

White-Collar And Organized Crime Crime as a Job

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Learning Objectives

13.1 What is the history of white-collar crime in this country?

13.2 What is white-collar crime? What are the various kinds of white-collar crimes?

13.3 What is corporate crime? Political corruption?

How do they differ from more traditional forms of white-collar crime?

13.4 What are the causes of white-collar crime? How do the motivations of white-collar criminals differ from those of other criminals?

13.5 How can white-collar and corporate crime be controlled?

13.6 What is organized crime and how does it differ from white-collar crime?

13.7 Identify some international criminal organizations.

13.8 What is transnational organized crime?

13.9 What is the RICO statute and how does it enable the use of asset forfeiture as an enforcement technique?

13.10 How can organized crime be controlled?

Introduction

In December 2017, Oliver Schmidt, a Volkswagen executive in charge of VW's environmental and engineering office in Auburn Hills, Michigan, was sentenced to a seven-year prison term and fined \$400,000 after he pled guilty to charges of conspiring to mislead U.S. regulators and to violating the federal Clean Air Act. The plea came after Volkswagen admitted that it had used software in some of its cars that was designed to falsely improve the results of exhaust emissions tests. Had Schmidt not taken the deal offered by prosecutors, he could have been sentenced to as many as 169 years in prison.¹⁵²⁵

A Brief History of White-Collar Crime

13.1 What is the history of white-collar crime in this country?

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White-collar crime is not unique to the twenty-first century. Financial scandals have a long and ubiquitous history in the United States, sometimes even involving government regulators. In 1929, the Teapot Dome scandal, which embroiled the administration of President Warren Harding, began in 1921 when Secretary of the Interior Albert B. Fall secretly leased naval oil reserves at Teapot Dome, Wyoming, and Elk Hills, California, to developers without asking for competitive bids. A Senate investigation later revealed that large sums of federal money had been loaned to developers without interest. Fall was eventually fined and sent to prison, and a 1927 U.S. Supreme Court decision ordered the fields restored to the U.S. government.

The insider-trading scam of stock market tycoon Ivan Boesky and the securities fraud conviction of junk-bond king Michael Milken in the 1980s demonstrated again how fortunes could be amassed through white-collar law violations. Boesky was estimated to have netted a profit of \$250 million for himself and a few close friends; Milken paid a ~~\$600 million~~ fine—far less

netted a profit of \$250 million for himself and a few close friends; Milken paid a \$600 million fine—far less than the amount he is estimated to have reaped from illegal bond trading.

The nationwide savings and loan (S&L) disaster of the 1980s, which some have called the “biggest white-collar crime in history,” serves as another example of white-collar crime. The S&L fiasco was the result of years of intentional mismanagement and personal appropriation of depositors’ funds by institutional executives. Although the actual amount of money lost or stolen during the scandal may never be known, it has been estimated to run into the hundreds of billions of dollars. The collapse of just one such institution, Charles Keating’s California-based Lincoln Savings and Loan Association, cost taxpayers—who were left to redeem the insolvent institution—approximately \$2.5 billion, and the collapse of Neil Bush’s Silverado Banking Savings and Loan in Denver cost nearly \$1 billion.



A Volkswagen production line in South Carolina. In 2017, the company admitted to installing software in some of its vehicles that produced misleading emissions readings and agreed to pay \$4.3

company admitted to installing software in some of its vehicles that produced misleading emissions readings and agreed to pay \$4.3 billion in criminal and civil penalties. How is white-collar crime different from other crimes? How is it similar?
Heriberto Rodriguez/REUTERS/Alamy Stock Photo

Another type of white-collar crime sprang from the low interest rates characteristic of the early and mid-1990s. Sham banking operations flourished by offering high interest rates and double-digit rates of return on investments, but such “phantom banks” evaporated as quickly as they were formed, leaving investors stunned and sometimes penniless.

The past two decades have seen a number of infamous white-collar crime prosecutions, including those involving executives at the former energy-trading giant Enron Corporation, which had used complex off-balance-sheet partnerships to hide losses and inflate revenues. The company’s collapse in 2001 set the stage both for massive reforms in the business and financial world and for federal and state investigations into the accounting practices and business dealings of all publicly traded companies in the United States. Enron’s bankruptcy wiped out at least \$24 billion in retirement plans, stock accounts, and mutual funds as the company’s stock plummeted.

On July 21, 2002—less than a year after the collapse of Enron—WorldCom, Inc., a huge telecommunications company, filed for what was then the largest-ever U.S. bankruptcy. At least \$11 billion of the company’s money had been lost in an accounting fraud intended to save the failing company.

One month later, a federal grand jury indicted former

One month later, a federal grand jury indicted former WorldCom top executives Buford Yates and Scott Sullivan on charges of conspiracy, **securities fraud**, and false filings with the Securities and Exchange Commission (SEC).

Yates pleaded guilty and helped federal prosecutors build cases against others at the company; he was sentenced in 2005 to a year and a day in prison. Sullivan became the government's star witness at the criminal trial of former WorldCom CEO Bernard Ebbers. Sullivan received a five-year sentence, but Ebbers was found guilty of nine counts of conspiracy, securities fraud, and false regulatory filings and was sent to prison for 25 years. For a list of Time magazine's "Top 10 Crooked CEOs" of recent years, visit <https://www.time.com/time/specials/packages/completelist/0,29569,1903155,00.html>.

Allegations of criminal wrongdoing spread to other companies. In 2002, ImClone founder Dr. Sam Waksal pleaded guilty to six federal charges of bank fraud and conspiracy involving **insider trading** (equity trading based on confidential information that could affect stocks being traded) that threatened the home-decorating empire of Martha Stewart. Prosecutors alleged that Waksal had tipped off family members and friends, including Stewart and her stockbroker, that the Food and Drug Administration (FDA) would not approve his company's experimental cancer drug, Erbitux.

Waksal, who admitted to **bank fraud** for forging the name of ImClone's chief attorney to a document

Waksal, who admitted to **bank fraud** for forging the name of ImClone's chief attorney to a document securing a line of credit, was sentenced to seven years in prison, and Martha Stewart was ordered to spend five months behind bars.¹⁵²⁶

Table 13-1 describes the terminology of financial crimes.

Table 13-1**The Terminology of Financial Crimes**

Antitrust violation: Any activity that illegally inhibits competition between companies within an industry, such as price fixing and monopolies in restraint of trade. Antitrust violations are infractions of the Sherman Act (15 U.S.C. Sections 1–7) and the Clayton Act (15 U.S.C. Sections 12–27).

Bank fraud (also financial fraud or financial institution fraud): Fraud or embezzlement that occurs within or against financial institutions that are insured or regulated by the U.S. government. Financial institution fraud includes commercial loan fraud, check fraud, counterfeit negotiable instruments, mortgage fraud, and false credit applications.

Bankruptcy fraud: The misleading of creditors through the concealment and misstatement of assets. Bankruptcy fraud also involves illegal pressure on bankruptcy petitioners.

Economic espionage/trade secret theft: The theft or misappropriation of proprietary economic information (i.e., trade secrets) from an individual, a business, or an industry.

Embezzlement: The unlawful misappropriation for personal use of money, property, or other thing of value entrusted to the offender's care, custody, or control.

Environmental law violation: Any business activity in violation of federal and state environmental laws, including the discharge of toxic substances into the air, water, or soil, especially when those substances pose a significant threat of harm to people, property, or the environment.

Government fraud: Fraud against the government, especially in connection with federal government contracting and fraud in connection with federal and/or federally funded programs. Such programs include public housing, agricultural programs, defense procurement, and government-funded educational programs. Fraudulent activities involving government contracting include bribery in contracts or procurement, collusion among contractors, false or double billing, false certification of the quality of parts or of test results, and substitution of bogus or otherwise inferior parts.

Health-care fraud: Fraudulent billing practices by health-care providers, including hospitals, home health care, ambulance services, doctors, chiropractors, psychiatric hospitals, laboratories, pharmacies, and nursing homes, that affect health-care consumers, insurance providers, and government-funded payment providers such as Medicare and Medicaid. Fraudulent activities include receiving kickbacks, billing for services not rendered, billing for unnecessary equipment, and billing for services performed by a less qualified person.

