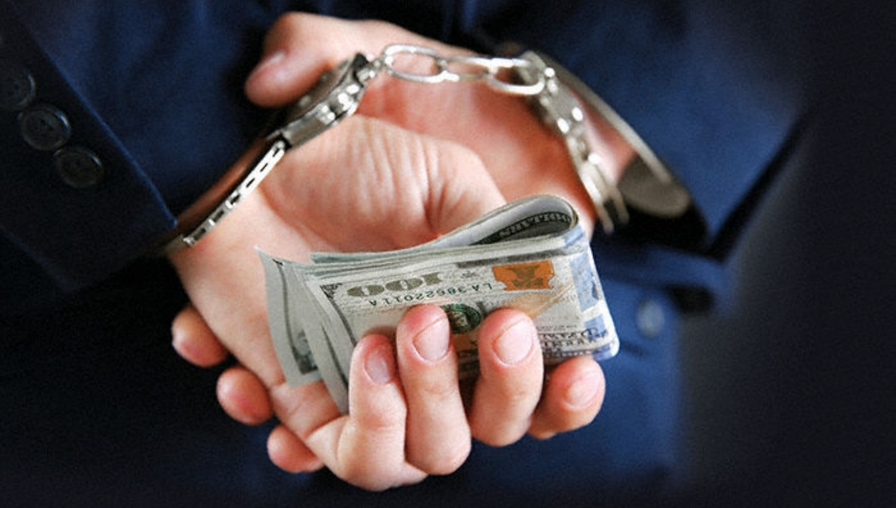
Seventh Edition

PROFIT WITHOUT Honor

White Collar Crime & the Looting of America



Stephen M. Rosoff | Henry N. Pontell | Robert Tillman

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WHITE-COLLAR CRIME AND THE LOOTING OF AMERICA

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Dedication

To our families
and
In memory of Lillian Rosoff
A woman of resonant kindness
and quiet courage
and
In memory of Stephen M. Rosoff
Exceptional teacher, brilliant scholar,
and a man of impeccable wit and humor

CONTENTS

PREFACE

Since the sixth edition of this book in 2014, there have been dramatic new developments in the study of white-collar crime. One would surely expect that, for the battle between profit and honor is as old as human commerce. In a hotly contested national election, the country chose its first "businessman-president" who never held a government office, and whose cabinet and agency appointments will prove interesting to the future of white-collar crime. As of this writing, the country is in the throes of one of the largest upheavals in both national and international politics in modern history. Robert Mueller, former head of the FBI, and until recently, unimpeachable prosecutor and public servant, was appointed as a special prosecutor for discerning the facts surrounding the already-well-documented Russian meddling in the last U.S. presidential election. It was determined by every intelligence and law enforcement agency that the Russians had in fact hacked the election, with the seeming goal of defeating Hillary Clinton. The special prosecutor was appointed as a result of President Trump firing FBI director James Comey, for stated reasons (admitted in a major television interview) having to do with his pursuit of the Russian investigation. The president has repeatedly and publically denied any collusion by himself and his campaign staff with the Russian government in the election, or obstruction of justice in the investigation itself. As of this writing, there are 5 guilty pleas and 19 indictments of those close to the White House, and/or associated with Russian interference in the 2016 national election, brought by Special Counsel Robert Mueller, including the indictment of former Republican presidential campaign head, Paul Manafort. As the investigation focuses more intensely on those close to the White House, including the president, his son, Donald, Jr., son-in-law, Jared Kushner, as well as various staff, there have been political attacks by a Republican-controlled Congress and by the president himself on Mueller, the FBI, and the investigation itself, despite the fact that Mueller and the person who appointed him in the Department of Justice are both Republicans.

As almost constant chaos is created around the investigation by the administration and its political surrogates, including elected members of Congress, in response to additional uncovered details, a number of questions arise, not the least of which is, if there was no Russian collusion or obstruction of justice involved as the president repeatedly claims, why doesn't the administration simply cooperate fully, hand over all files, and stop attacking those who are charged with ascertaining the facts in accordance with established institutional norms and laws that govern the process? Defenders and the president argue that the investigation is simply a sham, is designed by opponents to question the legitimacy of his election, represents sour grapes by those who lost the election, and is waste of taxpayer money. This same president has refused to turn over his personal tax returns unlike all recent predecessors to the office, claiming that they are still under audit (which does not legally preclude him from doing so). Trump was elected with a major campaign promise to disrupt politics as usual, and he has certainly accomplished that goal in his first year of office. But it must also be noted that where there is smoke, there usually is fire. As we note later in this book, at some point complexity IS fraud, in that very complex schemes can be designed in an attempt to prevent investigators from establishing underlying criminal intent.

Some comedians have already labeled the rather amateurish transparency of the Russian connection to presidential politics and actions of the administration as "Stupid Watergate," referring to one of the darkest chapters in U.S. history, which we discuss at length in Chapter 9. However, by what the public has witnessed thus far, it could also be termed "In-Your-Face Watergate," in that damning evidence surfaced some time ago, but a Republican-controlled Congress and the president himself have made contorted moves to distract attention from, pick away at, and ultimately destroy its credibility. As we explain in Chapter 10, "big corruption" is very different from, and much more dangerous than, "little corruption," in that if left unchecked, it can undermine and fundamentally alter societal institutions. It remains to be seen whether or not the Constitution, the free press, and American democracy itself will withstand current assaults being leveled against them by both a major foreign adversary and partisan politicians loyal to the president. By the time this book is published the current situation will have certainly changed, and one can only hope that both the country and world will be better for it. In addition to the potential crime and corruption at the highest levels of government in America today, and central to the topic of this book, lurk the eventual disastrous results of massive deregulatory policies already enacted by the current administration on the prevention, commission, and enforcement of laws against white-collar and corporate crime.

