interstate commerce to which neither section 503(a) [21 USCS § 353(a)] nor section 503(b)(1) [21 USCS § 353(b)(1)] is applicable, if the delivery or proffered delivery was made in good faith and the labeling at the time thereof contained the same directions for use and warning statements as were contained in the labeling at the time of such receipt of such article; or (5) for having violated section 301(i)(2) [21 USCS § 331(i)(2)] if such person acted in good faith and had no reason to believe that use of the punch, die, plate, stone, or other thing involved would result in a drug being a counterfeit drug, or for having violated section 301(i)(3) [21 USCS § 331(i)(3)] if the person doing the act or causing it to be done acted in good faith and had no reason to believe that the drug was a counterfeit drug.

(d) Exceptions involving misbranded food. No person shall be subject to the penalties of subsection (a)(1) of this section for a violation of section 301 [21 USCS § 331] involving misbranded food if the violation exists solely because the food is misbranded under section 403(a)(2) [21 USCS § 343(a)(2)] because of its advertising.

(e) Distribution of or possession with intent to distribute human growth hormone; exception.

(1) Except as provided in paragraph (2), whoever knowingly distributes, or possesses with intent to distribute, human growth hormone for any use in humans other than the treatment of a disease or other recognized medical condition, where such use has been authorized by the Secretary of Health and Human Services under section 505 [21 USCS § 355] and pursuant to the order of a physician, is guilty of an offense punishable by not more than 5 years in prison, such fines as are authorized by title 18, United States Code, or both.

(2) Whoever commits any offense set forth in paragraph (1) and such offense involves an individual under 18 years of age is punishable by not more than 10 years imprisonment, such fines as are authorized by title 18, United States Code, or both.

(3) Any conviction for a violation of paragraphs (1) and (2) of this subsection shall be considered a felony violation of the Controlled Substances Act for the purposes of forfeiture under section 413 of such Act [21 USCS § 853].

(4) As used in this subsection the term "human growth hormone" means somatrem, somatropin, or an analogue of either of them.

(5) The Drug Enforcement Administration is authorized to investigate offenses punishable by this subsection.

(f) Civil penalties.

(1) (A) Except as provided in subparagraph (B), any person who violates a requirement of this Act which relates to devices shall be liable to the United States for a civil penalty in an amount not to exceed $ 15,000 for each such violation, and not to exceed $ 1,000,000 for all such violations adjudicated in a single proceeding. For purposes of the preceding sentence, a person accredited under paragraph (2) of section 704(g) [21 USCS § 374(g)] who is substantially not in compliance with the standards of accreditation under such section, or who poses a threat to public health or fails to act in a manner that is consistent with the purposes of such section, shall be considered to have violated a requirement of this Act that relates to devices.

(B) Subparagraph (A) shall not apply—

(i) to any person who violates the requirements of section 519(a) or 520(f) [21 USCS § 360i(a) or § 360j(f)] unless such violation constitutes (I) a significant or knowing departure from such requirements, or (II) a risk to public health,

(ii) to any person who commits minor violations of section 519(e) or 519(f) [21 USCS § 360i(e) or (f)] (only with respect to correction reports) if such person demonstrates substantial compliance with such section, or

(iii) to violations of section 501(a)(2)(A) [21 USCS § 360(a)(2)(A)] which involve one or more devices which are not defective.

(2) (A) Any person who introduces into interstate commerce or delivers for introduction into interstate commerce an article of food that is adulterated within the meaning of section 402(a)(2)(B) [21 USCS § 342(a)(2)(B)] shall be subject to a civil money penalty of not more than $ 50,000 in the case of an individual and $ 250,000 in the case of any other person for such introduction or delivery, not to exceed $ 500,000 for all such violations adjudicated in a single proceeding. (B) This paragraph shall not apply to any person who grew the article of food that is adulterated. If the Secretary assesses a civil penalty against any person under this paragraph, the Secretary may not use the criminal authorities under this section to sanction such person for the introduction or delivery for introduction into interstate commerce of the article of food that is adulterated. If the Secretary assesses a civil penalty against any person under this paragraph, the Secretary may not use the seizure authorities of section 304 [21 USCS § 334] or the injunction authorities of section 302 [21 USCS § 332] with respect to the article of food that is adulterated.

(C) In a hearing to assess a civil penalty under this paragraph, the presiding officer shall have the same authority with regard to compelling testimony or production of documents as a presiding officer has under section 408(g)(2)(B) [21 USCS § 346a(g)(2)(B)]. The third sentence of paragraph (3)(A) shall not apply to any investigation under this paragraph.

(3) (A) A civil penalty under paragraph (1) or (2) shall be assessed by the Secretary by an order made on the record after opportunity for a hearing provided in accordance with this subparagraph and section 554 of title 5, United States Code. Before issuing such an order, the Secretary shall give written notice to the person to be assessed a civil penalty under such order of the Secretary's proposal to issue such order and provide such person an opportunity for a hearing on the order. In the course of any investigation, the Secretary may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation.

(B) In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(C) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which may be assessed under paragraph (1) or (2). The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(4) Any person who requested, in accordance with paragraph (3)(A), a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 60-day period beginning on the date the order making such assessment was issued.

(5) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment becomes final, and if such person does not file a petition for judicial review of the order in accordance with paragraph (4), or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Secretary, the Attorney

General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 60-day period referred to in paragraph (4) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

§ 334. Seizure

(a) Grounds and jurisdiction.

(1) Any article of food, drug, or cosmetic that is adulterated or misbranded when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 404 or 505 [21 USCS § 344 or 355], be introduced into interstate commerce, shall be liable to be proceeded against while in interstate commerce, or at any time thereafter, on libel of information and condemned in any district court of the United States or United States court of a Territory within the jurisdiction of which the article is found. No libel for condemnation shall be instituted under this Act [21 USCS §§ 301 et seq.], for any alleged misbranding if there is pending in any court a libel for condemnation proceeding under this Act [21 USCS §§ 301 et seq.] based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply (A) when such misbranding has been the basis of a prior judgment in favor of the United States, in a criminal, injunction, or libel for condemnation proceeding under this Act [21 USCS §§ 301 et seq.], or (B) when the Secretary has probable cause to believe from facts found, without hearing, by him or any officer or employee of the Department that the misbranded article is dangerous to health, or that the labeling of the misbranded article is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer. In any case where the number of libel for condemnation proceedings is limited as above provided the proceeding pending or instituted shall, on application of the claimant, seasonably made, be removed for trial to any district agreed upon by stipulation between the parties, or, in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, to which the case shall be removed for trial.

(2) The following shall be liable to be proceeded against at any time on libel of information and condemned in any district court of the United States or United States court of a Territory within the jurisdiction of which they are found: (A) Any drug that is a counterfeit drug, (B) Any container of a counterfeit drug, (C) Any punch, die, plate, stone, labeling, container, or other thing used or designed for use in making a counterfeit drug or drugs, and (D) Any adulterated or misbranded device.

(3) (A) Except as provided in subparagraph (B), no libel for condemnation may be instituted under paragraph (1) or (2) against any food which—

(i) is misbranded under section 403(a)(2) [21 USCS § 343(a)(2)] because of its advertising, and

(ii) is being held for sale to the ultimate consumer in an establishment other than an establishment owned or operated by a manufacturer, packer, or distributor of the food.

(B) A libel for condemnation may be instituted under paragraph (1) or (2) against a food described in subparagraph (A) if—

(i) (I) the food's advertising which resulted in the food being misbranded under section 403(a)(2) [21 USCS § 343(a)(2)] was disseminated in the establishment in which the food is being held for sale to the ultimate consumer,

(II) such advertising was disseminated by, or under the direction of, the owner or operator of such establishment, or

(III) all or part of the cost of such advertising was paid by such owner or operator; and

(ii) the owner or operator of such establishment used such advertising in the establishment to promote the sale of the food.

(b) Procedure; multiplicity of pending proceedings. The article, equipment, or other thing proceeded against shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of adulteration or misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the claimant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the claimant may apply to the court of one such jurisdiction, and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

(c) Availability of samples of seized goods prior to trial. The court at any time after seizure up to a reasonable time before trial shall by order allow any party to a condemnation proceeding, his attorney or agent, to obtain a representative sample of the article seized and a true copy of the analysis, if any, on which the proceeding is based and the identifying marks or numbers, if any, of the packages from which the samples analyzed were obtained.

(d) Disposition of goods after decree of condemnation; claims for remission or mitigation of forfeitures.

(1) Any food, drug, device, or cosmetic condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such article shall not be sold under such decree contrary to the provisions of this Act [21 USCS §§ 301 et seq.] or the laws of the jurisdiction in which sold. After entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such article shall not be sold or disposed of contrary to the provisions of this Act [21 USCS §§ 301 et seq.] or the laws of any State or Territory in which sold, the court may by order direct that such article be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this Act [21 USCS §§ 301 et seq.] under the supervision of an officer or employee duly designated by the Secretary, and the expenses of such supervision shall be paid by the person obtaining release of the article under bond. If the article was imported into the United States and the person seeking its release establishes (A) that the adulteration, misbranding, or violation did not occur after the article was imported, and (B) that he had no cause for believing that it was adulterated, misbranded, or in violation before it was released from customs custody, the court may permit the article to be delivered to the owner for exportation in lieu of destruction upon a showing by the owner that all of the conditions of section 801(e) [21 USCS § 381(e)] can and will be met. The provisions of this sentence shall not apply where condemnation is based upon violation of section 402(a)(1), (2), or (6) [21 USCS § 342(a)(1), (2), or (6)], section 501(a)(3) [21 USCS § 351(a)(3)], section 502(j) [21 USCS § 352(j)], or section 601(a) or (d) [21 USCS § 361(a) or (d)]. Where such exportation is made to the original foreign supplier, then subparagraphs (A) and (B) of section 801(e)(1) [21 USCS § 381(e)(1)(A), (B)] and the preceding sentence shall not be applicable; and in all cases of exportation the bond shall be conditioned that the article shall not be sold or disposed of until the applicable conditions of section 801(e) [21 USCS § 381(e)] have been met. Any person seeking to export an imported article pursuant to any of the provisions of this subsection shall establish that the article was intended for export at the time the article entered commerce. Any article condemned by reason of its being an article which may not, under section 404 or 505 [21 USCS § 344 or 355] be introduced

into interest to commerce, shall be disposed of by destruction.

(2) The provisions of paragraph (1) of this subsection shall, to the extent deemed appropriate by the court, apply to any equipment or other thing which is not otherwise within the scope of such paragraph and which is referred to in paragraph (2) of subsection (a).

(3) Whenever in any proceeding under this section, involving paragraph (2) of subsection (a), the condemnation of any equipment or thing (other than a drug) is decreed, the court shall allow the claim of any claimant, to the extent of such claimant's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court (i) that he has not committed or caused to be committed any prohibited act referred to in such paragraph (2) and has no interest in any drug referred to therein, (ii) that he has an interest in such equipment or other thing as owner or lienor or otherwise, acquired by him in good faith, and (iii) that he at no time had any knowledge or reason to believe that such equipment or other thing was being or would be used in, or to facilitate, the violation of laws of the United States relating to counterfeit drugs.

(e) Costs. When a decree of condemnation is entered against the article, court costs and fees, and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the article.

(f) Removal of case for trial. In the case of removal for trial of any case as provided by subsection (a) or (b)—

(1) The clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction.

(2) The court to which such case was removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed. (g) Administrative restraint; detention orders.

(1) If during an inspection conducted under section 704 [21 USCS § 374] of a facility or a vehicle, a device which the officer or employee making the inspection has reason to believe is adulterated or misbranded is found in such facility or vehicle, such officer or employee may order the device detained (in accordance with regulations prescribed by the Secretary) for a reasonable period which may not exceed twenty days unless the Secretary determines that a period of detention greater than twenty days is required to institute an action under subsection (a) or section 302 [21 USCS § 332], in which case he may authorize a detention period of not to exceed thirty days. Regulations of the Secretary prescribed under this paragraph shall require that before a device may be ordered detained under this paragraph the Secretary or an officer or employee designated by the Secretary approve such order. A detention order under this paragraph may require the labeling or marking of a device during the period of its detention for the purpose of identifying the device as detained. Any person who would be entitled to claim a device if it were seized under subsection (a) may appeal to the Secretary a detention of such device under this paragraph. Within five days of the date an appeal of a detention is filed with the Secretary, the Secretary shall after affording opportunity for an informal hearing by order confirm the detention or revoke it.

(2) (A) Except as authorized by subparagraph (B), a device subject to a detention order issued under paragraph (1) shall not be moved by any person from the place at which it is ordered detained until—

(i) released by the Secretary, or

(ii) the expiration of the detention period applicable to such order, whichever occurs first.

(B) A device subject to a detention order under paragraph (1) may be moved—

(i) in accordance with regulations prescribed by the Secretary, and

(ii) if not in final form for shipment, at the discretion of the manufacturer of the device for the purpose of completing the work required to put it in such form. (h) Administrative detention of foods.

(1) Detention authority

(A) In general. An officer or qualified employee of the Food and Drug Administration may order the detention, in accordance with this subsection, of any article of food that is found during an inspection, examination, or investigation under this Act [21 USCS §§ 301 et seq.] conducted by such officer or qualified employee, if the officer or qualified employee has credible evidence or information indicating that such article presents a threat of serious adverse health consequences or death to humans or animals.

(B) Secretary's approval. An article of food may be ordered detained under subparagraph (A) only if the Secretary or an official designated by the Secretary approves the order. An official may not be so designated unless the official is the director of the district under this Act [21 USCS §§ 301 et seq.] in which the article involved is located, or is an official senior to such director

(2) Period of detention. An article of food may be detained under paragraph (1) for a reasonable period, not to exceed 20 days, unless a greater period, not to exceed 30 days, is necessary, to enable the Secretary to institute an action under subsection (a) or section 302 [21 USCS § 332]. The Secretary shall by regulation provide for procedures for instituting such action on an expedited basis with respect to perishable foods.

(3) Security of detained article. An order under paragraph (1) with respect to an article of food may require that such article be labeled or marked as detained, and shall require that the article be removed to a secure facility, as appropriate. An article subject to such an order shall not be transferred by any person from the place at which the article is ordered detained, or from the place to which the article is so removed, as the case may be, until released by the Secretary or until the expiration of the detention period applicable under such order, whichever occurs first. This subsection may not be construed as authorizing the delivery of the article pursuant to the execution of a bond while the article is subject to the order, and section 801(b) [21 USCS § 381(b)] does not authorize the delivery of the article pursuant to the execution of a bond while the article is subject to the order.

(4) Appeal of detention order.

(A) In general. With respect to an article of food ordered detained under paragraph (1), any person who would be entitled to be a claimant for such article if the article were seized under subsection (a) may appeal the order to the Secretary. Within five days after such an appeal is filed, the Secretary, after providing opportunity for an informal hearing, shall confirm or terminate the order involved, and such confirmation by the Secretary shall be considered a final agency action for purposes of section 702 of title 5, United States Code. If during such five-day period the Secretary fails to provide such an opportunity, or to confirm or terminate such order, the order is deemed to be terminated.

(B) Effect of instituting court action. The process under subparagraph (A) for the appeal of an order under paragraph (1) terminates if the Secretary institutes an action under subsection (a) or section 302 [21 USCS § 332] regarding the article of food involved.

§ 335b. Civil penalties

(a) In general. Any person that the Secretary finds—

(1) knowingly made or caused to be made, to any officer, employee, or agent of the Department of Health and Human Services, a false statement or misrepresentation of a material fact in connection with an abbreviated drug application,

(2) bribed or attempted to bribe or paid or attempted to pay an illegal gratuity to any officer, employee, or agent of the Department of Health and Human Services in connection with an abbreviated drug application,

(3) destroyed, altered, removed, or secreted, or procured the destruction, alteration, removal, or secretion of, any material document or other material evidence which was the property of or in the possession of the Department of Health and Human Services for the purpose of interfering with that Department's discharge of its responsibilities in connection with an abbreviated drug application,

(4) knowingly failed to disclose, to an officer or employee of the Department of Health and Human Services, a material fact which such person had an obligation to disclose relating to any drug subject to an abbreviated drug application,

(5) knowingly obstructed an investigation of the Department of Health and Human Services into any drug subject to an abbreviated drug application,

(6) is a person that has an approved or pending drug product application and has knowingly—

(A) employed or retained as a consultant or contractor, or

(B) otherwise used in any capacity the services of, a person who was debarred under section 306 [21 USCS § 335a], or

(7) is an individual debarred under section 306 [21 USCS § 335a]and, during the period of debarment, provided services in any capacity to a person that had an approved or pending drug product application, shall be liable to the United States for a civil penalty for each such violation in an amount not to exceed $ 250,000 in the case of an individual and $ 1,000,000 in the case of any other person. (b) Procedure.

(1) In general.

(A) Action by the Secretary. A civil penalty under subsection (a) shall be assessed by the Secretary on a person by an order made on the record after an opportunity for an agency hearing on disputed issues of material fact and the amount of the penalty. In the course of any investigation or hearing under this subparagraph, the Secretary may administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation.

(B) Action by the Attorney General. In lieu of a proceeding under subparagraph (A), the Attorney General may, upon request of the Secretary, institute a civil action to recover a civil money penalty in the amount and for any of the acts set forth in subsection (a). Such an action may be instituted separately from or in connection with any other claim, civil or criminal, initiated by the Attorney General under this Act.

(2) Amount. In determining the amount of a civil penalty under paragraph (1), the Secretary or the court shall take into account the nature, circumstances, extent, and gravity of the act subject to penalty, the person's ability to pay, the effect on the person's ability to continue to do business, any history of prior, similar acts, and such other matters as justice may require.

(3) Limitation on actions. No action may be initiated under this section—

(A) with respect to any act described in subsection (a) that occurred before the date of the enactment of this section [enacted May 13, 1992], or

(B) more than 6 years after the date when facts material to the act are known or reasonably should have been known by the Secretary but in no event more than 10 years after the date the act took place.

(c) Judicial review. Any person that is the subject of an adverse decision under subsection (b)(1)(A) may obtain a review of such decision by the United States Court of Appeals for the District of Columbia or for the circuit in which the person resides, by filing in such court (within 60 days following the date the person is notified of the Secretary's decision) a petition requesting that the decision be modified or set aside.

(d) Recovery of penalties. The Attorney General may recover any civil penalty (plus interest at the currently prevailing rates from the date the penalty became final) assessed under subsection (b)(1)(A) in an action brought in the name of the United States. The amount of such penalty may be deducted, when the penalty has become final, from any sums then or later owing by the United States to the person against whom the penalty has been assessed. In an action brought under this subsection, the validity, amount, and appropriateness of the penalty shall not be subject to judicial review.

(e) Informants. The Secretary may award to any individual (other than an officer or employee of the Federal Government or a person who materially participated in any conduct described in subsection (a)) who provides information leading to the imposition of a civil penalty under this section an amount not to exceed— (1) $ 250,000, or

(2) one-half of the penalty so imposed and collected, whichever is less. The decision of the Secretary on such award shall not be reviewable.

§ 342. Adulterated food

A food shall be deemed to be adulterated—

(a) Poisonous, insanitary, or deleterious ingredients.

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health.[; or] (2)(A) if it bears or contains any added poisonous or added deleterious substance (other than a substance that is a pesticide chemical residue in or on a raw agricultural commodity or processed food, a food additive, a color additive, or a new animal drug) that is unsafe within the meaning of section 406 [21 USCS § 346]; or (B) if it bears or contains a pesticide chemical residue that is unsafe within the meaning of section 408(a) [21 USCS § 346a(a)]; or (C) if it is or if it bears or contains (i) any food additive that is unsafe within the meaning of section 409 [21 USCS § 348]; or (ii) a new animal drug (or conversion product thereof) that is unsafe within the meaning of section 512 [21 USCS § 360b]; or (3) if it consists in whole or in part of any filthy, putrid, or decomposed substances, or if it is otherwise unfit for food; or (4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or (5) if it is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (7) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 [21 USCS § 348].

(b) Absence, substitution, or addition of constituents. (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(c) Color additives. If it is, or it bears or contains, a color additive which is unsafe within the meaning of section 721(a) [21 USCS § 379e(a)].

(d) Confectionery containing alcohol or nonnutritive substance. If it is confectionery, and—

(1) has partially or completely imbedded therein any nonnutritive object, except that this subparagraph shall not apply in the case of any nonnutritive object if, in the judgment of the Secretary as provided by regulations, such object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health;

(2) bears or contains any alcohol other than alcohol not in excess of one-half of 1 per centum by volume derived solely from the use of flavoring extracts, except that this clause shall not apply to confectionery which is introduced or delivered for introduction into, or received or held for sale in, interstate commerce if the sale of such confectionery is permitted under the laws of the State in which such confectionery is intended to be offered for sale; or

(3) bears or contains any nonnutritive substance, except that this subparagraph shall not apply to a safe nonnutritive substance which is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storage of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of any provision of this Act [21 USCS §§ 301 et seq.], except that the Secretary may, for the purpose of avoiding or resolving uncertainty as to the application of this subparagraph, issue regulations allowing or prohibiting the use of particular nonnutritive substances.

(e) Oleomargarine containing filthy, putrid, etc., matter. If it is oleomargarine or margarine or butter and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance, or such oleomargarine or margarine or butter is otherwise unfit for food.

(f) Safety of dietary supplements and burden of proof on FDA.

(1) If it is a dietary supplement or contains a dietary ingredient that—

(A) presents a significant or unreasonable risk of illness or injury under—

(i) conditions of use recommended or suggested in labeling, or

(ii) if no conditions of use are suggested or recommended in the labeling, under ordinary conditions of use;

(B) is a new dietary ingredient for which there is inadequate information to provide reasonable assurance that such ingredient does not present a significant or unreasonable risk of illness or injury;

(C) the Secretary declares to pose an imminent hazard to public health or safety, except that the authority to make such declaration shall not be delegated and the Secretary shall promptly after such a declaration initiate a proceeding in accordance with sections 554 and 556 of title 5, United States Code, to affirm or withdraw the declaration; or

(D) is or contains a dietary ingredient that renders it adulterated under paragraph (a)(1) under the conditions of use recommended or suggested in the labeling of such dietary supplement.

In any proceeding under this subparagraph, the United States shall bear the burden of proof on each element to show that a dietary supplement is adulterated. The court shall decide any issue under this paragraph on a de novo basis.

(2) Before the Secretary may report to a United States attorney a violation of paragraph (1)(A) for a civil proceeding, the person against whom such proceeding would be initiated shall be given appropriate notice and the opportunity to present views, orally and in writing, at least 10 days before such notice, with regard to such proceeding.

(g) Good manufacturing practices.

(1) If it is a dietary supplement and it has been prepared, packed, or held under conditions that do not meet current good manufacturing practice regulations, including regulations requiring, when necessary, expiration date labeling, issued by the Secretary under subparagraph (2).

(2) The Secretary may by regulation prescribe good manufacturing practices for dietary supplements. Such regulations shall be modeled after current good manufacturing practice regulations for food and may not impose standards for which there is no current and generally available analytical methodology. No standard of current good manufacturing practice may be imposed unless such standard is included in a regulation promulgated after notice and opportunity for comment in accordance with chapter 5 of title 5, United States Code [5 USCS §§ 500 et seq.].

(h) If it is an article of food imported or offered for import into the United States and the article of food has previously been refused admission under section 801(a) [21 USCS § 381(a)], unless the person re-offering the article affirmatively establishes, at the expense of the owner or consignee of the article, that the article complies with the applicable requirements of this Act [21 USCS §§ 301 et seq.], as determined by the Secretary.

§ 343. Misbranded food

A food shall be deemed to be misbranded—

(a) False or misleading label. If (1) its labeling is false or misleading in any particular, or (2) in the case of a food to which section 411 [21 USCS § 350] applies, its advertising is false or misleading in a material respect or its labeling is in violation of section 411(b)(2) [21 USCS § 350(b)(2)].

(b) Offer for sale under another name. If it is offered for sale under the name of another food.

(c) Imitation of another food. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

(d) Misleading container. If its container is so made, formed, or filled as to be misleading.

(e) Package form. If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, except that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary.

(f) Prominence of information on label. If any word, statement, or other information required by or under authority of this Act [21 USCS §§ 301 et seq.] to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(g) Representation as to definition and standard of identity. If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by section 401 [21 USCS § 341], unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(h) Representation as to standards of quality and fill of container. If it purports to be or is represented as—

(1) a food for which a standard of quality has been prescribed by regulations as provided by section 401 [21 USCS § 341], and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(2) a food for which a standard or standards of fill of container have been prescribed by regulations as provided by section 401 [21 USCS § 341], and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or (3) a food that is pasteurized unless—

(A) such food has been subjected to a safe process or treatment that is prescribed as pasteurization for such food in a regulation promulgated under this Act [21 USCS §§ 301 et seq.]; or

(B) (i) such food has been subjected to a safe process or treatment that—

(I) is reasonably certain to achieve destruction or elimination in the food of the most resistant microorganisms of public health significance that are likely to occur in the food;

(II) is at least as protective of the public health as a process or treatment described in subparagraph (A);

(III) is effective for a period that is at least as long as the shelf life of the food when stored under normal and moderate abuse conditions; and

(IV) is the subject of a notification to the Secretary, including effectiveness data regarding the process or treatment; and (ii) at least 120 days have passed after the date of receipt of such notification by the Secretary without the Secretary making a determination that the process or treatment involved has not been shown to meet the requirements of subclauses (I) through (III) of clause (i). For purposes of paragraph (3), a determination by the Secretary that a process or treatment has not been shown to meet the requirements of sub-clauses (I) through (III) of subparagraph (B)(i) shall constitute final agency action under such subclauses.

(i) Label where no representation as to definition and standard of quality. Unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient and if the food purports to be a beverage containing vegetable or fruit juice, a statement with appropriate prominence on the information panel of the total percentage of such fruit or vegetable juice contained in the food; except that spices, flavorings, and colors not required to be certified under section 721(c) [21 USCS § 379e(c)] unless sold as spices, flavorings, or such colors, may be designated as spices, flavorings, and colorings without naming each. To the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Secretary.

(j) Representation for special dietary use. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Secretary determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses.

(k) Artificial flavoring, artificial coloring, or chemical preservatives.

If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact, except that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the Secretary. The provisions of this paragraph and paragraphs (g) and (i) with respect to artificial coloring shall not apply in the case of butter, cheese, or ice cream. The provisions of this paragraph with respect to chemical preservatives shall not apply to a pesticide chemical when used in or on a raw agricultural commodity which is the produce of the soil.

(l) Pesticide chemicals on raw agricultural commodities. If it is a raw agricultural commodity which is the produce of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of such commodity bears labeling which declares the presence of such chemical in or on such commodity and the common or usual name and the function of such chemical, except that no such declaration shall be required while such commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of such container in accordance with the custom of the trade.

(m) Color additives. If it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements, applicable to such color additive, as may be contained in regulations issued under section 721 [21 USCS § 379e].

(n) Packaging or labeling of drugs in violation of regulations. If its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970 [15 USCS § 1472 or 1473].

(o) [Repealed]

(p) [Deleted]

(q) Nutrition labeling; information required.

(1) Except as provided in subparagraphs (3), (4), and (5), if it is a food intended for human consumption and is offered for sale, unless its label or labeling bears nutrition information that provides—

(A) (i) the serving size which is an amount customarily consumed and which is expressed in a common household measure that is appropriate to the food, or

(ii) if the use of the food is not typically expressed in a serving size, the common household unit of measure that expresses the serving size of the food,

(B) the number of servings or other units of measure per container,

(C) the total number of calories—

(i) derived from any source, and

(ii) derived from the total fat, in each serving size or other unit of measure of the food,

(D) the amount of the following nutrients: Total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and total protein contained in each serving size or other unit of measure,

(E) any vitamin, mineral, or other nutrient required to be placed on the label and labeling of food under this Act [21 USCS §§ 301 et seq.] before October 1, 1990, if the Secretary determines that such information will assist consumers in maintaining healthy dietary practices.

The Secretary may by regulation require any information required to be placed on the label or labeling by this subparagraph or subparagraph (2)(A) to be highlighted on the label or labeling by larger type, bold type, or contrasting color if the Secretary determines that such highlighting will assist consumers in maintaining healthy dietary practices.

(2) (A) If the Secretary determines that a nutrient other than a nutrient required by subparagraph (1)(C), (1)(D), or (1)(E) should be included in the label or labeling of food subject to subparagraph (1) for purposes of providing information regarding the nutritional value of such food that will assist consumers in maintaining healthy dietary practices, the Secretary may by regulation require that information relating to such additional nutrient be included in the label or labeling of such food.

(B) If the Secretary determines that the information relating to a nutrient required by subparagraph (1)(C), (1)(D), or (1)(E) or clause (A) of this subparagraph to be included in the label or labeling of food is not necessary to assist consumers in maintaining healthy dietary practices, the Secretary may by regulation remove information relating to such nutrient from such requirement.

(3) For food that is received in bulk containers at a retail establishment, the Secretary may, by regulation, provide that the nutrition information required by subparagraphs (1) and (2) be displayed at the location in the retail establishment at which the food is offered for sale. (4) (A) The Secretary shall provide for furnishing the nutrition information required by subparagraphs (1) and (2) with respect to raw agricultural commodities and raw fish by issuing voluntary nutrition guidelines, as provided by clause (B) or by issuing regulations that are mandatory as provided by clause (D).

(B) (i) Upon the expiration of 12 months after the date of the enactment of the Nutrition Labeling and Education Act of 1990 [enacted Nov. 8, 1990], the Secretary, after providing an opportunity for comment, shall issue guidelines for food retailers offering raw agricultural commodities or raw fish to provide nutrition information specified in subparagraphs (1) and (2). Such guidelines shall take into account the actions taken by food retailers during such 12-month period to provide to consumers nutrition information on raw agricultural commodities and raw fish. Such guidelines shall only apply—

(I) in the case of raw agricultural commodities, to the 20 varieties of vegetables most frequently consumed during a year and the 20 varieties of fruit most frequently consumed during a year, and

(II) to the 20 varieties of raw fish most frequently consumed during a year.

The vegetables, fruits, and raw fish to which such guidelines apply shall be determined by the Secretary by regulation and the Secretary may apply such guidelines regionally.

(ii) Upon the expiration of 12 months after the date of the enactment of the Nutrition Labeling and Education Act of 1990 [enacted Nov. 8, 1990], the Secretary shall issue a final regulation defining the circumstances that constitute substantial compliance by food retailers with the guidelines issued under subclause (i). The regulation shall provide that there is not substantial compliance if a significant number of retailers have failed to comply with the guidelines. The size of the retailers and the portion of the market served by retailers in compliance with the guidelines shall be considered in determining whether the substantial-compliance standard has been met.

(C) (i) Upon the expiration of 30 months after the date of the enactment of the Nutrition Labeling and Education Act of 1990 [enacted Nov. 8, 1990], the Secretary shall issue a report on actions taken by food retailers to provide consumers with nutrition information for raw agricultural commodities and raw fish under the guidelines issued under clause (A). Such report shall include a determination of whether there is substantial compliance with the guidelines.

(ii) If the Secretary finds that there is substantial compliance with the guidelines, the Secretary shall issue a report and make a determination of the type required in subclause (i) every two years.

(D) (i) If the Secretary determines that there is not substantial compliance with the guidelines issued under clause (A), the Secretary shall at the time such determination is made issue proposed regulations requiring that any person who offers raw agricultural commodities or raw fish to consumers to provide, in a manner prescribed by regulations, the nutrition information required by subparagraphs (1) and (2). The Secretary shall issue final regulations imposing such requirements 6 months after issuing the proposed regulations. The final regulations shall become effective 6 months after the date of their promulgation.

(ii) Regulations issued under subclause (i) may require that the nutrition information required by subparagraphs (1) and (2) be provided for more than 20 varieties of vegetables, 20 varieties of fruit, and 20 varieties of fish most frequently consumed during a year if the Secretary finds that a larger number of such products are frequently consumed. Such regulations shall permit such information to be provided in a single location in each area in which raw agricultural commodities and raw fish are offered for sale. Such regulations may provide that information shall be expressed as an average or range per serving of the same type of raw agricultural commodity or raw fish. The Secretary shall develop and make available to the persons who offer such food to consumers the information required by subparagraphs (1) and (2). (iii) Regulations issued under subclause (i) shall permit the required information to be provided in each area of an establishment in which raw agricultural commodities and raw Fish are offered for sale. The regulations shall permit food retailers to display the required information by supplying copies of the information provided by the Secretary, by making the information available in brochure, notebook or leaflet form, or by posting a sign disclosing the information. Such regulations shall also permit presentation of the required information to be supplemented by a video, live demonstration, or other media which the Secretary approves.

(E) For purposes of this subparagraph, the term “fish” includes freshwater or marine fin fish, crustaceans, and mollusks, including shellfish, amphibians, and other forms of aquatic animal life.

(F) No person who offers raw agricultural commodities or raw fish to consumers may be prosecuted for minor violations of this sub-paragraph if there has been substantial compliance with the requirements of this paragraph.

(5) (A) Subparagraphs (1), (2), (3), and (4) shall not apply to food—

(i) which is served in restaurants or other establishments in which food is served for immediate human consumption or which is sold for sale or use in such establishments,

(ii) which is processed and prepared primarily in a retail establishment, which is ready for human consumption, which is of the type described in subclause (i), and which is offered for sale to consumers but not for immediate human consumption in such establishment and which is not offered for sale outside such establishment,

(iii) which is an infant formula subject to section 412 [21 USCS § 350a],

(iv) which is a medical food as defined in section 5(b) of the Orphan Drug Act (21 U.S.C. 360ee(b)), or

(v) which is described in section 405(2) [21 USCS § 345(2)].

(B) Subparagraphs (1) and (2) shall not apply to the label of a food if the Secretary determines by regulations that compliance with such subparagraphs is impracticable because the package of such food is too small to comply with the requirements of such subparagraphs and if the label of such food does not contain any nutrition information.

(C) If a food contains insignificant amounts, as determined by the Secretary, of all the nutrients required by subparagraphs (1) and (2) to be listed in the label or labeling of food, the requirements of such subparagraphs shall not apply to such food if the label, labeling, or advertising of such food does not make any claim with respect to the nutritional value of such food. If a food contains insignificant amounts, as determined by the Secretary, of more than one-half the nutrients required by subparagraphs (1) and (2) to be in the label or labeling of the food, the Secretary shall require the amounts of such nutrients to be stated in a simplified form prescribed by the Secretary

(D) If a person offers food for sale and has annual gross sales made or business done in sales to consumers which is not more than $ 500,000 or has annual gross sales made or business done in sales of food to consumers which is not more than $ 50,000, the requirements of subparagraphs (1), (2), (3), and (4) shall not apply with respect to food sold by such person to consumers unless the label or labeling of food offered by such person provides nutrition information or makes a nutrition claim.

(E) (i) During the 12-month period for which an exemption from subparagraphs (1) and (2) is claimed pursuant to this subclause, the requirements of such subparagraphs shall not apply to any food product if—

(I) the labeling for such product does not provide nutrition information or make a claim subject to paragraph (r),

(II) the person who claims for such product an exemption from such subparagraphs employed fewer than an average of 100 full-time equivalent employees,

(III) such person provided the notice described in subclause (iii), and

(IV) in the case of a food product which was sold in the 12-month period preceding the period for which an exemption was claimed, fewer than 100,000 units of such product were sold in the United States during such preceding period, or in the case of a food product which was not sold in the 12-month period preceding the period for which such exemption is claimed, fewer than 100,000 units of such product are reasonably anticipated to be sold in the United States during the period for which such exemption is claimed.