Insider trading: Equity trading based on confidential information about important events that may affect the price of the issue being traded. Because confidential information confers advantages on those who possess it, federal law prohibits them from using that knowledge to reap profits or to avoid losses in the stock market.

Insurance fraud: Fraudulent activity committed by insurance applicants, policyholders, third-party claimants, or professionals who provide insurance services to claimants. Such fraudulent activities include inflating, or "padding," actual claims and fraudulent inducements to issue policies and/or establish a lower premium rate.

Kickbacks: The return of a certain amount of money from seller to buyer as a result of a collusive agreement.

Mail fraud: The use of the U.S. mail in furtherance of criminal activity.

Money laundering: The process of converting illegally earned assets, originating as cash, to one or more alternative forms to conceal such incriminating factors as illegal origin and true ownership.

Securities fraud: The theft of money resulting from intentional manipulation of the value of equities, including stocks and bonds. Securities fraud also includes theft from securities accounts and wire fraud.

Tax evasion: Fraud committed by filing false tax returns or not filing tax returns at all.

Welfare fraud: The use of deceitful statements, practices, or devices to unlawfully obtain welfare benefits.

Wire fraud: The use of an electric or electronic communications facility to intentionally transmit a false and/or deceptive message in furtherance of a fraudulent activity.



Sources: *Cynthia Barnett, The Measurement of White-Collar Crime Using Uniform Crime Reporting Data*, Federal Bureau of Investigation, Criminal Justice Information Services Division, <http://www.fbi.gov/ucr/whitecollarforweb.pdf> (accessed June 18, 2009); Clifford Karchmer and Douglas Ruch, "State and Local Money Laundering Control Strategies," *NIJ Research in Brief* (Washington, DC: National Institute of Justice, 1992); and Legal Information Institute, "White-Collar Crime: An Overview," https://www.law.cornell.edu/wex/White-collar_crime (accessed May 14, 2019).

Understanding White-Collar Crime

13.2 What is white-collar crime? What are the various kinds of white-collar crimes?

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Is White-Collar Crime Actually Crime?



In 1939, **Edwin H. Sutherland** defined **white-collar crime** as violations of the criminal law “committed by a person of respectability and high social status in the course of his occupation.”¹⁵²⁷ Many criminologists do not properly understand crime, Sutherland claimed, because they fail to recognize that the secretive violations of public and corporate trust by those in positions of authority are just as criminal as predatory acts committed by people of lower social standing.

Sutherland also noted that white-collar criminals are far less likely to be investigated, arrested, or prosecuted than are other types of offenders. In Sutherland's day, when they were convicted, white-collar offenders were much less likely to receive active prison terms than were "common criminals." The deference shown to white-collar criminals, said Sutherland, is due primarily to their social standing. Many white-collar criminals have been well respected in their communities, and many have taken part in national affairs.

Given these kinds of sentiments, criminologists felt compelled for years to address the question "Is white-collar crime really crime?" As recently as 1987, writers on the subject were still asking, "Do persons of high standing commit crimes?"¹⁵²⁸ Although most criminologists today would answer the question with a resounding *yes*, members of the public were slower to accept the notion that violations of the criminal law by businesspeople share conceptual similarities with street crime. Attitudes, however, have quickly changed during the past few years as headline-making charges have been filed against a number of corporate scam artists and financial managers who duped investors out of billions of dollars.

Definitional Evolution of White-Collar Crime

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Between the early and later definitions of *white-collar crime*, many investigators refined its conceptual boundaries. **Herbert Edelhertz** defined *white-collar crime* as any “illegal act or series of illegal acts committed by nonphysical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantages.”

Gilbert Geis grappled with the notion of “upperworld crime,” which he called “a label designed to call attention to the violation of a variety of criminal statutes by persons who at the moment are generally not considered, in connection with such violations, to be the ‘usual’ kind of underworld and/or psychologically aberrant offenders.”

Many writers were quick to realize that “upperworld,” or white-collar, crime might have its counterpart in certain forms of blue-collar crime committed by members of less prestigious occupational groups, so the term *blue-collar crime* emerged as a way of classifying the law-violating behavior of people involved in appliance and automobile repair, yard maintenance, house cleaning, and general installation services. See the Theory versus Reality box for more on

services. See the Theory versus Reality box for more on definitions of white-collar crime.

In an effort to bring closure to the concept of work-related crime, the term **occupational crime**—“any act punishable by law that is committed through opportunity created in the course of an occupation which is legal”—emerged as a kind of catchall category that included the job-related law violations of both white- and blue-collar workers. An excellent four-part typology of occupational crime is offered by **Gary S. Green** in his book *Occupational Crime*:

1. Organizational occupational crime. An organizational occupational crime is committed for the benefit of an employer or organization, but only the employer or organization—not individual employees—benefits.

2. State authority occupational crime. A state authority occupational crime is committed by people exercising their state-based authority, is occupation specific, and can be committed only by officials in public office or those working for them.

3. Professional occupational crime. A professional occupational crime is committed by professionals while in their occupational capacity (such as physicians, attorneys, and psychologists).

4. Individual occupational crime. An individual occupational crime, committed by an individual acting alone, is a kind of catchall category that includes personal-income-tax evasion, theft of goods and services by employees, and filing of false expense reports.

and filing of false expense reports.

For an interesting presentation of white-collar and occupational crime typologies, visit the National Check Fraud Center and Cornell Law School's white-collar crime page via <http://www.ckfraud.org/whitecollar.html> and https://www.law.cornell.edu/wex/White-collar_crime.

Theory versus Reality

White-Collar Crime: The Initial Statement

At least one eminent criminologist has called the concept of white-collar crime "the most significant development in criminology, especially since World War II."ⁱ The roots of the concept go back to 1939, when Edwin Sutherland first coined the term *white-collar crime* in his presidential address to the American Sociological Society. Details of that address are discussed elsewhere in this chapter. His speech concluded with the following five points:

1. White-collar criminality is real criminality, being in all cases in violation of the criminal law.
2. White-collar criminality differs from lower-class criminality principally in implementation of the criminal law, which segregates white-collar criminals administratively from other criminals.
3. The theories of the criminologists that crime is due to poverty or to psychopathic and sociopathic conditions statistically associated with poverty are invalid because first, they are

derived from samples that are grossly biased with respect to socioeconomic status; second, they do not apply to the white-collar criminals; and third, they do not even explain the criminality of the lower class, as the factors are not related to a general process characteristic of all criminality.

4. A theory of criminal behavior that will explain both white-collar criminality and lower-class criminality is needed.

5. A hypothesis of this nature is suggested in terms of differential association and social disorganization.

Discussion Questions

1. Why is white-collar crime possibly the most significant development in criminology since World War II?

2. Why did Sutherland have to remind people that "white-collar criminality is real criminality"? Why might some have thought otherwise?

Note

i. Donald J. Newman, "White-Collar Crime: An Overview and Analysis," *Law and Contemporary Problems*, Vol. 23, No. 4 (Autumn 1958).

Source: Edwin Sutherland, "White-Collar Criminality," *American Sociological Review*, Vol. 5 (February 1940), pp. 1–12.

White-Collar Crime Today

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The chief criterion for a crime to be “white collar” is that “it occurs as a part of, or a deviation from, the violator’s occupational role.”¹⁵²⁹ This focus on the violator, rather than on the offense, in deciding whether to classify a crime as white collar was accepted by the 1967 Presidential Commission on Law Enforcement and Administration of Justice. In its classic report *The Challenge of Crime in a Free Society*, members of the commission wrote, “The ‘white-collar’ criminal is the broker who distributes fraudulent securities, the builder who deliberately uses defective material, the corporation executive who conspires to fix prices, the legislator who peddles his influence and votes for private gain, or the banker who misappropriates funds in his keeping.”¹⁵³⁰

Visit the National White Collar Crime Center and the Internet Crime Complaint Center (IC3) at <https://www.NW3C.org> and <https://www.IC3.gov>. Both report on white-collar crimes committed via the Internet. **Figure 13–1** shows the top 10 Internet crime complaints recorded by the IC3 by dollar value.