In 2008, the U.S. economy imploded, throwing the nation (and the world) into the worst financial crisis since the Great Depression. The country has seemingly picked up the pieces and rebuilt its shattered economic infrastructure, but whether or not the lessons from the disaster were really learned appears dubious at best, as politicians, economists, and ordinary citizens point fingers of blame in every direction. But there is at least one thing almost everyone, regardless of class or ideology, can agree on. Whatever market forces or "natural" economic cycles pushed the U.S. economy to the edge of the abyss, it was a lethal concoction of greed, corruption, and criminality that provided the *coup de grace*, the final push over the precipice.

The legendary investor Warren Buffett has a favored aphorism: when the tide goes out you see who has been swimming naked. By 2012, the tide had not only gone out, and true to Buffett's dictum, a plethora of naked swimmers were also revealed. None of the largest companies or their executives were ever criminally convicted although most received civil and administrative fines.

The subprime mortgage market was exposed as a house of cards, propped up by worthless paper representing worthless loans. Corruption and misrepresentation by giant mortgage lenders like Fannie Mae and Freddie Mac tipped over the first domino. The mortgage collapse quickly metastasized like a deadly cancer. Some of the passengers—and coconspirators—on the subprime train wreck were among the most hallowed names on Wall Street. Down went Bear Stearns, down went Merrill Lynch, down went Lehman Brothers—all dumped (in Trotsky's famous phrase) into the ash heap of history. From there, the cancer spread to the U.S. stock market and the banks and the insurance companies and the manufacturing sector, and then, because the world has been well into the age of the global economy, down went the international financial markets.

It would be simplistic to attribute the entire collapse to white-collar crime. World events and perhaps uncontrollable economic forces played a role, as did an epidemic of stunning, albeit not necessarily criminal, corporate and political recklessness and incompetence. But it would be even more simplistic to deny that white-collar crimes of unprecedented magnitude have taken place. These crimes are examined and described in this edition.

One of the most conspicuous of the "naked swimmers" was New York investment guru Bernard Madoff, who orchestrated the most costly Ponzi scam in history that flushed away a reported $65 billion from investors—many of them charitable foundations. The Madoff case highlights the shortcomings in financial regulation and oversight that allowed the much larger economic crisis to occur. The events that took Madoff from being a finance superstar to a federal penitentiary where he will almost certainly spend the rest of his life are analyzed in this edition.

Computer crime has continued to emerge as the nation's fastest growing category of crime. This edition continues to highlight the explosion of Internet frauds. Of particular focus are the "pump and dump" swindles that infest the Internet; the nefarious spammers, who flood our e-mail boxes with crooked schemes; so-called phishing scams that help cyber-criminals steal our identities; new developments in online international espionage, especially those involving China; activities of those involved in "hactivisim" where the motives for hacking are political, resulting in a form of electronic protest; and those seemingly ubiquitous Nigerian "4-1-9" con games that bait seductive electronic traps for the unwary among us. Despite denials by Russian government leaders, the extent and influence of hacking into American (and other countries') elections have yet to be fully uncovered. Social media have apparently played an important role as both Twitter and Facebook were used to disseminate false and biased political information using bogus accounts bought by Russian operatives. These computer crimes threaten the very legitimacy of the electoral process itself and are among the most dangerous crimes facing the nation. It would not be hyperbole to claim that we are currently engaged in an undeclared cyber war with an enemy state.

Wal-Mart, the world's largest company, remains the symbol of corporate irresponsibility. Allegations of everything from monopolistic practices, to environmental contamination, to violations of labor laws through the exploitation of its own workers and the promotion of slave labor overseas, to illegal union busting, to its callous utilization of "dead peasant insurance" have been leveled against the retailing behemoth. Religious affinity scams also have exploded, costing devout victims hundreds of millions of dollars. Likewise, a shocking study has revealed a prevalence of embezzlement within the American Roman Catholic Church that is scarcely believable. New and horrifying cases of worker safety violations have been uncovered. Political corruption at all levels of government persists. And even public school education, a social institution never before linked to white-collar crime, has generated stunning and widespread cheating scandals on the parts of teachers and administrators willing to resort to fraud in order to raise state-mandated test scores.

This edition applies particular scrutiny to outrageous and sometimes repulsive abuses of power by the government in the post-9/11 era. Illegal domestic surveillance and the torture of foreign nationals are detailed and exposed as crimes hiding behind a smokescreen of national security.

All of these issues, along with newer cases of many other predatory offenses and rapacious scams, are examined in this updated edition.

So, once again, *Profit Without Honor* seeks to elucidate a very broad subject that only seems to get broader: white-collar crime. How broad? Its domain stretches from the small price-gouging merchant to the huge price-fixing cartel. It can breed in an antiseptic hospital or a toxic dump. It is at home on Main Street, Wall Street, Madison Avenue—even 1600 Pennsylvania Avenue.

Yet, as Americans demonize the Crips and the Bloods, recoil at al-Qaeda, and "radical Islamic terrorists," and still obsess over O. J. Simpson, white-collar crime remains the "other" crime problem. The reason for this relative indifference is that the true costs of upperworld misconduct are largely unrecognized. Compared to murderers, terrorists, and urban gangsters, white-collar criminals do not seem to scare the public very much.