(ii) During the 12-month period after the applicable date referred to in this sentence, the requirements of subparagraphs (1) and (2) shall not apply to any food product which was first introduced into interstate commerce before May 8, 1994, if the labeling for such product does not provide nutrition information or make a claim subject to paragraph (r), if such person provided the notice described in sub-clause (iii), and if—

(I) during the 12-month period preceding May 8, 1994, the person who claims for such product an exemption from such subparagraphs employed fewer than an average of 300 full-time equivalent employees and fewer than 600,000 units of such product were sold in the United States,

(II) during the 12-month period preceding May 8, 1995, the person who claims for such product an exemption from such subparagraphs employed fewer than an average of 300 full-time equivalent employees and fewer than 400,000 units of such product were sold in the United States, or

(III) during the 12-month period preceding May 8, 1996, the person who claims for such product an exemption from such sub-paragraphs employed fewer than an average of 200 full-time equivalent employees and fewer than 200,000 units of such product were sold in the United States.

(iii) The notice referred to in subclauses (i) and (ii) shall be given to the Secretary prior to the beginning of the period during which the exemption under subclause (i) or (ii) is to be in effect, shall state that the person claiming such exemption for a food product has complied with the applicable requirements of subclause (i) or (ii), and shall—

(I) state the average number of full-time equivalent employees such person employed during the 12 months preceding the date such person claims such exemption,

(II) state the approximate number of units the person claiming the exemption sold in the United States,

(III) if the exemption is claimed for a food product which was sold in the 12-month period preceding the period for which the exemption was claimed, state the approximate number of units of such product which were sold in the United States during such preceding period, and, if the exemption is claimed for a food product which was not sold in such preceding period, state the number of units of such product which such person reasonably anticipates will be sold in the United States during the period for which the exemption was claimed, and

(IV) contain such information as the Secretary may require to verify the information required by the preceding provisions of this subclause if the Secretary has questioned the validity of such information. If a person is not an importer, has fewer than 10 full-time equivalent employees, and sells fewer than 10,000 units of any food product in any year, such person is not required to file a notice for such product under this subclause for such year.

(iv) In the case of a person who claimed an exemption under subclause (i) or (ii), if, during the period of such exemption, the number of full-time equivalent employees of such person exceeds the number in such subclause or if the number of food products sold in the United States exceeds the number in such subclause, such exemption shall extend to the expiration of 18 months after the date the number of full-time equivalent employees or food products sold exceeded the applicable number

(v) For any food product first introduced into interstate commerce after May 8, 2002, the Secretary may by regulation lower the employee or units of food products requirement of subclause (i) if the Secretary determines that the cost of compliance with such lower requirement will not place an undue burden on persons subject to such lower requirement.

(vi) For purposes of subclauses (i), (ii), (iii), (iv), and (v)—

(I) the term “unit” means the packaging or, if there is no packaging, the form in which a food product is offered for sale to consumers,

(II) the term “food product” means food in any sized package which is manufactured by a single manufacturer or which bears the same brand name, which bears the same statement of identity, and which has similar preparation methods, and

(III) the term "person" in the case of a corporation includes all domestic and foreign affiliates of the corporation.

(F) A dietary supplement product (including a food to which section 411 [21 USCS § 350] applies) shall comply with the requirements of subparagraphs (1) and (2) in a manner which is appropriate for the product and which is specified in regulations of the Secretary which shall provide that—

(i) nutrition information shall first list those dietary ingredients that are present in the product in a significant amount and for which a recommendation for daily consumption has been established by the Secretary, except that a dietary ingredient shall not be required to be listed if it is not present in a significant amount, and shall list any other dietary ingredient present and identified as having no such recommendation;

(ii) the listing of dietary ingredients shall include the quantity of each such ingredient (or of a proprietary blend of such ingredients) per serving;

(iii) the listing of dietary ingredients may include the source of a dietary ingredient; and

(iv) the nutrition information shall immediately precede the ingredient information required under subclause (i), except that no ingredient identified pursuant to subclause (i) shall be required to be identified a second time.

(G) Subparagraphs (1), (2), (3), and (4) shall not apply to food which is sold by a food distributor if the food distributor principally sells food to restaurants or other establishments in which food is served for immediate human consumption and does not manufacture, process, or repackage the food it sells.

(r) Labeling required.

(1) Except as provided in clauses (A) through (C) of subparagraph (5), if it is a food intended for human consumption which is offered for sale and for which a claim is made in the label or labeling of the food which expressly or by implication—

(A) characterizes the level of any nutrient which is of the type required by paragraph (q)(1) or (q)(2) to be in the label or labeling of the food unless the claim is made in accordance with subparagraph (2), or

(B) characterizes the relationship of any nutrient which is of the type required by paragraph (q)(1) or (q)(2) to be in the label or labeling of the food to a disease or a health-related condition unless the claim is made in accordance with subparagraph (3) or (5)(D).

A statement of the type required by paragraph (q) that appears as part of the nutrition information required or permitted by such paragraph is not a claim which is subject to this paragraph and a claim subject to clause (A) is not subject to clause (B).

(2) (A) Except as provided in subparagraphs (4)(A)(ii) and (4)(A)(iii) and clauses (A) through (C) of subparagraph (5), a claim described in subparagraph (1)(A)—

(i) may be made only if the characterization of the level made in the claim uses terms which are defined in regulations of the Secretary,

(ii) may not state the absence of a nutrient unless—

(I) the nutrient is usually present in the food or in a food which substitutes for the food as defined by the Secretary by regulation, or

(II) the Secretary by regulation permits such a statement on the basis of a finding that such a statement would assist consumers in maintaining healthy dietary practices and the statement discloses that the nutrient is not usually present in the food,

(iii) may not be made with respect to the level of cholesterol in the food if the food contains, as determined by the Secretary by regulation, fat or saturated fat in an amount which increases to persons in the general population the risk of disease or a health related condition which is diet related unless—

(I) the Secretary finds by regulation that the level of cholesterol is substantially less than the level usually present in the food or in a food which substitutes for the food and which has a significant market share, or the Secretary by regulation permits a statement regarding the absence of cholesterol on the basis of a finding that cholesterol is not usually present in the food and that such a statement would assist consumers in maintaining healthy dietary practices and the regulation requires that the statement disclose that cholesterol is not usually present in the food, and

(II) the label or labeling of the food discloses the level of such fat or saturated fat in immediate proximity to such claim and with appropriate prominence which shall be no less than one-half the size of the claim with respect to the level of cholesterol,

(iv) may not be made with respect to the level of saturated fat in the food if the food contains cholesterol unless the label or labeling of the food discloses the level of cholesterol in the food in immediate proximity to such claim and with appropriate prominence which shall be no less than one-half the size of the claim with respect to the level of saturated fat,

(v) may not state that a food is high in dietary fiber unless the food is low in total fat as defined by the Secretary or the label or labeling discloses the level of total fat in the food in immediate proximity to such statement and with appropriate prominence which shall be no less than one-half the size of the claim with respect to the level of dietary fiber, and

(vi) may not be made if the Secretary by regulation prohibits the claim because the claim is misleading in light of the level of another nutrient in the food.

(B) If a claim described in subparagraph (1)(A) is made with respect to a nutrient in a food and the Secretary makes a determination that the food contains a nutrient at a level that increases to persons in the general population the risk of a disease or health-related condition that is diet related, the label or labeling of such food shall contain, prominently and in immediate proximity to such claim, the following statement: "See nutrition information for ——— content." The blank shall identify the nutrient associated with the increased disease or health-related condition risk. In making the determination described in this clause, the Secretary shall take into account the significance of the food in the total daily diet.

(C) Subparagraph (2)(A) does not apply to a claim described in subparagraph (1)(A) and contained in the label or labeling of a food if such claim is contained in the brand name of such food and such brand name was in use on such food before October 25, 1989, unless the brand name contains a term defined by the Secretary under sub-paragraph (2)(A)(i). Such a claim is subject to paragraph (a).

(D) Subparagraph (2) does not apply to a claim described in sub-paragraph (1)(A) which uses the term "diet" and is contained in the label or labeling of a soft drink if (i) such claim is contained in the brand name of such soft drink, (ii) such brand name was in use on such soft drink before October 25, 1989, and (iii) the use of the term "diet" was in conformity with section 105.66 of title 21 of the Code of Federal Regulations. Such a claim is subject to paragraph (a).

(E) Subclauses (i) through (v) of subparagraph (2)(A) do not apply to a statement in the label or labeling of food which describes the percentage of vitamins and minerals in the food in relation to the amount of such vitamins and minerals recommended for daily consumption by the Secretary.

(F) Subclause (i) clause (A) does not apply to a statement in the labeling of a dietary supplement that characterizes the percentage level of a dietary ingredient for which the Secretary has not established a reference daily intake, daily recommended value, or other recommendation for daily consumption.

(G) A claim of the type described in subparagraph (1)(A) for a nutrient, for which the Secretary has not promulgated a regulation under clause (A)(i), shall be authorized and may be made with respect to a food if—

(i) a scientific body of the United States Government with official responsibility for public health protection or research directly relating to human nutrition (such as the National Institutes of Health or the Centers for Disease Control and Prevention) or the National Academy of Sciences or any of its subdivisions has published an authoritative statement, which is currently in effect, which identifies the nutrient level to which the claim refers;

(ii) a person has submitted to the Secretary, at least 120 days (during which the Secretary may notify any person who is making a claim as authorized by clause (C) that such person has not submitted all the information required by such clause) before the first introduction into interstate commerce of the food with a label containing the claim, (I) a notice of the claim, which shall include the exact words used in the claim and shall include a concise description of the basis upon which such person relied for determining that the requirements of subclause (i) have been satisfied, (II) a copy of the statement referred to in subclause (i) upon which such person relied in making the claim, and (III) a balanced representation of the scientific literature relating to the nutrient level to which the claim refers;

(iii) the claim and the food for which the claim is made are in compliance with clauses (A) and (B), and are otherwise in compliance with paragraph (a) and section 201(n) [21 USCS § 321(n)]; and

(iv) the claim is stated in a manner so that the claim is an accurate representation of the authoritative statement referred to in sub-clause (i) and so that the claim enables the public to comprehend the information provided in the claim and to understand the relative significance of such information in the context of a total daily diet.

For purposes of this clause, a statement shall be regarded as an authoritative statement of a scientific body described in subclause (i) only if the statement is published by the scientific body and shall not include a statement of an employee of the scientific body made in the individual capacity of the employee.

(H) A claim submitted under the requirements of clause (G) may be made until—

(i) such time as the Secretary issues a regulation—

(I) prohibiting or modifying the claim and the regulation has become effective, or

(II) finding that the requirements of clause (G) have not been met, including finding that the petitioner had not submitted all the information required by such clause; or

(ii) a district court of the United States in an enforcement proceeding under chapter III [21 USCS §§ 331 et seq.] has determined that the requirements of clause (G) have not been met.

(3) (A) Except as provided in subparagraph (5), a claim described in subparagraph (1)(B) may only be made—

(i) if the claim meets the requirements of the regulations of the Secretary promulgated under clause (B), and

(ii) if the food for which the claim is made does not contain, as determined by the Secretary by regulation, any nutrient in an amount which increases to persons in the general population the risk of a disease or health-related condition which is diet related, taking into account the significance of the food in the total daily diet, except that the Secretary may by regulation permit such a claim based on a finding that such a claim would assist consumers in maintaining healthy dietary practices and based on a requirement that the label contain a disclosure of the type required by subparagraph (2)(B).

(B) (i) The Secretary shall promulgate regulations authorizing claims of the type described in subparagraph (1)(B) only if the Secretary determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.

(ii) A regulation described in subclause (i) shall describe—

(I) the relationship between a nutrient of the type required in the label or labeling of food by paragraph (q)(1) or (q)(2) and a disease or health-related condition, and

(II) the significance of each such nutrient in affecting such disease or health-related condition.

(iii) A regulation described in subclause (i) shall require such claim to be stated in a manner so that the claim is an accurate representation of the matters set out in subclause (ii) and so that the claim enables the public to comprehend the information provided in the claim and to understand the relative significance of such information in the context of a total daily diet.

(C) Notwithstanding the provisions of clauses (A)(i) and (B), a claim of the type described in subparagraph (1)(B) which is not authorized by the Secretary in a regulation promulgated in accordance with clause (B) shall be authorized and may be made with respect to a food if—

(i) a scientific body of the United States Government with official responsibility for public health protection or research directly relating to human nutrition (such as the National Institutes of Health or the Centers for Disease Control and Prevention) or the National Academy of Sciences or any of its subdivisions has published an authoritative statement, which is currently in effect, about the relationship between a nutrient and a disease or health-related condition to which the claim refers;

(ii) a person has submitted to the Secretary, at least 120 days (during which the Secretary may notify any person who is making a claim as authorized by clause (C) that such person has not submitted all the information required by such clause) before the first introduction into interstate commerce of the food with a label containing the claim, (I) a notice of the claim, which shall include the exact words used in the claim and shall include a concise description of the basis upon which such person relied for determining that the requirements of subclause (i) have been satisfied, (II) a copy of the statement referred to in subclause (i) upon which such person relied in making the claim, and (III) a balanced representation of the scientific literature relating to the relationship between a nutrient and a disease or health-related condition to which the claim refers;

(iii) the claim and the food for which the claim is made are in compliance with clause (A)(ii) and are otherwise in compliance with paragraph (a) and section 201(n) [21 USCS § 321(n)]; and

(iv) the claim is stated in a manner so that the claim is an accurate representation of the authoritative statement referred to in sub-clause (i) and so that the claim enables the public to comprehend the information provided in the claim and to understand the relative significance of such information in the context of a total daily diet. For purposes of this clause, a statement shall be regarded as an authoritative statement of a scientific body described in subclause (i) only if the statement is published by the scientific body and shall not include a statement of an employee of the scientific body made in the individual capacity of the employee.

(D) A claim submitted under the requirements of clause (C) may be made until—

(i) such time as the Secretary issues a regulation under the standard in clause (B)(i)—

(I) prohibiting or modifying the claim and the regulation has become effective, or

(II) finding that the requirements of clause (C) have not been met, including finding that the petitioner has not submitted all the information required by such clause; or

(ii) a district court of the United States in an enforcement proceeding under chapter III [21 USCS §§ 331 et seq.] has determined that the requirements of clause (C) have not been met.

(4) (A) (i) Any person may petition the Secretary to issue a regulation under subparagraph (2)(A)(i) or (3)(B) relating to a claim described in subparagraph (1)(A) or (1)(B). Not later than 100 days after the petition is received by the Secretary, the Secretary shall issue a final decision denying the petition or file the petition for further action by the Secretary. If the Secretary does not act within such 100 days, the petition shall be deemed to be denied unless an extension is mutually agreed upon by the Secretary and the petitioner. If the Secretary denies the petition or the petition is deemed to be denied, the petition shall not be made available to the public. If the Secretary files the petition, the Secretary shall deny the petition or issue a proposed regulation to take the action requested in the petition not later than 90 days after the date of such decision. If the Secretary does not act within such 90 days, the petition shall be deemed to be denied unless an extension is mutually agreed upon by the Secretary and the petitioner. If the Secretary issues a proposed regulation, the rulemaking shall be completed within 540 days of the date the petition is received by the Secretary. If the Secretary does not issue a regulation within such 540 days, the Secretary shall provide the Committee on Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate the reasons action on the regulation did not occur within such 540 days.

(ii) Any person may petition the Secretary for permission to use in a claim described in subparagraph (1)(A) terms that are consistent with the terms defined by the Secretary under subparagraph (2)(A)(i). Within 90 days of the submission of such a petition, the

Secretary shall issue a final decision denying the petition or granting such permission.

(iii) Any person may petition the Secretary for permission to use an implied claim described in subparagraph (1)(A) in a brand name. After publishing notice of an opportunity to comment on the petition in the Federal Register and making the petition available to the public, the Secretary shall grant the petition if the Secretary finds that such claim is not misleading and is consistent with terms defined by the Secretary under subparagraph (2)(A)(i). The Secretary shall grant or deny the petition within 100 days of the date it is submitted to the Secretary and the petition shall be considered granted if the Secretary does not act on it within such 100 days.

(B) A petition under clause (A)(i) respecting a claim described in subparagraph (1)(A) or (1)(B) shall include an explanation of the reasons why the claim meets the requirements of this paragraph and a summary of the scientific data which supports such reasons.

(C) If a petition for a regulation under subparagraph (3)(B) relies on a report from an authoritative scientific body of the United States, the Secretary shall consider such report and shall justify any decision rejecting the conclusions of such report.

(5) (A) This paragraph does not apply to infant formulas subject to section 412(h) [21 USCS § 350a(h)] and medical foods as defined in section 5(b) of the Orphan Drug Act [21 USCS § 360ee(b)].

(B) Subclauses (iii) through (v) of subparagraph (2)(A) and sub-paragraph (2)(B) do not apply to food which is served in restaurants or other establishments in which food is served for immediate human consumption or which is sold for sale or use in such establishments.

(C) A subparagraph (1)(A) claim made with respect to a food which claim is required by a standard of identity issued under section 401 [21 USCS § 341] shall not be subject to subparagraph (2)(A)(i) or (2)(B).

(D) A subparagraph (1)(B) claim made with respect to a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances shall not be subject to subparagraph (3) but shall be subject to a procedure and standard, respecting the validity of such claim, established by regulation of the Secretary

(6) For purposes of paragraph (r)(1)(B), a statement for a dietary supplement may be made if—

(A) the statement claims a benefit related to a classical nutrient deficiency disease and discloses the prevalence of such disease in the United States, describes the role of a nutrient or dietary ingredient intended to affect the structure or function in humans, characterizes the documented mechanism by which a nutrient or dietary ingredient acts to maintain such structure or function, or describes general well-being from consumption of a nutrient or dietary ingredient,

(B) the manufacturer of the dietary supplement has substantiation that such statement is truthful and not misleading, and

(C) the statement contains, prominently displayed and in bold-face type, the following: "This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease."

A statement under this subparagraph may not claim to diagnose, mitigate, treat, cure, or prevent a specific disease or class of diseases. If the manufacturer of a dietary supplement proposes to make a statement described in the first sentence of this subparagraph in the labeling of the dietary supplement, the manufacturer shall notify the Secretary no later than 30 days after the first marketing of the dietary supplement with such statement that such a statement is being made.

(7) The Secretary may make proposed regulations issued under this paragraph effective upon publication pending consideration of public comment and publication of a final regulation if the Secretary determines that such action is necessary—

(A) to enable the Secretary to review and act promptly on petitions the Secretary determines provide for information necessary to—

(i) enable consumers to develop and maintain healthy dietary practices;

(ii) enable consumers to be informed promptly and effectively of important new knowledge regarding nutritional and health benefits of food; or

(iii) ensure that scientifically sound nutritional and health information is provided to consumers as soon as possible; or

(B) to enable the Secretary to act promptly to ban or modify a claim under this paragraph.

Such proposed regulations shall be deemed final agency action for purposes of judicial review.

(s) Dietary supplements

If—

(1) it is a dietary supplement; and

(2) (A) the label or labeling of the supplement fails to list—

(i) the name of each ingredient of the supplement that is described in section 201(ff) [21 USCS § 321(ff)]; and

(ii) (I) the quantity of each such ingredient; or

(II) with respect to a proprietary blend of such ingredients, the total quantity of all ingredients in the blend;

(B) the label or labeling of the dietary supplement fails to identify the product by using the term "dietary supplement", which term may be modified with the name of such an ingredient;

(C) the supplement contains an ingredient described in section 201(ff)(1)(C) [21 USCS § 321(ff)(1)(C)], and the label or labeling of the supplement fails to identify any part of the plant from which the ingredient is derived;

(D) the supplement—

(i) is covered by the specifications of an official compendium;

(ii) is represented as conforming to the specifications of an official compendium; and

(iii) fails to so conform; or

(E) the supplement—

(i) is not covered by the specifications of an official compendium; and

(ii) (I) fails to have the identity and strength that the supplement is represented to have; or

(II) fails to meet the quality (including tablet or capsule disintegration), purity, or compositional specifications, based on validated assay or other appropriate methods, that the supplement is represented to meet. A dietary supplement shall not be deemed misbranded solely because its label or labeling contains directions or conditions of use or warnings.

(t) If it purports to be or is represented as catfish, unless it is fish classified within the family Ictaluridae.

(u) If it purports to be or is represented as ginseng, unless it is an herb or herbal ingredient derived from a plant classified within the genus Panax.

(v) If—

(1) it fails to bear a label required by the Secretary under section 801(n)(1) [21 USCS § 381(n)(1)] (relating to food refused admission into the United States);

(2) the Secretary finds that the food presents a threat of serious adverse health consequences or death to humans or animals; and

(3) upon or after notifying the owner or consignee involved that the label is required under section 801 [21 USCS § 381], the Secretary informs the owner or consignee that the food presents such a threat.

§ 351. Adulterated drugs and devices A drug or device shall be deemed to be adulterated—

(a) Poisonous, insanitary, etc., ingredients; adequate controls in manufacture. (1) If it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2)(A) if it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (B) if it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this Act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess; or (C) if it is a compounded positron emission tomography drug and the methods used in, or the facilities and controls used for, its compounding, processing, packing, or holding do not conform to or are not operated or administered in conformity with the positron emission tomography compounding standards and the official monographs of the United States Pharmacopoeia to assure that such drug meets the requirements of this Act as to safety and has the identity and strength, and meets the quality and purity characteristics, that it purports or is represented to possess; or (3) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if (A) it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of section 721(a) [21 USCS § 379e(a)], or (B) it is a color additive the intended use of which in or on drugs or devices is for purposes of coloring only and is unsafe within the meaning of section 721(a) [21 USCS § 379e(a)]; or (5) if it is a new animal drug which is unsafe within the meaning of section 512 [21 USCS § 360b]; or (6) if it is an animal feed bearing or contaminating a new animal drug, and such animal feed is unsafe within the meaning of section 512 [21 USCS § 360f].

(b) Strength, quality, or purity differing from official compendium. If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, except that whenever tests or methods of assay have not been prescribed in such compendium, or such tests or methods of assay as are prescribed are, in the judgment of the Secretary, insufficient for the making of such determination, the Secretary shall bring such fact to the attention of the appropriate body charged with the revision of such compendium, and if such body fails within a reasonable time to prescribe tests or methods of assay which, in the judgment of the Secretary, are sufficient for purposes of this paragraph, then the Secretary shall promulgate regulations prescribing appropriate tests or methods of assay in accordance with which such determination as to strength, quality, or purity shall be made. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homoepathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the Homoeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(c) Misrepresentation of strength, etc., where drug is unrecognized in compendium. If it is not subject to the provisions of paragraph (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(d) Mixture with or substitution of another substance. If it is a drug and any substance has been (1) mixed or packed therewith so as to reduce its quality or strength or (2) substituted wholly or in part there for.

(e) Devices not in conformity with performance standards.

(1) If it is, or purports to be or is represented as, a device which is subject to a performance standard established under section 514 [21 USCS § 360d], unless such device is in all respects in conformity with such standard.

(2) If it is declared to be, purports to be, or is represented as, a device that is in conformity with any standard recognized under section 514(c) [21 USCS § 360d(c)] unless such device is in all respects in conformity with such standard.

(f) Certain class III devices.

(1) If it is a class III device—

(A) (i) which is required by a regulation promulgated under sub-section (b) of section 515 [21 USCS § 360e] to have an approval under such section of an application for premarket approval and which is not exempt from section 515 [21 USCS § 360e] under section 520(g) [21 USCS § 360j(g)], and

(ii) (I) for which an application for premarket approval or a notice of completion of a product development protocol was not filed with the Secretary within the ninety-day period beginning on the date of the promulgation of such regulation, or

(II) for which such an application was filed and approval of the application has been denied, suspended, or withdrawn, or such a notice was filed and has been declared not completed or the approval of the device under the protocol has been withdrawn;

(B) (i) which was classified under section 513(f) [21 USCS § 360c(f)] into class III, which under section 515(a) [21 USCS § 360e(a)] is required to have in effect an approved application for premarket approval, and which is not exempt from section 515 [21 USCS § 360e] under section 520(g) [21 USCS § 360j(g)], and

(ii) which has an application which has been suspended or is otherwise not in effect; or

(C) which was classified under section 520(l) [21 USCS § 360j(l)] into class III, which under such section is required to have in effect an approved application under section 515 [21 USCS § 360e], and which has an application which has been suspended or is otherwise not in effect.

(2) (A) In the case of a device classified under section 513(f) [21 USCS § 360c(f)] into class III and intended solely for investigational use, paragraph (1)(B) shall not apply with respect to such device during the period ending on the ninetieth day after the date of the promulgation of the regulations prescribing the procedures and conditions required by section 520(g)(2) [21 USCS § 360j(g)(2)].

(B) In the case of a device subject to a regulation promulgated under subsection (b) of section 515 [21 USCS § 360e(b)], paragraph (1) shall not apply with respect to such device during the period ending— (i) on the last day of the thirtieth calendar month beginning after the month in which the classification of the device in class III became effective under section 513 [21 USCS § 360c], or

(ii) on the ninetieth day after the date of the promulgation of such regulation, whichever occurs later.

(g) Banned devices. If it is a banned device.

(h) Manufacture, packing, storage, or installation of device not in conformity with applicable requirements or conditions. If it is a device and the methods used in, or the facilities or controls used for, its manufacture, packing, storage, or installation are not in conformity with applicable requirements under section 520(f)(1) [21 USCS § 360j(f)(1)] or an applicable condition prescribed by an order under section 520(f)(2) [21 USCS § 360j(f)(2)].

(i) Failure to comply with requirements under which device was exempted for investigational use. If it is a device for which an exemption has been granted under section 520(g) [21 USCS § 360j(g)] for investigational use and the person who was granted such exemption or any investigator who uses such device under such exemption fails to comply with a requirement prescribed by or under such section.

§ 352. Misbranded drugs and devices

A drug or device shall be deemed to be misbranded—

(a) False or misleading label. If its labeling is false or misleading in any particular. Health care economic information provided to a formulary committee, or other similar entity, in the course of the committee or the entity carrying out its responsibilities for the selection of drugs for managed care or other similar organizations, shall not be considered to be false or misleading under this paragraph if the health care economic information directly relates to an indication approved under section 505 [21 USCS § 355] or under section 351(a) of the Public Health Service Act [42 USCS § 262(a)] for such drug and is based on competent and reliable scientific evidence. The requirements set forth in section 505(a) [21 USCS § 355(a)] or in section 351(a) of the Public Health Service Act [42 USCS § 262(a)] shall not apply to health care economic information provided to such a committee or entity in accordance with this paragraph. Information that is relevant to the substantiation of the health care economic information presented pursuant to this paragraph shall be made available to the Secretary upon request. In this paragraph, the term “health care economic information” means any analysis that identifies, measures, or compares the economic consequences, including the costs of the represented health outcomes, of the use of a drug to the use of another drug, to another health care intervention, or to no intervention.

(b) Package form; Contents of label. If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary.

(c) Prominence of information on label. If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
(d) [Repealed]
(e) Designation of drugs or devices by established names.
(1) (A) If it is a drug, unless its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula)—
(i) the established name (as defined in subparagraph (3)) of the drug, if there is such a name;
(ii) the established name and quantity or, if determined to be appropriate by the Secretary, the proportion of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including whether active or not the established name and quantity or if determined to be appropriate by the Secretary, the proportion of any bromides, ether, chloroform, acetanilide, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein, except that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subclause, shall not apply to nonprescription drugs not intended for human use; and
(iii) the established name of each inactive ingredient listed in alphabetical order on the outside container of the retail package and, if determined to be appropriate by the Secretary, on the immediate container, as prescribed in regulation promulgated by the Secretary, except that nothing in this subclause shall be deemed to require that any trade secret be divulged, and except that the requirements of this sub-clause with respect to alphabetical order shall apply only to nonprescription drugs that are not also cosmetics and that this subclause shall not apply to nonprescription drugs not intended for human use.
(B) For any prescription drug the established name of such drug or ingredient, as the case may be, on such label (and on any labeling on which a name for such drug or ingredient is used) shall be printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient, except that to the extent that compliance with the requirements of sub-clause (ii) or (iii) of clause (A) or this clause is impracticable, exemptions shall be established by regulations promulgated by the Secretary.
(2) If it is a device and it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name (as defined in subparagraph (4)) prominently printed in type at least half as large as that used thereon for any proprietary name or designation for such device, except that to the extent compliance with the requirements of this subparagraph is impracticable, exemptions shall be established by regulations promulgated by the Secretary.
(3) As used in subparagraph (1), the term "established name," with respect to a drug or ingredient thereof, means (A) the applicable official name designated pursuant to section 508 [21 USCS § 358], or (B), if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium, or (C) if neither clause (A) nor clause (B) of this subparagraph applies, then the common or usual name, if any, of such drug or of such ingredient, except that where clause (B) of this subparagraph applies to an article recognized in the United States Pharmacopeia and in the Homoeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopeia shall apply unless it is labeled and offered for sale as a homoeopathic drug, in which case the official title used in the Homoeopathic Pharmacopoeia shall apply.
(4) As used in subparagraph (2), the term "established name" with respect to a device means (A) the applicable official name of the device designated pursuant to section 508 [21 USCS § 358], (B) if there is no such name and such device is an article recognized in an official compendium, then the official title thereof in such compendium, or (C) if neither clause (A) nor clause (B) of this subparagraph applies, then any common or usual name of such device.
(f) Directions for use and warnings on label. Unless its labeling bears
(1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users, except that where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the Secretary shall promulgate regulations exempting such drug or device from such requirement. Required labeling for prescription devices intended for use in health care facilities may be made available solely by electronic means provided that the labeling complies with all applicable requirements of law and, that the manufacturer affords health care facilities the opportunity to request the labeling in paper form, and after such request, promptly provides the health care facility the requested information without additional cost.
(g) Representations as recognized drug; packing and labeling; inconsistent requirements for designation of drug. If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein. The method of packing may be modified with the consent of the Secretary. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homoeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the Homoeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia, except that in the event of inconsistency between the requirements of this paragraph and those of paragraph (e) as to the name by which the drug or its ingredients shall be designated, the requirements of paragraph (e) shall prevail.
(h) Deteriorative drugs; packing and labeling. If it has been found by the Secretary to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Secretary shall by regulations require as necessary for the protection of the public health. No such regulation shall be established for any drug recognized in an official compendium until the Secretary shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.
(i) Drug; misleading container; imitation; offer for sale under another name. If it is a drug and its container is so made, formed, or filled as to be misleading, or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug.
(j) Health-endangering when used as prescribed. If it is dangerous to health when used in the dosage, or manner or with the frequency or duration prescribed, recommended, or suggested in the labeling there-of.
(k), (l) [Repealed]
(m) Color additives; packing and labeling. If it is a color additive the intended use of which is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, as may be contained in regulations issued under section 721 [21 USCS § 379e].
(n) Prescription drug advertisements: established name; quantitative formula; side effects, contraindications, and effectiveness; prior approval; false advertising; labeling; construction of the Convention on Psychotropic Substances. In the case of any prescription drug distributed or offered for sale in any State, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of (1) the established name as defined in section 502(e) [subsec. (e) of this section], printed prominently and in type at least half as large as that used for any trade or brand name thereof, (2) the formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) [subsec. (e) of this

section], and (3) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations which shall be issued by the Secretary in accordance with the procedure specified in section 701(e) of this Act [21 USCS § 371(e)], except that (A) except in extraordinary circumstances, no regulation issued under this paragraph shall require prior approval by the Secretary of the content of any advertisement, and (B) no advertisement of a prescription drug, published after the effective date of regulations issued under this paragraph applicable to advertisements of prescription drugs, shall, with respect to the matters specified in this paragraph or covered by such regulations, be subject to the provisions of sections 12 through 17 of the Federal Trade Commission Act, as amended [15 USCS §§ 52-57]. This paragraph (n) shall not be applicable to any printed matter which the Secretary determines to be labeling as defined in section 201(m) of this Act [21 USCS § 321(m)]. Nothing in the Convention on Psychotropic Substances, signed at Vienna, Austria, on February 21, 1971, shall be construed to prevent drug price communications to consumers.

(o) Drugs or devices from nonregistered establishments. If it was manufactured, prepared, propagated, compounded, or processed in an establishment in any State not duly registered under section 510 [21 USCS § 360], if it was not included in a list required by section 510(j) [21 USCS § 360(j)], if a notice or other information respecting it was not provided as required by such section or section 510(k) [21 USCS § 360(k)], or if it does not bear such symbols from the uniform system for identification of devices prescribed under section 510(e) [21 USCS § 360(e)] as the Secretary by regulation requires.

(p) Packaging or labeling of drugs in violation of regulations. If it is a drug and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970 [15 USCS § 1472 or 1473].

(q) Restricted devices using false or misleading advertising or used in violation of regulations. In the case of any restricted device distributed or offered for sale in any State, if (1) its advertising is false or misleading in any particular, or (2) it is sold, distributed, or used in violation of regulations prescribed under section 520(e) [21 USCS § 360j(e)].

(r) Restricted devices not carrying requisite accompanying statements in advertisements and other descriptive printed matter. In the case of any restricted device distributed or offered for sale in any State, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that device (1) a true statement of the device's established name as defined in section 502(e) [21 USCS § 352(e)], printed prominently and in type at least half as large as that used for any trade or brand name thereof, and (2) a brief statement of the intended uses of the device and relevant warnings, precautions, side effects, and contra-indications and, in the case of specific devices made subject to a finding by the Secretary after notice and opportunity for comment that such action is necessary to protect the public health, a full description of the components of such device or the formula showing quantitatively each ingredient of such device to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing. Except in extraordinary circumstances, no regulation issued under this paragraph shall require prior approval by the Secretary of the content of any advertisement and no advertisement of a restricted device, published after the effective date of this paragraph shall, with respect to the matters specified in this paragraph or covered by regulations issued hereunder, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act (15 U.S.C. 52-55). This paragraph shall not be applicable to any printed matter which the Secretary determines to be labeling as defined in section 201(m) [21 USCS § 321(m)].

(s) Devices subject to performance standards not bearing requisite labeling. If it is a device subject to a performance standard established under section 514 [21 USCS § 360d], unless it bears such labeling as may be prescribed in such performance standard.

(t) Devices for which there has been a failure or refusal to give required notification or to furnish required material or information. If it is a device and there was a failure or refusal (1) to comply with any requirement prescribed under section 518 [21 USCS § 360h] respecting the device, (2) to furnish any material or information required by or under section 519 [21 USCS § 360i] respecting the device, or (3) to comply with a requirement under section 522 [21 USCS § 360l].

§ 361. Adulterated cosmetics A cosmetic shall be deemed to be adulterated—

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual, except that this provision shall not apply to coaltar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.", and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(b) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(c) If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(d) If its container is composed in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(e) If it is not a hair dye and it is, or it bears or contains, a color additive which is unsafe within the meaning of section 721(a) [21 USCS § 379e(a)].

§ 362. Misbranded cosmetics

A cosmetic shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary.

(c) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If its container is so made, formed, or filled as to be misleading.

(e) If it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements, applicable to such color additive, as may be contained in regulations issued under section 721 [21 USCS § 379e]. This paragraph shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes (as defined in the last sentence of section 601(a) [21 USCS § 361(a)].

(f)]If its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970 [15 USCS § 1472 or 1473].

§ 371. Regulations and hearings

(a) Authority to promulgate regulations. The authority to promulgate regulations for the efficient enforcement of this Act, except as otherwise provided in this section, is hereby vested in the Secretary.