Figure 13-1

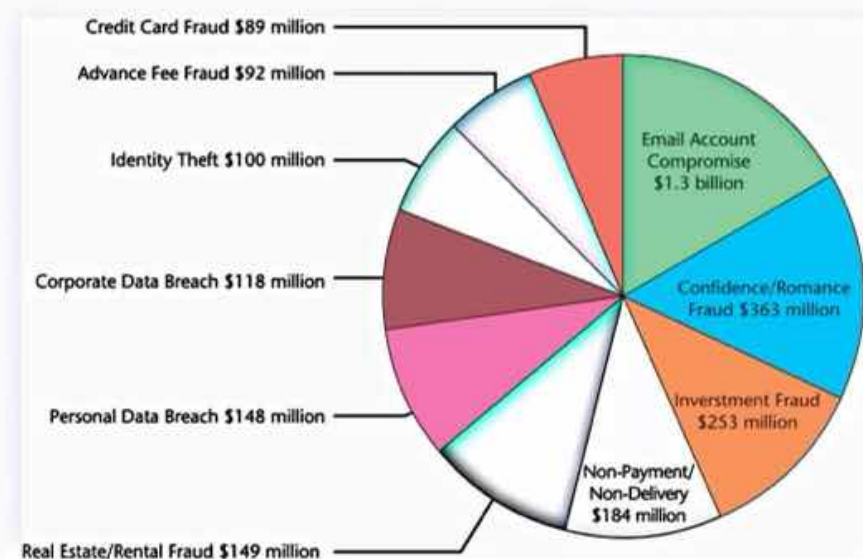
Top 10 Internet Crime Complaints by Victim Loss



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Figure 13-1

Top 10 Internet Crime Complaints by Victim Loss



Source: The FBI's Internet Crime Complaint Center.

Survey

White-Collar Crime



Corporate Crime

13.3 What is corporate crime? Political corruption? How do they differ from more traditional forms of white collar crime?

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Corporate Crime



Corporate malfeasance, which is essentially another form of white-collar crime, has been dubbed “corporate crime.” **Corporate crime** can be defined as “a violation of a criminal statute either by a corporate entity or by its executives, employees, or agents acting on behalf of and for the benefit of the corporation, partnership, or other form of business entity.”¹⁵³⁴

Corporate crimes come in many forms, ranging from prior knowledge about automobile defects to price fixing and insider securities trading. Culpability, which often results in ~~civil suits against the corporation~~ civil suits against the corporation along

with possible criminal prosecutions, is greatest where company officials can be shown to have had advance knowledge about product defects, dangerous conditions, or illegal behavior on the part of employees.

In 1909, in the case of *New York Central and Hudson River Railroad Co. v. United States*,¹⁵³⁵ the U.S. Supreme Court reasoned that the criminal acts and intentions of a company's employees can extend to the company itself. The Court said that because corporations could be held liable for civil wrongs involving their employees' bad conduct, it would be appropriate to hold them criminally liable as well. In a precedent-setting decision assigning legal liability to a corporate entity, the justices wrote, "Since a corporation acts by its officers and agents, their purposes, motives, and intent are just as much those of the corporation as are the things done."

In 2017, in an example of how corporations can be held criminally responsible for the acts of their officials, Volkswagen AG was fined \$2.8 billion in federal court in Detroit, Michigan.¹⁵³⁶ The criminal conviction and fine stemmed from the company's decade-long scheme to sell diesel vehicles containing software designed to cheat on U.S. emissions tests. VW had pled guilty on March 10, 2017, to three felony counts of (1) conspiracy to defraud the United States, engage in wire fraud, and violate the Clean Air Act; (2) obstruction of justice; and (3) importation of merchandise by means of false statements.¹⁵³⁷ During the sentencing hearing, the court accepted the parties' plea agreement that had been previously arranged by federal prosecutors.

Power Fasteners, Inc., of Brewster, New York, was similarly indicted in 2007 on charges of manslaughter by Massachusetts prosecutors after the epoxy products it manufactured failed in Boston's "Big Dig" tunnel in 2006, allowing 20 tons of concrete ceiling panels to collapse onto a car below, killing the passenger.¹⁵³⁸ In 2008, the company agreed to pay \$16 million to settle a civil lawsuit brought against it in exchange for a promise by prosecutors to drop manslaughter charges.¹⁵³⁹

Finally, in 2012, British Petroleum (BP) pleaded guilty to criminal charges and agreed to pay a \$4.5 billion in fines—in addition to the tens of billions of dollars it had already agreed to pay for cleanup and to reimburse victims whose livelihood had been affected by the oil spill from the company's Deepwater Horizon oil rig in 2010 in the Gulf of Mexico.¹⁵⁴⁰

It should be noted that corporate criminal liability is what some have called a unique form of "American exceptionalism," as few other countries hold corporations criminally accountable.¹⁵⁴¹

Financial Crime

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Most white-collar crimes are financial crimes, meaning illegal activities generally committed for monetary profit by businesses and those who run them. The FBI classifies the following types of activities as financial crimes: corporate fraud, securities and commodities fraud, health-care fraud, mortgage fraud, insurance fraud, mass-marketing fraud, welfare fraud, theft or piracy of intellectual property, and money laundering (Figure 13-2).¹⁵⁴² Many of these categories are discussed in the pages that follow.

Check Your Understanding

Figure 13-2: Types of Financial Crime



Source: Federal Bureau of Investigation.

Corporate Fraud

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The term **corporate fraud** refers to accounting schemes, self-dealing by corporate executives, and obstruction of justice as well as insider trading, kickbacks, and misuse of corporate property for personal gain. The majority of these cases pursued at the federal level are built on accounting schemes intended to deceive investors, auditors, and analysts about the financial health of a corporation; in addition to significant financial losses to investors, corporate fraud has the potential to cause damage to both investor confidence and the U.S. economy.

Corporate fraud sometimes involves the backdating of executive stock options under which the date of options is set to a time in the past when the price of the stock was lower than on the date the options were actually issued. Backdating stock options inflates the value of the options to the holder at the expense of regular shareholders.

Obstruction of justice occurs when activities are undertaken that are designed to conceal any of the types of criminal conduct noted here, particularly when the obstruction impedes the inquiries of the SEC, other regulatory agencies, and/or law enforcement agencies.

Securities and Commodities Fraud

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Securities and commodities fraud includes crimes such as stock market manipulation, high-yield-investment fraud (Ponzi schemes, pyramid schemes, and prime bank schemes), advance fee fraud, hedge fund fraud, commodities fraud, foreign exchange fraud, and broker embezzlement.

Stock market manipulation schemes (commonly referred to as “pump and dumps”) create artificial buying pressure for a targeted security, generally a low-volume stock in the over-the-counter securities market, that is largely controlled by the fraud perpetrators. This artificially increased trading volume unfairly increases the price of the targeted security (the “pump”), which is rapidly sold off into the inflated market created for the security by the fraud perpetrators (the “dump”), resulting in illicit gains for the perpetrators and losses for innocent third-party investors.

High-yield-investment fraud takes various forms, all of which are characterized by offers of low- or no-risk investments that guarantee unusually high rates of return. **Ponzi schemes** use money collected from new investors, rather than business profits, to pay high rates of return promised to earlier investors, giving them the impression that this is a legitimate money-making enterprise when, in reality, investors' money is

them the impression that this is a legitimate money-making enterprise when, in reality, investors' money is the only source of funding. The term *pyramid scheme* refers to money collected from newer victims of the fraud to pay earlier victims to provide a veneer of legitimacy; the victims themselves are induced to recruit more victims through the payment of recruitment commissions. *Prime bank schemes* (another form of high-yield-investment fraud) induce victims to invest in financial instruments, allegedly issued by well-known institutions, offering risk-free opportunities for high rates of return. The benefits are supposedly the result of access to a secret worldwide exchange ordinarily open only to the world's largest financial institutions, but such networks don't exist or the perpetrators don't have access to them, and the perpetrators keep the money with which they've been entrusted.