Even the economic expense—by far the most identifiable cost—is typically underestimated by the average citizen. Annual losses from white-collar crime are probably 50 times as great as the losses from ordinary property crime. For example, the price of bailing out a single corrupt savings and loan institution surpassed the total losses of all the bank robberies in American history. The bill for the taxpayer bailout of the financial services industry, which choked on its own greed, was about a *trillion* dollars. (To put that figure in perspective, consider that a million seconds is about 11 days; a trillion seconds is about 30,000 years.) Indeed, the price-tags attached to some white-collar crimes ultimately are so staggering they are difficult to comprehend. They evoke memories of the late Senator Everett McKinley Dirkson's wry quip: "A billion here, a billion there; and pretty soon you're talking about real money!"

But monetary expenditures are only the tip of the topic. The "looting" in the subtitle refers to more than larceny; it implies "destruction" too. This book argues for an expanded definition of white-collar crime because it is not just property crime on a grand scale. It entails higher and more enduring levels of costs—particularly physical and social costs. These less conspicuous effects carry a heavy payment that cannot be measured with a calculator.

White-collar crimes do not leave a chalk outline on the sidewalk or blood spatter on the wall, so the American public, in its understandable preoccupation with street crime, often has overlooked the violent aspects of elite deviance. In his polemic book *Thinking About Crime*, James Q. Wilson marginalized white-collar crime, lumping it together with "victimless" crimes such as gambling and prostitution. He stated that most citizens (including himself) do not consider white-collar offenses to be very serious compared to street crime. Wilson's intuition about the predominance of such a belief is quite correct, even decades later in the post-Enron era. The belief itself, however, is utterly wrong. *White-Collar criminals cause more pain and death than all "common criminals" combined*.

A likely explanation for the inadequate attention can be derived from a cognitive rule-of-thumb known as the *availability heuristic*, which stipulates that there is a common human tendency to judge the likelihood of occurrences in terms of how readily instances come to mind. Vivid events stick in our memories, and their greater ease of recall misleads us to overrate their frequency relative to less dramatic, but actually more pervasive events. The physical harm wrought by some forms of white-collar crime can be slow and cumulative—like the mythic "death of a thousand cuts." In other words, the human suffering caused by corporate cupidity frequently can take years to materialize, in contrast to the graphic suddenness which usually characterizes street violence. Consequently, it is easy for people to misperceive the extent of the injuries caused. As this book will delineate, environmental crime, hazardous workplaces, medical malfeasance, and unsafe products are lethal manifestations of what Ralph Nader calls "postponed violence."

As for social costs, they are the most insidious and difficult to measure. The victims here are not limited to endangered employees, mistreated patients, or injured consumers, but include all of society—from its component institutions to its transcendent culture. Indeed, a case could be made easily that *every* category of white-collar crime depicted in this book manifests a deleterious effect on some social institution and thereby inflicts damage on society as a whole. To cite just two examples: The insider trading scandals detailed in Chapter 6 and the corporate crimes highlighted in Chapter 7 have eroded public faith in the American economy; likewise the crimes by the government described in Chapter 9 and the political corruption related in Chapter 10 have devalued the democratic process.

It should also be noted that much of the existing white-collar crime literature focuses on offenders—those who commit these crimes, their motives, and their methods. This is certainly an illuminating perspective, but not the only perspective. This book seeks to shed light on the *victims* of white-collar crime as well. Victimology is a critical element because it helps give the problem the personal relevance it has sometimes lacked. The more predatory white-collar crime is perceived to be, the less likely it will continue to be dismissed as a mere appendix to the crime problem.

One additional preliminary comment seems appropriate—and it concerns the style of the chapters that follow. We have chosen to present our material in an occasionally flippant and hopefully engaging manner. But despite its intermittent irreverence, this is a serious book on an important subject. It is not difficult to write mordantly about con artists charging people $30 for a "solar clothes dryer," then mailing them a piece of rope and some clothespins (Chapter 2), or greedy doctors billing Medicare for pregnancy tests performed on elderly males (Chapter 11), or religious charlatans peddling trashy "holy shower caps" to thousands of faithful proselytes (Chapter 5). It is likewise easy for readers to ridicule those who are duped by such flagrant deceit. So it is worthwhile to bear in mind an old maxim: when you slip on a banana peel, it's tragedy; only when *someone else* slips is it comedy. A reiterative lesson of this book is that white-collar crime spares no one. Everybody reading this sentence (or writing it, for that matter) has been somebody's victim. Each of us would do well to remember just how much alike a window and a mirror can be.

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ACKNOWLEDGMENTS

Since the publication of the fifth edition, we have lost a dear friend, dedicated teacher, and noted scholar in Stephen Rosoff, whose major contributions to this book will continue to educate and inform students for generations to come. A professor of criminology at the University of Houston – Clear Lake for many years, Steve passed away in March 2010 at the age of 64. He had undergone esophageal surgery, followed by a number of additional operations, had shown incredible strength in battling through these maladies, and was recovering at a rehabilitation unit in Houston when his heart failed him. He was an incredibly popular instructor at UH who created a highly successful criminology curriculum with a thriving master's degree program that attracted a very large number of officers from the Houston Police Department.

Steve's family moved from Brooklyn to Boston when he was very young. A lifelong baseball fanatic, he played in Little League, and few persons knew more about the sport, its players, and its statistics. He was a loyal Red Sox fan and attended one of the championship games at Fenway Park when his team won the World Series in 2007.