(b) Regulations for imports and exports. The Secretary of the Treasury and the Secretary of Health and Human Services shall jointly prescribe regulations for the efficient enforcement of the provisions of section 801 [21 USCS § 381], except as otherwise provided therein. Such regulations shall be promulgated in such manner and take effect at such time, after due notice, as the Secretary of Health and Human Services shall determine.

(c) Conduct of hearings. Hearings authorized or required by this Act shall be conducted by the Secretary or such officer or employee as he may designate for the purpose.

(d) Effectiveness of definitions and standards of identity. The definitions and standards of identity promulgated in accordance with the provisions of this Act shall be effective for the purposes of the enforcement of this Act, notwithstanding such definitions and standards as may be contained in other laws of the United States and regulations promulgated thereunder.

(e) Procedure for establishment.

(1) Any action for the issuance, amendment, or repeal of any regulation under section 403(j), 404(a), 406, 501(b), or 502 (d) or (h) of this Act [21 USCS § 343(j), 344(a), 346, 351(b) or 352(d) or (h)], and any action for the amendment or repeal of any definition and standard of identity under section 401 of this Act [21 USCS § 341] for any dairy product (including products regulated under parts 131, 133 and 135 of title 21, Code of Federal Regulations) shall be begun by a proposal made (A) by the Secretary on his own initiative, or (B) by petition of any interested person, showing reasonable grounds therefor, filed with the Secretary. The Secretary shall publish such proposal and shall afford all interested persons an opportunity to present their views thereon, orally or in writing. As soon as practicable thereafter, the Secretary shall by order act upon such proposal and shall make such order public. Except as provided in paragraph (2), the order shall become effective at such time as may be specified therein, but not prior to the day following the last day on which objections may be filed under such paragraph.

(2) On or before the thirtieth day after the date on which an order entered under paragraph (1) is made public, any person who will be adversely affected by such order if placed in effect may file objections thereto with the Secretary, specifying with particularity the provisions of the order deemed objectionable, stating the grounds therefor, and requesting a public hearing upon such objections. Until final action upon such objections is taken by the Secretary under paragraph (3), the filing of such objections shall operate to stay the effectiveness of those provisions of the order to which the objections are made. As soon as practicable after the time for filing objections has expired the Secretary shall publish a notice in the Federal Register specifying those parts of the order which have been stayed by the filing of objections and, if no objections have been filed, stating that fact.

(3) As soon as practicable after such request for a public hearing, the Secretary, after due notice, shall hold such a public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. At the hearing, any interested person may be heard

in person or by representative. As soon as practicable after completion of the hearing, the Secretary shall by order act upon such objections and make such order public. Such order shall be based only on substantial evidence of record at such hearing and shall set forth, as part of the order, detailed findings of fact on which the order is based. The Secretary shall specify in the order the date on which it shall take effect, except that it shall not be made to take effect prior to the ninetieth day after its publication unless the Secretary finds that emergency conditions exist necessitating an earlier effective date, in which event the Secretary shall specify in the order his findings as to such conditions.

(f) Review of order.

(1) In a case of actual controversy as to the validity of any order under subsection (e), any person who will be adversely affected by such order if placed in effect may at any time prior to the ninetieth day after such order is issued file a petition with the Circuit Court of Appeals of the United States [United States Court of Appeals] for the circuit wherein such person resides or has his principal place of business, for a judicial review of such order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary there-upon shall file in the court the record of the proceedings on which the Secretary based his order, as provided in section 2112 of title 28, United States Code.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendations, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently. If the order of the Secretary refuses to issue, amend, or repeal a regulation and such order is not in accordance with the law the court shall by its judgment order the Secretary to take action, with respect to such regulation, in accordance with law. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code, as amended.

(5) Any action instituted under this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(6) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(g) Copies of records of hearings. A certified copy of the transcript of the record and proceedings under subsection (e) shall be furnished by the Secretary to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, libel for condemnation, exclusion of imports, or other proceeding arising under or in respect to this Act, irrespective of whether proceedings with respect to the order have previously been instituted or become final under sub-section (f).

(h) Guidance documents.

(1) (A) The Secretary shall develop guidance documents with public participation and ensure that information identifying the existence of such documents and the documents themselves are made available to the public both in written form and, as feasible, through electronic means. Such documents shall not create or confer any rights for or on any person, although they present the views of the Secretary on matters under the jurisdiction of the Food and Drug Administration.

(B) Although guidance documents shall not be binding on the Secretary, the Secretary shall ensure that employees of the Food and Drug Administration do not deviate from such guidances without appropriate justification and supervisory concurrence. The Secretary shall provide training to employees in how to develop and use guidance documents and shall monitor the development and issuance of such documents.

(C) For guidance documents that set forth initial interpretations of a statute or regulation, changes in interpretation or policy that are of more than a minor nature, complex scientific issues, or highly controversial issues, the Secretary shall ensure public participation prior to implementation of guidance documents, unless the Secretary determines that such prior public participation is not feasible or appropriate. In such cases, the Secretary shall provide for public comment upon implementation and take such comment into account.

(D) For guidance documents that set forth existing practices or minor changes in policy, the Secretary shall provide for public comment upon implementation.

(2) In developing guidance documents, the Secretary shall ensure uniform nomenclature for such documents and uniform internal procedures for approval of such documents. The Secretary shall ensure that guidance documents and revisions of such documents are properly dated and indicate the nonbinding nature of the documents. The Secretary shall periodically review all guidance documents and, where appropriate, revise such documents.

(3) The Secretary, acting through the Commissioner, shall maintain electronically and update and publish periodically in the Federal Register a list of guidance documents. All such documents shall be made available to the public.

(4) The Secretary shall ensure that an effective appeals mechanism is in place to address complaints that the Food and Drug Administration is not developing and using guidance documents in accordance with this subsection.

(5) Not later than July 1, 2000, the Secretary after evaluating the effectiveness of the Good Guidance Practices document, published in the Federal Register at 62 Fed. Reg. 8961, shall promulgate a regulation consistent with this subsection specifying the policies and procedures of the Food and Drug Administration for the development, issuance, and use of guidance documents.

Celler-Kefauver Act (1950)
Amending § 7 of the Clayton Antitrust Act
Title 15. Commerce and Trade
Chapter 1. Monopolies and Combinations in Restraint of Trade

§ 18. Acquisition by one corporation of stock of another No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly. This section shall not apply to persons purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired. Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: Provided, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Power Commission, Surface Transportation Board, the Securities and Exchange Commission in the exercise of its jurisdiction under section 10 of the Public Utility Holding Company Act of 1935 [15 USCS § 79j], the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Board, or Secretary.

Sarbanes-Oxley Act (2002)
Title 15. Commerce and Trade
Chapter 98. Public Company Accounting Reform and Corporate Responsibility

§ 7201. Definitions
In this Act, the following definitions shall apply:

(1) Appropriate State regulatory authority. The term “appropriate State regulatory authority” means the State agency or other authority responsible for the licensure or other regulation of the practice of accounting in the State or States having jurisdiction over a registered public accounting firm or associated person thereof, with respect to the matter in question.

(2) Audit. The term “audit” means an examination of the financial statements of any issuer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 103 [15 USCS § 7213], in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of expressing an opinion on such statements.

(3) Audit committee. The term “audit committee” means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(4) Audit report. The term “audit report” means a document or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, or other document; or

(ii) asserts that no such opinion can be expressed.

(5) Board. The term “Board” means the Public Company Accounting Oversight Board established under section 101 [15 USCS § 7211]. (6) Commission. The term “Commission” means the Securities and Exchange Commission.

(7) Issuer. The term “issuer” means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

(8) Non-audit services. The term “non-audit services” means any professional services provided to an issuer by a registered public accounting firm, other than those provided to an issuer in connection with an audit or a review of the financial statements of an issuer.

(9) Person associated with a public accounting firm.

(A) In general. The terms “person associated with a public accounting firm” (or with a “registered public accounting firm”) and “associated person of a public accounting firm” (or of a “registered public accounting firm”) mean any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of a public accounting firm, or any other independent contractor or entity that, in connection with the preparation or issuance of any audit report—

(i) shares in the profits of, or receives compensation in any other form from, that firm; or

(ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.

(B) Exemption authority. The Board may, by rule, exempt persons engaged only in ministerial tasks from the definition in subparagraph (A), to the extent that the Board determines that any such exemption is consistent with the purposes of this Act, the public interest, or the protection of investors.

(10) Professional standards. The term "professional standards" means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933 [15 USCS § 77s(b)], as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s) [77s(a)] [15 USCS § 77s(a)]) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m) [78m(b)] [15 USCS § 78m(b)]); and

(ii) relevant to audit reports for particular issuers, or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers; and

(ii) are established or adopted by the Board under section 103(a) [15 USCS § 7213(a)], or are promulgated as rules of the Commission.

(11) Public accounting firm. The term "public accounting firm" means—

(A) a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports; and

(B) to the extent so designated by the rules of the Board, any associated person of any entity described in subparagraph (A).

(12) Registered public accounting firm. The term "registered public accounting firm" means a public accounting firm registered with the Board in accordance with this Act.

(13) Rules of the Board. The term "rules of the Board" means the bylaws and rules of the Board (as submitted to, and approved, modified, or amended by the Commission, in accordance with section 107 [15 USCS § 7217]), and those stated policies, practices, and interpretations of the Board that the Commission, by rule, may deem to be rules of the Board, as necessary or appropriate in the public interest or for the protection of investors.

(14) Security. The term "security" has the same meaning as in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(15) Securities laws. The term "securities laws" means the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), as amended by this Act, and includes the rules, regulations, and orders issued by the Commission thereunder.

(16) State. The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States. § 7202. Commission rules and enforcement (a) Regulatory action. The Commission shall promulgate such rules and regulations, as may be necessary or appropriate in the public interest or for the protection of investors, and in furtherance of this Act. (b) Enforcement.

(1) In general. A violation by any person of this Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules or regulations.

(2)—(4) [Omitted]

(c) Effect on Commission authority. Nothing in this Act or the rules of the Board shall be construed to impair or limit—

(1) the authority of the Commission to regulate the accounting profession, accounting firms, or persons associated with such firms for purposes of enforcement of the securities laws;

(2) the authority of the Commission to set standards for accounting or auditing practices or auditor independence, derived from other provisions of the securities laws or the rules or regulations thereunder, for purposes of the preparation and issuance of any audit report, or otherwise under applicable law; or

(3) the ability of the Commission to take, on the initiative of the Commission, legal, administrative, or disciplinary action against any registered public accounting firm or any associated person thereof.

Public Accounting Oversight Board

§ 7211. Establishment; administrative provisions

(a) Establishment of Board. There is established the Public Company Accounting Oversight Board, to oversee the audit of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors. The Board shall be a body corporate, operate as a nonprofit corporation, and have succession until dissolved by an Act of Congress.

(b) Status. The Board shall not be an agency or establishment of the United States Government, and, except as otherwise provided in this Act, shall be subject to, and have all the powers conferred upon a non-profit corporation by, the District of Columbia Nonprofit Corporation Act [unclassified]. No member or person employed by, or agent for, the Board shall be deemed to be an officer or employee of or agent for the Federal Government by reason of such service.

(c) Duties of the Board. The Board shall, subject to action by the Commission under section 107 [15 USCS § 7217], and once a determination is made by the Commission under subsection (d) of this section—

(1) register public accounting firms that prepare audit reports for issuers, in accordance with section 102 [15 USCS § 7212];

(2) establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers, in accordance with section 103 [15 USCS § 7213];

(3) conduct inspections of registered public accounting firms, in accordance with section 104 [15 USCS § 7214] and the rules of the Board;

(4) conduct investigations and disciplinary proceedings concerning, and impose appropriate sanctions where justified upon, registered public accounting firms and associated persons of such firms, in accordance with section 105 [15 USCS § 7215];

(5) perform such other duties or functions as the Board (or the Commission, by rule or order) determines are necessary or appropriate to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof, or otherwise to carry out this Act, in order to protect investors, or to further the public interest;

(6) enforce compliance with this Act, the rules of the Board, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, by registered public accounting firms and associated persons thereof; and

(7) set the budget and manage the operations of the Board and the staff of the Board.

(d) Commission determination. The members of the Board shall take such action (including hiring of staff, proposal of rules, and adoption of initial and transitional auditing and other professional standards) as may be necessary or appropriate to enable the Commission to determine, not later than 270 days after the date of enactment of this Act [enacted July 30, 2002], that the Board is so organized and has the capacity to carry out the requirements of this title [15 USCS §§ 7211 et seq.], and to enforce compliance with this title [15 USCS §§ 7211 et seq.] by registered public accounting firms and associated persons thereof. The Commission shall be responsible, prior to the appointment of the Board, for the planning

for the establishment and administrative transition to the Board's operation.
(e) Board membership.
(1) Composition. The Board shall have 5 members, appointed from among prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the responsibilities for and nature of the financial disclosures required of issuers under the securities laws and the obligations of accountants with respect to the preparation and issuance of audit reports with respect to such disclosures.
(2) Limitation. Two members, and only 2 members, of the Board shall be or have been certified public accountants pursuant to the laws of 1 or more States, provided that, if 1 of those 2 members is the chairperson, he or she may not have been a practicing certified public accountant for at least 5 years prior to his or her appointment to the Board.
(3) Full-time independent service. Each member of the Board shall serve on a full-time basis, and may not, concurrent with service on the Board, be employed by any other person or engage in any other professional or business activity. No member of the Board may share in any of the profits of, or receive payments from, a public accounting firm (or any other person, as determined by rule of the Commission), other than fixed continuing payments, subject to such conditions as the Commission may impose, under standard arrangements for the retirement of members of public accounting firms.
(4) Appointment of Board members.
(A) Initial board. Not later than 90 days after the date of enactment of this Act [enacted July 30, 2002], the Commission, after consultation with the Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, shall appoint the chairperson and other initial members of the Board, and shall designate a term of service for each.
(B) Vacancies. A vacancy on the Board shall not affect the powers of the Board, but shall be filled in the same manner as provided for appointments under this section.
(5) Term of service.
(A) In general. The term of service of each Board member shall be 5 years, and until a successor is appointed, except that—
(i) the terms of office of the initial Board members (other than the chairperson) shall expire in annual increments, 1 on each of the first 4 anniversaries of the initial date of appointment; and
(ii) any Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of that term.
(B) Term limitation. No person may serve as a member of the Board, or as chairperson of the Board, for more than 2 terms, whether or not such terms of service are consecutive.
(6) Removal from office. A member of the Board may be removed by the Commission from office, in accordance with section 107(d)(3) [15 USCS § 7217(d)(3)], for good cause shown before the expiration of the term of that member.
(f) Powers of the Board. In addition to any authority granted to the Board otherwise in this Act, the Board shall have the power, subject to section 107 [15 USCS § 7217]—
(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the Commission, in any Federal, State, or other court;
(2) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);
(3) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;
(4) to appoint such employees, accountants, attorneys, and other agents as may be necessary or appropriate, and to determine their qualifications, define their duties, and fix their salaries or other compensation (at a level that is comparable to private sector self-regulatory, accounting, technical, supervisory, or other staff or management positions);
(5) to allocate, assess, and collect accounting support fees established pursuant to section 109 [15 USCS § 7219], for the Board, and other fees and charges imposed under this title [15 USCS §§ 7211 et seq.]; and
(6) to enter into contracts, execute instruments, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this title [15 USCS §§ 7211 et seq.].
(g) Rules of the Board. The rules of the Board shall, subject to the approval of the Commission—
(1) provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under this Act;
(2) permit, as the Board determines necessary or appropriate, delegation by the Board of any of its functions to an individual member or employee of the Board, or to a division of the Board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any matter, except that—
(A) the Board shall retain a discretionary right to review any action pursuant to any such delegated function, upon its own motion; (B) a person shall be entitled to a review by the Board with respect to any matter so delegated, and the decision of the Board upon such review shall be deemed to be the action of the Board for all purposes (including appeal or review thereof); and
(C) if the right to exercise a review described in subparagraph (A) is declined, or if no such review is sought within the time stated in the rules of the Board, then the action taken by the holder of such delegation shall for all purposes, including appeal or review thereof, be deemed to be the action of the Board;
(3) establish ethics rules and standards of conduct for Board members and staff, including a bar on practice before the Board (and the Commission, with respect to Board-related matters) of 1 year for former members of the Board, and appropriate periods (not to exceed 1 year) for former staff of the Board; and
(4) provide as otherwise required by this Act.
(h) Annual report to the Commission. The Board shall submit an annual report (including its audited financial statements) to the Commission, and the Commission shall transmit a copy of that report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, not later than 30 days after the date of receipt of that report by the Commission.
§ 7212. Registration with the Board
(a) Mandatory registration. Beginning 180 days after the date of the determination of the Commission under section 101(d) [15 USCS § 7211(d)], it shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer.
(b) Applications for registration.
(1) Form of application. A public accounting firm shall use such form as the Board may prescribe, by rule, to apply for registration under this section.
(2) Contents of applications. Each public accounting firm shall submit, as part of its application for registration, in such detail as the Board shall specify—
(A) the names of all issuers for which the firm prepared or issued audit reports during the immediately preceding calendar year, and for which the firm expects to prepare or issue audit reports during the current calendar year;
(B) the annual fees received by the firm from each such issuer for audit services, other accounting services, and non-audit services, respectively;
(C) such other current financial information for the most recently completed fiscal year of the firm as the Board may reasonably request;
(D) a statement of the quality control policies of the firm for its accounting and auditing practices;
(E) a list of all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person, as well as the State license numbers of the firm itself;

(F) information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any audit report;

(G) copies of any periodic or annual disclosure filed by an issuer with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such issuer and the firm in connection with an audit report furnished or prepared by the firm for such issuer; and

(H) such other information as the rules of the Board or the Commission shall specify as necessary or appropriate in the public interest or for the protection of investors.

(3) Consents. Each application for registration under this subsection shall include—

(A) a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board in the furtherance of its authority and responsibilities under this title [15 USCS §§ 7211 et seq.] (and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm); and

(B) a statement that such firm understands and agrees that cooperation and compliance, as described in the consent required by sub-paragraph (A), and the securing and enforcement of such consents from its associated persons, in accordance with the rules of the Board, shall be a condition to the continuing effectiveness of the registration of the firm with the Board.

(c) Action on applications.

(1) Timing. The Board shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior to such date, issues a written notice of disapproval to, or requests more information from, the prospective registrant.

(2) Treatment. A written notice of disapproval of a completed application under paragraph (1) for registration shall be treated as a disciplinary sanction for purposes of sections 105(d) and 107(c) [15 USCS §§ 7215(d), 7217(c)].

(d) Periodic reports. Each registered public accounting firm shall submit an annual report to the Board, and may be required to report more frequently, as necessary to update the information contained in its application for registration under this section, and to provide to the Board such additional information as the Board or the Commission may specify, in accordance with subsection (b)(2).

(e) Public availability. Registration applications and annual reports required by this subsection, or such portions of such applications or reports as may be designated under rules of the Board, shall be made available for public inspection, subject to rules of the Board or the Commission, and to applicable laws relating to the confidentiality of proprietary, personal, or other information contained in such applications or reports, provided that, in all events, the Board shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.

(f) Registration and annual fees. The Board shall assess and collect a registration fee and an annual fee from each registered public accounting firm, in amounts that are sufficient to recover the costs of processing and reviewing applications and annual reports.

§ 7213. Auditing, quality control, and independence standards and rules

(a) Auditing, quality control, and ethics standards.

(1) In general. The Board shall, by rule, establish, including, to the extent it determines appropriate, through adoption of standards proposed by 1 or more professional groups of accountants designated pursuant to paragraph (3)(A) or advisory groups convened pursuant to paragraph (4), and amend or otherwise modify or alter, such auditing and related attestation standards, such quality control standards, and such ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.

(2) Rule requirements. In carrying out paragraph (1), the Board—

(A) shall include in the auditing standards that it adopts, requirements that each registered public accounting firm shall—

(i) prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report; (ii) provide a concurring or second partner review and approval of such audit report (and other related information), and concurring approval in its issuance, by a qualified person (as prescribed by the Board) associated with the public accounting firm, other than the person in charge of the audit, or by an independent reviewer (as prescribed by the Board); and

(iii) describe in each audit report the scope of the auditor's testing of the internal control structure and procedures of the issuer, required by section 404(b) [15 USCS § 7262(b)], and present (in such report or in a separate report)—

(I) the findings of the auditor from such testing;

(II) an evaluation of whether such internal control structure and procedures—

(aa) include maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(bb) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and

(III) a description, at a minimum, of material weaknesses in such internal controls, and of any material noncompliance found on the basis of such testing.

(B) shall include, in the quality control standards that it adopts with respect to the issuance of audit reports, requirements for every registered public accounting firm relating to—

(i) monitoring of professional ethics and independence from issuers on behalf of which the firm issues audit reports; (ii) consultation within such firm on accounting and auditing questions;

(iii) supervision of audit work;

(iv) hiring, professional development, advancement of person nel;

(v) the acceptance and continuation of engagements;

(vi) internal inspection; and

(vii) such other requirements as the Board may prescribe, subject to subsection (a)(1).

(3) Authority to adopt other standards.

(A) In general. In carrying out this subsection, the Board—

(i) may adopt as its rules, subject to the terms of section 107 [15 USCS § 7217], any portion of any statement of auditing standards or other professional standards that the Board determines satisfy the requirements of paragraph (1), and that were proposed by 1 or more professional groups of accountants that shall be designated or recognized by the Board, by rule, for such purpose, pursuant to this paragraph or 1 or more advisory groups convened pursuant to paragraph (4); and

(ii) notwithstanding clause (i), shall retain full authority to modify, supplement, revise, or subsequently amend, modify, or repeal, in whole or in part, any portion of any statement described in clause (i).

(B) Initial and transitional standards. The Board shall adopt standards described in subparagraph (A)(i) as initial or transitional standards, to the extent the Board determines necessary, prior to a determination of the Commission under section 101(d) [15 USCS § 7211(d)], and such standards shall be separately approved by the Commission at the time of that determination, without regard to the procedures required by section 107 [15 USCS § 7217] that otherwise would apply to the approval of rules of the Board.

(4) Advisory groups. The Board shall convene, or authorize its staff to convene, such expert advisory groups as may be appropriate, which may include practicing accountants and other experts, as well as representatives of other interested groups, subject to such rules as the Board may prescribe to prevent conflicts of interest, to make recommendations concerning the content (including proposed drafts) of auditing, quality control, ethics, independence, or other standards required to be established under this section.

(b) Independence standards and rules. The Board shall establish such rules as may be necessary or appropriate in the public interest

or for the protection of investors, to implement, or as authorized under, title II of this Act.
(c) Cooperation with designated professional groups of accountants and advisory groups.
(1) In general. The Board shall cooperate on an ongoing basis with professional groups of accountants designated under subsection (a) (3)(A) and advisory groups convened under subsection (a)(4) in the examination of the need for changes in any standards subject to its authority under subsection (a), recommend issues for inclusion on the agendas of such designated professional groups of accountants or advisory groups, and take such other steps as it deems appropriate to increase the effectiveness of the standard setting process.
(2) Board responses. The Board shall respond in a timely fashion to requests from designated professional groups of accountants and advisory groups referred to in paragraph (1) for any changes in standards over which the Board has authority.
(d) Evaluation of standard setting process. The Board shall include in the annual report required by section 101(h) [15 USCS § 7211(h)] the results of its standard setting responsibilities during the period to which the report relates, including a discussion of the work of the Board with any designated professional groups of accountants and advisory groups described in paragraphs (3)(A) and (4) of subsection (a), and its pending issues agenda for future standard setting projects.
§ 7214. Inspections of registered public accounting firms
(a) In general. The Board shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers. (b) Inspection frequency.
(1) In general. Subject to paragraph (2), inspections required by this section shall be conducted—
(A) annually with respect to each registered public accounting firm that regularly provides audit reports for more than 100 issuers; and
(B) not less frequently than once every 3 years with respect to each registered public accounting firm that regularly provides audit reports for 100 or fewer issuers.
(2) Adjustments to schedules. The Board may, by rule, adjust the inspection schedules set under paragraph (1) if the Board finds that different inspection schedules are consistent with the purposes of this Act, the public interest, and the protection of investors. The Board may conduct special inspections at the request of the Commission or upon its own motion.
(c) Procedures. The Board shall, in each inspection under this section, and in accordance with its rules for such inspections—
(1) identify any act or practice or omission to act by the registered public accounting firm, or by any associated person thereof, revealed by such inspection that may be in violation of this Act, the rules of the Board, the rules of the Commission, the firm's own quality control policies, or professional standards;
(2) report any such act, practice, or omission, if appropriate, to the Commission and each appropriate State regulatory authority; and
(3) begin a formal investigation or take disciplinary action, if appropriate, with respect to any such violation, in accordance with this Act and the rules of the Board.
(d) Conduct of inspections. In conducting an inspection of a registered public accounting firm under this section, the Board shall—
(1) inspect and review selected audit and review engagements of the firm (which may include audit engagements that are the subject of ongoing litigation or other controversy between the firm and 1 or more third parties), performed at various offices and by various associated persons of the firm, as selected by the Board;
(2) evaluate the sufficiency of the quality control system of the firm, and the manner of the documentation and communication of that system by the firm; and
(3) perform such other testing of the audit, supervisory, and quality control procedures of the firm as are necessary or appropriate in light of the purpose of the inspection and the responsibilities of the Board.
(e) Record retention. The rules of the Board may require the retention by registered public accounting firms for inspection purposes of records whose retention is not otherwise required by section 103 [15 USCS § 7213] or the rules issued thereunder.
(f) Procedures for review. The rules of the Board shall provide a procedure for the review of and response to a draft inspection report by the registered public accounting firm under inspection. The Board shall take such action with respect to such response as it considers appropriate (including revising the draft report or continuing or supplementing its inspection activities before issuing a final report), but the text of any such response, appropriately redacted to protect information reasonably identified by the accounting firm as confidential, shall be attached to and made part of the inspection report.
(g) Report. A written report of the findings of the Board for each inspection under this section, subject to subsection (h), shall be—
(1) transmitted, in appropriate detail, to the Commission and each appropriate State regulatory authority, accompanied by any letter or comments by the Board or the inspector, and any letter of response from the registered public accounting firm; and
(2) made available in appropriate detail to the public (subject to section 105(b)(5)(A) [15 USCS § 7215(b)(5)(A)], and to the protection of such confidential and proprietary information as the Board may determine to be appropriate, or as may be required by law), except that no portions of the inspection report that deal with criticisms of or potential defects in the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the Board, not later than 12 months after the date of the inspection report.
(h) Interim Commission review.
(1) Reviewable matters. A registered public accounting firm may seek review by the Commission, pursuant to such rules as the Commission shall promulgate, if the firm—
(A) has provided the Board with a response, pursuant to rules issued by the Board under subsection (f), to the substance of particular items in a draft inspection report, and disagrees with the assessments contained in any final report prepared by the Board following such response; or
(B) disagrees with the determination of the Board that criticisms or defects identified in an inspection report have not been addressed to the satisfaction of the Board within 12 months of the date of the inspection report, for purposes of subsection (g)(2).
(2) Treatment of review. Any decision of the Commission with respect to a review under paragraph (1) shall not be reviewable under section 25 of the Securities Exchange Act of 1934 (15 U.S.C. 78y), or deemed to be "final agency action" for purposes of section 704 of title 5, United States Code.
(3) Timing. Review under paragraph (1) may be sought during the 30-day period following the date of the event giving rise to the review under subparagraph (A) or (B) of paragraph (1).
§ 7215. Investigations and disciplinary proceedings
(a) In general. The Board shall establish, by rule, subject to the requirements of this section, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.
(b) Investigations.
(1) Authority. In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.
(2) Testimony and document production. In addition to such other actions as the Board determines to be necessary or appropriate, the rules of the Board may—
(A) require the testimony of the firm or of any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation;
(B) require the production of audit work papers and any other

document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and records of such firm or associated person to verify the accuracy of any documents or information supplied;

(C) request the testimony of, and production of any document in the possession of, any other person, including any client of a registered public accounting firm that the Board considers relevant or material to an investigation under this section, with appropriate notice, subject to the needs of the investigation, as permitted under the rules of the Board; and

(D) provide for procedures to seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and production of any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation under this section.

(3) Noncooperation with investigations.

(A) In general. If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation under this section, the Board may—

(i) suspend or bar such person from being associated with a registered public accounting firm, or require the registered public accounting firm to end such association;

(ii) suspend or revoke the registration of the public accounting firm; and

(iii) invoke such other lesser sanctions as the Board considers appropriate, and as specified by rule of the Board.

(B) Procedure. Any action taken by the Board under this paragraph shall be subject to the terms of section 107(c) [15 USCS § 7217(c)].

(4) Coordination and referral of investigations.

(A) Coordination. The Board shall notify the Commission of any pending Board investigation involving a potential violation of the securities laws, and thereafter coordinate its work with the work of the Commission's Division of Enforcement, as necessary to protect an ongoing Commission investigation.

(B) Referral. The Board may refer an investigation under this section—

(i) to the Commission;

(ii) to any other Federal functional regulator (as defined in section 509 of the Gramm–Leach–Bliley Act (15 U.S.C. 6809)), in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of such regulator; and

(iii) at the direction of the Commission, to—

(I) the Attorney General of the United States;

(II) the attorney general of 1 or more States; and

(III) the appropriate State regulatory authority.

(5) Use of documents.

(A) Confidentiality. Except as provided in subparagraph (B), all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 104 [15 USCS § 7214] or with an investigation under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552a), or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

(B) Availability to government agencies. Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) may—

(i) be made available to the Commission; and

(ii) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, be made available to— (I) the Attorney General of the United States;

(II) the appropriate Federal functional regulator (as defined in section 509 of the Gramm–Leach–Bliley Act (15 U.S.C. 6809)), other than the Commission, with respect to an audit report for an institution subject to the jurisdiction of such regulator;

(III) State attorneys general in connection with any criminal investigation; and

(IV) any appropriate State regulatory authority, each of which shall maintain such information as confidential and privileged.

(6) Immunity. Any employee of the Board engaged in carrying out an investigation under this Act shall be immune from any civil liability arising out of such investigation in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

(c) Disciplinary procedures.

(1) Notification; recordkeeping. The rules of the Board shall provide that in any proceeding by the Board to determine whether a registered public accounting firm, or an associated person thereof, should be disciplined, the Board shall—

(A) bring specific charges with respect to the firm or associated person;

(B) notify such firm or associated person of, and provide to the firm or associated person an opportunity to defend against, such charges; and

(C) keep a record of the proceedings.

(2) Public hearings. Hearings under this section shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing.

(3) Supporting statement. A determination by the Board to impose a sanction under this subsection shall be supported by a statement setting forth—

(A) each act or practice in which the registered public accounting firm, or associated person, has engaged (or omitted to engage), or that forms a basis for all or a part of such sanction;

(B) the specific provision of this Act, the securities laws, the rules of the Board, or professional standards which the Board determines has been violated; and

(C) the sanction imposed, including a justification for that sanction.

(4) Sanctions. If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to applicable limitations under paragraph (5), including—

(A) temporary suspension or permanent revocation of registration under this title [15 USCS §§ 7211 et seq.];

(B) temporary or permanent suspension or bar of a person from further association with any registered public accounting firm;

(C) temporary or permanent limitation on the activities, functions, or operations of such firm or person (other than in connection with required additional professional education or training);

(D) a civil money penalty for each such violation, in an amount equal to—

(i) not more than $ 100,000 for a natural person or $ 2,000,000 for any other person; and

(ii) in any case to which paragraph (5) applies, not more than $750,000 for a natural person or $ 15,000,000 for any other person;

(E) censure;

(F) required additional professional education or training; or

(G) any other appropriate sanction provided for in the rules of the Board.

(5) Intentional or other knowing conduct. The sanctions and penal-ties described in subparagraphs (A) through (C) and (D)(ii) of paragraph (4) shall only apply to—

(A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard; or

(B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

(6) Failure to supervise.

(A) In general. The Board may impose sanctions under this section on a registered accounting firm or upon the supervisory personnel of such firm, if the Board finds that—

(i) the firm has failed reasonably to supervise an associated person, either as required by the rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under this Act, or professional standards; and

(ii) such associated person commits a violation of this Act, or any of such rules, laws, or standards.

(B) Rule of construction. No associated person of a registered public accounting firm shall be deemed to have failed reasonably to supervise any other person for purposes of subparagraph (A), if—

(i) there have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of the Board and that would reasonably be expected to prevent and detect any such violation by such associated person; and

(ii) such person has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and had no reasonable cause to believe that such procedures and system were not being complied with.

(7) Effect of suspension.

(A) Association with a public accounting firm. It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any registered public accounting firm, or for any registered public accounting firm that knew, or, in the exercise of reasonable care should have known, of the suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(B) Association with an issuer. It shall be unlawful for any person that is suspended or barred from being associated with an issuer under this subsection willfully to become or remain associated with any issuer in an accountancy or a financial management capacity, and for any issuer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(d) Reporting of sanctions.

(1) Recipients. If the Board imposes a disciplinary sanction, in accordance with this section, the Board shall report the sanction to—

(A) the Commission;

(B) any appropriate State regulatory authority or any foreign accountancy licensing board with which such firm or person is licensed or certified; and

(C) the public (once any stay on the imposition of such sanction has been lifted).

(2) Contents. The information reported under paragraph (1) shall include—

(A) the name of the sanctioned person;

(B) a description of the sanction and the basis for its imposition; and

(C) such other information as the Board deems appropriate.

(e) Stay of sanctions.

(1) In general. Application to the Commission for review, or the institution by the Commission of review, of any disciplinary action of the Board shall operate as a stay of any such disciplinary action, unless and until the Commission orders (summarily or after notice and opportunity for hearing on the question of a stay, which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that no such stay shall continue to operate.

(2) Expedited procedures. The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of a stay pending review of any disciplinary action of the Board under this subsection.

§ 7216. Foreign public accounting firms (a) Applicability to certain foreign firms.

(1) In general. Any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, shall be subject to this Act and the rules of the Board and the Commission issued under this Act, in the same manner and to the same extent as a public accounting firm that is organized and operates under the laws of the United States or any State, except that registration pursuant to section 102 [15 USCS § 7212] shall not by itself provide a basis for subjecting such a foreign public accounting firm to the jurisdiction of the Federal or State courts, other than with respect to controversies between such firms and the Board.

(2) Board authority. The Board may, by rule, determine that a foreign public accounting firm (or a class of such firms) that does not issue audit reports nonetheless plays such a substantial role in the preparation and furnishing of such reports for particular issuers, that it is necessary or appropriate, in light of the purposes of this Act and in the public interest or for the protection of investors, that such firm (or class of firms) should be treated as a public accounting firm (or firms) for purposes of registration under, and oversight by the Board in accordance with, this title [15 USCS §§ 7211 et seq.]. (b) Production of audit workpapers.

(1) Consent by foreign firms. If a foreign public accounting firm issues an opinion or otherwise performs material services upon which a registered public accounting firm relies in issuing all or part of any audit report or any opinion contained in an audit report, that foreign public accounting firm shall be deemed to have consented—

(A) to produce its audit workpapers for the Board or the Commission in connection with any investigation by either body with respect to that audit report; and

(B) to be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for production of such workpapers.

(2) Consent by domestic firms. A registered public accounting firm that relies upon the opinion of a foreign public accounting firm, as described in paragraph (1), shall be deemed—

(A) to have consented to supplying the audit workpapers of that foreign public accounting firm in response to a request for production by the Board or the Commission; and

(B) to have secured the agreement of that foreign public accounting firm to such production, as a condition of its reliance on the opinion of that foreign public accounting firm.