Advance fee fraud encompasses a broad variety of schemes designed to induce victims into remitting upfront payments in exchange for the promise of goods, services, and/or prizes; victims are informed that to participate in this promising investment opportunity, they must first pay various taxes and/or fees—which go directly to the perpetrators.

Hedge fund fraud uses private investment partnerships that have generally experienced a relative lack of regulatory scrutiny, and the fraud perpetrated by fund managers can involve the overstatement or misappropriation of fund assets overcharges for fund management fees, insider trading, market timing, and late trading.

Commodities fraud typically involves the deceptive or fraudulent sale of commodities investments (e.g., gold, silver, oil, copper, and natural gas); false or deceptive sales practices are used to solicit victim funds for commodities transactions that either never occur or are inconsistent with the original sales promises.

Commodities market participants may also attempt to illegally manipulate the market for a commodity by fraudulently reporting price information or cornering the market to artificially increase the price of the targeted commodity.

Foreign exchange fraud uses false or deceptive sales practices alleging high rates of return for minimal risk to induce victims to invest in the foreign currency exchange market. The transactions never occur or are executed for the sole purpose of generating excessive trading commission—in breach of the trader's responsibilities to the client. Alternatively, individual currency traders employed by large financial institutions may illegally attempt to manipulate foreign currency exchange prices to generate illicit trading profits for their own enrichment.

Schemes using *broker embezzlement* involve illicit, unauthorized actions by brokers to steal directly from their clients; these may be facilitated by the forging of client documents, the doctoring of account statements, or unauthorized trading and fund transfers in violation of the broker's legal obligations to the client.

According to the FBI, the losses associated with these types of fraud range from the macroeconomic (erosion of investor confidence in capital markets) to the

Securities and Commodities Fraud

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Scandals, Government Collusion, and Political Corruption

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No discussion of white-collar crime would be complete without mention of government corruption. Like business people, government officials and their cronies are in a position to profit from shady or illegal activities. One analyst, in fact, notes that “corruption is a pervasive concept in western political thought.”¹⁵⁶¹

Take, for example, the case of Mexican drug lord Joaquin “El Chapo” Guzman, 61, who stood trial in 2019 in New York City after his extradition from Mexico a year earlier. At the start of Guzman’s trial, his defense attorneys asked the jury, “How did [Guzman] get away being the biggest narco trafficker on the planet. . .? I’m going to tell you. . .: he pays for it. He bribes the entire government of Mexico, including up to the very top: the current president of Mexico. And for good measure, the previous one as well.”¹⁵⁶² During Guzman’s trial, a former associate testified that Guzman, once head of the Sinaloa Cartel, paid a \$100 million bribe to Mexico’s then-president Enrique Pena Nieto. Alex Cifuentes, who once described himself as “Guzman’s right-hand man,” told prosecutors that shortly after he was elected, Pena Nieto reached out to Guzman, asking for \$250 million saying that if he paid the amount requested, he wouldn’t have to live in

the amount requested, he wouldn't have to live in hiding anymore. When told about the allegations, a spokesperson for Pena Nieto, called them "false, defamatory and absurd." Jesus Zambada, another Sinola cartel member, also testified at trial that he had paid a multimilliondollar bribe to an aide of Mexican President Andres Manuel Lopez Obrador, when Lopez Obrador was mayor of Mexico City. U.S. prosecutors soon asked the judge presiding over Guzman's trial to block testimony about high-level corruption, and he decided to prevent Guzman's lawyers from questioning witnesses any further about Lopez Obrador, Mexico's sitting president.

Politics in the United States is not free from corruption. In 2018, Paul Manafort, Campaign Chairman for President Donald Trump, was convicted of filing false tax returns, and bank fraud. A number of other government officials who had served in the Trump white house were also indicted or convicted of criminal activity, including Albert Kelly, former EPA Superfund Task Force Director, and George Papadopoulos, former Trump Foreign Policy Advisor, who pled guilty to making false statements to the FBI.

Some people claim that "big money has a stranglehold on our country's political system," and that it is destroying American democracy. One of the problems is the permitted practice of lobbying, under which promoters of corporations, wealthy individuals, and special interest groups attempt to sway members of congress to create and enact legislation favorable to them and their interests. In 1972, U.S. Representative Billy Tauzin, then-chairman of the House Energy and Commerce Committee, ~~drafted the Medicare~~

Commerce Committee, drafted the Medicare prescription drug bill. The bill, once passed, became Medicare's prescription drug benefit plan. Tauzin had received close to \$300,000 in campaign contributions from drug makers, health products companies, and some health professionals. The legislation that Tauzin drafted fell in line with pharmaceutical demands to avoid price controls on drugs, and to forbid the federal government, the largest purchaser of prescription drugs, from entering into negotiations with pharmaceutical manufacturers to lower drug prices.¹⁵⁶³ After Tauzin left congress, he went to work as a **lobbyist** for PhRMA, the pharmaceutical industry's lobbying arm. His starting salary was said to be about \$2 million per year, and he eventually rose in rank within the company to become its chief executive officer.

Not all political corruption ends up being exposed by federal prosecutors. Much of it is simply regarded as "politics as usual." Such behavior, even though it may be seen as corrupt by many people, does not violate the law because it is undertaken by people who make the law, or by people who are influential in having laws made or changed. In the 1990s, for example, Clinton-era Treasury Secretary Robert Rubin, a former co-chairman of Goldman Sachs, one of our nation's biggest investment banks, worked to influence Senators in an effort to repeal the Glass-Steagall Act. The Act separated investment banking from commercial banking, and had been passed during the administration of Franklin Delano Roosevelt. The act protected ordinary Americans' bank deposits from being used by investment bankers in risky futures trading. which sometimes involves fraudulent

securities. Rubin's efforts were undertaken in support of Wall Street brokerage firms, and big banks—but arguably hurt average Americans. Some people suggest that the repeal of Glass-Steagall brought about the dubious loans of the 1990s, which led to the crash of the housing market and the Great Recession that began in 2008.

Corruption has plagued American politics throughout history. In 1873, for example, William “Boss” Tweed was convicted of taking part in a corruption plot (known as the Tammany Hall scandal) that stole over \$1 billion (in today's money) from New York City and the state of New York during the Civil War. Similarly, in the late 1970s, Tennessee Governor Ray Blanton, was accused of selling pardons to convicted offenders in state's prison system. Blanton pardoned 24 convicted murderers and 28 other prisoners shortly before his term in office ended, with many people charging that money had changed hands. In a case with more supporting evidence, Republican Budd Dwyer of Pennsylvania committed suicide one day before he was to be sentenced in federal court for taking hundreds of thousands of dollars in campaign contributions from a computer company who was awarded a \$4 million contract in return. Another corrupt American politician, Edwin Edwards, democratic governor of Louisiana from 1972 to 1996, was convicted of extorting payments for lucrative riverboat casino licenses on the Mississippi River. In a similar scandal, George Ryan, who was Governor of Illinois from 1999 until 2003, was convicted in 2008 on 22 counts of racketeering, bribery, money laundering, extortion, and tax fraud. The charges stemmed from bribes that his office had taken ~~to give licenses to unqualified truck~~

office had taken to give licenses to unqualified truck drivers. In 2002, James Traficant was expelled from the U.S. Congress by a vote of 420–1 after his conviction on 10 felony charges involving bribery, tax evasion, and racketeering. The list of corrupt American politicians is lengthy, and includes names like Kwame M. Kilpatrick (Detroit's Mayor from 2002 to 2008); Warren G. Harding (associated with the Teapot Dome scandal in 1921); Huey Long, Governor of Louisiana from 1928 to 1932); ex-New Orleans mayor Mayor Ray Nagin; and Rod Blagojevich (Illinois Governor from 2002 to 2009).