A gifted child and a voracious reader, Steve graduated from English High School in Boston at the age of 15, and entered UMass Amherst where he studied drama. Given his young age, it proved to be a difficult experience and he dropped out after a year. He went to work in his family's pickle business ("Rosoff's Pickles"), was employed as an actor and producer in theater and film over the next decade and a half, and began taking psychology courses through Harvard extension. In his early thirties he matriculated at Harvard and graduated in three years number two in his class with a major in psychology.

Steve arrived at UC, Irvine's Program in Social Ecology in the early 1980s to begin his doctoral work in human development. He had been attracted by the advertised interdisciplinary environment and the "strange name" of the degree. After his first year he worked as a research assistant on a federally funded study of Medicaid fraud conducted by Gil Geis, Paul Jesilow, and Henry Pontell and shifted his scholarly interests to law and psychology, medical sociology, criminology, and white-collar crime. He completed a stellar master's thesis on the social psychology of the sanctioning of high-status defendants (later published in *Law & Human Behavior*, the top-rated journal in law and psychology), and placed articles in medical journals on issues related to miscreant physicians. Missing the east coast, he applied and was accepted into Harvard's PhD program in psychology, where he spent his third year of graduate work. Not finding a suitable mentor for his interests in the punishment of the well-to-do, he returned to UCI to write his doctoral dissertation the following year.

Steve's wit and wry sense of humor are shown in a short piece that he contributed to the *Sage Handbook of Field Work*. "Interviewing offenders of any hued collar is a tricky business," he started out. "If I were interviewing a convicted burglar I would probably call him Charlie (or whatever his first name is), while he might call me 'Doc.' There is a role reversal when the offender is an elite deviant. I respectfully called the Medicaid fraud subject Dr. So-and-So. And I might well be called Steve in return—or called nothing at all." Then Steve added the punch line: "No problem. When the interview ends, I'm still the one without a parole officer."

He taught enormously popular graduate courses at UH in social deviance, law and society, crime and the media, law and psychology, criminological theory, organized crime, juvenile delinquency, crime in the cinema, and white-collar and corporate crime. He was a brilliant, gifted, and hardworking instructor who still found time to publish articles and book chapters. Steve presented papers at conferences in Australia, Hungary, Thailand, and Italy, and was a regular participant at criminology conferences in the

United States. He was invited to discuss his work at a major conference on control fraud following the Enron debacle (discussed in Chapter 7) organized by noted economist James Galbraith at the University of Texas, Austin, and was a delegate and presenter at a UN Crime Congress. The head of the FBI's Behavioral Sciences Unit invited him to a three-day closed conference on cybercrime at Quantico. Always ahead of the curve, Steve was the first major writer on cybercrime in criminology.

In addition to all of these significant academic accomplishments, Steve Rosoff was a first-rate human being whose absolute unpretentiousness belied his enormous intellectual prowess. In addition to baseball, he was also a movie and media expert. His life was teaching. His immense kindness toward animals saw him rescue numerous dogs who became members of his family. He had a keen eye for injustice, an impeccable wit, and an almost nonstop sense of humor. As one colleague astutely observed, "He was probably the funniest smart person I have ever known and the smartest funny person as well." His coauthors recognize and honor his major contributions to all aspects of this text. It stands as his legacy, or as Steve so elegantly described, "His footprints in the sand."

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ABOUT THE AUTHORS

Stephen M. Rosoff was professor of criminology at the University of Houston—Clear Lake. He received his Ph.D. in social ecology from the University of California, Irvine. He had written extensively on white-collar crime and professional deviance, particularly in the areas of medical fraud and computer crime. His scholarship appeared in numerous journals and books around the world. He is co-author of *Social Deviance* (McGraw Hill, 2011).

Henry N. Pontell is professor of criminology, law and society in the School of Social Ecology at the University of California, Irvine. He received his Ph.D. in sociology from the State University of New York at Stony Brook. His scholarly work has focused on financial and medical fraud and the role of corporate crime in major financial debacles, among other areas in criminology. His books include *Big Money Crime: Fraud and Politics in the Savings and Loan Crisis* (UC Press); *Prescription for Profit: How Doctors Defraud Medicaid* (UC Press) *and International Handbook of White-Collar and Corporate Crime* (Springer).

Robert H. Tillman is professor of sociology at St. John's University in New York City. He received his Ph.D. in sociology from the University of California, Davis. He is the author and co-author of several books on white-collar crime, including *Big Money Crime: Fraud and Politics in the Savings and Loan Crisis* (University of California Press) and *Pump and Dump: The Rancid Rules of the New Economy* (Rutgers University Press).

1

Introduction

On April 25, 2008, a group of mostly wealthy men gathered at a Greenwich Village restaurant for an evening of food, fun, and wine—lots of *high quality wine*. The occasion was an auction of fine and rare wines, some of the best in the world, sold at prices that reached as high as $42,000 a bottle. Among those to be auctioned that evening were 38 bottles of Clos Saint-Denis, a burgundy produced by the French winery Domaine Ponsot.[1]

This was an exclusive gathering of the elite world of rare wine collectors and connoisseurs, people with the money to drop thousands of dollars on a single bottle of vintage wine and whose refined palates allowed them to distinguish a '47 Pétrus (a rare Bordeaux wine) from a '61 Pétrus. By all accounts, everyone present that evening was having a fine time, but one of those in attendance was not. Laurent Ponsot, the owner of Domaine Ponsot, had flown over from France to tell the auctioneer to remove all of his wines from the auction after he saw the bottles of burgundy listed in the auction house's catalog and knew immediately they were fakes. The catalog listed them as having been produced between 1945 and 1971. *Domain Ponsot hadn't begun making that wine until the 1980s.*

The seller of the wines was a mysterious young man named Rudy Kurniawan who lived in California but who was thought to be from a wealthy family in Indonesia, though nobody seemed to be quite sure. The young entrepreneur had burst onto the elite wine scene in the early 2000s and quickly became a major player in the rapidly growing market for fine wines, buying and selling millions of dollars of rare vintages and hosting lavish wine-dinners attended by celebrities that included a well-known novelist, movie producers, and comedians. At one of these parties, the bill came to $250,000 and Kurniawan put it all on his American Express card. But he made a curious request of the restaurant: he wanted all of the empty bottles of wine delivered to him. He made the same request after other dinners he hosted as well.