(c) Exemption authority. The Commission, and the Board, subject to the approval of the Commission, may, by rule, regulation, or order, and as the Commission (or Board) determines necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions exempt any foreign public accounting firm, or any class of such firms, from any provision of this Act or the rules of the Board or the Commission issued under this Act.

(d) Definition. In this section, the term "foreign public accounting firm" means a public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.

§ 7217. Commission oversight of the Board

(a) General oversight responsibility. The Commission shall have oversight and enforcement authority over the Board, as provided in this Act. The provisions of section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1)), and of section 17(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)(1)) shall apply to the Board as fully as if the Board were a "registered securities association" for purposes of those sections 17(a)(1) and 17(b)(1) [15 USCS § 78q(a)(1), (b)(1)].

(b) Rules of the Board.

(1) Definition. In this section, the term "proposed rule" means any proposed rule of the Board, and any modification of any such rule.

(2) Prior approval required. No rule of the Board shall become effective without prior approval of the Commission in accordance with this section, other than as provided in section 103(a)(3)(B) [15 USCS § 7213(a)(3)(B)] with respect to initial or transitional standards.

(3) Approval criteria. The Commission shall approve a proposed

rule, if it finds that the rule is consistent with the requirements of this Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors.

(4) Proposed rule procedures. The provisions of paragraphs (1) through (3) of section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) shall govern the proposed rules of the Board, as fully as if the Board were a "registered securities association" for purposes of that section 19(b) [15 USCS § 78s(b)], except that, for purposes of this paragraph—

(A) the phrase "consistent with the requirements of this title and the rules and regulations thereunder applicable to such organization" in section 19(b)(2) of that Act [15 USCS § 78s(b)(2)] shall be deemed to read "consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002 [15 USCS §§ 7211 et seq.], and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors"; and

(B) the phrase "otherwise in furtherance of the purposes of this title" in section 19(b)(3)(C) of that Act [15 USCS § 78s(b)(3)(C)] shall be deemed to read "otherwise in furtherance of the purposes of title I of the Sarbanes-Oxley Act of 2002 [15 USCS §§ 7211 et seq.]".

(5) Commission authority to amend rules of the Board. The provisions of section 19(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(c)) shall govern the abrogation, deletion, or addition to portions of the rules of the Board by the Commission as fully as if the Board were a "registered securities association" for purposes of that section 19(c) [15 USCS § 78s(c)], except that the phrase "to conform its rules to the requirements of this title and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this title" in section 19(c) of that Act [15 USCS § 78s(c)] shall, for purposes of this paragraph, be deemed to read "to assure the fair administration of the Public Company Accounting Oversight Board, conform the rules promulgated by that Board to the requirements of title I of the Sarbanes-Oxley Act of 2002 [15 USCS §§ 7211 et seq.], or otherwise further the purposes of that Act, the securities laws, and the rules and regulations thereunder applicable to that Board".

(c) Commission review of disciplinary action taken by the Board.

(1) Notice of sanction. The Board shall promptly file notice with the Commission of any final sanction on any registered public accounting firm or on any associated person thereof, in such form and containing such information as the Commission, by rule, may prescribe.

(2) Review of sanctions. The provisions of sections 19(d)(2) and 19(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(d)(2) and (e)(1)) shall govern the review by the Commission of final disciplinary sanctions imposed by the Board (including sanctions imposed under section 105(b)(3) of this Act [15 USCS § 7215(b)(3)] for noncooperation in an investigation of the Board), as fully as if the Board were a self-regulatory organization and the Commission were the appropriate regulatory agency for such organization for purposes of those sections 19(d)(2) and 19(e)(1) [15 USCS § 78s(d)(2), (e)(1)], except that, for purposes of this paragraph—

(A) section 105(e) of this Act [15 USCS § 7215(e)] (rather than that section 19(d)(2) [15 USCS § 78s(d)(2)]) shall govern the extent to which application for, or institution by the Commission on its own motion of, review of any disciplinary action of the Board operates as a stay of such action;

(B) references in that section 19(e)(1) [15 USCS § 78s(e)(1)] to "members" of such an organization shall be deemed to be references to registered public accounting firms;

(C) the phrase "consistent with the purposes of this title" in that section 19(e)(1) [15 USCS § 78s(e)(1)] shall be deemed to read "consistent with the purposes of this title and title I of the Sarbanes-Oxley Act of 2002 [15 USCS §§ 78a et seq., 7211 et seq.]";

(D) references to rules of the Municipal Securities Rulemaking Board in that section 19(e)(1) [15 USCS § 78s(e)(1)] shall not apply; and

(E) the reference to section 19(e)(2) of the Securities Exchange Act of 1934 [15 USCS § 78s(e)(2)] shall refer instead to section 107(c)(3) of this Act [15 USCS § 7217(c)(3)].

(3) Commission modification authority. The Commission may enhance, modify, cancel, reduce, or require the remission of a sanction imposed by the Board upon a registered public accounting firm or associated person thereof, if the Commission, having due regard for the public interest and the protection of investors, finds, after a proceeding in accordance with this subsection, that the sanction—

(A) is not necessary or appropriate in furtherance of this Act or the securities laws; or

(B) is excessive, oppressive, inadequate, or otherwise not appropriate to the finding or the basis on which the sanction was imposed. (d) Censure of the Board; other sanctions.

(1) Rescission of Board authority. The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this Act and the securities laws, may relieve the Board of any responsibility to enforce compliance with any provision of this Act, the securities laws, the rules of the Board, or professional standards.

(2) Censure of the Board; limitations. The Commission may, by order, as it determines necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that the Board—

(A) has violated or is unable to comply with any provision of this Act, the rules of the Board, or the securities laws; or

(B) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by a registered public accounting firm or an associated person thereof.

(3) Censure of Board members; removal from office. The Commission may, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, remove from office or censure any member of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that such member—

(A) has willfully violated any provision of this Act, the rules of the Board, or the securities laws;

(B) has willfully abused the authority of that member; or

(C) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by any registered public accounting firm or any associated person thereof.

§ 7218. Accounting standards

(a) [Omitted]

(b) Commission authority. The Commission shall promulgate such rules and regulations to carry out section 19(b) of the Securities Act of 1933 [15 USCS § 77s(b)], as added by this section, as it deems necessary or appropriate in the public interest or for the protection of investors.

(c) No effect on Commission powers. Nothing in this Act, including this section and the amendment made by this section, shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.

(d) Study and report on adopting principles-based accounting.

(1) Study.

(A) In general. The Commission shall conduct a study on the adoption by the United States financial reporting system of a principles-based accounting system.

(B) Study topics. The study required by subparagraph (A) shall include an examination of—

(i) the extent to which principles-based accounting and financial reporting exists in the United States;

(ii) the length of time required for change from a rules-based to a principles-based financial reporting system;

(iii) the feasibility of and proposed methods by which a principles-based system may be implemented; and

(iv) a thorough economic analysis of the implementation of a principles-based system.

(2) Report. Not later than 1 year after the date of enactment of this Act [enacted July 30, 2002], the Commission shall submit a report on the results of the study required by paragraph (1) to the

Committee on Banking, Housing, and Urban Affairs of the Senate and the Commit-tee on Financial Services of the House of Representatives.

§ 7219. Funding

(a) In general. The Board, and the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933 [15 USCS § 77s(b)], as amended by section 108 [15 USCS § 7218], shall be funded as provided in this section.

(b) Annual budgets. The Board and the standard setting body referred to in subsection (a) shall each establish a budget for each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains (or at the beginning of the Board's first fiscal year, which may be a short fiscal year). The budget of the Board shall be subject to approval by the Commission. The budget for the first fiscal year of the Board shall be prepared and approved promptly following the appointment of the initial five Board members, to permit action by the Board of the organizational tasks contemplated by section 101(d) [15 USCS § 7211(d)].

(c) Sources and uses of funds.

(1) Recoverable budget expenses. The budget of the Board (reduced by any registration or annual fees received under section 102(e) [15 USCS § 7212(e)] for the year preceding the year for which the budget is being computed), and all of the budget of the standard setting body referred to in subsection (a), for each fiscal year of each of those 2 entities, shall be payable from annual accounting support fees, in accordance with subsections (d) and (e). Accounting support fees and other receipts of the Board and of such standard-setting body shall not be considered public monies of the United States.

(2) Funds generated from the collection of monetary penalties. Subject to the availability in advance in an appropriations Act, and notwithstanding subsection (i), all funds collected by the Board as a result of the assessment of monetary penalties shall be used to fund a merit scholarship program for undergraduate and graduate students enrolled in accredited accounting degree programs, which program is to be administered by the Board or by an entity or agent identified by the Board.

(d) Annual accounting support fee for the Board.

(1) Establishment of fee. The Board shall establish, with the approval of the Commission, a reasonable annual accounting support fee (or a formula for the computation thereof), as may be necessary or appropriate to establish and maintain the Board. Such fee may also cover costs incurred in the Board's first fiscal year (which may be a short fiscal year), or may be levied separately with respect to such short fiscal year.

(2) Assessments. The rules of the Board under paragraph (1) shall provide for the equitable allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1), among issuers, in accordance with subsection (g), allowing for differentiation among classes of issuers, as appropriate. (e) Annual accounting support fee for standard setting body. The annual accounting support fee for the standard setting body referred to in subsection (a)—

(1) shall be allocated in accordance with subsection (g), and assessed and collected against each issuer, on behalf of the standard setting body, by 1 or more appropriate designated collection agents, as may be necessary or appropriate to pay for the budget and provide for the expenses of that standard setting body, and to provide for an independent, stable source of funding for such body, subject to review by the Commission; and

(2) may differentiate among different classes of issuers.

(f) Limitation on fee. The amount of fees collected under this section for a fiscal year on behalf of the Board or the standards setting body, as the case may be, shall not exceed the recoverable budget expenses of the Board or body, respectively (which may include operating, capital, and accrued items), referred to in subsection (c)(1).

(g) Allocation of accounting support fees among issuers. Any amount due from issuers (or a particular class of issuers) under this section to fund the budget of the Board or the standard setting body referred to in subsection (a) shall be allocated among and payable by each issuer (or each issuer in a particular class, as applicable) in an amount equal to the total of such amount, multiplied by a fraction—

(1) the numerator of which is the average monthly equity market capitalization of the issuer for the 12-month period immediately preceding the beginning of the fiscal year to which such budget relates; and

(2) the denominator of which is the average monthly equity market capitalization of all such issuers for such 12-month period.

(h) [Omitted]

(i) Rule of construction. Nothing in this section shall be construed to render either the Board, the standard setting body referred to in subsection (a), or both, subject to procedures in Congress to authorize or appropriate public funds, or to prevent such organization from utilizing additional sources of revenue for its activities, such as earnings from publication sales, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual and perceived independence of such organization.

(j) Start-up expenses of the Board. From the unexpended balances of the appropriations to the Commission for fiscal year 2003, the Secretary of the Treasury is authorized to advance to the Board not to exceed the amount necessary to cover the expenses of the Board during its first fiscal year (which may be a short fiscal year). Auditor Independence

§ 7231. Exemption authority

The Board may, on a case by case basis, exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 [15 USCS § 78j-1(g)] (as added by this section), to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission in the same manner as for rules of the Board under section 107 [15 USCS § 7217].

§ 7232. Study of mandatory rotation of registered public accounting firms

(a) Study and review required. The Comptroller General of the United States shall conduct a study and review of the potential effects of requiring the mandatory rotation of registered public accounting firms.

(b) Report required. Not later than 1 year after the date of enactment of this Act [enacted July 30, 2002], the Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study and review required by this section.

(c) Definition. For purposes of this section, the term "mandatory rotation" refers to the imposition of a limit on the period of years in which a particular registered public accounting firm may be the auditor of record for a particular issuer.

§ 7233. Commission authority

(a) Commission regulations. Not later than 180 days after the date of enactment of this Act [enacted July 30, 2002], the Commission shall issue final regulations to carry out each of subsections (g) through (l) of section 10A of the Securities Exchange Act of 1934 [15 USCS § 78j-1], as added by this title.

(b) Auditor independence. It shall be unlawful for any registered public accounting firm (or an associated person thereof, as applicable) to prepare or issue any audit report with respect to any issuer, if the firm or associated person engages in any activity with respect to that issuer prohibited by any of subsections (g) through (l) of section 10A of the Securities Exchange Act of 1934 [15 USCS § 78j-1], as added by this title, or any rule or regulation of the Commission or of the Board issued thereunder.

§ 7234. Considerations by appropriate State regulatory authorities In supervising nonregistered public accounting firms and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable, particularly taking into consideration the size and nature of the business of the accounting firms they supervise and the size and nature of the business of the clients of those firms. The standards applied by the Board under this Act should not be presumed to be applicable for purposes of this section for small and medium sized nonregistered public accounting firms.

Corporate Responsibility

§ 7241. Corporate responsibility for financial reports (a) Regulations required. The Commission shall, by rule, require, for each company filing periodic reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)), that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify in each annual or quarterly report filed or submitted under either such section of such Act that—

(1) the signing officer has reviewed the report;

(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report;

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared;

(C) have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days prior to the report; and

(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

(5) the signing officers have disclosed to the issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function)—

(A) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize, and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(b) Foreign reincorporations have no effect. Nothing in this section 302 [this section] shall be interpreted or applied in any way to allow any issuer to lessen the legal force of the statement required under this section 302 [this section], by an issuer having reincorporated or having engaged in any other transaction that resulted in the transfer of the corporate domicile or offices of the issuer from inside the United States to outside of the United States.

(c) Deadline. The rules required by subsection (a) shall be effective not later than 30 days after the date of enactment of this Act [enacted July 30, 2002].

§ 7242. Improper influence on conduct of audits

(a) Rules to prohibit. It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.

(b) Enforcement. In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.

(c) No preemption of other law. The provisions of subsection (a) shall be in addition to, and shall not supersede or preempt, any other provision of law or any rule or regulation issued thereunder.

(d) Deadline for rulemaking. The Commission shall—

(1) propose the rules or regulations required by this section, not later than 90 days after the date of enactment of this Act [enacted July 30, 2002]; and

(2) issue final rules or regulations required by this section, not later than 270 days after that date of enactment [enacted July 30, 2002]. § 7243. Forfeiture of certain bonuses and profits

(a) Additional compensation prior to noncompliance with commission financial reporting requirements. If an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the issuer shall reimburse the issuer for—

(1) any bonus or other incentive-based or equity-based compensation received by that person from the issuer during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and

(2) any profits realized from the sale of securities of the issuer during that 12-month period.

(b) Commission exemption authority. The Commission may exempt any person from the application of subsection (a), as it deems necessary and appropriate.

§ 7244. Insider trades during pension fund blackout periods (a) Prohibition of insider trading during pension fund blackout periods.

(1) In general. Except to the extent otherwise provided by rule of the Commission pursuant to paragraph (3), it shall be unlawful for any director or executive officer of an issuer of any equity security (other than an exempted security), directly or indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of the issuer (other than an exempted security) during any blackout period with respect to such equity security if such director or officer acquires such equity security in connection with his or her service or employment as a director or executive officer.

(2) Remedy.

(A) In general. Any profit realized by a director or executive officer referred to in paragraph (1) from any purchase, sale, or other acquisition or transfer in violation of this subsection shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such director or executive officer in entering into the transaction.

(B) Actions to recover profits. An action to recover profits in accordance with this subsection may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer fails or refuses to bring such action within 60 days after the date of request, or fails diligently to prosecute the action thereafter, except that no such suit shall be brought more than 2 years after the date on which such profit was realized.

(3) Rulemaking authorized. The Commission shall, in consultation with the Secretary of Labor, issue rules to clarify the application of this subsection and to prevent evasion thereof. Such rules shall provide for the application of the requirements of paragraph (1) with respect to entities treated as a single employer with respect to an issuer under section 414(b), (c), (m), or (o) of the Internal Revenue Code of 1986 [26 USCS § 414(b), (c), (m), or (o)] to the extent necessary to clarify the application of such requirements and to prevent evasion thereof. Such rules may also provide for appropriate exceptions from the requirements of this subsection, including exceptions for purchases pursuant to an automatic dividend reinvestment program or purchases or sales made pursuant to an advance election.

(4) Blackout period. For purposes of this subsection, the term "blackout period", with respect to the equity securities of any issuer—

(A) means any period of more than 3 consecutive business days during which the ability of not fewer than 50 percent of the participants or beneficiaries under all individual account plans maintained by the issuer to purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer held in such an individual account plan is temporarily suspended by the issuer or by a fiduciary of the plan; and

(B) does not include, under regulations which shall be prescribed by the Commission—

(i) a regularly scheduled period in which the participants and beneficiaries may not purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer, if such period is—
(I) incorporated into the individual account plan; and

(II) timely disclosed to employees before becoming participants under the individual account plan or as a subsequent amendment to the plan; or

(ii) any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor.

(5) Individual account plan. For purposes of this subsection, the term "individual account plan" has the meaning provided in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34), except that such term shall not include a one-participant retirement plan (within the meaning of section 101(i)(8)(B) of such Act (29 U.S.C. 1021(i)(8)(B))).

(6) Notice to directors, executive officers, and the Commission. In any case in which a director or executive officer is subject to the requirements of this subsection in connection with a blackout period (as defined in paragraph (4)) with respect to any equity securities, the issuer of such equity securities shall timely notify such director or officer and the Securities and Exchange Commission of such blackout period.

(b) Notice requirements to participants and beneficiaries under ERISA.

(1) [Omitted]

(2) Issuance of initial guidance and model notice. The Secretary of Labor shall issue initial guidance and a model notice pursuant to section 101(i)(6) of the Employee Retirement Income Security Act of 1974 [29 USCS § 1021(i)(6)] (as added by this subsection) not later than January 1, 2003. Not later than 75 days after the date of the enactment of this Act [enacted July 30, 2002, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection.

(3) [Omitted]

[(4)](3) Plan amendments. If any amendment made by this subsection requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after the effective date of this section, if—

(A) during the period after such amendment made by this sub-section takes effect and before such first plan year, the plan is operated in good faith compliance with the requirements of such amendment made by this subsection, and

(B) such plan amendment applies retroactively to the period after such amendment made by this subsection takes effect and before such first plan year.

(c) Effective date. The provisions of this section (including the amendments made thereby) shall take effect 180 days after the date of the enactment of this Act [enacted July 30, 2002]. Good faith compliance with the requirements of such provisions in advance of the issuance of applicable regulations thereunder shall be treated as compliance with such provisions.

§ 7245. Rules of professional responsibility for attorneys

Not later than 180 days after the date of enactment of this Act [enacted July 30, 2002], the Commission shall issue rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, including a rule—

(1) requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and

(2) if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

§ 7246. Fair funds for investors

(a) Civil penalties added to disgorgement funds for the relief of victims. If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) the Commission obtains an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.

(b) Acceptance of additional donations. The Commission is authorized to accept, hold, administer, and utilize gifts, bequests and devises of property, both real and personal, to the United States for a disgorgement fund described in subsection (a). Such gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the disgorgement fund and shall be available for allocation in accordance with subsection (a).

(c) Study required.

(1) Subject of study. The Commission shall review and analyze—

(A) enforcement actions by the Commission over the five years preceding the date of the enactment of this Act [enacted July 30, 2002] that have included proceedings to obtain civil penalties or disgorgements to identify areas where such proceedings may be utilized to efficiently, effectively, and fairly provide restitution for injured investors; and

(B) other methods to more efficiently, effectively, and fairly provide restitution to injured investors, including methods to improve the collection rates for civil penalties and disgorgements.

(2) Report required. The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate within 180 days after of the date of the enactment of this Act [enacted July 30, 2002], and shall use such findings to revise its rules and regulations as necessary. The report shall include a discussion of regulatory or legislative actions that are recommended or that may be necessary to address concerns identified in the study.

(d) [Omitted]

(e) Definition. As used in this section, the term "disgorgement fund" means a fund established in any administrative or judicial proceeding described in subsection (a). Enhanced Financial Disclosures

§ 7261. Disclosures in periodic reports

(a) [Omitted]

(b) Commission rules on pro forma figures. Not later than 180 days after the date of enactment of the Sarbanes-Oxley Act fo [of] 2002 [enacted July 30, 2002], the Commission shall issue final rules providing that pro forma financial information included in any periodic or other report filed with the Commission pursuant to the securities laws, or in any public disclosure or press or other release, shall be presented in a manner that—

(1) does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the pro forma financial information, in light of the circumstances under which it is presented, not misleading; and

(2) reconciles it with the financial condition and results of operations of the issuer under generally accepted accounting principles.

(c) Study and report on special purpose entities.

(1) Study required. The Commission shall, not later than 1 year after the effective date of adoption of off-balance sheet disclosure rules required by section 13(j) of the Securities Exchange Act of 1934 [15 USCS § 78m(j)], as added by this section, complete a study of filings by issuers and their disclosures to determine—

(A) the extent of off-balance sheet transactions, including assets, liabilities, leases, losses, and the use of special purpose entities; and

(B) whether generally accepted accounting rules result in financial statements of issuers reflecting the economics of such off-balance sheet transactions to investors in a transparent fashion.

(2) Report and recommendations. Not later than 6 months after the date of completion of the study required by paragraph (1), the Commission shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, setting forth—

(A) the amount or an estimate of the amount of off-balance sheet transactions, including assets, liabilities, leases, and losses of, and the use of special purpose entities by, issuers filing periodic reports pursuant to section 13 or 15 of the Securities Exchange Act of 1934 [15 USCS § 78m or 78o];

(B) the extent to which special purpose entities are used to facilitate off-balance sheet transactions;

(C) whether generally accepted accounting principles or the rules of the Commission result in financial statements of issuers reflecting the economics of such transactions to investors in a transparent fashion;

(D) whether generally accepted accounting principles specifically result in the consolidation of special purpose entities sponsored by an issuer in cases in which the issuer has the majority of the risks and rewards of the special purpose entity; and

(E) any recommendations of the Commission for improving the transparency and quality of reporting off-balance sheet transactions in the financial statements and disclosures required to be filed by an is-suer with the Commission.

§ 7262. Management assessment of internal controls

(a) Rules required. The Commission shall prescribe rules requiring each annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) to contain an internal control report, which shall—

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

(b) Internal control evaluation and reporting. With respect to the internal control assessment required by subsection (a), each registered public accounting firm that prepares or issues the audit report for the issuer shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the Board. Any such attestation shall not be the subject of a separate engagement.

§ 7263. Exemption

Nothing in section 401 [15 USCS § 7261], 402, or 404 [15 USCS § 7262], the amendments made by those sections, or the rules of the Commission under those sections shall apply to any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

§ 7264. Code of ethics for senior financial officers

(a) Code of ethics disclosure. The Commission shall issue rules to require each issuer, together with periodic reports required pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 [15 USCS § 78m(a) or 78o(d)], to disclose whether or not, and if not, the reason therefor, such issuer has adopted a code of ethics for senior financial officers, applicable to its principal financial officer and comptroller or principal accounting officer, or persons performing similar functions.

(b) Changes in codes of ethics. The Commission shall revise its regulations concerning matters requiring prompt disclosure on Form 8-K (or any successor thereto) to require the immediate disclosure, by means of the filing of such form, dissemination by the Internet or by other electronic means, by any issuer of any change in or waiver of the code of ethics for senior financial officers.

(c) Definition. In this section, the term "code of ethics" means such standards as are reasonably necessary to promote—

(1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer; and

(3) compliance with applicable governmental rules and regulations.

(d) Deadline for rulemaking. The Commission shall—

(1) propose rules to implement this section, not later than 90 days after the date of enactment of this Act [enacted July 30, 2002]; and

(2) issue final rules to implement this section, not later than 180 days after that date of enactment.

§ 7265. Disclosure of audit committee financial expert

(a) Rules defining "financial expert". The Commission shall issue rules, as necessary or appropriate in the public interest and consistent with the protection of investors, to require each issuer, together with periodic reports required pursuant to sections 13(a) and 15(d) of the Securities Exchange Act of 1934 [15 USCS §§ 78m(a), 78o(d)], to disclose whether or not, and if not, the reasons therefor, the audit committee of that issuer is comprised of at least 1 member who is a financial expert, as such term is defined by the Commission.

(b) Considerations. In defining the term "financial expert" for purposes of subsection (a), the Commission shall consider whether a person has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions—

(1) an understanding of generally accepted accounting principles and financial statements;

(2) experience in—

(A) the preparation or auditing of financial statements of generally comparable issuers; and

(B) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) experience with internal accounting controls; and

(4) an understanding of audit committee functions.

(c) Deadline for rulemaking. The Commission shall—

(1) propose rules to implement this section, not later than 90 days after the date of enactment of this Act [enacted July 30, 2002]; and (2) issue final rules to implement this section, not later than 180 days after that date of enactment.

§ 7266. Enhanced review of periodic disclosures by issuers

(a) Regular and systematic review. The Commission shall review disclosures made by issuers reporting under section 13(a) of the Securities Exchange Act of 1934 [15 USCS § 78m(a)] (including reports filed on Form 10-K), and which have a class of securities listed on a national securities exchange or traded on an automated quotation facility of a national securities association, on a regular and systematic basis for the protection of investors. Such review shall include a review of an issuer's financial statement.

Dodd-Frank Wall Street Reform and Consumer Protection Act (2010)
Title I: Financial Stability
Subtitle A: Financial Stability Oversight Council

(Sec. 112) Requires the Council, among other things, to: (1) identify risks to U.S. financial stability that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (2) promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; (3) respond to emerging threats to the stability of the financial system.

Includes among the Council's duties: (1) identifying gaps in regulation that could pose risks to U.S. financial stability; (2) requiring supervision by the Board of Governors of the Federal Reserve (Federal Reserve Board) for nonbank financial companies that may pose risks to U.S. financial stability in the event of their material financial distress or failure, or because of specified activities; (3)

making recommendations to the Board concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board; and (4) identifying systemically important financial market utilities and payment, clearing, and settlement activities.

(Sec. 113) Authorizes the Council to determine that a foreign or a U.S. nonbank financial company shall be supervised by the Federal Reserve Board and subject to prudential standards under this Act, if the Council determines that material financial distress, or activities at the company, could threaten U.S. financial stability.

Authorizes the company, upon the Council's determination, to establish an intermediate holding company in which its financial activities (and those of its subsidiaries) are conducted in compliance with Board regulations or guidance. Subjects such intermediate holding company to Board supervision and to prudential standards under this Act as if it were a nonbank financial company supervised by the Board.

Restricts Board supervision to the company's financial activities only.

Requires the Council, in exercising its duties with respect to foreign nonbank financial companies, foreign-based bank holding companies, and cross-border activities and markets, to consult with appropriate foreign regulatory authorities.

(Sec. 114) Requires any nonbank financial company determined to come under Board supervision to register with the Federal Reserve Board.

(Sec. 115) Authorizes the Council to recommend to the Board prudential standards and reporting and disclosure requirements for Board-supervised nonbank financial companies and large, interconnected bank holding companies that: (1) are more stringent than those for other nonbank financial companies and bank holding companies that do not present similar risks to the U.S. financial stability; and (2) increase in stringency, based upon specified considerations.

Requires the Council to study and report to Congress on the feasibility, benefits, costs, and structure of a contingent capital requirement for Board-supervised nonbank financial companies and large, interconnected bank holding companies.

Authorizes the Council to make recommendations to the Board about Board-supervised nonbank financial companies and large, interconnected bank holding companies, including: (1) required periodic reports on company plans for rapid and orderly resolution in the event of material financial distress or failure; (2) company credit exposure; (3) standards to limit risks posed by failure of any individual company to other companies; and (3) short-term company debt limits.

(Sec. 116) Authorizes the Council, acting through the Office of Financial Research, to require a bank holding company with total consolidated assets of $50 billion or more or a Board-supervised nonbank financial company (and subsidiaries) to submit certified reports of condition and risk management systems.

(Sec. 117) Treats as a Board-supervised nonbank financial company any entity that: (1) was a bank holding company having total consolidated assets 50 billion or more as of January 1, 2010; (2) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program (TARP) under the Emergency Economic Stabilization Act of 2008 (EESA); or (3) is a successor entity.

Prescribes a procedure for appeal from such treatment.

(Sec. 118) Treats Council expenses as expenses of, and paid by, the Office of Financial Research.

(Sec. 119) Prescribes procedures for resolution by the Council of supervisory jurisdictional disputes among member agencies.

(Sec. 120) Authorizes the Council, in specified circumstances, to provide for more stringent regulation of a financial activity by issuing recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for a financial activity or practice conducted by bank holding companies or nonbank financial companies.

Requires such primary agencies to impose the standards recommended by the Council.

(Sec. 121) Requires the Federal Reserve Board to take mitigatory actions restricting the activities of bank holding companies with total consolidated assets of $50 billion or more, or Board-supervised nonbank financial companies, which pose a grave threat to U.S. financial stability, including: (1) limiting the company's ability to become affiliated with another company; (2) restricting the company's ability to offer a financial product or products; (3) requiring the company to terminate one or more activities; (4) imposing conditions on the manner in which the company conducts activities; or (5) requiring the company to transfer assets or off-balance-sheet items to unaffiliated entities.

(Sec. 122) Authorizes the Comptroller General to audit Council activities.

(Sec. 123) Instructs the Council Chairperson to study and report to Congress on the economic impact of possible financial services regulatory limitations intended to reduce systemic risk.

Subtitle B: Office of Financial Research - (Sec. 152) Establishes within the Department of the Treasury the Office of Financial Research (OFR) to support the Council and member agencies in: (1) collecting and standardizing data collections; (2) performing applied research and essential long-term research; and (3) developing risk measurement and monitoring tools.

(Sec. 154) Establishes the Data Center and the Research and Analysis Center to carry out OFR programmatic responsibilities.

(Sec. 155) Establishes the Financial Research Fund in the Treasury as depository for funds and assessments designated for the OFR.

Subtitle C: Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies - (Sec. 161) Authorizes the Federal Reserve Board to require a nonbank financial company under its supervision (and any subsidiary) to report under oath regarding its financial condition, its systems for monitoring and controlling risks, and the extent to which its activities and operations threaten U.S. financial stability.

Authorizes the Board to examine such companies regarding such matters.

(Sec. 162) Subjects a Board-supervised nonbank financial company (and any subsidiaries that are not depository institutions) to specified enforcement proceedings of the Federal Deposit Insurance Act (FDIA) in the same manner and to the same extent as if it were a bank holding company.

Authorizes the Board to recommend that primary financial regulatory agency initiate supervisory actions or enforcement proceedings against noncompliant depository institution or functionally regulated subsidiaries.

(Sec. 163) Treats a Board-supervised nonbank financial company as a statutory bank holding company for purposes of requirements governing bank acquisitions.

Requires a bank holding company with total consolidated assets of $50 billion or more or a Board-supervised nonbank financial company to notify the Board in writing in advance of any transaction in which it acquires direct or indirect ownership or control of voting shares of a company (other than an insured depository institution) which: (1) has total consolidated assets of $10 billion or more; and (2) is engaged in specified activities under the Bank Holding Company Act of 1956.

(Sec. 164) Treats a Board-supervised nonbank financial company as a bank holding company for purposes of the Depository Institutions Management Interlocks Act. Prohibits the Board, however, from permitting service by a management official of a Board-supervised nonbank financial company as a management official of any bank holding company with total consolidated assets of $50 billion or more, or any other Board-supervised nonaffiliated nonbank financial company (except to provide a temporary exemption for interlocks resulting from a merger, acquisition, or consolidation).

(Sec. 165) Requires the Board to establish, for Board-supervised nonbank financial companies and for bank holding companies with total consolidated assets of $50 billion or more, prudential standards addressing specified requirements that: (1) are more stringent than those for other nonbank financial companies and bank holding companies that do not present similar risks to the U.S. financial stability; and (2) increase in stringency, based upon specified considerations.

Authorizes the Board to require each Board-supervised nonbank financial company and bank holding companies with total consolidated assets of $50 billion or more to maintain a minimum amount of contingent capital convertible to equity in times of financial stress.

Directs the Board to require each Board-supervised nonbank financial company and such bank holding companies to report periodically: (1) their plans for rapid and orderly resolution in the event of material financial distress or failure; and (2) the nature and extent of their credit exposure.

Requires the Board to prescribe standards limiting the risks and credit exposure that failure of any individual company could pose to a Board-supervised nonbank financial company or to a bank holding company with total consolidated assets of $50 billion or more. Requires such regulations to prohibit credit exposure exceeding 25% of a company's capital stock and surplus (or a lower amount, if necessary).

Authorizes the Board to prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by bank holding companies with total consolidated assets of $50 billion or more or Board-supervised nonbank financial companies.

Directs the Board to require each publicly-traded Board-supervised nonbank financial company to establish a risk committee responsible for the oversight of the enterprise-wide risk management practices.

Requires the Board to conduct annual analyses in which Board-supervised nonbank financial companies and bank holding companies with total consolidated assets of $50 billion or more are subject to evaluation of whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions (stress tests).

Directs the Board to require a bank holding company with total consolidated assets of $50 billion or more or a Board-supervised nonbank financial company (but not any federal home loan bank) to maintain a debt to equity ratio of no more than 15 to 1, upon Council determination that the company poses a grave threat to the U.S. financial stability and that this requirement is necessary to mitigate that risk.

Requires the computation of capital in such companies to take into account any off-balance-sheet activities for purposes of meeting their capital requirements.

(Sec. 166) Directs the Federal Reserve Board to prescribe early remediation requirements to address the financial distress of a Board-supervised nonbank financial company or a bank holding company with total consolidated assets of $50 billion or more.

(Sec. 167) Authorizes the Board to require any nonbank financial company it supervises that conducts activities that are not financial in nature or incidental thereto under the Bank Holding Company Act of 1956 to establish and conduct all or a portion of such activities that are financial in nature or incidental thereto in or through an affiliated intermediate holding company.

Requires a company that directly or indirectly controls an intermediate holding company established under such affiliation procedures to serve as a source of strength to its subsidiary intermediate holding company.

(Sec. 170) Directs the Board to promulgate criteria for exempting from its supervision certain types or classes of U.S. nonbank financial companies or foreign nonbank financial companies.

(Sec. 171) Directs federal banking agencies to establish, on a consolidated basis, minimum leverage capital requirements and minimum risk-based capital requirements for insured depository institutions (except federal home loan banks), depository institution holding companies, and Board-supervised nonbank financial companies.

Directs the Comptroller General to study and report to Congress on access to capital by smaller insured depository institutions.

Requires the federal banking agencies to develop capital requirements for insured depository institutions, depository institution holding companies, and Board-supervised nonbank financial companies that address the risks their activities pose, including the risk to other public and private stakeholders in the event of adverse performance, disruption, or failure of the institution or the activity.

(Sec. 172) Amends the FDIA to subject Board-supervised nonbank financial companies and bank holding companies with total consolidated assets of $50 billion or more to examination and enforcement action for insurance and liquidation purposes whenever the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) determines that a special examination is necessary.

(Sec. 173) Amends the International Banking Act of 1978 to authorize the Federal Reserve Board, when considering an application to establish in the United States a foreign bank that presents a risk to the stability of the U.S. financial system, to take into account whether the foreign bank's home country has adopted, or is making demonstrable progress toward adopting, an appropriate system of regulation for its financial system to mitigate such risk.

Authorizes the Board to order a foreign bank which presents a risk to the stability of the U.S. financial system, and which operates a state branch or agency or commercial lending company subsidiary in the United States, to terminate the activities of that branch, agency, or subsidiary if the foreign bank's home country has not adopted, or is not making demonstrable progress toward adopting, an appropriate system of regulation for its financial system to mitigate such risk.