Terrorism and White-Collar Crime

Audio

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Terrorist activity frequently involves some form of white-collar crime because terrorists need money for daily living expenses and for weapons, travel, and communications. Terrorist groups also frequently send a portion of the money acquired from illegal activities back to their home country or pass it along to those higher up in the chain of command. Involvement in white-collar crime allows terrorist groups to maintain a significantly lower profile than if they raised funds through other crimes such as bank robberies and illegal drug sales.

John Kane and April Wall, in a report prepared for the White Collar Crime Center, pointed out that “curtailing terrorist activity may be achieved through the combined efforts of nations, through legislation that criminalizes the financing of terrorism, modifications to regulations that govern nonprofit or charity-based corporations, international cooperation, and a willingness of the international banking community to adhere to reporting rules designed to detect money laundering and suspicious activity” and that shell companies have been used by terrorist groups to receive and distribute money.¹⁵⁶⁴ The term *shell companies* refers to entities engaged in legitimate activities to establish a good reputation in the business community and provide a veneer of legitimacy; they

community and provide a veneer of legitimacy; they can launder funds by creating invoices for nonexistent products or services that then appear to be paid by another company to provide a channel for profits from illegal activities (such as insurance fraud and identity theft) so that the money enters the legitimate flow of cash disguised as revenue from legitimate activities. In 2001, for example, an American telecommunications company was indicted on charges of aiding members of al-Qaeda in preparation for the 9/11 terrorist attacks by handling more than \$500,000 in monthly money transfers. **Table 13-2** provides examples of the kinds of white-collar crimes associated with terrorism in recent years, along with information on federal criminal statutes that these kinds of activities violate.

Table 13-2

White-Collar Crimes Associated with Terrorism Cases

TYPE OF OFFENSE	DESCRIPTION OF OFFENSE	STATUTE
Identification Document Fraud	Fraud in connection with identification documents	18 USC 1028
	Forgery or false use of passports	18 USC 1543
	Misuse of passports	18 USC 1544
	Fraud and misuse of visas, permits, and other documents	18 USC 1546
	Social Security fraud	42 USC 408
Financial Fraud	Bribery of public officials and witnesses	18 USC 201
	Counterfeited or forged securities of states and private entities	18 USC 513
	False statements on credit application	18 USC 1014
	Bank fraud	18 USC 1344
	Money laundering	18 USC 1956
	Unlicensed money-transmitting business	18 USC 1960

	Money laundering	18 USC 1956
	Unlicensed money-transmitting business	18 USC 1960
	Racketeering	18 USC 1962
	Transactions structured to evade reporting requirements	31 USC 5324
Mail and Wire Fraud	Mail fraud	18 USC 1341
	Fraud by wire, radio, or television	18 USC 1343
Credit Card Fraud	Fraud in connection with access devices	18 USC 1029
Tax Fraud	Materially false income tax returns	26 USC 7206
	Corrupt endeavors to impede IRS laws	26 USC 7212
Immigration Fraud	Deportable alien	8 USC 1227
	Alien failing to report address change	8 USC 1305
	Alien smuggling	8 USC 1324
	Evasion of immigration laws	8 USC 1325
	False representations as U.S. citizen	18 USC 911
	Illegal alien	18 USC 922
	False statements regarding naturalization, citizenship, or alien registry	18 USC 1015
	Unlawful procurement of citizenship or naturalization	18 USC 1425
Other Related Charges	Aiding and abetting	18 USC 2
	Conspiracy to commit offenses against or defraud the U.S.	18 USC 371
	Materially false statements	18 USC 1001
	Perjury	18 USC 1621
	Provision of material support to terrorists	18 USC 2339
	Conspiracy to give or receive funds, goods, or services for designated terrorist	50 USC 1701

Source: John Kane and April Wall, *Identifying the Links between White-Collar Crime and Terrorism* (Glen Allen, VA: National White Collar Crime Center, September 2004), p. 13.

Causes of White-Collar Crime

13.4 What are the causes of white-collar crime? How do the motivations of white-collar criminals differ from those of other criminals?

Audio

Listen to the Audio



[Listen to audio](#)

When Edwin H. Sutherland first coined the term *white-collar crime*, he wrote, “A hypothesis is needed that will explain both white-collar criminality and lower-class criminality.”¹⁵⁶⁵ The answer Sutherland gave to his own challenge was that “white-collar criminality, just as other systematic criminality, is learned.”¹⁵⁶⁶ He went on to apply elements of his famous theory of differential association (discussed in **Chapter 7**) to white-collar crime, saying that “it is learned in direct or indirect association with those who already practice the behavior.”¹⁵⁶⁷

In 1968, Gary S. Becker was awarded the Nobel Prize for using mathematical models to show the trade-offs involved in rational decision making—including the decision making of white-collar criminals.¹⁵⁶⁸ Becker assumed that white-collar offenders act rationally in perpetrating their crimes and that they apply their entrepreneurial and management skills to schemes designed to produce illicit rewards.

More recently, other authors have offered integrative perspectives. **Travis Hirschi** and **Michael Gottfredson**, for example, in an issue of the journal *Criminology* published half a century after Sutherland's initial work, wrote, "In this paper we outline a general theory of crime capable of organizing the facts about white-collar crime at the same time it is capable of organizing the facts about all forms of crime."¹⁵⁶⁹ Their analysis of white-collar crime focuses squarely on the development of the concept itself. Hirschi and Gottfredson suggest that if we were not aware of the fact that the concept of white-collar crime arose "as a reaction to the idea that crime is concentrated in the lower class, there would be nothing to distinguish it from other" forms of crime.¹⁵⁷⁰ "It may be, then," they write, "that the discovery of white-collar criminals is important only in a context in which their existence is denied by theory or policy."¹⁵⁷¹ In other words, nothing is unusual about the idea of white-collar crime other than the fact that many people are loath to admit that high-status individuals commit crimes just as people of lower status do.

In fact, say Hirschi and Gottfredson, white-collar criminals are motivated by the same forces that drive other criminals: self-interest, the pursuit of pleasure, and the avoidance of pain. White-collar crimes, however, have special characteristics. They generally involve more intellectual complexity than street criminals, they often involve some form of fraudulent representation, they provide relatively large rewards, the rewards they produce may follow quickly from their commission, sanctions associated with them may be vague or only rarely imposed, and they may require only minimal effort from those with the requisite skills

only minimal effort from those with the requisite skills to engage in them.

Hirschi and Gottfredson conclude, however, that criminologists err in assuming that white-collar criminality is common or that it is as common as the forms of criminality found among the lower classes. They reason that the personal characteristics of most white-collar workers are precisely those we would expect to produce conformity in behavior. High educational levels, a commitment to the status quo, personal motivation to succeed, deference to others, attention to conventional appearance, and other inherent aspects of social conformity—all of which tend to characterize those who operate at the white-collar level—are not the kinds of personal characteristics associated with crime commission. “In other words,” say Hirschi and Gottfredson, “selection processes inherent to the high end of the occupational structure tend to recruit people with relatively low propensity to crime.”¹⁵⁷²

One other reason most criminologists are mistaken about the assumed high rate of white-collar criminality is because “white-collar researchers often take organizations as the unit of analysis” and confuse the crimes committed by organizational entities with those of individuals within those organizations.¹⁵⁷³ Similarly, rates of white-collar offending tend to lump together the crimes of corporations with crimes committed by individual representatives of those organizations when making comparisons with the rate of criminal activity among blue-collar and other groups.

A complementary perspective by Australian criminologist **John Braithwaite** says that white-collar criminals are frequently motivated by a disparity between corporate goals and the limited opportunities available to businesspeople through conventional business practices.¹⁵⁷⁴ When pressured to achieve goals that may be unattainable within the existing framework of laws and regulations surrounding their business's area of endeavor, innovative corporate officers may turn to crime to meet organizational demands.¹⁵⁷⁵

Braithwaite believes that a general theory covering both white-collar and other forms of crime can be developed by focusing on inequality as the central explanatory variable in all criminal activity.¹⁵⁷⁶

Although alienation from legitimate paths to success may lead lower-class offenders to criminal activity in an effort to acquire the material possessions necessary for survival, greed can similarly motivate relatively successful individuals to violate the law to acquire even more power and more wealth.¹⁵⁷⁷ New types of criminal opportunities and new paths to immunity from accountability arise from inequitable concentrations of wealth and power. Inequality thus worsens crimes of poverty motivated by the need to survive as well as crimes of wealth motivated by greed.