The incredibly expensive parties were part of an extravagant lifestyle that seemed to confirm the rumors that Kurniawan came from a wealthy family in Asia. He owned exotic cars—including a Bentley and a Ferrari, purchased paintings by Andy Warhol, wore suits from Hermes, and bought an $8 million house in Bel Air. He earned the nickname Dr. Conti because of his fondness for the rare wine Romanée-Conti. He was also selling a lot of rare wine at handsome prices. At just two auctions held in 2006, his wines sold for $35 million.[2]

Everything began to change for Kurniawan after the 2008 auction where his wines were pulled. Suspicions spread about their authenticity. Auction houses would no longer sell them. Collectors began to investigate the provenance of wines they had purchased from him. One of those was the super-wealthy collector William Koch (whose brothers are well known for their support of the Tea Party) who sued Kurniawan in 2009 claiming that he had been sold $2 million worth of fake wines. One of the major clues to the fraud? The adhesive used to label an 1857 bottle of French wine was Elmer's Glue, which was first produced in 1947.[3]

Eventually, law enforcement agencies took an interest in Kurniawan and in the early morning hours of March 8, 2012, FBI agents raided a house he shared with his mother in a suburb of Los Angeles. What they found were not the trappings of extreme wealth but all the paraphernalia of a disorganized wine counterfeiting operation. They "found thousands of wine labels for top wines…hundreds of old and new corks…and rubber stamps with vintages and châteaux names, such as 1899 and 1900 Latour and 1992 Screaming Eagle."[4] They also discovered empty bottles of rare wines soaking in the kitchen sink so that the labels could be removed and reused.

After sorting through all of the contents in the home, it became clear to the agents what Kurniawan had been doing. He was using the empty bottles from authentic wines shipped to him after his wine-tasting bacchanals to create counterfeit versions of rare wines. He would mix newer, less expensive wines together to mimic the tastes and colors of rare wines. In one case, "Kurniawan obtained a relatively recent bottle of California pinot noir, one worth approximately $250, so that it could be used to create an expensive bottle of wine from the 1940's and 1950's, vintages of Domain de la Romanee-Conti, the most highly regarded winery in Burgundy, France..."[5] He would then pour the mixture into the empty bottles, seal them with corks, and affix the old labels. Finally, he would put these fakes on the market, selling "these counterfeit bottles of wine at auctions and in direct sales to wealthy collectors—often selling the counterfeit wines alongside genuine bottles of rare and vintage wines so that he could dismiss, as spoiled bottles or aberrations, any bottles of wine ultimately identified as counterfeit."[6] Of the 97 bottles of Domaine Ponsot wine put on auction and later withdrawn, valued at between $440,500 and $602,000, at least 84 were fake.[7]

Kurniawan was eventually convicted in a Manhattan criminal court and in 2014 he was sentenced to 10 years in prison. In handing down the sentence, the judge described his crime as "a bold, grandiose, unscrupulous but destined-to-fail con."[8]

In many ways, Kurniawan's scams had revealed what a number of knowledgeable wine collectors had suspected for years: that many of the rare and high-priced wines sold in auctions around the world are not what their owners claim them to be. Laurent Ponsot has estimated that 80 percent of old, rare burgundies sold at auctions are phony.[9] Another expert described the proportion of the wines on the world market that are counterfeit as "huge."[10] In China, the fake wine problem is rampant. One analysis estimated that 70 percent of all wine sold in China is fake.[11]

Seen more broadly, Kurniawan's fake wine schemes have a significant commonality with a number of white-collar crimes discussed in this book. He took advantage of a market that operated largely outside of formal rules and regulations. As one of Koch's investigators put it, the moral to this story is that an unregulated system allows the wolves to come in and game the system.[12] The same could be said of a number of other unregulated or deregulated markets through which lots of money flow and where there is little-to-no resistance to prevent crooks from gaming the system.

Rudy Kurniawan was clearly a fraudster for our times. We live, it would seem, in a world of "fakes." The current U.S. president has seized on this (wrongly or rightly…) in terms of talking incessantly about "fake news." Perhaps more accurately to many, cyber thieves create phony identities (Chapter 12), many parts of the world are awash in fake drugs (Chapter 3), and even connoisseurs worldwide are tricked into buying fake wines. Fakery, deception, misrepresentation, and concealment are the hallmarks of many white-collar crimes. The Kurniawan wine fraud case is one colorful example of the pervasiveness of white-collar crime in our society. On any given day, one might pick up a newspaper and read stories reporting bribery scandals among politicians at every tier of government, crooked deals involving Wall Street financiers, or the raffish schemes of predatory con artists. And these are only the stories that make it into the press. Behind them are innumerable cases of corruption, fraud, and abuse that are never uncovered or reported. Yet, when most Americans talk about the "crime problem," they have in mind images of the violent murders, rapes, assaults, and robberies relentlessly portrayed in television "docudramas" and in gory detail by the tabloid press. The public's fears are not unwarranted; street crime remains at intolerably high levels in the

United States. The problem is that these concerns can eclipse our understanding of other kinds of crime—particularly white-collar offenses that are in many less obvious ways much more harmful to society at large.