Amends the Securities Exchange Act of 1934 to authorize the Securities and Exchange Commission (SEC), in determining whether to permit a foreign person or an affiliate to register as a U.S. broker or dealer, or succeed to the registration of a U.S. Broker or dealer, to consider whether, for a foreign person or an affiliate that presents a risk to the stability of the U.S. financial system, the home country of the foreign person's home country has adopted, or is making demonstrable progress toward adopting, an appropriate system of regulation for its financial system to mitigate such risk.

Authorizes the SEC to terminate the registration of such foreign person as a broker or dealer in the United States, if the foreign person's home country has not adopted, or is not making demonstrable progress toward adopting, an appropriate system of regulation for its financial system to mitigate such risk.

(Sec. 174) Directs the Comptroller General to study and report to Congress on: (1) the use of hybrid capital instruments as a component of Tier 1 capital for banking institutions and bank holding companies; and (2) capital requirements applicable to U.S. intermediate holding companies of foreign banks that are bank holding companies or savings and loan holding companies.

(Sec. 175) Directs the President (or a designee) to coordinate through all available international policy channels policies similar to those found in U.S. law relating to limiting the scope, nature, size, scale, concentration, and interconnectedness of financial companies, in order to protect U.S. financial stability and the global economy.

Directs the Council Chairperson to consult regularly with the financial regulatory entities and other appropriate organizations of foreign governments or international organizations on matters relating to systemic risk to the international financial system.

the Federal Reserve Board, and the Secretary to consult with their foreign counterparts and through appropriate multilateral organizations to encourage comprehensive and robust prudential supervision and regulation for all highly leveraged and interconnected financial companies.

Title II: Orderly Liquidation Authority - (Sec. 202) Prescribes jurisprudential procedures for orderly liquidation of financial entities, including petitions for U.S. district court review, three-year appointment of the FDIC as receiver, and appeals of district court final decisions.

Requires the Administrative Office of the United States Courts and the Comptroller General each to monitor and report to Congress on: (1) the activities of the United States District Court for the District of Columbia; and (2) the bankruptcy and orderly liquidation process for financial companies under the Bankruptcy Code.

Directs the Comptroller General to study and report to: (1) Congress regarding international coordination relating to the orderly liquidation of financial companies under the Bankruptcy Code; and (2) the Council regarding prompt corrective action implementation by the appropriate federal agencies.

(Sec. 203) Sets forth procedures by which the FDIC, the SEC, the Director of the Federal Insurance Office and the Federal Reserve Board shall make written recommendations to the Secretary concerning the disposition of certain financial companies in danger of default, including brokers, dealers, insurance companies and their subsidiaries.

Requires the Secretary and the FDIC as receiver for a covered financial company, to report to Congress and the public on plans and actions to wind down a financial company which the Secretary and the President have determined is in default or in danger and its failure would have serious adverse effects on U.S. financial stability in the U.S. (covered financial company).

Directs the Comptroller General to review and report to Congress on any determination that results in the appointment of the FDIC as receiver.

(Sec. 204) Sets forth procedures for the FDIC to exercise its authorities, powers, and duties as receiver for a covered financial company.

(Sec. 205) Requires the FDIC to appoint, without need for court approval, the Securities Investor Protection Corporation (SIPC) to act as trustee for the liquidation of a covered broker or dealer. Sets forth SIPC powers and duties as well as mandatory terms and conditions for orderly liquidation actions.

(Sec. 207) Shields the members of the board of directors of a covered financial company (or body performing similar functions) from liability to company shareholders or creditors for acquiescing in or consenting in good faith to the appointment of the FDIC as receiver for the covered financial company.

(Sec. 208) Dismisses cases or proceedings against a covered financial company, upon proper notice, following appointment of either FDIC or SIPC as receiver and trustee, respectively.

Requires the assets of a covered financial company, upon appointment of the FDIC as receiver, to revest in it, to the extent they have vested in any entity other than the covered financial company as a result of any case or proceeding commenced under the Bankruptcy Code, the Securities Investor Protection Act of 1970, or any similar provision of applicable state liquidation or insolvency law.

(Sec. 210) Specifies the powers and duties of the FDIC as receiver for a covered financial company.

Prescribes liquidation procedures, including resolution of claims and statute of limitations.

Declares unenforceable any walkaway clauses in a qualified financial contract of a covered financial company in default.

Sets forth procedures to charter and establish bridge financial companies.

Prohibits the FDIC from entering into any agreement or approving any protective order which prohibits it from disclosing the settlement terms of any action for damages or restitution brought by the FDIC acting as receiver for a covered financial company.

Establishes in the Treasury the Orderly Liquidation Fund to: (1) enable the FDIC to implement its authorities in this Act; and (2) cover the cost of authorized actions, including the orderly liquidation of covered financial companies.

Requires the FDIC to charge risk-based assessments to pay in full obligations issued by the FDIC to the Secretary.

Directs the FDIC to prescribe regulations prohibiting the sale of assets of a covered financial company by the FDIC to specified persons, including convicted debtors.

Authorizes the FDIC, as receiver of a covered financial company, to recover from any current or former senior executive or director substantially responsible for the company's failed condition any compensation received: (1) during the two-year period preceding the date on which it was appointed receiver; or (2) at any time in the case of fraud.

(Sec. 211) Sets forth the duties of the Inspectors General of the FDIC and of the Department of the Treasury, respectively, to conduct, supervise, and coordinate audits and investigations of actions taken by the FDIC as receiver and by the Secretary related to the liquidation of any covered financial company.

(Sec. 212) Requires the FDIC to take the action necessary to avoid any conflicts of interest that may arise in connection with multiple receiverships.

(Sec. 213) Authorizes either the Federal Reserve Board or the FDIC to ban certain activities by senior executives and directors.

(Sec. 214) Requires the liquidation of all financial companies placed into receivership under this Act. Prohibits the use of taxpayer funds to prevent liquidation of any such companies.

Requires the recovery through assessments from the disposition of assets of a liquidated financial company, or from the financial sector, of any funds expended under this Act in the company's liquidation.

(Sec. 215) Directs the Council to study and report to Congress on "secured creditor haircuts," an evaluation of the importance of maximizing U.S. taxpayer protections and promoting market discipline with respect to the treatment of fully secured creditors in the utilization of the orderly liquidation authority authorized by this Act. (A "haircut" would treat a portion of the claims of secured creditors in liquidations as unsecured.)

(Sec. 216) Directs the Board to study and report to Congress on: (1) specified issues with respect to the resolution of financial companies under chapter 7 (Liquidation) or 11 (Reorganization) of the Bankruptcy Code; and (2) international coordination relating to the resolution of systemic financial companies under the U.S. Bankruptcy Code and applicable foreign law.

Title III: Transfer of Powers to the Comptroller of the Currency, the Corporation, and the Board of Governors - Enhancing Financial Institution Safety and Soundness Act of 2010 -Subtitle A: Transfer of Powers and Duties - (Sec. 312) Transfers to the Federal Reserve Board, one year (or, at the Secretary's discretion, no more than 18 months) after enactment of this Act, all functions and rulemaking authority of the Office of Thrift Supervision (OTS) relating to savings and loan holding companies.

Transfers to the Office of the Comptroller of the Currency all OTS functions relating to federal savings associations, and all rulemaking authority relating to savings associations.

Transfers to the FDIC all OTS functions relating to state savings associations.

(Sec. 313) Abolishes the OTS.

(Sec. 314) Amends the Revised Statutes of the United States to revise the general requirements for the Office of the Comptroller of the Currency to accord with this Act.

Requires the Comptroller of the Currency to designate a Deputy Comptroller, responsible for the supervision and examination of federal savings associations.

(Sec. 318) Authorizes the Comptroller of the Currency to collect assessments, fees, or other charges from national banking associations or federal branches or agencies of a foreign bank, and the FDIC to assess fees against depository institutions subject to its regular and special examinations.

Requires the Federal Reserve Board to collect assessments, fees, or other charges from all: (1) bank holding companies and savings and loan holding companies having total consolidated assets of $50 billion or more; and (2) Board-supervised nonbank financial companies.

Subtitle B: Transitional Provisions - Sets forth transitional requirements and procedures for the orderly transfer of OTS functions, employees, funds and property to the Office of the Comptroller of the Currency, the FDIC, and the Board of Governors.

Subtitle C: Federal Deposit Insurance Corporation - (Sec. 331) Amends the FDIA to require the FDIC to: (1) revise the assessment base with respect to an insured depository institution; and (2) prescribe the method for declaration, calculation, distribution, and payment of dividends, with discretion to suspend or limit their declaration.

(Sec. 334) Replaces the 1.15% to 1.5% of estimated insured deposits range for reserve ratios which the FDIC Board may designate with a minimum reserve ratio of 1.35% of estimated insured deposits, or the comparable percentage of the assessment base.

(Sec. 335) Amends the FDIA and the Federal Credit Union Act (FUCA) to increase permanently the maximum federal deposit insurance and federal share insurance amount from $100,000 to $250,000. Makes such increase retroactive to January 1, 2008.

(Sec. 336) Replaces the Director of the Office of Thrift Supervision on the FDIC Board with the Director of the Consumer Financial Protection Bureau.

Subtitle D: Other Matters - (Sec. 341) Permits a savings association that becomes a bank to: (1) continue to operate any branch or agency that it operated immediately before becoming a bank; and (2) establish, acquire, and operate additional branches and agencies at any location within any state in which it operated a branch immediately before it became a bank, if the law of the pertinent state would permit establishment of the branch by a state-chartered bank.

(Sec. 342) Requires each agency to establish an Office of Minority and Women Inclusion responsible for all matters of the agency relating to diversity in management, employment, and business activities. Requires the Director of each such Office to develop and implement procedures for inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities at all federal agency levels, including procurement, insurance, and contracts.

(Sec. 343) Amends the FDIA and the FCUA to require that a depositor's net amount maintained at an insured depository institution in a noninterest-bearing transaction account is fully insured.

Subtitle E: Technical and Conforming Amendments - Sets forth technical and conforming amendments to specified Acts regarding banking, housing and securities.

Title IV: Regulation of Advisers to Hedge Funds and Others - Private Fund Investment Advisers Registration Act of 2010 - (Sec. 403) Amends the Investment Advisers Act of 1940 to repeal its exemption and apply registration requirements to a private fund investment adviser (but not to a foreign private investment adviser).Jack double-check this please).

Exempts from such Act's registration requirements: (1) an investment adviser who solely advises specified small business investment companies licensed under the Small Business Investment Act of 1958 or related entities; and (2) an investment adviser that is registered with the Commodity Futures Trading Commission (CFTC) as a commodity trading advisor and advises a private fund. Requires a CFTC-registered commodity trading advisor that advises a private fund to register with the SEC if the advisor's business should become predominantly securities-related advice.

(Sec. 404) Subjects to SEC recordkeeping requirements, as well as periodic and special examinations, any registered investment adviser who advises private funds.

Requires the SEC to make such records, especially those relating to systemic risk, available to the Council.

Exempts from the Freedom of Information Act (FOIA) information that the SEC, the Council, and any other department, agency, or self-regulatory organization (SRO) receives from the SEC under this Act.

(Sec. 405) Adds the assessment of potential systemic risk as an exception to the prohibition against disclosure by an investment adviser of the identity, investments, or affairs of any client.

(Sec. 406) Prohibits the SEC, with respect to certain prohibited fraudulent transactions by investment advisers, from defining "client" to include an investor in a private fund managed by an investment adviser, if the private fund has entered into an advisory contract with such adviser.

Instructs the SEC and the CFTC to promulgate joint rules for mandatory reports filed with them by certain registered investment advisers.

(Sec. 407) Exempts an investment adviser who advises solely venture capital funds from registration requirements with respect to the provision of investment advice relating to a venture capital fund.

Directs the SEC to require the latter advisers, however, to maintain records and make annual reports to the SEC.

(Sec. 408) Directs the SEC to exempt from registration requirements an investment adviser acting solely as an adviser to private funds and having assets under management in the United States of less than $150 million.

Directs the SEC, with respect to investment advisers acting as investment advisers to mid-sized private funds, to: (1) take into account the size, governance, and investment strategy of such funds to determine whether they pose systemic risk; and (2) provide for registration and examination procedures with respect to the investment advisers of such funds which reflect the level of systemic risk such funds pose.

(Sec. 409) Excludes any family office from the definition of "investment adviser," as defined by the SEC according to specified criteria. (Sec. 410) Sets forth criteria for the treatment of certain mid-sized investment advisers with assets under management of between $25 million and $100 million. Exempts from federal registration any state-registered mid-sized investment adviser that is not an adviser to a federally-registered investment company registered, or a business development company, unless it would be required to register with 15 or more states, in which case it may register under the Investment Company Act of 1940.

(Sec. 411) Requires an investment adviser to safeguard client assets held in the adviser's custody, including by verification of such assets by an independent public accountant.

(Sec. 412) Directs the Comptroller General to study and report to specified congressional committees on: (1) the compliance costs of certain SEC rules concerning client funds or securities held by investment advisers; and (2) the additional costs if a certain portion of a rule relating to operational independence were eliminated

(Sec. 413) Directs the SEC in its rules to adjust the net worth standard for an accredited investor so that the individual net worth of any natural person, or joint net worth with the person's spouse, at the time of purchase, is more than $1 million (excluding the value of the primary residence). Makes $1 million (excluding the value of the primary residence) the net worth standard during the four-year period beginning on the enactment of this Act.

Authorizes the SEC to: (1) review periodically the definition of "accredited investor" to determine whether its requirements should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy; and (2) make such adjustments as appropriate.

(Sec. 414) States that nothing in the Investment Advisers Act of 1940 shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the CFTC or any private party, arising under the Commodity Exchange Act governing commodity pools, commodity pool operators, or commodity trading advisors.

(Sec. 415) Directs the Comptroller General to study and report to specified congressional committees on the appropriate criteria for determining the financial thresholds to qualify for accredited investor status and eligibility to invest in private funds; and (4) the feasibility of forming an SRO to oversee private funds.

(Sec. 417) Directs the SEC Division of Risk, Strategy, and Financial Innovation to study and report to Congress on: (1) the state of short selling on national securities exchanges and in the over-the-counter markets; (2) the feasibility, benefits, and costs of requiring reporting publicly, in real time, the short sale positions of publicly listed securities, or, in the alternative, reporting such short positions in real time only to the SEC and the Financial Industry Regulatory Authority (FINRA); and (3) a feasibility, benefits, and costs of conducting a voluntary pilot program for public companies to mark and report all trades in real time through the Consolidated Tape as "short," "market maker short," "buy," "buy-to-cover," or "long."

(Sec. 418) Amends the Investment Advisers Act of 1940 with respect to SEC authority to exempt persons or transactions from specified investment advisory contract prohibitions and requirements if the contract is with any person that the SEC determines, based on certain factors, does not need the protection of such prohibitions and requirements. Declares that, with respect to any factor used in an SEC rule or regulation in making such a determination, if the SEC uses a dollar amount test in connection with such factor, such as a net asset threshold, it shall, by order, adjust every five years for the effects of inflation on such test.

Title V: Insurance - Subtitle A: Federal Insurance Office - Federal Insurance Office Act of 2010 - (Sec. 502) Establishes in the Treasury the Federal Insurance Office (FIO) authorized to: (1) monitor the insurance industry; (2) identify issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the U.S. financial system; (3) monitor the extent to which traditionally underserved communities and consumers, minorities, and low- and moderate-income persons have access to affordable insurance products covering all lines of insurance, except health insurance; (4) recommend to the Financial Stability Oversight Council that it designate an insurer, including its affiliates, as an entity subject to regulation as a nonbank financial company supervised by the Board of Governors; (5) assist in administering the Terrorism Insurance Program; and (6) coordinate federal efforts and develop federal policy on prudential aspects of international insurance matters.

Extends the authority of the Office to all lines of insurance except: (1) health insurance; (2) crop insurance; and (3) long-term care insurance (except long-term care insurance included with life or annuity insurance components).

Authorizes information-gathering from insurers and affiliates. Permits data or information obtained by the Office to be made available to state insurance regulators, individually or collectively, through an information-sharing agreement.

Grants the Director of the Office subpoena and enforcement powers.

Sets forth a limited preemption of state insurance measures.

Requires the Director of the Office to study and report to specified congressional committees on: (1) U.S. And global reinsurance markets; and (2) modernization and improvement of domestic insurance regulation.

Authorizes appropriations for the FIO.

Authorizes the Secretary and the United States Trade Representative (USTR), jointly, on behalf of the United States, to negotiate and enter into bilateral or multilateral recognition agreements with foreign governments, authorities, or regulatory entities.

Subtitle B: State-Based Insurance Reform - Nonadmitted and Reinsurance Reform Act of 2010 - Part I: Nonadmitted Insurance - (Sec. 521) Prohibits any state other than the home state of an insured from requiring a premium tax payment for nonadmitted insurance.

Authorizes states to establish procedures to allocate among themselves the premium taxes paid to an insured's home state.

Declares that Congress intends that each state adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this Act.

Allows an insured's home state to require surplus lines brokers and certain insureds to file annual tax allocation reports detailing the portion of the nonadmitted insurance premiums attributable to properties, risks, or exposures located in each state.

(Sec. 522) Subjects nonadmitted insurance solely to the regulatory requirements of the insured's home state.

Declares that only an insured's home state may require a surplus lines broker to be licensed to conduct nonadmitted insurance business with respect to such insured.

Declares that state law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer is not preempted.

(Sec. 523) Prohibits a state from collecting fees relating to licensure of a surplus lines broker in the state unless it has a regulatory mechanism in effect for participation in the national insurance producer database of the National Association of Insurance Commissioners (NAIC), or any other equivalent uniform national database.

(Sec. 524) Prohibits a state from establishing eligibility criteria for nonadmitted insurers domiciled in a U.S. jurisdiction except in conformance with the Non-Admitted Insurance Model Act, unless the state has adopted nationwide uniform requirements, forms, and procedures developed in accordance with this Act that include alternative nationwide uniform eligibility requirements.

Prohibits a state from prohibiting a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States and listed on the NAIC International Insurers Department Quarterly Listing of Alien Insurers.

(Sec. 525) Cites conditions with which a surplus lines broker seeking to procure or place nonadmitted insurance in a state for an exempt commercial purchaser must comply in order to win exemption from any state requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers.

(Sec. 526) Requires the Comptroller General to study and report to Congress on the nonadmitted insurance market in order to determine the effect of this title upon the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market.

Part II: Reinsurance - (Sec. 531) Prohibits a state from denying credit for reinsurance for the insurer's ceded risk if the domiciliary state of an insurer purchasing reinsurance (the ceding insurer) recognizes such credit and: (1) is either an NAIC-accredited state; or (2) has financial solvency requirements substantially similar to NAIC accreditation requirements.

Preempts the extraterritorial application of the laws, regulations, or other actions of a non-domiciliary state of a ceding insurer (except those related to taxes and assessments on insurance companies or insurance income) to the extent that they: (1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes through contractual arbitration not inconsistent with federal law; (2) require that a certain state's law shall govern the reinsurance contract, its requirements, or any disputes arising from it; (3) attempt to enforce a reinsurance contract on terms different from those set forth in it, if those terms are not inconsistent with this subtitle; or (4) otherwise apply the laws of the state to reinsurance agreements of ceding insurers not domiciled in that state.

(Sec. 532) Reserves to a reinsurer's domiciliary state sole responsibility for regulating the reinsurer's financial solvency if it is either NAIC-accredited, or has financial solvency requirements substantially similar to NAIC.

Prohibits any other state from requiring a reinsurer to provide financial information in addition to that required by its NAIC-compliant domiciliary state.

Part III: Rule of Construction - Prohibits any construction of this Act to modify, impair, or supersede the application of the antitrust laws. States that any implied or actual conflict between this Act and any amendments to this Act and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

Title VI: Improvements to Regulation of Bank and Savings Association Holding Companies and Depository Institutions - Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2010 - (Sec. 603) Prohibits the Federal Deposit Insurance Corporation (FDIC) from approving applications for deposit insurance received after November 23, 2009, for an industrial bank, a credit card bank, or a trust bank directly or indirectly owned or controlled by a commercial firm.

Defines a company as a commercial firm if the annual gross revenues derived by it and all of its affiliates from activities financial in nature and, if applicable, from the ownership or control of one or more insured depository institutions represent less than 15% of the company's consolidated annual gross revenues.

Requires a federal banking agency to disapprove a change in control over such entities if the change would result in direct or indirect control by a commercial firm, unless in addition to obtaining all regulatory approvals the bank: (1) is in danger of default; (2) results from the bona fide merger or whole acquisition of a commercial firm by another commercial firm; or (3) results from an acquisition of voting shares of a publicly traded company that controls such a bank if, after acquisition, the acquiring shareholder (or group of shareholders acting in concert) holds less than 25% of any class of the company's voting shares.

Directs the Comptroller General to study and report to Congress on whether it is necessary, in order to strengthen the U.S. financial system, to eliminate certain exceptions to the definition of a bank under the Bank Holding Company Act of 1956 (BHCA).

(Sec. 604) Amends the BHCA to revise requirements for reports and examinations which bank holding companies and savings and loan holding companies must submit to the Board of Governors of the Federal Reserve System (Board). Requires the Board, to the fullest extent possible, to: (1) rely on the examination reports of other federal or state regulatory agencies, and other specified required reports, relating to a savings and loan holding company and any subsidiary; (2) coordinate with other federal and state regulators; and (3) avoid duplication of examination activities, reporting requirements, and requests for information.

Authorizes the Board to examine, in certain circumstances, functionally regulated subsidiaries of bank holding companies, including certain entities subject to regulatory oversight by the CFTC.

Repeals specified limitations on the rulemaking, prudential, supervisory, and enforcement authority of the Board.

Amends the BHCA to require the Board to take into consideration the extent to which a proposed bank acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the U.S. banking or financial system.

Requires a financial holding company to obtain prior Board approval to acquire a company whose total consolidated assets exceed $10 billion.

Requires the Board to consider, in connection with a proposed merger, acquisition or consolidation, the extent to which such action would result in greater or more concentrated risks to the stability of the U.S. Banking or financial system.

Amends the Home Owners' Loan Act (HOLA) to require the Board, to the fullest extent possible, to: (1) rely on the examination reports of other federal or state regulatory agencies, and other specified required reports, relating to a savings and loan holding company and any subsidiary; (2) coordinate with other federal and state regulators; and (3) avoid duplication of examination activities, reporting requirements, and requests for information.

(Sec. 605) Amends the Federal Deposit Insurance Act to direct the Board to examine the activities of certain nondepository institution subsidiaries of a depository institution holding company that are permissible for the insured depository institution subsidiaries of the holding company.

Authorizes the appropriate federal agency for the lead insured depository institution to recommend to the Board to take enforcement action against such a nondepository institution subsidiary if its activities pose a material threat to the safety and soundness of any insured depository institution subsidiary of the depository institution holding company.

(Sec. 606) Amends the BHCA and HOLA to require financial holding companies and savings and loan holding companies to remain well capitalized and well managed, including their interstate acquisitions and mergers.

(Sec. 608) Amends the Federal Reserve Act (FRA) to cover such transactions as: (1) a purchase of assets subject to an agreement to repurchase; (2) a transaction with an affiliate that involves the borrowing or lending of securities, thus causing a member bank's (or a subsidiary's) credit exposure to the affiliate; and (3) a derivative transaction with an affiliate that causes a member bank's (or a subsidiary's) credit exposure to the affiliate.

Revises restrictions on bank transactions with affiliates to require that any credit exposure of a bank (or subsidiary) to an affiliate resulting from a securities borrowing or lending transaction, or a derivative transaction, be secured at all times.

Repeals the requirement that any collateral subsequently retired or amortized be replaced by additional eligible collateral where needed to keep the percentage of the collateral value relative to the amount of the outstanding loan or extension of credit, guarantee, acceptance, or letter of credit equal to the minimum percentage required at the transaction's inception.

Declares unacceptable the use of a low-quality asset as collateral for credit exposure to an affiliate resulting from a bank's (or subsidiary's) securities borrowing or lending transaction, or derivative transaction. Revises exemptions to the restrictions on bank transactions with affiliates with respect to such credit exposure.

Cites circumstances under which the Comptroller of the Currency may exempt a national bank, the FDIC may exempt a state nonmember bank, and the Board may exempt a state member bank from restrictions on transactions with affiliates.

Amends HOLA to cite circumstances under which the Comptroller of the Currency may exempt a federal savings association from such restrictions.

(Sec. 609) Repeals the exemption of covered transactions between a bank and any of its individual financial subsidiaries from the requirement that the aggregate amount of the transaction not exceed 10% of the member bank's capital stock and surplus.

Repeals also the exclusion of the financial subsidiary's retained earnings from a bank's investment in one of its individual financial subsidiaries.

(Sec. 610) Amends the Revised Statutes with respect to the limit of 15% of a national banking association's unimpaired capital and unimpaired surplus on the total loans and extensions of credit it makes to a person outstanding at one time and not fully secured by collateral having a market value at least equal to the amount of the loan or extension of credit.

Includes among such loans and extensions of credit the credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the national banking association and a person. Defines derivative transaction as any transaction that is a contract, agreement, swap, warrant, note, or option based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(Sec. 611) Amends the FDIA to allow a state bank to engage in a derivative transaction only if the law with respect to lending limits of the state in which it is chartered takes into consideration credit exposure to derivative transactions.

(Sec. 612) Amends the National Bank Consolidation and Merger Act, the Revised Statutes, and HOLA to prohibit certain conversions between national and state banks and savings associations by banks and thrifts subject to certain cease and desist or other formal enforcement orders. Cites conditions for exemption from such prohibition.

(Sec. 613) Amends the Revised Statutes and the FDIA to revise requirements for the state "opt-in" election to permit interstate branching through de novo branches. Specifies that the application of a national bank to establish a de novo branch in a state in which the bank does not maintain a branch may be approved if the law of the state where the branch is located, or is to be located, would permit establishment of the branch if the bank were a state bank chartered by such state.

(Sec. 614) Amends the FRA regarding limits on credit extensions to executive officers, directors, and principal shareholders of member banks (insiders) to declare that a member bank shall be deemed to have extended credit to a person if the member bank has credit exposure to the person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and the person.

(Sec. 615) Amends the FDIA to prohibit an insured depository institution from purchasing an asset from, or selling one to, its executive officers, directors, or principal shareholders unless the transaction is on market terms and, if the transaction represents more than 10% of the institution's capital stock and surplus, the transaction has been approved in advance by a majority of the institution's board of directors (with interested directors not participating).

(Sec. 616) Amends the BHCA, HOLA, and the International Lending Supervision Act of 1983 to authorize the appropriate federal banking agency to: (1) issue regulations relating to the capital requirements of bank holding companies and savings and loan holding companies, respectively; and (2) instruct such entities, in establishing capital requirements, to seek to make them countercyclical, so that the amount of capital required to be maintained by a company increases in times of economic expansion and decreases in times of economic contraction, consistent with the company's safety and soundness.

Amends the FDIA to direct the appropriate federal banking agency for a bank holding company or savings and loan holding company to require such an entity to serve as a source of financial strength for any of its subsidiaries that is a depository institution.

Defines "source of financial strength" as the ability of a company that directly or indirectly owns or controls an insured depository institution to provide it with financial assistance if it experiences financial distress.

Directs the appropriate federal banking agency for an insured depository institution that is not the subsidiary of a bank holding company or savings and loan holding company to require any company that directly or indirectly controls it to serve as a source of financial strength for it.

(Sec. 617) Amends the Securities Exchange Act of 1934 to repeal the statutory framework under which certain investment bank holding companies may elect to become supervised by the Securities Exchange Commission (SEC).

(Sec. 618) Prescribes requirements for U.S. registration and supervision, including capital and risk management, of certain securities holding companies required by a foreign regulator or foreign law to be subject to comprehensive consolidated supervision.

(Sec. 619) Amends the BHCA to prohibit a banking entity from: (1) engaging in proprietary trading; or (2) acquiring or retaining any ownership interest in or sponsor a hedge fund or a private equity fund.

Subjects a Board-supervised nonbank financial company to additional capital requirements and quantitative limits if it engages in proprietary trading or maintains an ownership interest in, or sponsors, a hedge fund or a private equity fund.

Exempts certain permissible activities from such additional capital and additional quantitative limits, among them: (1) the purchase, sale, acquisition, or disposition of U.S. obligations or securities and specified other instruments; (2) risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of a banking entity; (3) investments in one or more small business investment companies; (4) organization and offering of a private equity or hedge fund; (5) certain proprietary trading; or (6) the acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity solely outside of the United States.

Directs the Financial Stability Oversight Council to study and make recommendations on implementing these prohibitions.

Directs the appropriate federal banking agencies, the SEC, and the CFTC to adopt and coordinate implementing rules.

(Sec. 620) Directs the appropriate federal banking agencies to review jointly and report to Congress on the activities in which a banking entity may legally engage, including any financial, operational, managerial, or reputation risks associated with or presented as a result of such an activity, as well as risk mitigation activities.

(Sec. 621) Amends the Securities Act of 1933 to prohibit underwriters, placement agents, initial purchasers, or sponsors of an asset-backed security (or any affiliate or subsidiary), during the year after the first closing of the security's sale, from engaging in any transaction that would involve or result in any material conflict of interest with respect to any investor in a related transaction. Exempts from such prohibition: (1) risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of such a security; or (2) purchases or sales of such securities.

(Sec. 622) Amends the BHCA to prohibit a financial company from merging, consolidating with, or acquiring control of another company if the total consolidated liabilities of the acquiring financial company, upon consummation of the transaction, would exceed 10% of the aggregate consolidated liabilities of all financial companies at the end of the calendar year preceding the transaction. Exempts from such concentration limit an acquisition: (1) of a bank in default or in danger of default; (2) with respect to which assistance is provided by the FDIC; or (3) that would result only in a de minimis increase in the financial company's liabilities.

Requires the Financial Stability Oversight Council to study and makes recommendations regarding the extent to which this concentration limit would affect financial stability, moral hazard in the financial system, the efficiency and competitiveness of domestic financial firms and financial markets, and the cost and availability of credit and other financial services to domestic households and businesses.

Directs the Board to issue final implementing regulations to reflect Council recommendations.

(Sec. 623) Amends the FDIA to prohibit the responsible agency (usually the FDIC) from approving an application for an interstate merger transaction if, upon consummation of the transaction, the resulting insured depository institution (including its affiliated insured depository institutions) would control more than 10% of the total amount of deposits of insured depository institutions in the United States. Exempts from this prohibition an interstate merger transaction that involves insured depository institutions in default or in danger of default, or with respect to which the FDIC provides specified assistance.

Amends the BHCA to prohibit the Board from approving a bank holding company's application to acquire an insured depository institution if: (1) the institution's home state is not the home state of the bank holding company; and (2) the applicant (including all affiliated insured depository institutions) control, or upon consummation of the transaction would control, more than 10% of the total amount of deposits of insured depository institutions in the United States. Exempts from this prohibition an acquisition that involves insured depository institutions in default or in danger of default, or with respect to which the FDIC provides specified assistance.

Amends the Home Owners' Loan Act to prohibit acquisitions of insured depository institutions by a savings and loan holding company if : (1) the depository institution's home state is not the home state of the savings and loan holding company; and (2) the applicant and all affiliated insured depository institutions control, or upon consummation of the transaction would control, more than 10% of the total amount of deposits of insured depository institutions in the United States; and (3) the acquisition does not involve an insured depository institution in default or in danger of default, or with respect to which the FDIC provides specified assistance.

(Sec. 624) Prohibits a savings association that fails to become or remain a qualified thrift lender from paying dividends, except those permissible for a national bank, necessary to meet the obligations of a controlling company, and specifically approved by the Comptroller of the Currency and the Board. (Sec. 625) Sets forth requirements for treatment of dividends by certain savings association subsidiaries of mutual holding companies, including those for: (1) advance notice of dividend declarations; (2) invalidity of any dividends not announced before their declaration; (3) waiver by a mutual holding company of dividends declared by a subsidiary; and (4) federal banking agency valuations of waived dividends.

(Sec. 626) Authorizes the Board to require a grandfathered unitary savings and loan holding company which conducts non-financial activities to conduct its financial activities through an intermediate holding company that is a savings and loan holding company. Requires the Board to require the establishment of an intermediate holding company if that is necessary to supervise financial activities appropriately or to ensure that the Board does not supervise the non-financial activities. Declares that the internal financial activities of a grandfathered unitary savings and loan holding company shall not be required to be placed in an intermediate holding company.

Requires a grandfathered unitary savings and loan holding company that controls an intermediate holding company established under this Act to serve as a source of strength to its subsidiary intermediate holding company.

Requires the Board to establish criteria for determining whether to require a grandfathered unitary savings and loan holding company to establish an intermediate holding company.

(Sec. 627) Amends the Federal Reserve Act, the Home Owners' Loan Act, and the Federal Deposit Insurance Act to repeal the prohibition against the payment of interest on demand deposits.

(Sec. 628) Amends the Bank Holding Company Act of 1956 (BHCA) to exclude from treatment as a bank certain institutions which do not engage in the business of making commercial loans, other than credit card loans made to businesses that meet the eligibility criteria for small business loans

Title VII: Wall Street Transparency and Accountability - Wall Street Transparency and Accountability Act of 2010 - Subtitle A: Regulation of Over-the-Counter Swaps Markets - Part I: Regulatory Authority - (Sec. 712) Directs the Commodity Futures Trading Commission (CFTC) and the SEC to consult and coordinate with one another and with the Prudential Regulators before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap repositories, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities.

Exempts from such requirement an order issued: (1) in connection with an actual or potential violation of either the Commodity Exchange Act or the securities laws; or (2) in certain federal administrative proceedings conducted on the record.

Directs the CFTC and the SEC to prescribe joint implementing regulations regarding specified mixed swaps.

Denies jurisdiction to the CFTC and registered futures organizations over security-based swaps, and to the SEC and registered national securities associations over swaps, except as otherwise authorized by this title.

Retains the authority of a registered futures or national securities association, however, to examine for compliance with, and enforce, its rules on capital adequacy.

Prescribes a procedure for judicial review of final rules, regulations, or orders of either the CFTC or the SEC if the other objects on jurisdictional grounds.

Requires the Financial Stability Oversight Council to engage in dispute resolution if the CFTC and the SEC fail to prescribe such joint rules in a timely manner.

(Sec. 713) Amends the Securities Exchange Act of 1934 to authorize a registered broker or dealer also registered as a futures commission merchant to hold cash and securities in a portfolio margining account carried as a futures account subject to the Commodity Exchange Act.

Amends the Commodity Exchange Act to authorize a registered futures commission merchant that is also a registered securities broker or dealer to hold in a portfolio margining account carried as a securities account any contract for the purchase or sale of a commodity for future delivery (or an option on such a contract), and any money, securities or other property received from a customer to margin, guarantee, or secure such a contract, or accruing to a customer as the result of such a contract.

Directs the CFTC to exercise its authority to ensure that securities held in a portfolio margining account carried as a futures account are customer property and the owners of those accounts are customers for purposes of the Commodity Broker Liquidation requirements of federal bankruptcy law.

(Sec. 714) Authorizes the CFTC and the SEC to collect information concerning the markets for any types of swap or security-based swap and report on those detrimental to the stability of a financial market or of its participants.

(Sec. 715) Authorizes either the CFTC or the SEC to prohibit an entity domiciled in a foreign country from participating in the United States in any swap or security-based swap activities if the regulation of swaps or security-based swaps markets in that foreign country undermines the stability of the U.S. financial system.