Braithwaite also suggests that corporate culture socializes budding executives into clandestine and frequently illegal behavioral modalities, making it easier for them to violate the law when pressures to perform mount. The hostile relationship that frequently exists between businesses and the government agencies that regulate them may further
spur corporate officers to evade the law. Braithwaite

government agencies that regulate them may further spur corporate officers to evade the law. Braithwaite emphasizes his belief that the potential for shame associated with discovery—whether by enforcement agencies, the public, or internal corporate regulators—can have a powerful deterrent effect on most corporate executives because they are fundamentally conservative individuals who are otherwise seeking success through legitimate means.¹⁵⁷⁸

Braithwaite also recommends implementation of an “accountability model,” which would hold all those responsible for corporate crimes accountable.¹⁵⁷⁹

Rather than merely punishing corporations through fines, personal punishment meted out to corporate lawbreakers, says Braithwaite, should have the potential to substantially reduce white-collar offending.¹⁵⁸⁰

In sum, Braithwaite contends that an integrated theory of organizational crime would include insights garnered from (1) strain theories, as to the distribution of legitimate and illegitimate opportunities; (2) subcultural theory, as applied to business subcultures; (3) labeling theory, or the way stigmatization can foster criminal subculture formation; and (4) control theory, as to how potential white-collar offenders can be made accountable.¹⁵⁸¹

Finally, in 2016, in the book *Why They Do It*, Harvard Business School professor Eugene Soltes published the results of seven years of research and correspondence with 50 convicted white-collar criminals.¹⁵⁸² Soltes concluded that ~~the men and women he~~ studied had not

thought, and often got caught up in circumstances from which they could not escape. Small missteps snowballed into illegal dealings that went beyond their control. Many felt that what they did wasn't really wrong, or that they had been selectively prosecuted for actions that are common in the industries that they represented.

Curtailing White-Collar and Corporate Crime

13.5 How can white-collar and corporate crime be controlled?

Audio

Listen to the Audio



It is far easier to convict street criminals than white-collar criminals, and it may even be difficult for prosecutors to show that a white-collar crime has occurred. “When someone breaks into a house and takes the TV and VCR,” says Harvard University criminal law professor William Stuntz, “it’s a matter of proving who did it. With white-collar crime it’s usually not even clear what happened.”¹⁵⁸³

White-collar crimes are often difficult to investigate and prosecute for a number of other reasons. For one thing, white-collar criminals are generally better educated compared to other offenders and are therefore better able to conceal their activities.¹⁵⁸⁴ Similarly, cases against white-collar offenders must often be built on evidence of a continuing series of offenses, not a single crime, such as a bank robbery. Often the evidence involved is only understandable to financial or legal experts and can be difficult to explain to jurors. Finally, business executives, because they often have the financial resources of an entire corporation at their disposal and because they sometimes earn salaries and bonuses in the millions of

sometimes earn salaries and bonuses in the millions of dollars, are able to hire excellent defense attorneys and can tie up the courts with motions and appeals that might not be as readily available to defendants with fewer resources.

Events such as the 2001 collapse of Enron Corporation left investors around the world leery of American stock markets and forced federal legislators to enact sweeping financial reform. At the same time, the Securities and Exchange Commission (SEC) renewed efforts to enforce existing regulations and mandated new rules for investment bankers. By the start of 2001, the atmosphere of distrust that had been created by corporate criminals had become so severe that President George W. Bush believed it was necessary to make significant efforts to help restore investor confidence and to bring order to American financial markets. Consequently, the president created a federal Corporate Fraud Task Force within the U.S. DOJ, and on July 30, 2002, he signed the **Sarbanes–Oxley Act** (officially known as the Public Company Accounting Reform and Investor Protection Act), which set stiff penalties for corporate wrongdoers.¹⁵⁸⁵

In 2007, the U.S. DOJ announced that activities of the task force had resulted in 1,236 fraud convictions, including those of 214 chief executive officers and 53 chief financial officers, since 2002.¹⁵⁸⁶ In announcing the convictions, then-Attorney General Alberto Gonzales noted that “perhaps the most important accomplishment is the criminal conduct that never occurred because of the widespread deterrent effect” of the task force.¹⁵⁸⁷

In 2009, President Barack Obama replaced President Bush's Corporate Fraud Task Force with an interagency task force targeting financial crimes. Called the Financial Fraud Enforcement Task Force, the organization consists of senior-level officials from more than 20 federal departments, agencies, and offices.¹⁵⁸⁸ The new task force, which was given a wider mandate than its predecessor, was charged with combating mortgage fraud, securities fraud, Recovery Act fraud, and discrimination by financial institutions in the making of loans and in other financial activities. The task force also aimed to fully enforce the Fraud Enforcement and Recovery Act of 2009,¹⁵⁸⁹ which targeted the recovery of federal funds spent on fraudulent claims made under the American Recovery and Reinvestment Act of 2009 (also known as the Financial Stimulus Act),¹⁵⁹⁰ fraudulent claims under the Troubled Assets Relief Program (TARP),¹⁵⁹¹ and financial fraud related to any "other form of Federal assistance."

In his 2012 State of the Union Address to Congress, President Obama announced the creation of two more enforcement initiatives—one of which will be charged with targeting financial crimes; the other, with fighting unfair trade practices. The first, the Residential Mortgage-Backed Securities Working Group, will operate under the previously created Financial Fraud Enforcement Task Force; the second, which will investigate unfair trade practices in countries such as China, will likely be run from the White House under the Deputy National Security Advisor for International Affairs.¹⁵⁹²

The Sarbanes–Oxley Act, referred to earlier, has been called the most far-reaching reform of U.S. business practices since the time of Franklin Delano Roosevelt. The law authorizes funding for investigators and for the development of new technologies at the SEC targeted at uncovering corporate wrongdoing. Under the Sarbanes–Oxley Act, the SEC has the authority to bar dishonest corporate directors and officers from ever again serving in positions of corporate responsibility. Similarly, penalties for obstructing justice and shredding documents are greatly increased, corporate officers who profit illegally can be forced to return their gains to investors, and the maximum federal prison term for common types of corporate fraud has been increased from 5 to 20 years.

The Sarbanes–Oxley Act also requires chief executive officers and chief financial officers to personally vouch for the truth and fairness of their companies' financial disclosures and establishes an independent oversight board to regulate the accounting profession. The board is required to set clear standards to uphold the integrity of public audits and has the authority to investigate abuses and discipline offenders. Similarly, the Sarbanes–Oxley Act prohibits auditing firms from providing consulting services that create conflicts of interest. Finally, under the law, officials in public corporations are barred from buying or selling stock during periods when employees are prevented from making stock transactions in their retirement or 401(k) accounts.

The Sarbanes–Oxley Act was the latest in a long line of federal legislation relating to the conduct of U.S. business that extends back more than 100 years. Some of the earliest such legislation can be found in the federal Sherman Act,¹⁵⁹³ which became law in 1890. The Sherman Act was passed to eliminate restraints on trade and competition and specifically to prevent the development of trusts and monopolies in restraint of trade. The Clayton Act,¹⁵⁹⁴ passed in 1914, prohibits mergers and acquisitions in which the effect “may be substantially to lessen competition, or to tend to create a monopoly.”

The Securities Act of 1933¹⁵⁹⁵ and the Securities Exchange Act of 1934¹⁵⁹⁶ were enacted by federal legislators reeling from the effects of the Great Depression, which began with the stock market crash of 1929. Often referred to as the “truth-in-securities” law, the Securities Act of 1933 has two basic objectives: (1) to require that investors receive financial and other significant information concerning securities being offered for public sale and (2) to prohibit deceit, misrepresentations, and other fraud in the sale of securities.