This book surveys the forms, causes, and consequences of white-collar crime. In it, the authors strive to give the reader a sense not only of the relevant social scientific theories but of the mechanics of white-collar crime: how these schemes work, who perpetrates them, and how they are tied to the environments in which they occur. The authors also hope to convey the scope of "upperworld" criminality, to demonstrate the degree to which it has become ingrained in our major social institutions and our culture.

THE HISTORY OF A CONCEPT

The term "white-collar crime" is a social science construct that has transcended its academic roots and entered the public lexicon. Its origin can be precisely located. In 1939, Professor Edwin Sutherland of Indiana University delivered the presidential address to the American Sociological Society, in which he argued for the need to expand criminological thinking to include behaviors and persons not generally thought of—either by the public or by most scholars of the time—as crime and criminals. As he later explained in a classic book, most theories of crime focus on those offenses committed in overwhelming disproportion by members of the social underclass.[13] Sutherland contended that such an exclusive perspective ignores the fact that upper class persons commit criminal acts, and that such behavior is different than the criminal acts engaged in by those in the lower socioeconomic classes, mostly because of the administrative mechanisms used to respond.[14] He called these offenses *white-collar crimes*, a metaphor meant to distinguish the occupational status of those who worked in office buildings from those who worked in factories or practiced other "blue-collar" trades or were unemployed.

Sutherland defined white-collar crime as "crimes committed by a person of respectability and high social status in the course of his occupation."[15] With this definition, he connected two distinct elements: the social status of the offender and the occupational mechanism by which the offense is committed.

In Sutherland's view, prevailing theories about the causes of crime were based on naive assumptions regarding the validity of official statistics gathered from public institutions like courts and prisons, which always have overrepresented the poor and the powerless. Sutherland asserted that those statistics were prone to extreme bias as they failed to reflect two important facts. First, persons of the upper socioeconomic class, because they are generally more politically and financially powerful, tend to escape arrest and conviction more often than lower class persons.[16] Second, and more importantly to Sutherland, the justice system is inclined to employ a very different procedural apparatus for dealing with white-collar offenders. He argued that those engaging in violation of laws concerning restraint of trade, advertising, food and drugs, and the like do not get arrested by the police, nor are they tried in criminal courts or sentenced to prison terms. Instead, these acts sometimes come before administrative commissions and the civil courts. He argued that because of this, *such offenses are not included in regularly gathered criminal statistics nor are individual cases considered by scholars who write about theories of criminal behavior*.[17]

Sutherland supported his position with data that revealed substantial numbers of criminal and administrative violations among the biggest corporations in the country. He further concluded that the financial cost of white-collar crime is likely to be much more costly—perhaps even many times as costly—as all crimes typically regarded as the "crime problem."[18] As an illustration, he noted that an executive of a chain grocery store embezzled $800,000 in one year, which was six times more than losses resulting from 500 burglaries and robberies of the stores in that chain in a year.[19]

Sutherland's work was groundbreaking, forging a new theoretical path and setting a research agenda for many future scholars. Indeed, his development of the concept of white-collar crime exemplifies what Peter Berger has labeled the "debunking motif" in sociology. The process of debunking involves examining parts of social realities other than those offered by official interpretations.[20] In fundamentally altering the study of crime by focusing attention upon an elite form of lawbreaking previously ignored by criminologists, Sutherland thus "debunked" popular theories of his time which pointed toward poverty, broken homes, and Freudian fixations as explanations for illegal behavior.[21]

It must be noted, however, that Sutherland's ideas were not incubated in a vacuum, but rather reflected the historical context in which they developed. Sutherland was 56 years old when he delivered his influential speech in 1939; so much of his intellectual germination took place in the early part of the 20th century—an era that witnessed an acceleration of the shift of the United States from a rural, agrarian society to an urban, industrial one. A major part of that transformation, of course, was the emergence of modern corporations as the dominant force in the U.S. economy.

The increasing power of a handful of big companies and their seeming immunity to laws designed only to restrict the behavior of deviant individuals had led to the public's emerging feelings of a lack of protection, restlessness, and anger.[22] That outrage eventually inspired a popular social movement to expose the abuses of big business. At the turn of the century, journalists known as "muckrakers" began to write shocking accounts of outrageous corporate conduct. Upton Sinclair, for example, published a scathing critique of the meatpacking industry in 1904, titled *The Jungle,* in which he detailed the horrendous conditions faced by immigrant workers desperate for a weekly wage.[23] Sinclair's exposé of unsanitary practices spurred the establishment of the Food and Drug Administration (FDA), the first federal agency empowered to create and enforce standards in the food processing industry (Chapter 3).