(Sec. 716) Prohibits federal assistance to a swaps entity with respect to any swap, security-based swap, or other activity. Excludes from the definition of "swaps entity" any major swap participant or major security-based swap participant that is an insured depository institution.

Declares this prohibition against federal assistance to a swap entity inapplicable to certain Federal Reserve-supervised and insured depository institutions owning or establishing an affiliate which is a swaps entity in compliance with the Federal Reserve Act and CFTC or SEC requirements. Applies such prohibition to any insured depository institution, however, unless it limits its swap or security-based swap activities to: (1) hedging and other similar risk mitigating activities directly related to the institution's activities; and (2) acting as a swaps entity for swaps or security-based swaps involving rates or reference assets that are permissible for investment by a national bank. Denies consideration as a bank permissible activity, however, acting as a swaps entity for credit default swaps, including swaps or security-based swaps referencing the credit risk of asset-backed securities, unless such swaps or security-based swaps are cleared by a derivatives clearing organization (DCO) or a clearing agency that is registered, or exempt from registration, as a DCO under the Commodity Exchange Act or as a clearing agency under the Securities Exchange Act, respectively.

Requires liquidation (termination or transfer) of all swaps or security-based swap activities of swaps entities that are: (1) FDIC institutions that are put into receivership or declared insolvent as a result of such swaps or activities; or (2) institutions posing a systemic risk and subject to heightened prudential supervision that are put into receivership or declared insolvent as a result of such swaps or activities.

Prohibits the use of taxpayer funds or resources: (1) to prevent the receivership of any swap entity resulting from its swap or security-based swap activity; or (2) for the orderly liquidation of any swaps entities that are non-FDIC insured, non-systemically significant institutions not subject to heightened prudential supervision.

Requires recovery of all funds expended on the termination or transfer of the swap or security-based swap activity of a swaps entity from the disposition of the entity's assets or through assessments, including assessments on the financial sector.

Prescribes rules for the conduct of swaps or security-based swap activities by a bank or bank holding company permitted to be or become a swap entity.

Authorizes the Financial Stability Oversight Council to determine that swaps entities may no longer access federal assistance with respect to any swaps or security-based swap activities whenever provisions established by this Act are insufficient to effectively mitigate systemic risk and protect taxpayers.

Requires an insured depository institution to comply with this Act's prohibition against proprietary trading in derivatives.

(Sec. 717) Amends the Commodity Exchange Act and the Securities Exchange Act of 1934 to: (1) prescribe a CFTC approval process for new products, including puts, calls, or other options on securities; and (2) deem a security any agreement, contract, or transaction (or class of such, including securities-related derivatives) exempted from restrictions on futures trading by the CTFC with the condition that the SEC exercise concurrent jurisdiction over the agreement, contract, or transaction (or class).

(Sec. 718) Sets forth a process for the CFTC or the SEC to determine the status of novel derivative products.

(Sec. 719) Requires the CFTC to study and report to Congress regarding the effects of the position limits imposed under this title on excessive speculation and on the movement of transactions from exchanges in the United States to trading venues outside the United States.

Instructs the Chairman of the CFTC to report biennially to Congress on the growth or decline of the derivatives markets in the United States and abroad.

Directs the CFTC and the SEC to study jointly and report to Congress on: (1) the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions to describe complex and standardized financial derivatives; (2) swap regulation as well as clearing house and clearing agency regulation in the United States, Asia, and Europe, comparing similar areas of regulation and other areas of regulation that could be harmonized; and (3) whether stable value contracts fall within the definition of a swap and if so, determine if an exemption from such definition for stable value contracts is appropriate and in the public interest.

(Sec. 720) Directs the CFTC and the Federal Energy Regulatory Commission (FERC) to negotiate and submit to Congress a memorandum of understanding to establish procedures for: (1) applying their respective authorities in a manner to ensure effective regulation in the public interest; (2) resolving conflicts concerning overlapping jurisdiction between the two agencies; (3) avoiding conflicting or duplicative regulation; and (4) sharing information where either Commission is investigating potential manipulation, fraud, or market power abuse in markets within its purview.

Part II: Regulation of Swap Markets - (Sec. 722) Amends the Commodity Exchange Act (CEA) with respect to CFTC exclusive jurisdiction over accounts, agreements and transactions involving swaps, and contracts of sale executed on a swaps execution facility. States that such CFTC jurisdiction limits neither the jurisdiction conferred by this Act upon the SEC with respect to security-based swap agreements and security-based swaps, nor SEC authority with respect to related agreements, contracts, or transactions.

Amends the CEA to prohibit a swap from being: (1) considered to be insurance; and (2) regulated as an insurance contract under state law.

Excludes from CFTC jurisdiction swaps activities outside the United States, unless they: (1) have a direct, significant connection with activities in, or effect upon, U.S. commerce; or (2) contravene CFTC regulations.

Denies CFTC jurisdiction regarding any security other than a security-based swap.

States that CFTC jurisdiction does not limit or affect the authority of FERC or a state regulatory authority with respect to an agreement, contract, or transaction entered into pursuant to a FERC- or state-approved tariff or rate schedule that is not executed, traded, or cleared on a registered entity or trading facility, or on one owned or operated by a regional transmission organization or independent system operator.

Retains certain existing enforcement authority of FERC under the Federal Power Act and the Natural Gas Act.

Requires the Secretary of the Treasury to take specified factors into consideration when determining whether to exempt foreign exchange swaps and foreign exchange forwards from the definition of swap (and U.S. regulation).

(Sec. 723) Repeals the exclusion from regulation of certain derivative transactions, electronic trading facilities, swap transactions; and transactions in exempt commodities.

States that it shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into, on, or subject to the rules of a board of trade designated as a contract market under the CEA.

Prescribes clearing requirements for swaps. Makes it unlawful for any person to engage in a swap without submitting it for clearing to a DCO that is either registered under this Act or exempt from such registration, if the swap is required to be cleared.

Requires the CFTC to review on an ongoing basis each swap, or any group, category, type, or class of swaps to determine whether it should be required to be cleared. Requires a DCO to submit to the CFTC each swap, group, category, type, or class it plans to accept for clearing. Authorizes the CFTC to stay a clearing requirement. Requires the CFTC to: (1) prescribe rules to prevent evasions of clearing requirements; and (2) investigate swaps subject to clearing but which have not been listed for clearing by a DCO.

Authorizes the CFTC, pursuant to such an investigation, to require that parties to swaps retain adequate margin or capital levels.

(Sec. 724) Declares that it is unlawful for any person who is not registered with the CFTC as a futures commission merchant to accept money, securities, or property (or to extend credit in lieu of them) from, for, or on behalf of a swaps customer to margin, guarantee, or secure a swap cleared by or through a DCO (including money, securities, or property accruing to the customer as the result of such a swap).

Requires a futures commission merchant to treat as belonging to the swaps customer, and deal as such, with all money, securities, and property of any swaps customer received to margin, guarantee, or secure a swap cleared by or though a DCO.

Prohibits the commingling of such assets with the futures commission merchant's own funds or their use to margin, secure, or guarantee any trades or contracts of any swaps customer or person other than the person for whom they are held. Allows the commingling of such assets, however, and their deposit in the same account or accounts with any bank or trust company or with a DCO, as well as their withdrawal for specified business purposes.

Deems a swap cleared by or through a DCO to be a commodity contract with regard to all money, securities, and property of any swaps customer received by a futures commission merchant or a DCO to margin, guarantee, or secure the swap (including money, securities, or property accruing to the customer as the result of the swap).

Declares it unlawful for any recipient of money, securities, or property for deposit in certain separate accounts to hold, dispose of, or use such assets as belonging to any person other than the swaps customer of the futures commission merchant. Prescribes: (1) bankruptcy treatment of cleared swaps; and (2) segregation requirements for uncleared swaps.

(Sec. 725) Modifies registration requirements governing DCOs, including governing core principles, risk management, and reporting requirements. Requires each DCO to designate an individual to serve as a compliance officer. Revises requirements for system safeguards and public disclosure of certain information, including contract terms, fees, margin-setting methodology and daily settlement prices of cleared contracts. Prescribes standards for governance fitness and mitigation of conflicts of interest.

Directs the CFTC to adopt data collection and maintenance requirements for swaps cleared by DCOs that are comparable to the corresponding requirements for: (1) swaps data reported to swap data repositories; and (2) swaps traded on swap execution facilities.

Amends the Legal Certainty for Bank Products Act of 2000 to revise the exclusion of identified banking products from the application of the CEA and from CFTC jurisdiction. Allows an exception to this exclusion for swaps or security-based swaps (thus subjecting them to federal banking agency regulation).

Amends the CEA to declare that, in order to minimize systemic risk, under no circumstances shall a DCO be compelled to accept the counterparty credit risk of another clearing organization.

(Sec. 726) Requires the CFTC to adopt conflict of interest rules which may include numerical limits on the control of, or the voting rights with respect to, any DCO that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading, by a bank holding company with total consolidated assets of $50 billion or more, a nonbank financial company supervised by the Board, an affiliate of such a bank holding company or nonbank financial company, a swap dealer, major swap participant, or associated person of a swap dealer or major swap participant.

(Sec. 727) Amends the CEA to require the CFTC to make swap transaction and pricing data available to the public in order to enhance price discovery. Authorizes the CFTC to require registered entities to publicly disseminate the swap transaction and pricing data required to be reported.

Requires: (1) each swap to be reported to a registered swap data repository; and (2) public reporting on a semiannual and annual basis of aggregate swap data.

(Sec. 728) Requires a person to register with the CFTC as a swap data repository regardless of whether the person is also licensed as a bank or registered with the SEC as a swap data repository. Allows a DCO to register as a swap data repository. Prescribes requirements and duties for swap data repositories, including designation of a chief compliance officer.

(Sec. 729) Sets forth reporting and recordkeeping rules for uncleared swaps.

(Sec. 730) Amends the CEA to set forth: (1) circumstances under which it is unlawful to enter into any swap that the CFTC determines performs a significant price discovery function with respect to registered entities; (2) requirements for the registration and regulation of swap dealers and major swap participants (including maintenance of daily trading records); and (3) special requirements for swap dealers acting either as advisors or as counterparties to special entities (federal, state, or local agencies, employee benefit plans or governmental benefit plans, or certain endowments).

(Sec. 732) Directs the CFTC to require that futures commission merchants and introducing brokers implement specified conflict-of-interest systems and structural and institutional safeguards to avert conflicts of interest.

(Sec. 733) Requires a swaps trading or processing facility to: (1) be registered as either a swap execution facility or as a designated contract market; and (2) maintain a risk analysis and oversight program. Prescribes core principles for swap execution facilities.

(Sec. 734) Amends the CEA to repeal requirements for derivatives transaction execution facilities and an election for registration by exempt boards of trade.

(Sec. 735) Revises requirements for a board of trade which has been designated as a contract market. Prescribes core principles for contract markets.

Requires such a board of trade to: (1) establish a program of risk analysis and oversight to identify and minimize sources of operational risk; (2) establish and enforce disciplinary procedures; (3) establish emergency procedures, backup facilities, and a plan for disaster recovery; (4) conduct periodic tests to verify that back-up resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail; and (5) have adequate financial, operational, and managerial resources to discharge contract market responsibilities.

Requires the board of directors of a publicly traded board of trade to recruit individuals from a broad and culturally diverse pool of qualified candidates.

(Sec. 736) Repeals the current prohibition to authorize the CFTC to regulate the setting of levels of margin for an registered entity.

(Sec. 737) Directs the CFTC to establish position limits on: (1) trading or positions held by any group or class of traders; and (2) positions (other than bona fide hedge positions) that may be held by any person with respect to either contracts of sale for future delivery, or options on contracts or commodities traded on or subject to the rules of a designated contract market.

(Sec. 738) Authorizes the CFTC to require a foreign board of trade to register with the CFTC if it provides its members or other participants located in the United States with direct access to the electronic trading and order matching system of the foreign board of trade.

(Sec. 739) Revises the denial of voidability of hybrid instruments, transactions, and contracts based solely on any failure to comply with CFTC terms or conditions. Extends such denial to the voidability of agreement, contract, or transaction between eligible contract participants (or persons reasonably believed to be such) based solely on the failure of the agreement, contract, or transaction to meet the CFTC definition of a swap.

(Sec. 740) Amends the Federal Deposit Insurance Corporation Improvement Act of 1991 to repeal its coverage of multilateral clearing organizations.

(Sec. 741) Grants the CFTC exclusive enforcement authority over swap markets. Grants the Prudential Regulators exclusive authority to enforce certain prudential requirements with respect to swap dealers or major swap participants. Authorizes the CFTC and the Prudential Regulators to: (1) refer noncompliance with the other's requirements to the other; and (2) initiate an enforcement proceeding if the other does not.

Amends the Commodity Exchange Act to declare it unlawful for any person, in connection with any contract of sale of any commodity for future delivery (or option on such a contract), or any swap, on a group or index of securities to: (1) employ any device, scheme, or artifice to defraud; (2) make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements not misleading; or (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Grants the CFTC jurisdiction over certain accounts or pooled investment vehicles that are offered for the purpose of trading, or that trade, any agreement, contract, or transaction in foreign currency.

Makes liable for certain double civil money penalties any DCO, swap dealer, or major swap participant that knowingly or recklessly evades, or participates in or facilitates an evasion of, specified requirements for certain transactions in exempt commodities.

(Sec. 742) Amends the CEA to: (1) grant the CFTC jurisdiction over specified retail commodity transactions; (2) require large swap traders to make specified reports and disclosures to the CFTC; and (3) require segregation of a counterparty's assets to be held as collateral in over-the-counter swap transactions not submitted for clearing to a DCO.

(Sec. 744) Authorizes the CFTC to seek, and the court to impose, equitable remedies, including restitution and disgorgement of gains, for violations of the CEA.

(Sec. 745) Allows an CFTC interpretation of an acceptable business practice with respect to significant price discovery contracts to provide the exclusive means for complying with the CEA. Revises requirements for certification of new rules or rule amendments which registered entities may elect to approve and implement.

(Sec. 746) Prohibits: (1) insider trading by any federal employee or agent who, by virtue of such status, acquires information that may affect price of any commodity in interstate commerce, or for future delivery, or any swap; (2) certain disruptive practices in trading, practice, or conduct subject to the rules of a registered entity, including "spoofing" (bidding or offering with the intent to cancel the bid or offer before execution); and (3) use of swaps to defraud.

(Sec. 748) Directs the CFTC to pay an award (of 10%-30% of monetary sanctions collected) to commodity whistleblowers who voluntarily provide original information leading to the successful enforcement of a covered judicial, administrative, or related action brought by the CFTC that results in monetary sanctions exceeding $1 million.

Establishes the Commodity Futures Trading Commission Customer Protection Fund for: (1) the payment of whistleblower awards; and (2) the funding of education initiatives to help customers protect themselves against violations of the CEA.

Prohibits specified acts of retaliation against whistleblowers. Includes job reinstatement and back pay as well as compensation for special damages as relief for an individual prevailing in a whistleblower action. Prescribes prohibitions and requirements for whistleblower confidentiality.

Instructs the CFTC Inspector General to study and report to Congress on whether a specified exemption under the FOIA aids whistleblowers in disclosing information to the CFTC.

Declares nonenforceable: (1) the waiver of whistleblower rights and remedies provided by this Act; and (2) any predispute arbitration agreement requiring arbitration of a dispute arising under the whistleblower protections of this Act.

(Sec. 750) Establishes an interagency working group to study and report to Congress on the oversight of existing and prospective carbon markets to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets.

(Sec. 751) Amends the CEA to establish the Energy and Environmental Markets Advisory Committee to serve as a vehicle for discussion and communication on matters of concern to exchanges, firms, end users, and regulators regarding energy and environmental markets, and their regulation by the CFTC.

(Sec. 752) Requires the CFTC, the SEC, and the Prudential Regulators to consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards for the regulation of swaps, security-based swaps, swap entities, and security-based swap entities.

Authorizes the CFTC, the SEC, and the Prudential Regulators to agree to information-sharing arrangements necessary or appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.

Requires the CFTC to consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of a commodity for future delivery (or options on them).

Authorizes the CFTC to agree with foreign regulatory authorities on information-sharing arrangements necessary or appropriate in the public interest for the protection users of contracts of sale of a commodity for future delivery.

(Sec. 753) Prohibits: (1) acts of manipulation and false or misleading information in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, and (2) any manipulative or deceptive device or contrivance in contravention of CFTC rules and regulations.

Declares it unlawful for any person to make any false or misleading statement of a material fact to the CFTC. Subjects violations to a civil penalty.

Prescribes enforcement actions, including private rights of action.

Subtitle B: Regulation of Security-Based Swap Markets - (Sec. 762) Amends the Gramm-Leach-Bliley Act to repeal the prohibition against regulation of a security-based swap agreement.

(Sec. 763) Amends the Securities Exchange Act of 1934 to prescribe requirements for clearing procedures and execution of security-based swaps, including requirements for: (1) swap execution facilities; (2) segregation of assets held as collateral in security-based swap transactions; and (3) position limits and accountability for security-based swaps and large trader reporting.

Requires a clearing agency to submit and the SEC to review each security-based swap, or any group, category, type or class of security-based swaps to determine whether it should be required to be cleared. Excepts a security-based swap from clearing requirements if one of its counterparties is not a financial entity, is using such swaps to hedge or mitigate commercial risk, and notifies the SEC how it generally meets its financial obligations associated with entering into non-cleared security-based swaps. Leaves the application of such exception solely to the discretion of such a counterparty.

Directs the SEC to consider whether to exempt from clearing requirements small banks, savings associations, farm credit system institutions, credit unions, and depository institutions with total assets of $10 billion or less.

Grants the sole right to select the clearing agency at which a security-based swap will be cleared to a person that is not a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant but is counterparty to such a swap that is subject to the mandatory clearing requirement and entered into by a security-based swap dealer or a major security-based swap participant.

Authorizes such a counterparty to any security-based swap that is not subject to the mandatory clearing requirement to elect to require clearing of the swap. Grants such a counterparty also the sole right to select the clearing agency.

Requires each registered clearing agency to designate a chief compliance officer.

Requires a clearing agency that performs its functions with respect to security-based swaps to register with the SEC.

Requires the SEC to adopt rules governing such agencies. Authorizes the SEC to exempt a clearing agency from registration for the clearing of security-based swaps if it is subject to comparable oversight by either the CFTC or governmental authorities in the agency's home country.

Sets forth registration and oversight requirements governing security-based swap execution facilities. Allows dual registration with the CFTC. Permits trading by such facilities only in security-based swaps that are not readily susceptible to manipulation.

Requires such facility to: (1) monitor trading and trade processing in security-based swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process (including methods for conducting real-time monitoring of trading and accurate trade reconstructions); (2) make public timely information on price, trading volume, and other trading data on security-based swaps; (3) have adequate financial, operational, and managerial resources to discharge its responsibilities; and (4) maintain a risk analysis and oversight program to identify and minimize sources of operational risk through the development of controls and procedures, and automated systems.

Sets forth a registration requirement for any person who accepts money, securities, or property (or extends credit in lieu of such assets) from, for, or on behalf of a security-based swaps customer to margin, guarantee, or secure a security-based swap cleared by or through a clearing agency.

Requires a broker, dealer, or security-based swap dealer to treat as belonging to the security-based swaps customer all assets received from such customer to execute a margin or guarantee, or to secure a security-based swap cleared by or though a clearing agency.

Requires a separate accounting of the assets of such customer. Prohibits commingling of such assets with the funds of the broker, dealer, or security-based swap dealer, or their use to margin, secure, or guarantee any trades or contracts of any person other than the one for whom such assets are held.

Prescribes segregation requirements for uncleared security-based swaps.

Requires security-based swap transactions with or for a person that is not an eligible contract participant to be executed on a registered national securities exchange.

Directs the SEC to establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap that any person may hold. Authorizes the SEC to direct an SRO to adopt rules regarding the size of positions in any security-based swap.

Authorizes the SEC to make security-based swap transaction and pricing data available to the public in a form and at such times as appropriate to enhance price discovery.

Requires the SEC to report semiannually and annually to the public information on: (1) the trading and clearing in the major security-based swap categories; and (2) the market participants and developments in new products.

Makes it unlawful for any person, unless registered with the SEC, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap data repository. Prescribes requirements for such repositories.

(Sec. 764) Prescribes requirements for: (1) registration with and regulation by the SEC of security-based swap dealers and major security-based swap participants (which may also be registered with the CFTC); and (2) reporting and recordkeeping, including daily trading recordkeeping, by them.

Directs the prudential regulators to issue minimum capital requirements and minimum initial and variation margin requirements for security-based swap dealers and major security-based swap participants that are banks. Requires the SEC to do the same for those dealers and participants that are not banks.

Directs the SEC to adopt business conduct requirements for security-based swap dealer or major security-based swap participant that acts as an advisor to a special entity (a federal, state, or local agency, or an employee benefit plan, a governmental benefit plan, or a charitable endowment). Requires such dealers or participants that offer to or enter into a security-based swap with a special entity to comply with any duties established by the SEC with respect to a counterparty that is an eligible contract participant.

Specifies general duties for registered security-based swap dealers and major security-based swap participants.

(Sec. 765) Directs the SEC to adopt conflict of interest rules with respect to security-based swaps clearing agencies, security-based swap execution facilities, national securities exchanges that post or make security-based swaps available for trading, bank holding companies with total consolidated assets of $50 billion or more, nonbank financial companies supervised by the Federal Reserve Board, and affiliates of such a bank holding company or nonbank financial company, a security-based swap dealer, major security-based swap participant, or person associated with a security-based swap dealer or major security-based swap participant.

(Sec. 766) Prescribes requirements for reporting and recordkeeping for certain security-based swaps.

(Sec. 767) Extends the preemption of state gaming and bucket shop laws to prohibit their invalidation of security-based swaps between eligible contract participants or effected on a registered national securities exchange.

(Sec. 768) Makes technical and conforming amendments regarding security-based swaps to the Securities Act of 1933, the Investment Company Act of 1940, and the Investment Advisers Act of 1940.

(Sec. 772) Prescribes general exemptive authority of the SEC with respect to security-based swaps and specific prohibitions against the grant of exemptions from certain requirements.

(Sec. 773) Subjects a clearing agency and security-based swap dealer or major security-based swap participant to a civil money penalty in twice the amount otherwise available for knowing or reckless evasion, participation in, or facilitation of specified violations.

Title VIII: Payment, Clearing, and Settlement Supervision - Payment, Clearing, and Settlement Supervision Act of 2010 - (Sec. 803) Defines "systemically important" and "systemic importance"' as referring to a situation where the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system.

(Sec. 804) Directs the Financial Stability Oversight Council (Council) to designate those financial market utilities or payment, clearing, or settlement activities which are, or are likely to become, systemically important. Requires the Council to rescind such a designation if the utility or activity no longer meets the standards for systemic importance.

(Sec. 805) Requires the Federal Reserve Board to prescribe risk management standards governing: (1) operations related to payment, clearing, and settlement activities of designated financial market utilities; and (2) the conduct of designated activities by financial institutions.

Authorizes the CFTC and the SEC, subject to review and challenge by the Federal Reserve Board and the Council, to prescribe risk management standards for the respective designated clearing entities and financial institutions engaged in designated activities for which each is the Supervisory Agency or the appropriate financial regulator.

(Sec. 806) Authorizes the Board to authorize a Federal Reserve Bank to: (1) establish an account for a designated financial market utility and provide certain services; and (2) provide to a designated financial market utility discount and borrowing privileges, but only in unusual or exigent circumstances.

Authorizes a Federal Reserve Bank to pay earnings on balances maintained by or on behalf of a designated financial market utility.

Authorizes the Board to exempt a designated financial market utility from, or modify, any reserve requirements.

Permits a designated financial market utility to implement a change that would otherwise require advance notice if it determines that: (1) an emergency exists; and (2) immediate implementation of the change is necessary for the utility to continue to provide its services in a safe and sound manner.

(Sec. 807) Prescribes examination and enforcement actions taken by a Supervisory Agency, the Board, and the Council with respect to designated financial market utilities.

Authorizes a Supervisory Agency to determine, whenever another entity performs a service integral to the operation of a designated financial market utility, whether such service is indeed in compliance with regulations and standards to the same extent as if the utility were performing the services on its own premises.

Grants the Board authority to recommend to the proper Supervisory Agency or itself take emergency enforcement actions against a designated financial market utility in the event of imminent risk of substantial harm.

(Sec. 808) Prescribes examination and enforcement actions by the Board against financial institutions subject to standards for designated activities.

(Sec. 809) Authorizes the Council to require any financial market utility and/or financial institution engaged in payment, clearing, or settlement activities to submit information it may require for the sole purpose of assessing whether that utility is systemically important, but only if the Council has reasonable cause to believe that the utility meets the standards for systemic importance.

Authorizes the Board and the Council to: (1) require financial institutions and designated financial market utilities to submit prescribed reports and data; and (2) share information of material concerns with the appropriate financial regulator and any Supervisory Agency. Grants such information sharing a specified exemption from FOIA disclosure requirements.

(Sec. 813) Requires the CFTC and the SEC to coordinate with the Board to develop jointly risk management supervision programs for designated clearing entities.

Title IX: Investor Protections and Improvements to the Regulation of Securities - Investor Protection and Securities Reform Act of 2010 - Subtitle A: Increasing Investor Protection - (Sec. 911) Amends the Securities Exchange Act of 1934 to establish the Investor Advisory Committee (Committee) to advise the SEC on: (1) regulatory priorities and issues relating to regulation of securities products, trading strategies, fee structures, and the effectiveness of disclosures; (2) initiatives to protect investor interest; (3) initiatives to promote investor confidence and the integrity of the securities marketplace; and (4) any recommended legislative changes.

(Sec. 912) Authorizes the SEC to: (1) gather information from and communicate with investors or other members of the public; (2) engage in temporary investor testing programs in the public interest; and (3) consult with academics and consultants.

(Sec. 913) Requires the SEC to study and report to Congress on: (1) the effectiveness of existing federal legal or regulatory standards of care (including those set by a national securities association) for brokers, dealers, investment advisers, and associated persons for providing personalized investment advice and recommendations about securities to retail customers; and (2) whether there are legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to such standards of care that should be addressed by rule or statute.

Authorizes the SEC to commence a rulemaking to address such standards of care.

Amends the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 toauthorize the SEC to establish a standard of conduct (fiduciary duty) for brokers, dealers, and investment advisers, without regard to their financial or other interests, to act in the customer's best interest when providing a retail customer with personalized investment advice about securities.

Directs the SEC to: (1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and (2) promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers deemed contrary to the public interest and the protection of investors.

(Sec. 914) Directs the SEC to study and report to Congress on the need for enhanced examination and reinforcement resources for investment advisers.

(Sec. 915) Amends the Securities Act of 1934 to establish the Office of the Investor Advocate to: (1) assist retail investors in resolving significant problems with the SEC or with SROs; (2) identify areas in which investors would benefit from changes in the regulations of the SEC or the rules of an SRO; (3) identify problems that investors have with financial service providers and investment products; (4) analyze the potential impact on investors of proposed SEC regulations or SRO rules; and (5) recommend changes to SEC regulations or orders and to federal law appropriate to mitigate all such problems.

(Sec. 916) Modifies procedures for SEC approval or disapproval of proposed SRO rule changes.

(Sec. 917) Directs the SEC to study and report to Congress regarding financial literacy among retail investors; and (2) complete a study on ways to improve investor access to information (including disciplinary actions, regulatory, judicial, and arbitration proceedings) on investment advisers, brokers, dealers and associated persons on the Central Registration Depository and Investment Adviser Registration Depository systems.

(Sec. 918) Directs the Comptroller General to study and report to Congress regarding: (1) mutual fund advertising; (2) potential conflicts of interest that exist between the staffs of the investment banking and equity and fixed income securities analyst functions within the same firm; and (3) the effectiveness of state and federal regulations to protect investors and other consumers from individuals who hold themselves out as financial planners through the use of misleading titles, designations, or marketing materials.

(Sec. 919D) Requires the Investor Advocate to appoint an Ombudsman to: (1) act as a liaison between the SEC and any retail investor in resolving problems that retail investors may have with the SEC or with SROs; (2) encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and (3) establish safeguards to maintain the confidentiality of communications between such persons and the Ombudsman.

Subtitle B: Increasing Regulatory Enforcement and Remedies - (Sec. 921) Amends the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 to authorize the SEC to restrict or prohibit mandatory pre-dispute arbitration affecting customers or clients of brokers and dealers, including municipal securities dealers.

(Sec. 922) Amends the Securities Exchange Act of 1934 to set forth monetary incentives and protection for whistleblowers, including an award to whistleblowers who voluntarily provided original information to the SEC that led to the successful enforcement of a covered judicial or administrative action brought by the SEC under the securities laws that results in monetary sanctions exceeding $1 million. Allows such an award in an aggregate amount of between 10% and 30% of the monetary sanctions collected.

Establishes in the Treasury the Securities and Exchange Commission Investor Protection Fund to: (1) pay awards to whistleblowers; and (2) fund specified activities of the SEC Inspector General.

Prohibits acts of retaliation against an employee for providing information to the SEC.

Instructs the SEC Inspector General to study and report to Congress and the public on the whistleblower protection program.

(Sec. 925) Amends the Securities Exchange Act of 1934 with respect to the registration and regulation of brokers, dealers, municipal securities dealers, and transfer agents, and the Investment Advisers Act of 1940 with respect to registration of investment advisers, to revise requirements for collateral bars or suspensions in the case of persons associated, or seeking to be associated, with any of them who is subject to penalties for specified offenses.

(Sec. 926) Requires the SEC to issue rules that disqualify any offering or sale of securities by a person subject to a final order of a state or federal regulatory body that bars the person from: (1) association with an entity regulated by body; (2) engaging in the business of securities, insurance, or banking; (3) engaging in savings association or credit union activities; or (4) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the SEC. Extends such disqualification to a person: (1) subject to a final order based upon fraudulent, manipulative, or deceptive conduct within the ten-year period before the date of the offer or sale, or (2) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving a false filing with the SEC.

(Sec. 928) Amends the Investment Advisers Act of 1940 to exempt state-registered investment advisers from certain restrictions on investment advisory contracts.

(Sec. 929) Revises the prohibition against unlawful credit extension (margin lending) to customers.

(Sec. 929A) Modifies federal criminal law granting whistleblower protections for employees of publicly traded companies to prohibit subsidiaries and affiliates of an issuer from engaging in specified acts of discrimination or retaliation.

(Sec. 929B) Modifies the procedure under which civil penalties obtained by the SEC shall be added to and become part of a disgorgement fund established for the relief of victims of the violation. Requires the amount of any settlement of a judicial or administrative action to be added to the disgorgement fund.

(Sec. 929C) Amends the Securities Investor Protection Act of 1970 (SIPA) to increase the borrowing limit on Treasury loans.

(Sec. 929D) Amends the Securities Exchange Act of 1934 regarding manipulative and deceptive devices to revise requirements for the reporting of lost and stolen securities to include canceled securities.

(Sec. 929E) Amends the Securities Exchange Act of 1933, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 to expand SEC enforcement and remedies to include: (1) nationwide service of subpoenas; (2) enforcement authority over any person who at the time of the alleged violation or abuse is or was a member or employee of specified bodies (formerly associated persons); and (3) authority to impose civil penalties in cease and desist proceedings. Grants federal district courts extraterritorial jurisdiction over the antifraud provisions of federal securities laws.

(Sec. 929G) Applies certain requirements for SEC appointments to positions in the competitive service to any competitive service position at the SEC that requires specialized knowledge of financial and capital market formation or regulation, financial market structures or surveillance, or information technology.

(Sec. 929H) Amends the Securities Investor Protection Act of 1970 (SIPA) to increase the standard maximum cash advance for each customer (including an inflation adjustment).

Prohibits a SIPC member that has a customer from entering into an insolvency, receivership, or bankruptcy proceeding, under federal or state law, without the specific consent of SIPC, except as provided in this Act.

(Sec. 929I) Amends the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940, to prohibit any compulsion of the SEC to disclose certain records or information obtained under the Acts if they have been obtained for use in furtherance of certain purposes, including surveillance, risk assessments, or other regulatory and oversight activities.

(Sec. 929J) Revises requirements for the production of audit work papers by a foreign public accounting firm or a registered public accounting firm that relies upon the work of the foreign firm.

Requires a foreign public accounting firm to produce its audit work papers and all other documents to the SEC or the Public Company Accounting Oversight Board (PCAOB) upon request if the firm issues an audit report, performs audit work, or conducts interim reviews upon which a registered public accounting firm relies in the conduct of an audit or interim review. (Continues to require a registered public accounting firm relying upon the work of a foreign public accounting firm to produce the foreign firm's work papers upon SEC or PCAOB request.)

(Sec. 929L) Applies anti-fraud provisions to any security that is not a government security.

(Sec. 929M) Amends the Securities Act of 1933, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 to subject to liability for prosecution and penalties persons who aid and abet violations of such Acts.

(Sec. 929O) Amends the Securities Act of 1934 to add recklessness as an element of the aiding and abetting standard of knowledge.

(Sec. 929P) Expands SEC enforcement and remedies, including: (1) imposition of civil money penalties in cease and desist proceedings; and (2) SEC extraterritorial jurisdiction with respect to antifraud activities.

(Sec. 929Q) Amends the Investment Company Act of 1940 to prescribe recordkeeping requirements for each person with custody or use of a registered investment company's securities, deposits, or credits.

(Sec. 929R) Amends the Securities Exchange Act of 1934 to revise SEC requirements for beneficial ownership and short-swing profit reporting.

(Sec. 929S) Amends the Securities Exchange Act of 1934 to require fingerprinting of partners, directors, officers, and employees of registered securities information processors, national securities exchanges, and national securities associations.

(Sec. 929T) Declares void any condition, stipulation, or provision binding any person to waive compliance with SRO rules.

(Sec. 929U) Prescribes deadlines and procedures for completing compliance examinations, inspections, and enforcement actions for violations of securities laws.

(Sec. 929V) Amends the Securities Investor Protection Act of 1970 (SIPA) to increase: (1) the minimum assessment paid by Securities Investor Protection Corporation (SIPC) members; and (2) the fine for certain prohibited acts, including misrepresentation of SIPC membership or protection.

(Sec. 929W) Requires the SEC to revise its regulations to require due diligence on the part of brokers and dealers and other specified paying agents to search for lost security holders who have been sent checks for dividends, interest, and other valuable property which have not yet been negotiated.

(Sec. 929X) Directs the SEC to prescribe rules requiring monthly public disclosure of specified information about short sales of each security, including their number.

Makes it unlawful to effect manipulative short sales of securities.

Requires registered brokers or dealers to notify customers that: (1) they may elect not to allow their fully paid securities to be used in connection with short sales; and (2) the broker or dealer may receive compensation in connection with lending the customer's securities.

(Sec. 929Y) Directs the SEC to study and report to Congress on the extent to which private rights of action under the antifraud provisions of the Securities and Exchange Act of 1934 should be extended to cover conduct occurring: (1) within the United States that constitutes a significant step in the furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; and (2) outside the United States that has a foreseeable substantial effect within the United States.

(Sec. 929Z) Directs the Comptroller General to study and report to Congress on the impact of authorizing a private right of action against any person who aids or abets another person in violation of the securities laws.

Subtitle C: Improvements to the Regulation of Credit Rating Agencies - (Sec. 932) Amends the Securities Act of 1934 to require each nationally recognized statistical rating organization (NRSRO) to establish, enforce, and document an effective internal control structure governing policies, procedures, and methodologies for determining credit ratings.