The Securities Exchange Act of 1934 gave birth to the SEC and conferred upon the SEC broad authority over all aspects of the securities industry. This includes the power to register, regulate, and oversee brokerage firms, transfer agents, and clearing agencies as well as the nation’s stock exchanges. The act also identified and prohibited certain types of conduct in the markets and provides the SEC with disciplinary powers over regulated entities and people associated with them.

Finally, the act empowered the SEC to require periodic reporting of information by companies with publicly traded securities.

Certain forms of occupational crime may be easier to address than others. Individual occupational crimes especially may be reduced by concerted enforcement and protective efforts, including enhanced IRS auditing programs, theft-deterrent systems, and good internal financial procedures. Consumer information services can help eliminate fraudulent business practices, and increases in both victim awareness and reporting can help target businesses and individuals responsible for various forms of white-collar or occupational crime.

Learn more about corporate responsibility and ethical business practices from the Interfaith Center on Corporate Responsibility at <https://www.iccr.org>. Links to various corporate codes of ethics can be found online at <http://www.ethicsweb.ca/resources/business/codes.html>. A discussion about deterring white-collar crime can be found at <https://ssrn.com/abstract=1001707>.

Organized Crime

13.6 What is organized crime and how does it differ from white-collar crime?

Audio

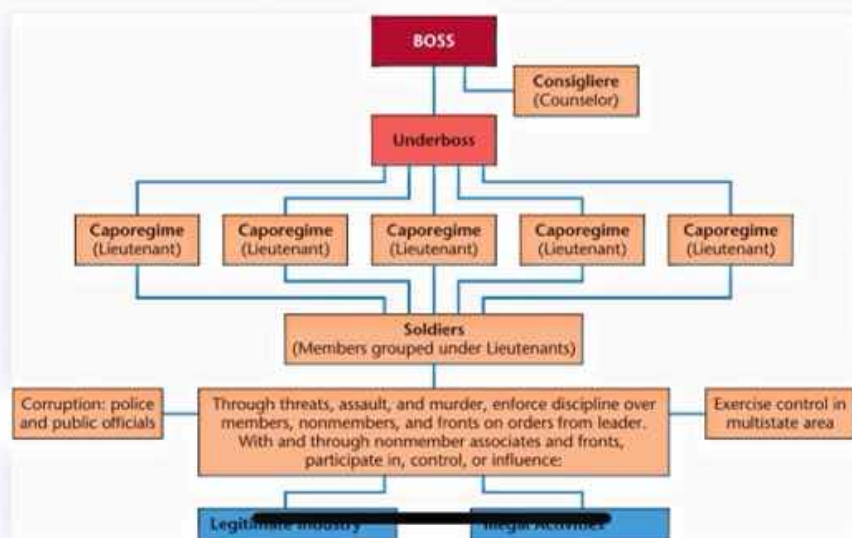
Listen to the Audio



Organized crime specifically refers to unlawful activities of the members of a highly organized, disciplined association engaged in supplying illegal goods and services, including prostitution, gambling, loan-sharking, narcotics, and labor racketeering. In 1967, the President's Commission on Law Enforcement and Administration of Justice investigated organized crime in the United States and found that—at the time—many organized crime families were of Italian descent. The Commission depicted the structure of a typical Italian American organized crime family as shown in **Figure 13-3**.

Figure 13-3

A Typical Italian American Organized Crime Family



Legitimate Industry	Illegal Activities
Food Products Realty Restaurants Garbage Disposal Produce Garment Manufacturing Bars and Taverns Waterfront Securities Labor Unions Vending Machines Others	Gambling (numbers, dice, bookmaking) Narcotics Loan-Sharking Labor Racketeering Extortion Alcohol Others

Source: Adapted from the President's Commission on Law Enforcement and Administration of Justice.

Much of what most Americans traditionally think of today as organized crime—sometimes called the **Mafia** or **La Cosa Nostra**—has roots that predate the establishment of the United States. For hundreds of years, secret societies have flourished in Italy.¹⁵⁹⁷ Italian criminal organizations that came to the United States with the wave of European immigrants during the late nineteenth and early twentieth centuries included the Mafia and the Black Hand. The Black Hand (in Italian, *La Mano Negro*) “specialized in the intimidation of Italian immigrants,”¹⁵⁹⁸ typically extorting protection money and valuables.

The Mafia worked to become a quasi-police organization in the Italian ghetto areas of the burgeoning American cities of the industrial era—often enforcing its own set of laws and codes. Secret societies in Italy were all but expunged during the 1930s and early 1940s under Fascist dictator Benito Mussolini. Surviving Mafia members became vehemently anti-Fascist, sentiments that endeared them to American and Allied intelligence services during World War II. Following the war, *mafioso* leaders resumed their traditional positions of power within Italian society, and links grew between American criminal organizations and those in Italy.

Other organized criminal groups, including Jewish and Irish gangs, flourished in New York City prior to the arrival of large numbers of Italian immigrants in the late 1800s. Ethnic succession has been as much a reality in organized crime as in most other aspects of American life. **Ethnic succession** refers to the continuing process whereby one immigrant or ethnic group succeeds another through assumption of a particular position in society.

Throughout the late nineteenth and early twentieth centuries, for example, Jewish gangsters such as Meyer Lansky, Benjamin “Bugsy” Siegel, “Dutch” Schultz, and Lepke Buchalter ran many of the “rackets” in New York City, only to have Italian immigrants who arrived a few years later take their places.

Around the middle of the twentieth century, organized criminal activity in the United States became the domain of Italian American immigrants and their descendants, especially those of Sicilian descent. Keep in mind that most Sicilians who immigrated to this country did not have ties or experience with Mafia organizations in the old country. Many Sicilian Americans immigrated to the United States to escape Mafia despotism at home, and most became productive members of their adopted society. The few who did involve themselves in organized crime created an organization known variously as the Mafia, the Outfit, the Mob, La Cosa Nostra (“our thing”), the syndicate, or simply the organization. Because *Mafia* is used most often, we will use it to describe Sicilian American organized criminal groups.

Prohibition and Official Corruption

In many ways, the advent of Prohibition was a godsend for Mafia leaders. Prior to Prohibition, Mafia operations in American cities were concerned mostly with gambling, protection rackets, and loan-sharking. Many *mafiosi*, however, were well versed in the manufacture of low-cost, high-proof, untaxed alcohol,¹⁵⁹⁹ an expertise they had brought from their native country. In addition, the existing infrastructure of organized crime permitted easy and efficient entry into the running and sale of contraband liquor. The huge profits to be had from bootlegging led to the wholesale bribery of government officials and to the quick corruption of many law enforcement officers throughout the country. Nowhere was corruption more complete than in Chicago, where runners working for organized crime distributed illegal alcohol under police protection¹⁶⁰⁰ and corrupt city government officials received regular payoffs from criminal cartels.

Transnational Organized Crime

13.8 What is transnational organized crime?

Audio

Listen to the Audio



Transnational organized crime, which refers to unlawful activity undertaken and supported by organized criminal groups operating across national boundaries, is emerging as one of the most pressing challenges of the early twenty-first century.¹⁶¹⁷

Russian organized crime is of special interest because it has grown quickly following the collapse of the Soviet Union and because it has taken root in the United States and other countries outside the former Soviet sphere of influence.

With the dissolution of Soviet-style controls between 1992 and 1994, the Russian Mafia quickly seized control of the country's banking system through the investment of ill-gotten gains, money laundering, intimidation, fraud, murder, and the outright purchase of financial institutions. Ninety-five Russian bankers were murdered by *Mafiya* operatives between 1995 and 2000, and hundreds of reform-minded business leaders and investigative journalists have been assassinated or kidnapped.¹⁶¹⁸ In September 2006,

Russian Central Bank deputy chairman Andrei Kozlov

leaders and investigative journalists have been assassinated or kidnapped.¹⁶¹⁸ In September 2006, Russian Central Bank deputy chairman Andrei Kozlov was fatally shot as he left a soccer stadium in Moscow. Kozlov had been a crusader against money laundering and had suspended or withdrawn the licenses of dozens of banks. After Kozlov's death, President Vladimir Putin created a task force to combat financial crime.