Around the same time, other journalists took aim at the monopolies that were establishing strangleholds on major sectors of the economy. The expanding corporations of the late 19th century had discovered a simple truth: it was more profitable to collude than to compete. The culmination of this assault on the free market was the formation of national trusts, through which various companies would fix prices or pool their operations under a single administration in order to eliminate competition. In an effort to curb such conspiracies, Congress passed the Sherman Antitrust Act of 1890 (Chapter 2). Although very few cases were prosecuted during the early years of the act, corporations were at least forced to rethink their strategies and turn toward a more "legitimate" form of expansion, the merger. Between 1895 and 1908, thousands of companies disappeared as larger firms gobbled them up.[24]

The corporation that came to symbolize the strategic use of mergers and trusts was the Standard Oil Company, headed by John D. Rockefeller. By ruthlessly destroying his competitors, Rockefeller had created an empire that controlled virtually the entire American petroleum industry. Ida Tarbell, a muckraker whose own father had been ruined by Rockefeller, chronicled the gluttony of Standard Oil. Her articles helped ignite public sentiment against Rockefeller and encouraged President Theodore Roosevelt to "bust" the Standard Oil trust. In 1909, the courts finally ordered Standard Oil to dissolve itself into a number of smaller companies.[25]

Still other writers decried the increasing concentration of economic power among rapacious oligopolies. Frank Norris's thinly fictionalized book *The Octopus* described how four powerful companies had conspired to control the vast railroad empire of the American West.[26] In *Other People's Money, and How the Bankers Use It,* Louis Brandeis, who would later become a distinguished Supreme Court Justice, warned of a "financial oligarchy" run by a network of interlocking directorates, through which officers of investment banks, life insurance companies, and railroad corporations sat on each other's boards, conducting transactions that benefited the members of what Brandeis called the "Money Trust."[27] The result was an economy run by and for the members of this elite group, who had become, in Brandeis's words, "masters [of] America's business world, so that practically no large enterprise can be undertaken successfully without their participation or approval."[28] Brandeis singled out banker J.P. Morgan for the harshest criticism. Morgan epitomized the 19th-century robber baron, and his House of Morgan symbolized "monopolistic and predatory control over the financial resources of the country."[29]

An even more direct influence on Sutherland's work was a 1907 book by sociologist E. A. Ross. The book was titled *Sin and Society,* and in it Ross vividly expressed his dismay about corrupt business practices: "Nationwide is the zone of devastation of the adulterator, the rebater, the commercial freebooter, the fraud promoter, the humbug healer, the law-defying monopolist."[30]

Behind all this corruption was a social type that Ross called the *criminaloid*. Such an individual enjoys a public image as a pillar of the community and a paragon of virtue, but beneath this veneer of respectability could be found a very different persona, one that is committed to personal gain through any means. Ross's criminaloid is clearly the antecedent of Sutherland's white-collar criminal.

The Roaring Twenties were a bonanza for white-collar crime. The feeding frenzy unleashed by an exploding economy attracted bold predators. The flashy (and notoriously unsuccessful) gambler Nicky Arnstein, husband of Broadway star Fannie Brice, went to prison for a bungled $3,000,000 bond swindle in 1920.[31] That same year, "Count" Victor Lustig emigrated to America from Bohemia and became one of the most legendary con men ever. Lustig's string of amazing swindles defies credulity. So brazen was Lustig that he even dared to count among his many victims the vicious Chicago crime boss Al Capone. Victor Lustig is best remembered as *the man who sold the Eiffel Tower*[32]—a feat he somehow managed to accomplish twice. The fast-talking Scotsman Arthur Ferguson also made a profitable career out of peddling famous landmarks to gullible tourists, starting in London, where he collected hefty down payments on Big Ben and Buckingham Palace. When Ferguson moved to the United States in 1925, he soon sold the White House on the installment plan to a wealthy rancher. He later served a prison sentence for attempting to sell the Statue of Liberty.[33]

Ponzis

An especially remarkable figure of this era was a diminutive, glib-tongued immigrant named Charles Ponzi. As a young man Ponzi had been an inept petty thief in his native Italy. His parents reportedly shipped him across the Atlantic just to get rid of him. By the time he settled in Boston in 1911, he had already served two prison terms in the United States and Canada.[34] But in Boston, Ponzi found his mendacious Muse. Although his audacious career was relatively brief, he remains one of the most influential white-collar criminals in American history. The ingenious strategy he refined has inspired (and will no doubt continue to inspire) generations of crooks.

In 1919, Ponzi announced that his Financial Exchange Company of Boston would guarantee an incredible 50 percent return to investors within 45 days. The plan ostensibly was to purchase international postage coupons in countries where the exchange rate was low and then resell them in countries with higher rates. It was a primitive form of the technique now known as arbitrage—which was refined so deviously by Ivan Boesky in the 1980s. Within six months, Ponzi had persuaded 20,000 investors to give him nearly $10 million. The secret of Ponzi's smoke screen was that he paid off early investors with new investors' money, thereby attracting more and more investors. At its height, his company had a *daily* cash flow of $250,000—a phenomenal amount for that time.[35] The mathematics of pyramid scams, however, give them a relatively short lifespan. Soon after the *Boston Globe* published a sensational exposé in 1920,[36] Ponzi was arrested, convicted of fraud, sentenced to four years in federal prison, and later deported. He died a pauper in 1949, in Brazil, where he had run a hot-dog stand.[37] Eighty years later, pyramid investment scams that promise income from the recruitment of others, rather than from the sale of a product, are still commonly known as Ponzis.[38]