Directs the SEC to prescribe rules requiring each NRSRO to submit to the SEC a specified annual internal controls report assessing the effectiveness of its internal control structure, with an attestation of its chief executive officer, or an equivalent individual.

Authorizes the SEC to either suspend temporarily, or to revoke permanently the registration of a NRSRO with respect to a particular class or subclass of securities, if it finds that the NRSRO does not have adequate financial and managerial resources consistently to produce credit ratings with integrity.

Instructs the SEC to issue rules to prevent the sales and marketing considerations of an NRSRO from influencing its production of ratings.

Requires each NRSRO to establish policies and procedures to ensure a look-back review to determine whether a conflict of interest exists in any case in which an employee of a person subject to an NRSRO credit rating, or of the issuer, underwriter, or sponsor of a security or money market instrument subject to an NRSRO credit rating, was employed by the NRSRO and participated in determining credit ratings for the person or the securities or money market instruments during the one-year period preceding the date an action was taken with respect to the credit rating. Requires the NRSRO to revise the rating if appropriate.

Requires an NRSRO to report to the SEC any case where it can reasonably be expected to know that a person associated with it within the previous five years as a senior officer or as a participant (directly or as supervisor) in determining the credit ratings in question subsequently obtained employment with any issuer, underwriter, or sponsor of an instrument for which the NRSRO had issued such a credit rating during the 12-month period before such employment.

Prohibits the designated compliance officer of an NRSRO from: (1) performing credit ratings; (2) participate in the development of ratings methodologies or models; (3) perform marketing or sales functions; or (4) participate in establishing compensation levels, other than for the compliance officer's employees. Authorizes the SEC to exempt a small NRSRO from these limitations if it finds that compliance with them would impose an unreasonable burden.

Directs the SEC to: (1) establish an Office of Credit Ratings to administer its rules with respect to NRSRO practices in determining ratings, for the protection of users of credit ratings and in the public interest; (2) require each NRSRO to disclose publicly information on the initial credit ratings it has determined for each type of obligor, security, and money market instrument, and any subsequent changes to such ratings, in order to allow users of credit ratings to evaluate their accuracy and compare the performance of ratings by different NRSROs; and (3) prescribe rules, for the protection of investors and in the public interest, regarding the procedures and methodologies, including qualitative and quantitative data and models, used by NRSROs.

Requires the issuer or underwriter of any asset-backed security to make publicly available the findings and conclusions of any third-party due diligence report it has obtained.

Requires at least half, but not fewer than two of the members of an NRSRO's board of directors to be independent of the NRSRO agency. Requires a portion of the independent directors to include users of ratings from a NRSRO. Prescribes criteria to determine such independence.

(Sec. 933) Declares that in private actions against an NRSRO it shall be sufficient for pleading any required state of mind that the complaint state with particularity facts giving rise to a strong inference that the NRSRO knowingly or recklessly failed to: (1) conduct a reasonable investigation of the rated security with respect to the factual elements relied upon by its own methodology for evaluating credit risk; or (2) obtain reasonable verification of such factual elements (by audit or even by a sampling technique) from other sources that the credit rating agency considered to be competent and that were independent of the issuer and underwriter.

(Sec. 934) Amends the Securities Exchange Act of 1934 to require each NRSRO to refer to the appropriate law enforcement or regulatory authorities any information that it receives from a third party and finds credible that alleges that an issuer of securities rated by the NRSRO has committed or is committing a material violation of law that has not been adjudicated by a federal or state court.

(Sec. 935) Requires an NRSRO, in producing a credit rating, to consider information which it finds credible that it has, or receives about an issuer from a source other than the issuer or underwriter, and which it finds potentially significant to a rating decision.

(Sec. 936) Directs the SEC to: (1) prescribe qualification standards to ensure the accuracy of securities ratings issued by credit rating analysts; (2) require each NRSRO to establish and enforce written policies and procedures that assess the probability that an issuer of a security or money market instrument will fail to make payments to investors in accordance with the terms of such instrument; and (3) define clearly and disclose the meaning of any symbol used by the NRSRO to denote a credit rating, and apply it in a consistent manner for all types of instruments for which it is used.

(Sec. 939) Amends the FDIA, the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Investment Company Act of 1940, the Revised Statutes, and the Securities Exchange Act of 1934 to remove references to credit ratings to reflect the provisions of this Act.

Directs the SEC to study and report to Congress on ratings standardization.

(Sec. 939A) Requires federal agencies to: (1) review any of their regulations that require the use of an assessment of the credit-worthiness of a security or money market instrument; (2) remove any requirement of reliance on credit ratings and substitute a standard of credit-worthiness deemed appropriate by the agency; and (3) report to Congress any modification of any regulation such agency has made.

(Sec. 939B) Requires the SEC to revise Regulation FD (general rule regarding selective disclosure by an issuer of material nonpublic information regarding that issuer or its securities) to remove the exemption from it for NRSROs and other credit rating agencies.

(Sec. 939C) Directs the SEC to study and report to Congress on the independence of NRSROs and how it affects the ratings they issue.

(Sec. 939D) Directs the Comptroller to study and report to Congress on: (1) alternative means for compensating NRSROs in order to create incentives for more accurate credit ratings; and (2) the feasibility and merits of creating an independent professional organization for NRSRO rating analysts responsible for establishing independent professional standards and a code of ethical conduct, as well as overseeing the profession.

(Sec. 939F) Directs the SEC to study and report to Congress on: (1) the credit rating process for structured finance products and the conflicts of interest associated with the issuer-pay and the subscriber-pay models; (2) the feasibility of establishing a system in which a public or private utility or an SRO assigns NRSROs to determine the credit ratings of such products; and (3) alternative means for compensating NRSROs that would create incentives for accurate credit ratings.

(Sec. 939G) Declares without force or effect Rule 436(g) promulgated by the SEC under the Securities Act of 1933. (Rule 436(g) exempts credit ratings provided by NRSROs from being considered a part of the registration statement prepared or certified by a person under such Act.)

(Sec. 939H) Expresses the sense of Congress that the SEC should exercise specified rulemaking authority to prevent improper conflicts of interest arising from employees of NRSROs providing services to issuers of securities that are unrelated to the issuance of credit ratings, including consulting, advisory, and other services.

Subtitle D: Improvements to the Asset-Backed Securitization Process - (Sec. 941) Amends the Securities Act of 1934 to direct the federal banking agencies and the SEC to jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any asset the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

Requires federal banking agencies, the SEC, the Secretary of Housing and Urban Development (HUD), and the Federal Housing Finance Agency(FHFA), to jointly prescribe regulations similarly requiring a securitizer to retain an economic interest in a portion of the credit risk for any residential mortgage asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party. Prescribes regulation standards, including a requirement to establish asset classes with separate rules for securitizers of different classes of assets, including residential mortgages, commercial mortgages, commercial loans, auto loans, and any other appropriate class of assets.

Directs the federal banking agencies and the SEC to jointly adopt or issue exemptions, exceptions, and adjustments to such rules. Exempts specifically any loans or financial assets made, insured, guaranteed, or purchased by any institution that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation. Exempts also any residential, multifamily, or health care facility mortgage loan asset, or securitization based directly or indirectly on such an asset, which is insured or guaranteed by the United States or a U.S. agency (not including the Federal National Mortgage Association [Fannie Mae], the Federal Home Loan Mortgage Corporation [Freddie Mac], and the federal home loan banks). Makes additional exemptions from such rules for qualified residential mortgages, subject to certain conditions.

Requires the Chairperson of the Financial Stability Oversight Council to coordinate all joint rulemaking.

Requires the Federal Reserve Board to study the combined impact on each individual class of asset-backed security of: (1) the new credit risk retention requirements of this subtitle, including the effect credit risk retention requirements have on increasing the market for federally subsidized loans; and (2) the Financial Accounting Statements 166 and 167 issued by the Financial Accounting Standards Board (FASB).

(Sec. 942) Amends the Securities Exchange Act of 1934 to authorize the SEC to: (1) provide for the suspension or termination of the duty to file for any class of issuer of asset-backed security; and (2) classify issuers and prescribe requirements appropriate for each class of issuer of asset-backed security.

Amends the Securities Act of 1933 to direct the SEC to adopt regulations requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security.

(Sec. 943) Directs the SEC to prescribe regulations on the use of representations and warranties in the market for asset-backed securities that: (1) require each NRSRO to describe in any report accompanying a credit rating the representations, warranties, and enforcement mechanisms available to investors and how they differ from those in issuances of similar securities; and (2) require any securitizer to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer, so that investors may identify asset originators with clear underwriting deficiencies.

(Sec. 944) Amends the Securities Act of 1933 to repeal the exemption from prohibitions and requirements relating to interstate commerce and the mails that is granted to certain transactions involving offers or sales of promissory notes secured by a first lien on real estate upon which is located a residential or commercial structure.

(Sec. 945) Directs the SEC to issue rules requiring any issuer of an asset-backed security to review the assets underlying the security, and disclose the nature of the review.

(Sec. 946) Requires the Chairman of the Financial Services Oversight Council to study the macroeconomic effects of the risk retention requirements under this subtitle, emphasizing the potential beneficial effects with respect to stabilizing the real estate market.

Subtitle E: Accountability and Executive Compensation - (Sec. 951) Amends the Securities Exchange Act of 1934 to require that a proxy or consent or authorization for a shareholders meeting for which SEC proxy solicitation rules require compensation disclosures include a separate resolution, subject to shareholder vote, to approve the compensation of executives.

Requires the person making a proxy or consent solicitation at a shareholders meeting to approve an acquisition, merger, consolidation, or proposed sale or other disposition of all, or substantially all, of an issuer's assets, to disclose in the related material any agreements or understandings that such person has with any named executive officers of the issuer, or of the acquiring issuer, regarding: (1) all compensation based upon, or relating to, such asset disposition; and (2) the aggregate total of all such compensation that may be paid or become payable to or on behalf of such executive officer (golden parachute compensation).

Declares that the shareholder vote shall not be binding on either the issuer or its board of directors, nor may it be construed: (1) as overruling a decision by the issuer or board of directors; (2) to create or imply any change or addition to the fiduciary duties of the issuer or board of directors; or (3) to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

Authorizes the SEC to exempt an issuer or class of issuers from such shareholder approval requirements, taking into account whether the requirements disproportionately burden small issuers.

(Sec. 952) Requires the SEC to direct the national securities exchanges and associations to prohibit the listing of any class of equity security of an issuer that is not in compliance with specified SEC standards governing compensation committees, including: (1) the independence of such committees; (2) independence standards for compensation consultants and other committee advisors; and (3) compensation committee authority relating to compensation consultants.

Exempts from such a prohibition any issuer that is a controlled company, limited partnership, company in bankruptcy proceedings, open-ended management investment company registered under the Investment Company Act of 1940, or a foreign private issuer that discloses annually to shareholders the reasons that it does not have an independent compensation committee.

(Sec. 953) Directs the SEC to require each issuer to disclose in any proxy or consent solicitation material for an annual shareholder meeting a clear description of any mandatory compensation disclosures, including the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock, dividends and distributions.

Directs the SEC also to require each issuer to disclose in any filing: (1) the median of the annual total compensation of all employees of the issuer, except the chief executive officer; (2) the annual total compensation of the chief executive officer; and (3) the ratio of the first amount to the second.

(Sec. 954) Requires the SEC to direct the national securities exchanges and associations to prohibit the listing of any security of an issuer that is not in compliance with SEC requirements governing the recovery of erroneously awarded compensation.

Directs the SEC to require each issuer to develop and implement a policy providing: (1) disclosure of the issuer's policy on incentive-based compensation that is based on financial information required reported by the securities laws; and (2) that, if the issuer is required to prepare an accounting restatement owing to its material noncompliance with financial reporting requirements, the issuer will recover from any current or former executive officer who received incentive-based compensation during the preceding three-year period, based on the erroneous data, in excess of what would have been paid to the executive officer under a required accounting restatement.

(Sec. 955) Directs the SEC to require each issuer to disclose, in any proxy or consent solicitation material for an shareholders' annual meeting, whether any employee or member of the board of directors, including designees, is permitted to purchase financial instruments designed to hedge or offset any decrease in the market value of equity securities granted as part of a compensation package, or held by them.

(Sec. 956) Directs federal regulators to jointly prescribe regulations requiring depository institutions or depository institution holding companies to disclose the structures of all incentive-based compensation arrangements in order to determine whether such structure: (1) provides excessive compensation, fees, or benefits to an executive officer, employee, director, or principal shareholder; or (2) could lead to material financial loss to such institutions.

Directs federal regulators to jointly prescribe regulations prohibiting incentive-based payment arrangements that the regulators determine encourage inappropriate risks by such institutions by providing an executive officer, employee, director, or principal shareholder with excessive compensation, fees, or benefits, or that could lead to material financial loss to the institution.

Exempts financial institutions with assets of less than $1 billion from such compensation restrictions.

(Sec. 957) Prohibits registration as a national securities exchange unless the rules of the exchange prohibit any member that is not the beneficial owner of a specified registered security from granting a proxy to vote in connection with a certain shareholder vote unless the security's beneficial owner has instructed the member to vote the proxy in accordance with the owner's voting instructions.

Subtitle F: Improvements to the Management of the Securities and Exchange Commission - (Sec. 961) Requires the SEC to report annually to Congress on its examinations of registered entities, enforcement investigations, and corporate financial securities filings. Requires the Directors of the Division of Enforcement, the Division of Corporation Finance, and the Office of Compliance Inspections and Examinations to certify in such report that the SEC has adequate internal supervisory controls to carry out its examination, enforcement and review duties.

Directs the Comptroller to report triennially to such congressional committees on: (1) the adequacy and effectiveness of the internal supervisory control structure and procedures; and (2) the quality of SEC personnel management.

(Sec. 963) Directs the SEC and the Comptroller General to assess, in separate annual reports to Congress, the effectiveness of SEC internal control structure and procedures for financial reporting.

(Sec. 964) Directs the Comptroller to evaluate triennially SEC oversight of national securities associations.

(Sec. 965) Requires the SEC Divisions of Trading and Markets and of Investment Management to each retain a staff of examiners who perform compliance inspections and examinations.

(Sec. 966) Directs the SEC Inspector General to establish a telephone hotline or other electronic means for SEC employee: (1) suggestions for improvements in work performance and use of the resources; and (2) allegations of waste, abuse, misconduct, or mismanagement within the SEC.

(Sec. 967) Requires the SEC to hire an independent consultant to examine and report to the SEC and Congress on SEC internal operations, structure, funding, and the need for comprehensive reform, including the SEC's relationship with and reliance upon self-regulatory organizations and other entities under SEC oversight relevant to the regulation of securities and the protection of investors.

(Sec. 968) Directs the Comptroller to study and report to Congress on SEC employees who leave the agency to work for financial institutions regulated by the SEC.

Subtitle G: Strengthening Corporate Governance - (Sec. 971) Extends SEC rulemaking authority to prescribe rules on proxy access, especially inclusion in a solicitation of proxy, consent, or authorization of a shareholder nominee to serve on the issuer's board of directors.

(Sec. 972) Instructs the SEC to issue rules requiring an issuer to disclose in the annual proxy sent to investors the reasons why the issuer has chosen the same person or different individuals to serve as chairman of the board of directors and chief executive officer (or equivalent positions).

Subtitle H: Municipal Securities - (Sec. 975) Amends the Securities Exchange Act of 1934 to require the registration of municipal advisors who either: (1) provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities; or (2) undertake a solicitation of a municipal entity or obligated person.

Revises the distribution of independent and associated members of the Municipal Securities Rulemaking Board, their eligibility standards, and their duties. Deems a municipal advisor and any associated person to have a fiduciary duty to any municipal entity for whom such advisor acts as a municipal advisor. Prohibits a municipal advisor from engaging in any act, practice, or course of business inconsistent with such fiduciary duty, or in contravention of any rule of the Board.

Revises registration prerequisites governing an affiliated securities association to require that its rules provide that it shall: (1) request guidance from the Municipal Securities Rulemaking Board when interpreting Board rules; and (2) inform the Board about certain enforcement actions and examinations so that the Board may assist in them and evaluate the ongoing effectiveness of its rules.

(Sec. 976) Directs the Comptroller to study: (1) mandatory disclosures by municipal securities issuers; (2) the municipal securities markets; and (3) the role and importance of the Governmental Accounting Standards Board (GASB) in the municipal securities markets and its funding levels.

(Sec. 978) Amends the Securities Act of 1933 to authorize the SEC to require a registered national securities association to establish: (1) a reasonable annual accounting support fee to fund the annual budget of the GASB; and (2) rules and procedures to provide for the allocation, assessment, and collection of such a fee from association members, as well as for remittance of such fees to the Financial Accounting Foundation.

Directs the Comptroller General to evaluate: (1) the role and importance of the GASB in the municipal securities markets; and (2) the manner and the level at which the GASB has been funded.

(Sec. 979) Establishes within the SEC the Office of Municipal Securities to administer SEC rules governing the practices of municipal securities brokers and dealers, municipal securities advisors, municipal securities investors, and municipal securities issuers; and (2) coordinate with the Municipal Securities Rulemaking Board for rulemaking and enforcement actions.

Subtitle I: Public Company Accounting Oversight Board, Portfolio Margining, and Other Matters - (Sec. 981) Amends the Sarbanes-Oxley Act of 2002 to authorize the PCAOB to provide to a foreign auditor oversight authority all information relating to a public accounting firm within the foreign oversight authority's jurisdiction.

(Sec. 982) Extends coverage of PCAOB auditing authority to all companies subject to the securities laws, not only public companies, and to brokers and dealers as well. Extends the registration requirement to public accounting firms that audit brokers and dealers, and authorizes the PCAOB to require an inspection program for them.

Requires each broker or dealer to pay the PCAOB its allocated annual accounting support fee.

Authorizes the PCAOB to refer to an SRO an investigation concerning an audit report for a broker or dealer under the SRO's jurisdiction.

(Sec. 983) Amends the Securities Investor Protection Act of 1970 with respect to a customer's portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the SEC.

(Sec. 984) Amends the Securities Act of 1934 regarding manipulative and deceptive devices to: (1) make it unlawful for any person to effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of SEC rules and regulations; and (2) direct the SEC to promulgate rules that are designed to increase the transparency of information available to brokers, dealers, and investors, with respect to the loan or borrowing of securities.

(Sec. 989) Instructs the Comptroller to study risks and conflicts associated with proprietary trading by and within depository institutions and bank and financial holding companies.

Requires the report to evaluate whether: (1) proprietary trading presents a material systemic risk to both the stability of the U.S. financial system and to the safety and soundness of the financial entities that engage in such trading; (2) it presents material conflicts of interest between financial entities that engage in proprietary trading and the clients of the institutions who use the firm either to execute trades or to rely upon the firm to manage assets; (3) adequate disclosure regarding the risks and conflicts of proprietary trading is provided to the depositors, trading and asset management clients, and investors of financial entities that engage in it; (4) the banking, securities, and commodities regulators of institutions that engage in proprietary trading have adequate systems and controls to monitor and contain the related risks and conflicts of interest; and (5) the costs and benefits of mitigating systemic risk and conflicts of interest.

(Sec. 989A) Requires the Office of Financial Literacy of the Bureau of Consumer Financial Protection established by Title X below) to establish a grants program for states or eligible entities to: (1) investigate and prosecute misleading and fraudulent marketing practices; (2) fund technology, equipment, and training for regulators, prosecutors, and law enforcement officers to identify salespersons and advisers who target seniors through the use of misleading designations and to increase their successful prosecution; (3) provide educational materials and training to seniors to increase awareness and understanding of misleading or fraudulent marketing; (4) develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors; and (5) enhance provisions of state law to provide protection for seniors against misleading or fraudulent marketing.

Authorizes appropriations for FY2011-FY2015.

(Sec. 989B) Amends the Inspector General Act of 1978 regarding: (1) the independence of Inspectors General of designated federal entities; (2) Inspector General accountability; and (3) removal of Inspectors General of designated federal entities.

(Sec. 989E) Establishes the Council of Inspectors General on Financial Oversight.

Authorizes the Council to convene a Council of Inspectors General Working Group to evaluate the Council's effectiveness and internal operations.

(Sec. 989F) Directs the Comptroller to study person to person lending to determine the optimal federal regulatory structure.

(Sec. 989G) Amends the Sarbanes-Oxley Act of 2002 to exempt smaller securities issuers that are neither large accelerated filers nor accelerated filers from the requirement that a registered public accounting firm that prepares or issues the issuer's audit report attest to, and report on, the assessment made by the issuer's management.

Directs the SEC to study and report to Congress on how it could reduce the burden for certain companies (whose market capitalization is between $75 million and $250 million for the relevant reporting period) of complying with such requirement while maintaining investor protections for such companies.

(Sec. 989H) Requires the heads of designated federal agencies, including the Federal Reserve Board, the CFTC, and the SEC, to each: (1) take action to address deficiencies identified by a report or investigation of the agency Inspector General; or (2) certify to both Houses of Congress that no action is necessary or appropriate in connection with such deficiencies.

(Sec. 989I) Requires the Comptroller General to study the exemption granted by this Act to smaller issuers that are nonaccelerated filers under the Sarbanes-Oxley Act of 2002 from the requirement for an evaluation by a registered public accounting firm of a securities issuer's internal control structure and procedures for financial reporting.

(Sec. 989J) Directs the SEC to treat as securities exempt from the coverage of the Securities Act of 1933 certain insurance or endowment policies or annuity contracts or optional annuity contract issued on and after June 16, 2013, whose value does not vary according to the performance of a separate account, and which meet other specified criteria.

Subtitle J: Securities and Exchange Commission Match Funding - (Sec. 991) Amends the Securities Exchange Act of 1934 to direct the SEC to collect transaction fees and assessments designed to recover the costs to the government of the annual appropriation to the SEC by Congress.

Amends the Securities Act of 1933 to revise requirements for annual and mid-year adjustments to transaction fees to replace the target offsetting collection amount for a fiscal year as goal of an adjustment with the regular appropriation to the SEC by Congress for such fiscal year. Specifies increased target offsetting collection amounts for FY2012-FY2021 and beyond in the calculation of securities registration fees.

Amends the Securities Exchange Act of 1934 to authorize appropriations for the SEC for FY2011-FY2015.

Requires the SEC to submit a budget annually to the President or the Office of Management and Budget (OMB), and copies concurrently to specified congressional committees.

Establishes in the Treasury the Securities and Exchange Commission Reserve Fund as the depository for an annual aggregate of up to $50 million in registration fees under the securities laws. Limits the balance in the Fund to $100 million. Requires deposit of any fees in excess of such amounts in the General Fund, and prohibits their availability for SEC obligation.

Title X: Bureau of Consumer Financial Protection - Consumer Financial Protection Act of 2010 - Subtitle A: Bureau of Consumer Financial Protection - (Sec. 1011) Establishes an independent Bureau of Consumer Financial Protection in the Federal Reserve System, headed by a Director nominated by the President and confirmed by the Senate, to regulate consumer financial products or services under federal consumer financial laws.

(Sec. 1012) Authorizes the Federal Reserve Board to delegate to the Bureau the authorities to examine persons subject to Board jurisdiction for compliance with federal consumer financial laws.

Prohibits the Board from (1) intervening in any matter or proceeding before the Director, including examinations or enforcement actions, unless otherwise specifically provided by law; (2) appointing, directing, or removing any officer or employee of the Bureau; or (3) merging or consolidating the Bureau, including its functions or responsibilities, with any division or office of the Board or the federal reserve banks.

Precludes from Board approval or review any rule or order of the Bureau. Prohibits the Board from delaying or preventing the issuance of any rule or order of the Bureau.

(Sec. 1013) Requires the Bureau to appoint an ombudsman to act as a liaison between the Bureau and any affected person with respect to any problem the person may have in dealing with the Bureau, resulting from its regulatory activities.

Requires the Director to establish: (1) specified functional research units; (2) information and technical assistance regarding the offering and provision of consumer financial products or services to traditionally underserved consumers and communities; (3) a unit to collect and track complaints regarding consumer financial products or services; (4) the Office of Fair Lending and Equal Opportunity; (5) the Office of Financial Education, which shall develop a strategy to improve the financial literacy of consumers; (6) the Office of Service Member Affairs; (7) the Office of Financial Protection for Older Americans; and (8) a Consumer Advisory Board.

Instructs the Comptroller to study: (1) the feasibility of certifying persons conducting financial literacy programs or activities; (2) technological resources intended to collect, analyze, evaluate, or promote financial literacy and counseling programs; (3) effective methods, tools, and strategies intended to educate and empower consumers about personal finance management; and (4) recommendations to encourage development of programs that improve financial education outcomes.

(Sec. 1017) Establishes in the Federal Reserve: (1) the Bureau of Consumer Financial Protection Fund to pay the expenses of the Bureau; and (2) the Consumer Financial Civil Penalty Fund for payments to victims of activities for which civil penalties have been imposed under federal consumer financial laws.

Authorizes appropriations for FY2010-FY2013 to carry out the authorities granted in federal consumer financial law.

Subtitle B: General Powers of the Bureau - (Sec. 1021) Requires the Bureau to implement and enforce federal consumer financial law to ensure that all consumers have access to fair, transparent, and competitive markets for consumer financial products and services.

(Sec. 1022) Grants the Bureau exclusive rulemaking authority to the extent that a federal consumer financial law authorizes the Bureau and another federal agency to issue regulations to assure compliance with such law.

States that the deference that a court affords to the Bureau regarding the meaning or interpretation of any federal consumer financial law shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer such law.

Directs the Bureau to monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for them.

Grants the Bureau access to any report of examination or financial condition made by a federal agency having jurisdiction over a covered person or service provider.

Authorizes the Bureau to prescribe registration requirements for covered persons other than an insured depository institution, insured credit union, or related person.

(Sec. 1023) Authorizes the Financial Stability Oversight Council, on the petition of one of its member agencies, to set aside a final Bureau regulation, or any of its provisions, if the Council decides, in accordance with a specified procedure, that the regulation or provision would put the safety and soundness of the U.S. Banking system or the stability of the U.S. financial system at risk.

(Sec. 1024) Prescribes requirements for Bureau supervision and rulemaking affecting certain nondepository covered persons, including those who offer or provide origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans, including private education and payday loans.

Subjects service providers of certain consumer real estate loans to Bureau supervision and enforcement authority.

(Sec. 1025) Grants the Bureau, in order to assess compliance with federal consumer financial laws, exclusive authority to require reports and conduct periodic examinations of insured depository institutions and insured credit unions whose total assets exceed $10 billion (including their affiliates). Grants the Bureau primary authority to enforce such laws to the extent that the Bureau and another federal agency are authorized to enforce them.

(Sec. 1026) Subjects insured depository institutions and insured credit unions with total assets of $10 billion or less (including their service providers) to examination and reporting requirements of the Bureau Director.

(Sec. 1027) Prohibits the Bureau from exercising its authority with respect to sellers of nonfinancial goods, except to the extent that they are engaged in offering or providing any consumer financial product or service.

Excludes from Bureau supervisory or rulemaking authority: (1) real estate brokers; (2) retailers of manufactured and modular homes; (3) certified public accountants and tax preparers; (4) attorneys; (5) persons regulated by state insurance regulators or state securities commissions; (6) employee benefit and compensation plans and certain other arrangements; (7) persons regulated by the SEC, the CFTC, or the Farm Credit Administration; (8) activities related to charitable contributions; and (9) auto dealers.

(Sec. 1028) Requires the Bureau to report to Congress on the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

Authorizes the Bureau to prohibit or restrict the use of mandatory pre-dispute arbitration clauses governing a a consumer financial product or service.

Subtitle C: Specific Bureau Authorities - (Sec. 1031) Authorizes the Bureau to: (1) prohibit unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for, or the offering of, a consumer financial product or service; and (2) promulgate regulations to prevent such practices. Subjects such Bureau authority to specified conditions.

(Sec. 1032) Authorizes the Bureau to prescribe rules to ensure that the features of any consumer financial product or service are fully, accurately, and effectively disclosed so as to permit consumers to understand the associated costs, benefits, and risks.

Directs the Bureau to propose for public comment rules and model disclosures that combine specified disclosures under the Truth in Lending Act and the Real Estate Settlement Procedures Act of 1974, into a single, integrated disclosure for mortgage loan transactions covered by those laws.

(Sec. 1035) Instructs the Secretary to designate a Private Education Loan Ombudsman within the Bureau to provide timely assistance to borrowers of private education loans.

(Sec. 1036) Specifies prohibited acts related to: (1) violations of federal consumer financial law or otherwise engage in any unfair, deceptive, or abusive act or practice; (2) failure or refusal to establish or maintain records, permit access to or copying of them, or provide information to the Bureau; and (3) knowing or reckless assistance to others in violation of the requirements of this subtitle.

Subtitle D: Preservation of State Law - (Sec. 1041) Declares that this Act shall not be construed as annulling, altering, or affecting, or exempting any person subject to this title from complying with state law, except to the extent of any inconsistency with this Act.

Declares that state law and regulations that afford consumers greater protection than that provided under this Act are not inconsistent with this Act.

Requires the Bureau to: (1) issue a notice of proposed rulemaking whenever a majority of the states has enacted a resolution in support of the establishment or modification of a consumer protection regulation by the Agency; and (2) take specified considerations into account before prescribing a final regulation based upon such notice (including whether the proposed regulation would afford greater protection to consumers than any existing regulation).

(Sec. 1042) Authorizes a state attorney general to bring a civil action in the name of the state (including, but only in certain circumstances, against a national bank or federal savings association) in federal or state court to enforce and secure remedies under this Act.

Authorizes a state attorney general bring a civil action in the name of such state against a national bank or federal savings association in any federal district court or state court that is located in that state having jurisdiction over the defendant to enforce a regulation prescribed by the Bureau under this title and to secure remedies under this title or remedies otherwise provided under other law.

Affirms the authority of: (1) state securities regulators and state insurance regulators to take action with respect to a person they regulate; and (2) the Comptroller of the Currency and the Director of the Office of Thrift Supervision (OTS) regarding the applicability of state law under federal banking law to existing contracts entered into by the national banks and federal savings associations they regulate and supervise.

(Sec. 1044) Amends the Revised Statutes and the Home Owners' Loan Act to prescribe state law preemption standards and visitorial standards for national banks, federal savings associations, and nondepository institution subsidiaries.

Requires the Comptroller to report to Congress concerning whether the agency intends to continue, rescind, or propose to amend any determination that a provision of federal law preempts a state consumer financial law, and the reasons for doing so.

Subtitle E: Enforcement Powers - Sets forth Bureau enforcement powers, including those for investigations, adjudication, and litigation authority.

Subtitle F: Transfer of Functions and Personnel; Transitional Provisions - (Sec. 1061) Transfers from the following entities to the Director certain consumer financial protection functions: (1) the Federal Reserve Board; (2) the Comptroller of the Currency; (3) the OTS Director; (4) the FDIC; (5) the Federal Trade Commission (FTC); (6) NCUA; (7) the Secretary of Housing and Urban Development (HUD) (relating to the Real Estate Settlement Procedures Act of 1974 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008); and (8) the Prudential Regulators.

(Sec. 1064) Provides for the transfer of affected personnel.

Subtitle G: Regulatory Improvements - (Sec. 1071) Amends the Equal Credit Opportunity Act to require each financial institution, in the case of an application for credit for either a small business, a women-owned, or a minority-owned business, to: (1) inquire whether the business is a women- or minority-owned, or a small business, business; and (2) maintain a separate record of the responses to such inquiry. Restricts access to such information by loan underwriters or other financial institution employees. Requires such information to be compiled and maintained by each financial institution and submitted annually to the Bureau, which shall make it available for public disclosure.

(Sec. 1072) Amends the Housing and Economic Recovery Act of 2008 to include economically vulnerable individuals and families among the groups targeted for financial education and counseling.

(Sec. 1073) Amends the Electronic Fund Transfer Act to prescribe mandatory disclosures for remittance transfers. Directs the Federal Reserve Board to work with the federal reserve banks and the Department of the Treasury to expand the use of the automated clearinghouse system and other payment mechanisms for remittance transfers to foreign countries. Instructs the Director to report to the President and Congress on the feasibility of and impediments to use of remittance history in calculation of a consumer's credit score.

(Sec. 1074) Directs the Secretary of the Treasury to study specified options for ending the conservatorship of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), while minimizing the cost to taxpayers.

(Sec. 1075) Amends the Electronic Fund Transfer Act to authorize the Federal Reserve Board to prescribe regulations: (1) for interchange transaction (swipe) fees that an issuer may receive or charge with respect to an electronic debit transaction (EDT); and (2) to prevent circumvention or evasion of swipe fees. Requires a swipe fee to be reasonable and proportional to the issuer's cost with respect to an EDT, but allows adjustments for fraud prevention costs. Prescribes considerations affecting such rulemaking.

Exempts from such requirements: (1) small issuers whose assets are less than $10 billion; and (2) government-administered payment programs and reloadable prepaid cards.

Authorizes the Board to prescribe regulations to prevent the use of network fees to compensate an issuer with respect to an EDT or to circumvent or evade the restrictions of this subtitle.

Requires the Board to prescribe regulations prohibiting a payment card network from: (1) restricting the number of payment card networks on which an EDT may be processed to one or to two or more owned or controlled by affiliates (exclusivity arrangements); (2) inhibiting the ability of any person who accepts debit cards to direct the routing of EDTs for processing over any payment card network; (3) inhibiting the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, checks, debit cards, or credit cards; or (2) restricting transaction minimums or maximums.

(Sec. 1076) Directs the Bureau to study reverse mortgage transactions and prescribe related regulations.

(Sec 1077) Requires the Director and the Secretary of Education to report to Congress on specified aspects of private education loans and private educational lenders.

(Sec. 1078) Directs the Bureau to study: (1) the nature, range, and size of variations between the credit scores sold to creditors and those sold to consumers by nationwide consumer reporting agencies; and (2) whether such variations disadvantage consumers.

(Sec. 1079) Requires the Director to:: (1) review all federal laws and regulations relating to the protection of consumers who use exchange facilitators for transactions primarily for personal, family, or household purposes; and (2) recommend measures to ensure protection of consumers who use such exchange facilitators.

Defines an exchange facilitator as a person that maintains an office or advertises services to facilitates, for a fee, an exchange of like kind property by entering into an agreement with a taxpayer by which the exchange facilitator: (1) acquires contractual rights to sell the taxpayer's relinquished property and transfers to the taxpayer, as a qualified intermediary, a replacement property; (2) takes title to a property as an exchange accommodation titleholder; or (3) acts as a qualified trustee or qualified escrow holder.

(Sec. 1079A) Requires the U.S. Sentencing Commission to review and, if appropriate, amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of: (1) offenses relating to securities fraud, in order to reflect the intent of Congress that penalties for the offenses appropriately account for their potential and actual harm to the public and the financial markets; and (2) fraud offenses relating to financial institutions or federally related mortgage loans, to reflect the intent of Congress that the penalties for the offenses ensure appropriate terms of imprisonment for offenders involved in substantial bank frauds or other frauds relating to financial institutions.

Amends federal criminal law to set the statute of limitations for securities fraud violations at six years after the commission of the offense.

Subtitle H: Conforming Amendments - Makes conforming amendments to specified Acts to reflect the provisions of this Act.

Title XI: Federal Reserve System Provisions - (Sec. 1101) Amends the Federal Reserve Act (FRA) to modify the Federal Reserve Board's emergency lending authorities.

Requires the Board to establish, by regulation, the policies and procedures governing emergency lending, to ensure that any emergency lending program or facility is for the purpose of providing liquidity to the financial system, and not to aid a failing financial company, and that the security for emergency loans is sufficient to protect taxpayers from losses and that any such program is terminated in a timely and orderly fashion.