The Analytical Center for Social and Economic Policies, a Russian think tank, estimates that four out of every five Russian businesses pay protection money to the mob.¹⁶¹⁹ In response to the wave of organized crime that Russia is currently experiencing, more than 25,000 private security firms have sprung up throughout the country. Analysts say, however, that few of these firms are legitimate, with many being fronts for Russian gangsters.¹⁶²⁰

Russian organized criminals differ from their counterparts in the United States because their ranks consist largely of ex- KGB officers, veterans of the 1979–1989 war in Afghanistan, underpaid military officers, and former Communist Party operatives who formed powerful economic alliances with traditional gangsters and black marketers years ago. As some observers note, Russian organized crime seems to be a natural outgrowth of the corrupt practices of officials who operated in the days of strict Soviet control, combined with a huge underground criminal black market that had already developed a complex organizational structure long before the Soviet Union fell apart.¹⁶²¹

While Russian organized crime profits from American-style activities such as narcotics, prostitution, racketeering, and illicit gambling, it is also heavily involved in human trafficking, product diversion and counterfeiting of popular Western goods (including software, video, and music duplication), and illicit arms sales and smuggling on a massive scale.

Over the past decade or two, hundreds of thousands of Russian citizens have immigrated to the United States. As U.S. officials have now discovered, many of these people were former black market profiteers and hard-core offenders who had been released by the KGB from the Soviet gulag.¹⁶²²

Russian organized criminal groups today operate out of 17 American cities in 14 states. According to one source, "The FBI believes there are 15 separate organized crime groups and 4,000 hard-core Mafia criminals from the former Soviet Union at work in the United States. They are engaged in money laundering, automobile theft, smuggling, contract murder, loan-sharking, medical insurance fraud, narcotics, and credit card and telecommunications fraud. The theft of electronic serial numbers from cellular phones and the duplication (cloning) of these PIN numbers have grown into a multimillion-dollar industry."¹⁶²³

The globalization of crime has necessitated the enhanced coordination of law enforcement efforts in different parts of the world and the expansion of American law enforcement activities beyond national borders. U.S. police agencies routinely send agents to assist law enforcement officers in other countries who

assist law enforcement officers in other countries who are involved in transnational investigations.

Crime in the News

U.S. Authorities Grapple with the Rise of Transnational Criminal Organizations

A Few years ago, the National Intelligence Council completed a comprehensive assessment of transnational organized crime. The report concluded that transnational criminal activities had expanded dramatically in size, scope, and influence, and had begun to pose a significant threat to U.S. and international security.

Following up on the assessment, then-president Obama issued an executive order creating a new threat category, transnational criminal organizations (TCOs). It named four TCOs and directed the Treasury Department to freeze their U.S. assets. The acronym "TCO" is patterned after that for FTOs, the U.S. government's designation for foreign terrorist organizations. After the September 11, 2001, attacks, President George W. Bush used the same executive powers to block assets of persons aiding terrorists.

The four TCOs that were named are the Brothers' Circle in the former Soviet Union, the Camorra in Italy, the Yakuza in Japan, and the Los Zetas drug cartel in Mexico. The Treasury Department was authorized to add more TCOs to the list, and in 2012 the Treasury added MS-13, originally a Los Angeles street gang founded by immigrants from El Salvador. "These organizations facilitate and aggregate violent civil

organizations facilitate and aggravate violent civil conflicts and increasingly facilitate the activities of other dangerous persons," the president said. "They are increasingly entrenched in the operations of foreign governments and the international financial system."

The National Strategy to Combat Transnational Organized Crime, a background document released along with the executive order, acknowledged that international criminal organizations had been around for years, but they were "largely regional in scope, hierarchically structured and had only occasional links to terrorism. Today's criminal networks are fluid, striking new alliances with other networks around the world and engaging in a wide range of illicit activities, including cybercrime, and providing support for terrorism."

By freezing the assets of TCOs, the U.S. government aimed "to squeeze them out of the global financial system and protect the U.S. financial system from laundering of its criminal proceeds," the department stated.

Discussion Questions

1. What are TCOs? How do they differ from traditional criminal organizations?
2. What kinds of international cooperation are needed to combat TCOs?



2. What kinds of international cooperation are needed to combat TCOs?



MS-13 gang members. In 2012, MS-13 was added to the list of large-scale transnational criminal organizations (TCOs)—allowing the U.S. Treasury Department to freeze the group's assets. What is a transnational criminal organization?

Neil Marriott/Photodisc/Getty Images

Sources: Howard LaFranchi, "MS-13 Gang Labeled Transnational Criminal Group, a First for US Street Gang," *Christian Science Monitor*, October 12, 2012, <http://www.csmonitor.com/USA/Foreign-Policy/2012/1012/MS-13-gang-labeled-transnational-criminal-group-a-first-for-US-street-gang>; Adam R. Pearlman, "Sanctions, Transnational Organized Crime," *The Federalist Society*, October 3, 2011, <http://www.fed-soc.org/publications/detail/sanctions-transnational-organized-crime>; and Robert Chesney, "Material Support to ... Transnational Criminal Organizations?" *Lawfare Blog*, July 25, 2011, <http://www.lawfareblog.com/2011/07/material-support-to-transnational-criminal-organizations>.

Organized Crime and the Law

13.9 What is the RICO statute and how does it enable the use of asset forfeiture as an enforcement technique?

Audio

Listen to the Audio



[Listen to audio](#)

For many years, American law enforcement agencies had few special weapons in the fight against organized crime. Instead, they prosecuted organized criminal operatives under statutes directed at solitary offenders, using laws such as those against theft, robbery, assault, gambling, prostitution, drug abuse, and murder. Innovative prosecutors at times drew upon other statutory resources in the drive to indict leaders of organized crime. On October 17, 1931, for example, Al Capone was convicted on various charges of income tax evasion after federal investigators were able to show that he had paid no taxes on an income in excess of \$1 million. Laws regulating the sale of alcohol and drugs and statutes circumscribing acts of prostitution have also been used against organized criminals, although with varying degrees of success.

The first federal legislation aimed specifically at curtailing the activities of organized crime was the Hobbs Act, which encompassed a series of statutes that were passed beginning in 1946. In essence, the Hobbs Act made it a violation of federal law to engage in any

travel in furtherance of criminal activity and made it a crime to use the highways, telephone, or mail in support of activities such as gambling, drug trafficking, loan-sharking, and other forms of racketeering.

The single most important piece of federal legislation ever passed that specifically targets the activities of organized crime is the **Racketeer Influenced and Corrupt Organizations (RICO) Act**, which was part of the federal Organized Crime Control Act of 1970. The Organized Crime Control Act defines *organized crime* as “the unlawful activities of the members of a highly organized, disciplined association engaged in supplying illegal goods and services, including but not limited to gambling, prostitution, loansharking, narcotics, labor racketeering, and other unlawful activities of members of such organizations.”

¹⁶²⁴ The RICO portion of the act brought under one single piece of legislation the many and diverse activities of American organized crime and made each punishable in a variety of new ways. RICO did not make racketeering itself illegal but, rather, focused on the ill-gotten gains derived from such activity, specifying that it will be unlawful for anyone involved in a pattern of racketeering to derive any income or proceeds from that activity.

Punishments provided for under RICO include **asset forfeiture**, which makes it possible for federal officials to seize the proceeds of those involved in racketeering. In the words of the statute, “Whoever violates any provision of this chapter shall be fined or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both,

and shall forfeit to the United States, irrespective of any provision of State law any property derived from any proceeds that the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection.”¹⁶²⁵ Hence, as a result of RICO, federal agents are empowered to seize the financial and other tangible fruits of organized criminal activity, including businesses, real estate, money, equities, gold and other commodities, vehicles (including airplanes and boats), and just about anything else that can be shown to have been acquired through a pattern of racketeering activity.