Requires the Board to establish procedures to prohibit borrowing programs and facilities by insolvent borrowers.

Prohibits the Board from establishing any program or facility without the prior approval of the Secretary of the Treasury.

Prescribes a detailed report which the Board must present to Congress regarding the amount and terms of financial assistance granted to a financial entity.

(Sec. 1102). Authorizes the Comptroller General to conduct audits and onsite examinations, if appropriate, of the Federal Reserve Board, a federal reserve bank, or a credit facility, solely for the purposes of assessing: (1) the operational integrity, accounting, financial reporting, and internal controls governing special Federal Reserve credit facilities or a covered transaction (any open market transaction or discount window advance); (2) the effectiveness of the security and collateral policies established for the facility or covered transaction in mitigating risk to the Federal Reserve bank and taxpayers; (3) whether the credit facility or the conduct of a covered transaction inappropriately favors one or more specific participants over other institutions eligible to utilize the facility; and (4) the policies governing the use, selection, or payment of third-party contractors by or for any credit facility or to conduct any covered transaction. Requires the Comptroller to report to Congress on each such audit.

Declares certain nondisclosure obligations inapplicable to the credit facilities Maiden Lane, Maiden Lane II, and Maiden Lane III.

(Sec. 1103) Amends the FRA to direct the Federal Reserve Board to make accessible to the public: (1) a webpage serving as a repository of information for at least six months following release of certain financial reports (including reports relating to emergency lending authority); and (2) information concerning borrowers and counterparties participating in emergency credit facilities, discount window lending programs, and open market operations authorized or conducted by the Board or a federal reserve bank.

Directs the Inspector General of the Board to study the impact that the FOIA exemption for information concerning such borrowers and counterparties has had on the ability of the public to access information about Federal Reserve Board administration of emergency credit facilities, discount window lending programs, and open market operations.

(Sec. 1104) Authorizes the Secretary of the Treasury to request the FDIC and the Board to determine whether a liquidity event exists that warrants use of a widely available program to guarantee obligations of solvent insured depository institutions or solvent depository institution holding companies during times of severe economic distress.

(Sec. 1105) Directs the FDIC, upon its determination together with the Board, to create such a program. Prohibits such a guarantee of obligations, however, from including the provision of equity in any form.

Prescribes procedures for creation of such a program, as well as a fast track legislative process for adoption of a request for guarantees.

Requires the FDIC to charge fees and other assessments to all program participants.

(Sec. 1106) Requires the FDIC, upon default of an insured depository institution or depository institution holding company participant in either the emergency financial stabilization program, or in a statutory debt guarantee program, to: (1) appoint itself as receiver for such institution; and (2) with respect to any other participant in default that is not an insured depository institution, to require a bankruptcy process for resolving the company.

(Sec. 1107) Requires the president of a Federal Reserve Bank to be appointed by its Class B and Class C directors, with the Federal Reserve Board's approval.

(Sec. 1108) Amends the FRA to require the President to designate two Vice Chairmen of the Federal Reserve Board (currently only one). Establishes the position of Vice Chairman for Supervision to: (1) develop policy recommendations for the Board regarding supervision and regulation of depository institution holding companies and other financial firms supervised by the Board; and (2) oversee the supervision and regulation of such firms.

Prohibits the Board from delegating to a Federal Reserve Bank its functions for the establishment of policies for the supervision and regulation of depository institution holding companies and other financial firms supervised by the Board.

(Sec. 1109) Directs the Comptroller to conduct a one-time audit of, and report to Congress on, all financial assistance provided between December 1, 2007 and the date of enactment of this Act by either the Board or a Federal Reserve Bank under the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility, the Term Asset-Backed Securities Loan Facility, the Primary Dealer Credit Facility, the Commercial Paper Funding Facility, the Term Securities Lending Facility, the Term Auction Facility, Maiden Lane, Maiden Lane II, Maiden Lane III, the agency Mortgage-Backed Securities program, foreign currency liquidity swap lines, and certain other programs. Requires the Federal Reserve Board to publish on its website specified information about such assistance and its recipients.

Directs the Comptroller to audit and report to Congress on the governance of the Federal Reserve Bank System.

Title XII: Improving Access to Mainstream Financial Institutions - Improving Access to Mainstream Financial Institutions Act of 2010 - (Sec. 1202) Authorizes the Secretary to establish a multiyear program of grants, cooperative agreements, and financial agency agreements to: (1) promote initiatives that enable low- and moderate-income individuals to establish accounts in a federally insured depository institution and improve access to the provision of accounts on reasonable terms; and (2) provide low-cost, small loans to consumers as alternatives to more costly small dollar loans.

Authorizes the Secretary also to implement measures or programs designed to expanded access to financial literacy and education opportunities for individuals who obtain loans, including counseling services, educational courses, or wealth building programs.

(Sec. 1206) Amends the Community Development Banking and Financial Institutions Act of 1994 to require the Community Development Financial Institutions Fund (Fund in this title) to make grants to community development financial institutions to: (1) enable them to establish a loan-loss reserve fund in order to defray the costs of establishing a small dollar loan program; and (2) help them maintain a small dollar loan program.

Prescribes: (1) a 50% matching requirement; and (2) use of Fund grants. Prohibits a recipient institution from providing direct loans to consumers.

(Sec. 1208) Authorizes appropriations.

Title XIII: Pay It Back Act - Pay It Back Act - (Sec. 1302) Amends the Emergency Economic Stabilization Act of 2008 (EESA) to reduce to $472 billion the authority of the Secretary of the Treasury to purchase troubled assets under the Troubled Asset Relief Program (TARP).

Prohibits reducing the amount of authority considered to be exercised by the Secretary by: (1) any amounts received by the Secretary from repayment of the principal of financial assistance by a recipient under any EESA program; (2) any amounts committed for any TARP guarantee that became or become uncommitted; or (3) any losses realized by the Secretary.

Prohibits using EESA authority to incur any obligation for a program or initiative that was not initiated before June 25, 2010.

(Sec. 1303) Requires the Secretary to report to Congress every six months on transfer to the Treasury's General Fund for reduction of the public debt of revenues of, and proceeds from the sale of troubled assets purchased under TARP, or from the sale, exercise, or surrender of warrants or senior debt instruments acquired under TARP.

(Sec. 1304) Amends the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, and the Federal Home Loan Bank Act to require the Secretary to deposit in the Treasury solely for debt reduction any amounts received by the Secretary for the sale of any obligation or security acquired from the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), or a Federal Home Loan Bank for secondary market operations. Prohibits the use of any such amounts as an offset for other spending increases or revenue reductions.

Requires deposit in the Treasury solely for debt reduction of any periodic commitment fee or any other fee or assessment paid to the Secretary by Fannie Mae or Freddie Mac as a result of any preferred stock purchase agreement, mortgage-backed security purchase program, or any other program or activity under the Housing and Economic Recovery Act of 2008.

(Sec. 1305) Requires the Director of the Federal Housing Finance Agency (FHFA) to report to Congress on FHFA plans to continue to support the nation's vital housing industry, while at the same time guaranteeing that the American taxpayer will not suffer unnecessary losses.

(Sec. 1306) Amends the American Recovery and Reinvestment Act of 2009 (ARRA) to require: (1) rescission of any ARRA (stimulus) funds offered to but not accepted by the governor or legislature of a state; and (2) their deposit in the Treasury solely for debt reduction. Requires the same treatment for any funds withdrawn or recaptured by an executive agency head which have not been obligated by a state to a local government or for a specific project.

Rescinds for deposit in the Treasury solely for debt reduction specified discretionary appropriations that have not been obligated as of December 31, 2012.

Authorizes the President to waive repayment of unobligated funds if the President determines that it is not in the best interest of the Nation to rescind a specific unobligated amount after December 31, 2012.

Title XIV: Mortgage Reform and Anti-Predatory Lending Act - Mortgage Reform and Anti-Predatory Lending Act - Designates specified subtitles and sections of Title XIV as enumerated consumer law falling within the purview of the Bureau of Consumer Financial Protection (Bureau) for purposes of Title X of this Act.

Subtitle A: Residential Mortgage Loan Origination Standards - (Sec. 1402) Amends the Truth in Lending Act (TILA) to prescribe fiduciary standards applicable to originators of residential mortgages.

Instructs the Federal Reserve Board to prescribe regulations requiring depository institutions to establish procedures to assure and monitor compliance with this Act.

(Sec. 1403) Prohibits: (1) steering incentives in connection with residential mortgage loan origination;and (2) restructuring of a financing origination fee, except in certain circumstances.

Directs the Board to prohibit specified mortgage origination practices, including steering a consumer to a residential mortgage loan that: (1) the consumer lacks a reasonable ability to repay; or (2) has predatory characteristics or effects (such as equity stripping, excessive fees, or abusive terms).

(Sec. 1404) Sets forth the maximum liability of a mortgage originator to a consumer for violation of the residential mortgage loan origination requirements of this title, in addition to court costs and attorney fees, at the greater of: (1) actual damages; or (2) three times the total amount of direct and indirect compensation or gain accruing to the originator in connection with the loan involved.

(Sec. 1405) Requires the Board to prohibit or condition terms, acts, or practices relating to residential mortgage loans that are found to be either: (1) abusive, unfair, deceptive, predatory; or (2) necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with Board-prescribed minimum standards for residential mortgage loans to prevent their circumvention or evasion or to facilitate compliance with them; or (3) not in the borrower's interest.

(Sec. 1406) Requires the Secretary of Housing and Urban Development (HUD) to study regulatory requirements that would provide: (1) widespread use of shared appreciation mortgages to strengthen local housing markets; (2) new opportunities for affordable home ownership; and (3) homeowners at risk of foreclosure with the ability to refinance or modify their mortgages.

Subtitle B: Minimum Standards for Mortgages - (Sec. 1411) Prescribes minimum standards for residential mortgage loans, including a requirement that a residential mortgage loan creditor: (1) make a reasonable and good faith determination based upon verified and documented information that the consumer has a reasonable ability to repay all loans on the same dwelling and applicable taxes, insurance (including mortgage guarantee insurance), and assessments; (2) use a fully amortizing repayment schedule for purposes of determining a consumer's ability to repay a variable rate loan that defers repayment of principal or interest; and (3) verify amounts of income or assets upon which such creditor relies to determine repayment ability by reviewing the consumer's Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets.

Exempts from the income verification requirement under certain conditions: (1) streamlined refinancings made by certain federal departments or agencies, and (2) reverse mortgages and bridge loans,.

(Sec. 1412) Authorizes any creditor or assignee subject to liability under this Act with respect to any residential mortgage loan to presume that it has met the minimum standards for such a loan if it is a qualified mortgage meeting specified criteria that does not result in a balloon payment.

Authorizes the Board by regulation to include as a qualified mortgage any balloon loan meeting the same specified criteria if it meets certain other criteria as well, including that it is extended by a creditor operating predominantly in rural or underserved areas.

(Sec. 1413) Authorizes a consumer, in a foreclosure proceeding on a residential mortgage loan, to assert as a matter of defense by recoupment or set off without regard for the time limit on a private action for damages under TILA, that the foreclosure-initiating creditor, assignee, or other holder of the mortgage: (1) violated the prohibition against certain steering incentives, or (2) failed to make a reasonable and good faith determination that the consumer had a reasonable ability to repay the mortgage.

(Sec. 1414) Prohibits specified practices, including: (1) certain prepayment penalties on specified mortgage loans; (2) single premium credit insurance; (3) mandatory arbitration or other nonjudicial procedure (except for reverse mortgages); (4) residential mortgage loan terms that waive a statutory cause of action by the consumer; and (5) mortgages with negative amortization (except, again, for reverse mortgages), unless certain disclosures are made and a first-time borrower receives home ownership counseling.

Excludes from the meaning of qualified mortgage for these purposes any residential mortgage loan with: (1) an adjustable rate; or (2) an annual percentage rate (APR) exceeding the average prime offer rate for a comparable transaction, as of the date the interest rate is set according to a specified formula. Requires publication of average prime offer rates and APR thresholds.

Requires a creditor or mortgage originator, before loan consummation or loan refinancing, to disclose the protection provided by a state anti-deficiency law and its significance for the consumer upon the loss of that protection. (A state anti-deficiency law shields a consumer mortgagor from liability for any deficiency between a foreclosure sale price and the outstanding balance of the mortgage.)

Requires a residential mortgage loan creditor to disclose before settlement: (1) the creditor's policy regarding partial payments and their application to the mortgage, and (2) whether partial payments will be placed in escrow.

(Sec. 1416) Doubles civil money penalties for certain violations.

(Sec. 1417) Shields a creditor, assignee, or securitizer from liability and rescission in the case of a borrower convicted of obtaining residential mortgage loan by fraud or deception.

(Sec. 1418) Requires a six-month notice period before a hybrid adjustable rate mortgage is reset.

(Sec. 1419) Prescribes creditor disclosures for: (1) variable rate residential mortgage loans for which an escrow or impound account will be established to pay taxes, insurance, and assessments; and (2) periodic statements for residential mortgage loans.

(Sec. 1421) Directs the Comptroller General to study the effects that enactment of this Act will have upon the availability and affordability of credit for consumers, small businesses, home buyers, and mortgage lending, including the effect upon: (1) the mortgage market for mortgages that are not within the safe harbor provided in this Act; (2) the ability of prospective home buyers to obtain financing; and (3) the refinance ability of homeowners facing resets or adjustments.

(Sec. 1422) Authorizes state attorneys general to bring an action to enforce the requirements of subtitle A (residential mortgage loan origination) and subtitle B (minimum standards for residential mortgage loans).

Subtitle C: High-Cost Mortgages - (Sec. 1431) Prescribes standards for points and fees related to: (1) high-cost mortgages; (2) open-end consumer credit plans; and (3) bona fide discount points and prepayment penalties.

(Sec. 1432) Repeals the allowance of prepayment penalties for certain mortgages.

Prohibits a high-cost mortgage from containing a scheduled payment that is more than twice as large (balloon payment) as the average of earlier scheduled payments.

(Sec. 1433) Prescribes additional requirements for certain mortgages.

Prohibits a creditor from: (1) recommending default on an existing debt prior to and in connection with the closing of a high-cost mortgage that refinances any portion of such debt; (2) imposing late payment fees in connection with a high-cost mortgage except in compliance with specified requirements; (3) accelerating debt on a high-cost mortgage (except in certain circumstances); or (4) financing, in connection with any high-cost mortgage, either a prepayment fee or penalty payable by the consumer if the creditor is the note holder of the note being refinanced.

Prohibits the creditor of a high-cost mortgage from implementing certain evasions, structured transactions, and reciprocal arrangements.

Prohibits a creditor from charging a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under such mortgage.

Prohibits any fee for payoff statements other than a processing fee.

Requires a creditor, as a prerequisite to extending consumer credit under a high-cost mortgage, to receive certification from a HUD-approved counselor that the consumer has received counseling on the advisability of the mortgage.

Prescribes a procedure by which a high cost loan creditor or assignee that, acting in good faith, commits an unintentional violation of these prohibitions and other requirements may make timely corrections and avoid liability for the violation.

Subtitle D: Office of Housing Counseling - Expand and Preserve Home Ownership Through Counseling Act - (Sec. 1442) Amends the Department of Housing and Urban Development Act to establish within HUD the Office of Housing Counseling, whose Director shall have primary responsibility for all activities and matters relating to both home ownership and rental housing counseling.

(Sec. 1443) Amends the Housing and Urban Development Act of 1968 to require the HUD Secretary to: (1) prescribe counseling procedures for home ownership and rental counseling; and (2) provide for certification of computer software programs for consumers to evaluate different residential mortgage loan proposals.

Requires the Director to: (1) develop and conduct national public service multimedia campaigns promoting housing counseling; and (2) use specified funds to conduct foreclosure rescue education programs, with emphasis upon retirement and low-income minority communities. Authorizes appropriations for FY2009-FY2011.

(Sec. 1444) Requires the HUD Secretary to provide financial assistance (grants) to HUD-approved housing counseling agencies and state housing finance agencies that offer home ownership and rental counseling.

Authorizes appropriations for FY2009-FY2012 for: (1) the Office of Housing Counseling; (2) the Director of Housing Counseling; and (3) assistance to entities providing home ownership and rental counseling.

(Sec. 1445) Requires an organization that receives federal assistance for counseling activities to be HUD-certified.

(Sec. 1446) Directs the HUD Secretary to study and report to Congress on: (1) the root causes of home loan defaults and foreclosures, including the role of escrow accounts in helping prime and nonprime borrowers to avoid defaults and foreclosures; and (2) the role of computer registries of mortgages, including those used for trading mortgage loans.

(Sec. 1447) Directs the HUD Secretary and the CFPB Director to establish on a census tract basis a default and foreclosure database on mortgage loans for one- to four-unit residential properties, and to make such information publicly available.

(Sec. 1449) Directs the Secretary to develop a funds-tracking system, including accountability and transparency criteria, to ensure that grant recipients use all amounts of financial assistance in accordance with specified requirements.

(Sec. 1450) Amends the Real Estate Settlement Procedures Act of 1974 (RESPA) to require the CFPB Director to: (1) prepare, at least once every five years, a booklet to help federally related mortgage loan applicants of different ethnic and cultural backgrounds to understand the nature and costs of real estate settlement services; and (2) distribute to all lenders that make federally related mortgage loans both the booklets and lists of HUD-certified home ownership counselors.

(Sec. 1451) Requires the HUD Secretary to take necessary steps to inform potential home buyers, through FHA-approved mortgage lenders, of the availability and importance of obtaining an independent home inspection.

(Sec. 1452) Allocates specified funds to the Neighborhood Reinvestment Corporation for activities to make borrowers who are delinquent on certain loans aware of the dangers of fraudulent activities associated with foreclosure.

Subtitle E: Mortgage Servicing - (Sec. 1461) Amends TILA to require a creditor in a non-credit card consumer credit transaction secured by a first lien on the principal dwelling (other than a reverse mortgage) to establish an escrow or impound account for mandatory periodic payments or premiums (including taxes, insurance, and ground rents). Allows exemptions from this requirement for creditors that operate predominantly in rural or underserved areas and retain their mortgage originations in portfolio.

Prohibits making an escrow or impound account a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the consumer's principal dwelling unless specified circumstances exist.

Requires such escrow or impound account to remain in existence for at least five years until sufficient equity exists so that private mortgage insurance is no longer required, or unless the underlying mortgage is terminated.

States that: (1) escrow accounts need not be established for loans secured by shares in a cooperative; and (2) insurance premiums need not be included in escrow accounts for loans secured by condominium units if the condominium association has an obligation to unit owners to maintain a master insurance policy.

Requires: (1) escrow accounts to be established in a federally insured depository institution or credit union; and (2) each creditor to pay interest on the amount held in such accounts as required by state or federal law.

Requires specified consumer disclosures regarding a mandatory escrow or impound account before consummation of the credit transaction giving rise to such account.

(Sec. 1462) Requires creditors to provide specified disclosures for consumers who waive escrow services.

(Sec. 1463) Amends RESPA to prohibit the servicer of a federally related mortgage from engaging in certain practices, including obtaining force-placed hazard insurance, unless there is reason to believe the borrower has failed to comply with the loan contract requirements. (Force-placed hazard insurance is coverage obtained by the servicer when the borrower has failed to comply with hazard insurance requirements under the terms of the mortgage.)

Prescribes notice and borrower non-response requirements for loan servicers to obtain force-placed insurance.

Doubles the penalties for loan servicer noncompliance with RESPA disclosure requirements.

Reduces from 20 days to 5 days the time limit within which loan servicers are required to respond to borrower inquiries.

Requires any remaining escrow balance that is within the control of the loan servicer at the time the loan is paid off to be: (1) promptly returned to the borrower within 20 business days; or (2) credited to a similar account for a new mortgage loan to the borrower with the same lender.

(Sec. 1464) Amends TILA to prohibit a loan servicer, except in a specified circumstance, from failing to credit a payment to the consumer's account as of the date of receipt.

Requires a creditor or servicer of a home loan to send an accurate payoff balance no later than seven business days after receipt of a written request for it.

(Sec. 1465) Requires repayment disclosures regarding a first mortgage- or lien-secured consumer credit transaction to take into account the amount of monthly escrow payments, including: (1) the taxable assessed value of the real property securing the transaction after consummation of the transaction, (2) the value of any improvements on the property or to be constructed on it, and (3) the replacement costs of the property for hazard insurance in the initial year after the transaction.

Subtitle F: Appraisal Activities - (Sec. 1471) Amends TILA to set forth property appraisal requirements for a creditor who extends higher-risk mortgage credit to a consumer, including: (1) a written appraisal performed by a certified or licensed appraiser who conducts a physical property visit of the interior of the mortgaged property; (2) a free copy of such appraisal to the applicant before the transaction closing date; and (3) a statement by the creditor at the time of the initial mortgage application that the appraisal is for its sole use, and that the applicant, at its own expense, may choose to have a separate appraisal.

Requires a creditor to obtain a second appraisal from a different certified or licensed appraiser if the purpose of a higher-risk mortgage (other than a HUD-insured reverse mortgage) is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price lower than the current sale price of the property.

(Sec. 1472)Prescribes appraisal independence requirements. Declares unlawful specified acts or practices that violate such requirements in connection with a consumer credit transaction secured by the consumer's principal dwelling.

Includes among unfair and deceptive practices any appraisal of a property offered as security in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person conducting or involved in the appraisal.

Includes, in addition, among such practices: (1) mischaracterizing, or suborning mischaracterization of, the appraised value of the property securing the extension of the credit; (2) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the transaction; and (3) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered.

Prohibits a certified or licensed appraiser or appraisal management company from having an interest, financial or otherwise, in the property or transaction involving the appraisal.

Authorizes the Board, the CFPB, and designated federal agencies to jointly issue regulations addressing the issue of appraisal report portability, including regulations that ensure such portability between lenders for a consumer credit transaction secured by a 1-4 unit single family residence that is the principal dwelling of the consumer, or mortgage brokerage services for such a transaction.

Subjects to civil penalties violations of appraisal independence requirements.

Declares that the deference that a court accords to the CFPB with respect to its determination of the meaning or interpretation of any TILA provisions (except property appraisal requirements) shall be applied as if the CFPB were the only agency authorized to apply, enforce, interpret, or administer such provisions.

(Sec. 1473) Amends the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) to condition the establishment by a federal financial institutions regulatory agency and the Resolution Trust Corporation of a threshold level at or below which a certified or licensed appraiser is not required to perform appraisals in connection with federally related transactions on the agency's receiving concurrence from the CFPB that such threshold level provides reasonable protection for consumers who purchase 1-4 unit single-family residences.

Directs the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) to detail in its annual report to Congress: (1) the results of all audits of state appraiser regulatory agencies; and (2) an accounting of disapproved actions and warnings taken in the previous year, including the conditions causing the disapproval and the actions taken to achieve compliance.

Requires Subcommittee meetings to be open to the public, but authorizes the closing of certain portions related to personnel and review of preliminary state audit reports.

Requires the Subcommittee to: (1) monitor state requirements for the registration and supervision of an appraisal management company; and (2) maintain a national registry of appraisal management companies that either are registered with and subject to supervision of a state appraiser certifying and licensing agency or are operating subsidiaries of a federally regulated financial institution.

Directs designated federal financial regulatory agencies, including the Federal Reserve Board and the CFPB, to jointly establish, by rule, minimum requirements a state must apply in the registration of appraisal management companies. Applies these same requirements to, and exempts from any state registration requirement, an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a federal financial institution regulatory age ncy.

Sets forth: (1) registration limitations; (2) additional state agency reporting requirements; and (3) revised registry fees.

Authorizes the Subcommittee to award grants to state appraiser certifying and licensing agencies in order to support their compliance with this Act.

Requires the requirements for state licensing of an appraiser to meet or exceed the minimum cr iteria issued by the Appraisal Qualifications Board of The Appraisal Foundation for the licensing of real estate appraisers.

Requires the Subcommittee to monitor whether each state appraiser certifying and licensing agency: (1) processes complaints and completes investigations in a reasonable time period; (2) appropriately disciplines sanctioned appraisers and appraisal management companies; (3) maintains an effective regulatory program; and (4) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies.

Authorizes the Subcommittee to: (1) remove a state licensed or certified appraiser or a registered appraisal management company from a national registry on an interim basis pending state agency action on licensing, certification, registration, and disciplinary proceedings; (2) impose sanctions against a state agency that fails to have an effective appraiser regulatory program; and (3) impose interim actions and suspensions against a state agency as an alternative to, or in advance of, derecognition of a state agency.

Prohibits appraisal of a federally related transaction by a state-certified or -licensed appraiser unless the state appraiser certifying or licensing agency has in place a policy of issuing a reciprocal certification or license for an individual from another state who meets certain state licensure standards.

Requires the Subcommittee to monitor each state appraiser certifying and licensing agency to determine whether: (1) its policies, practices, and procedures are consistent with maintaining appraiser independence; and (2) such state has effective regulations, and policies regarding the maintenance of appraiser independence.

Requires the Subcommittee to establish and operate an Appraisal Complaint National Hotline, including a toll-free telephone number and an email address.

Requires designated federal financial institution regulatory agencies, including the CFPB and the Subcommittee,to promulgate regulations to implement quality control standards governing automated valuation models (computerized models used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling).

Prohibits the use of broker price opinions as the primary basis to evaluate property for loan origination in connection with a residential mortgage loan secured by such property. (Defines broker price opinion as an estimate prepared by a real estate broker, agent, or sales person that: (1) details the probable selling price of a particular piece of real estate property; and (2) provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales; but (3) does not include an automated valuation model.)

Amends the Federal Financial Institutions Examination Council Act of 1978 to require that at all times at least one member of the Appraisal Subcommittee have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession.

(Sec. 1474) Amends the Equal Credit Opportunity Act (ECOA) to revise requirements that creditors provide loan applicants a copy of the appraisal report used in connection with the loan application secured by a lien on residential real property. Repeals the condition that the loan applicant request the copy. Requires a creditor to furnish the applicant with a copy of all written appraisals and valuations within three days after the closing of the loan.

(Sec. 1475) Amends RESPA to permit the standard real estate settlement form to disclose, in the case of an appraisal coordinated by an appraisal management company, the fee paid directly by the company to the appraiser and the company's administration fee.

(Sec. 1476) Instructs the Government Accountability Office to study : (1) the effectiveness and impact of certain appraisal methods, models, and distribution channels; (2) the Home Valuation Code of Conduct (HVCC); and (3) certain Appraisal Subcommittee functions, including its ability to monitor and enforce state and federal certification requirements and standards.

Subtitle G: Mortgage Resolution and Modification - (Sec. 1481) Directs the HUD Secretary to develop a program to ensure protection of current and future tenants and at-risk multifamily properties.

Denies persons convicted within the last 10 years of specified crimes involving a mortgage or real estate transaction any eligibility for mortgage assistance from the Making Home Affordable Program authorized or funded by the Emergency Economic Stabilization Act of 2008.

(Sec. 1482) Instructs the Secretary of the Treasury to revise the supplemental directives and other guidelines for the Home Affordable Modification Program (HAMP) of the Making Home Affordable initiative to require each mortgage servicer participating in HAMP to provide each borrower denied a mortgage modification with all borrower-related and mortgage-related input data used in any net present value (NPV) analyses performed in connection with the mortgage.

Directs the Secretary to establish a public website that provides: (1) a calculator for NPV analyses of a mortgage, based on the Secretary's methodology for calculating such value, that mortgagors can use to enter information regarding their own mortgages; and (2) a determination after entering such information of whether such mortgage would be accepted or rejected for modification under the Program.

(Sec. 1483) Directs the Secretary of the Treasury to revise the HAMP guidelines to make public the data being collected from each participating mortgage servicer and lender.

(Sec. 1484) Amends the Protecting Tenants at Foreclosure Act with respect to the requirement that any immediate successor in interest in residential real property pursuant to foreclosure of a federally-related mortgage loan assume that interest subject to certain conditions. Deems the date of a notice of such a foreclosure to be the date upon which complete title to a property is transferred to a successor entity or person as a result of a court order or pursuant to provisions in a mortgage, deed of trust, or security deed.

Subtitle H: Miscellaneous Provisions - (Sec. 1491) Expresses the sense of Congress that efforts to enhance the terms of residential mortgage credit and practices would be incomplete without enactment of meaningful structural reforms of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).

(Sec. 1492) Directs the Comptroller General to study certain interagency efforts to crackdown on mortgage foreclosure rescue scams and loan modification fraud in order to advise Congress on the risks and vulnerabilities of emerging schemes in the loan modification arena.

(Sec. 1493) Amends the Helping Families Save Their Homes Act of 2009 to require each state to report certain mortgage data.

(Sec. 1494) Directs the HUD Secretary to study the effect upon residential mortgage loan foreclosures of: (1) the presence of drywall imported from China between 2004 and the end of 2007; and (2) the availability of property insurance for residential structures in which such drywall is present.

(Sec. 1496) Makes necessary sums available to the HUD Secretary to: (1) provide $1 billion in emergency mortgage assistance through the Emergency Homeowners' Relief Fund for such purpose.

Amends the Emergency Housing Act of 1975 to permit emergency mortgage assistance if the mortgagor has incurred a substantial reduction in income as a result of involuntary unemployment or underemployment due to medical conditions.

Revises requirements for emergency mortgage assistance to replace the maximum amount of $250 per month with an amount determined reasonably necessary to supplement what the homeowner is capable of contributing toward the mortgage payment. Caps the aggregate amount of such assistance to any homeowner at $50,000.

Makes the interest rate fixed for the life of an insured loan or credit advance. Limits the interest rate to that generally charged for HUD-insured mortgages on single-family housing. Prohibits the charging of any interest on deferred interest on such a loan or credit advance. Requires the Secretary, in establishing rates, terms, and conditions for loans or advances of credit, to take into account a homeowner's ability to repay such loan or credit advance.

Authorizes any eligible homeowner who receives such a grant or credit advance to repay the loan in full, without penalty, by lump sum or by installment payments at any time before it becomes due and payable.

Repeals the 40% cap on the total amount of loans and credit advances by a financial institution that may be insured, and the 90% cap on the payment of any single loss claim that may be paid out.

Increases from $1.5 billion to $3 billion the cap on the aggregate amount of insured loans and advances, but includes emergency mortgage relief payments in such amount.

Directs the Secretary to establish underwriting guidelines or procedures to allocate amounts made available for incurred loans and advances and for emergency relief payments, based on the likelihood that a mortgagor will be able to resume mortgage payments.

Repeals the authorization of appropriations for the emergency mortgage relief program, but extends through FY2011 the authority to insure loans and credit advances under the program and to make emergency mortgage relief payments.

Repeals the authority of each federal supervisory agency to waive or relax limitations pertaining to their operations with respect to mortgage delinquencies in order to cause or encourage forebearance in residential mortgage loan foreclosures. Repeals certain reporting requirements as well as the authority of the FDIC to make credit advances to insured banks to facilitate their participation in the emergency mortgage relief program.

(Sec. 1497) Makes $1 billion available to the HUD Secretary for assistance to state and local governments for the redevelopment of abandoned and foreclosed homes.

(Sec. 1498) Directs the HUD Secretary to establish a grants program to provide a full range of foreclosure legal assistance to low- and moderate-income homeowners and tenants related to home ownership preservation, home foreclosure prevention, and tenancy associated with home foreclosure. Authorizes appropriations for FY2009-FY2012.

Title XV: Miscellaneous Provisions - (Sec. 1501) Amends the Bretton Woods Agreements Act to direct the Secretary of the Treasury to instruct the United States Executive Director at the International Monetary Fund (IMF) to: (1) evaluate, before consideration by the IMF Board of Executive Directors, any proposal to make a loan to a country whose public debt exceeds its gross domestic product if that country is not eligible for assistance from the International Development Association; and (2) oppose the proposal if such evaluation indicates the proposed loan is unlikely to be repaid in full.

Directs the Secretary to assess annually to Congress the likelihood that loans made pursuant to such proposals will be repaid in full.

(Sec. 1502) Expresses the sense of Congress that the exploitation and trade of conflict minerals originating in the Democratic Republic of the Congo (DRC) helps finance conflict characterized by extreme levels of violence in the eastern DRC, particularly sexual- and gender-based violence, and contributes to an emergency humanitarian situation therein, warranting certain disclosures under the Securities Exchange Act of 1934.

Amends the Securities Exchange Act of 1934 to direct the SEC to issue regulations requiring persons for which conflict minerals are necessary to the functionality or production of a product manufactured by that person to make annual disclosures of whether any such conflict minerals originated in the DRC or an adjoining country. Requires the report, regarding any minerals that did originate in the DRC or an adjoining country, to describe: (1) due diligence measures taken on the source and chain of custody of such minerals; and (2) the products manufactured, or contracted to be manufactured, that are not DRC conflict free. Defines "DRC conflict free" as products that do not contain minerals that directly or indirectly finance or benefit armed groups in the DRC or an adjoining country.

Instructs the Secretary of State to: (1) submit to Congress a strategy to address the linkages between human rights abuses, armed groups, mining of conflict minerals, and commercial products; (2) produce and update periodically a map, available to the public, of mineral-rich zones, trade routes, and areas under the control of armed groups in the DRC and adjoining countries ("Conflict Minerals Map"); and (3) publish in the Federal Register a notice of intent to declare a mineral a conflict mineral.

Directs the Comptroller General to assess for Congress: (1) the rate of sexual- and gender-based violence in war-torn areas of the DRC and adjoining countries; and (2) the effectiveness of these newly required reports in promoting peace and security in such countries.

Requires the Secretary of Commerce to assess for Congress the accuracy of independent private sector audits and other due diligence processes.

(Sec. 1503) Requires securities issuers required to report to the SEC that are coal or other mine operators, or that have subsidiaries that are mine operators, to include in periodic reports to the SEC, among other things, the total number per mine of violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a mine safety or health hazard for which the operator received a citation from the Mine Safety and Health Administration. Requires reports, also, of imminent danger orders and written notices of patterns of violations of such standards, or the potential to have such a pattern.

(Sec. 1504) Amends the Securities Exchange Act of 1934 to direct the SEC to: (1) promulgate final rules requiring each resource extraction issuer to include in its annual report information, in an interactive data format, detailing any payment made by the issuer, a subsidiary, or an entity under its control to a foreign government or the federal government for the purpose of the commercial development of oil, natural gas, or minerals; and (2) make a compilation of such information publicly accessible online.

Authorizes appropriations.

(Sec. 1505) Directs the Comptroller General to assess for Congress: (1) the relative independence, effectiveness, and expertise of presidentially appointed inspectors general and inspectors general of designated federal entities; and (2) the effects on independence of the amendments to the Inspector General Act of 1978 made by this Act.

(Sec. 1506) Directs the FDIC to evaluate for Congress: (1) the definition of core deposits for the purpose of calculating the insurance premiums of banks; (2) the potential impact on the Deposit Insurance Fund of revising the definitions of brokered deposits and core deposits to better distinguish between them; (3) the differences between core deposits and brokered deposits and their role in the economy and the domestic banking sector; (4) the potential stimulative effect on local economies of redefining core deposits; and (5) the competitive parity between large institutions and community banks that could result from redefining core deposits.

Title XVI: Section 1256 Contracts - Amends the Internal Revenue Code to exclude from the definition of a Section 1256 contract any interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap, or similar agreement. (Thus shields such instruments from treatment as sold for its fair market value [marked to market] on the last business day of the taxable year for capital gains or loss taxation purposes).

Index

Index note: Article titles and their page numbers are in **boldface**.

A

I

S

V

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