If anything, Ponzi schemes are now bigger than ever. According to one prosecutor, "there's a pyramiding frenzy going on in the United States, and hundreds of millions of dollars are exchanging hands."[39] One of the more outrageous recent cases involved R. Allen Stanford, the founder of Antigua-based Stanford International Bank. In a relatively short period of time, the bank had grown spectacularly, selling over $8 billion in certificates of deposits to investors from all over the world. The main attraction for those investors was the high yields consistently returned by those CDs. Stanford, a Texas native, cut a wide swath in Antigua where he owned the popular, local cricket team, sponsored an international cricket tournament where the grand prize was $20 million, and was even made a Knight by Queen Elizabeth in recognition for all of his good deeds in the country. Everything was going great until February 16, 2009, when federal agents raided his Houston office and sealed it off, treating it as a crime scene. That same day, the Securities and Exchange Commission filed suit against Stanford alleging that he had "executed a massive Ponzi scheme" that resulted in losses of $7 billion to clients. Instead of investing the money, Stanford and his colleagues simply used it to pay off some early investors and diverted much of the rest to themselves in the form of lavish salaries and loans.[40] Stanford was eventually convicted on criminal charges and in June 2012 was sentenced to 110 years in prison. At his sentencing, Stanford accused the government of engaging in "Gestapo tactics" which had "dismembered" his business.[41] A different point of view was offered by a group representing some of Stanford's victims which claimed that the disgraced banker was guilty of "financial terrorism."[42]

Other recent Ponzi cases include the following:

- In October 2011, Nicholas Cosmo, of Long Island, New York, was sentenced to 25 years in prison for operating his firm, Agape Inc., as a Ponzi scheme. Prosecutors claimed that he stole over $400 million from investors from all over the world who believed his promises of double-digit returns on their investment. Cosmo told investors he was using their money to make short-term bridge loans to small companies when in fact he was simply using the classic tactic of paying off early investors with funds from later investors.[43] According to the SEC, "This Ponzi scheme spread like wildfire through Long Island's middle-class communities because this small group of individuals blindly promoted the offerings as particularly safe and profitable . . ."[44]
- Houston police raided a meeting of the Jubilee Celebration Paradigm and seized more than $730,000 from participants. The operation was part of a multimillion dollar nationwide pyramid scheme. To join, one needed to pay $2,000 in cash and recruit two more members.[45] A few months later, police raided another pyramid meeting in Houston. This time it was the Ya-Ya Girls, an operation that persuaded women to invest $5,000 in hopes of getting a return of $40,000.[46]
- In 2003, former Harlem Globetrotters player Clyde "The Glide" Austin and two other men were arraigned on federal charges of fraud, money laundering, and conspiracy. They allegedly promoted a pyramid scheme that bilked investors out of more than $10 million, while promising high-yield "secret and exclusive investment opportunities." According to prosecutors, many of the 200 investors were members of churches associated with the defendants.[47]
- San Francisco attorney Nikolai Tehin was sentenced to 14 years in prison in 2005 for stealing millions of dollars from clients, including struggling immigrants and

children born with disabilities. Tehin had stolen $1.3 million owed to dozens of low-income migrant workers from Mexico, whom he had represented in a suit against their landlord for failing to keep his clients' rental units habitable. Tehin also pilfered $1 million from malpractice settlements—including cases involving a baby born with severe brain damage, two children born with cystic fibrosis, and a young girl who died under medical supervision. Tehin used some of the settlement money to pay off other clients, in a typical Ponzi scheme. He spent the rest on a lavish lifestyle that included a 73-foot yacht, an $8 million home, and a fleet of luxury cars.[48]

- In 2007, North Carolina swindler Richard Dompier was convicted of mail fraud, tax fraud, and money laundering and sentenced to 10 years in federal prison for operating an international Ponzi scheme. He also was ordered to pay $2.8 million in restitution to his victims. Utilizing the Internet and direct mail, Dompier's company, New Millenium Group (NMG), told potential investors that if they invested $98, the company would provide them with a one-ounce bar of silver and commission checks totaling $15,853.50 over a 14-month period. In fact, the NMG silver program was a front with no legitimate business activities. Taking a page from the Ponzi handbook, Dompier paid initial investors with funds obtained from later investors. Dompier sold over 75,000 silver bars to more than 5,000 customers in 41 countries, promising them they would collectively receive about $1.2 billion.[49] In an ironic twist, it was revealed that Dompier himself had been swindled out of $200,000 by one of those ubiquitous and clumsy Nigerian e-mail scams[50] (discussed in Chapter 12). Who says you can't con a con man?
- One of Charles Ponzi's most nefarious reincarnations was David Burry, who defrauded relatives and neighbors out of more than $25 million—much of it the retirement savings and children's college funds of lifelong friends. He used their money to buy luxury cars and homes, a 48-foot yacht, a private helicopter, and other conspicuous trappings of wealth.[51] Burry was the owner of CF Foods, a wholesale candy distributor. The company, like Burry, appeared to be very successful, but it too was a classic Ponzi. Burry promised investors returns of 18 to 30 percent, but instead of generating sales and profits, he simply paid off some old investors with money from newer investors and pocketed the rest.[52] The sense of personal betrayal was devastating. David Burry was known in his community as a man who gave generously to charities and went to church regularly every Sunday. He even attended Bible classes—though he evidently missed the one covering the Fifth Commandment: Thou shalt not steal.
- People who recently received e-mails with a subject line that read, "Hotter than anything you've ever seen,"[53] probably thought it was one of those tacky sex ads. But it was worse. It was a pyramid investment offer:

> Follow the simple instructions and in two weeks you will have US$10,000 in your bank account. Because of the LOW INVESTMENT, SPEED and HIGH POTENTIAL, this program has a VERY HIGH RESPONSE RATE![54]

According to the U.S. Postal Inspection Service, 80 percent of the scams involving junk e-mail (known as "spam") are for pyramid schemes.[55] E-mail has provided a perfect new environment for one of the most rudimentary cons—the chain letter. Chain letters can sound so seductive—until one does the math. For example, if you are number 6 in the chain, the letter must go five more rounds before you move to the top of the list. If everyone is expected to send the chain to five other persons, who each in turn must send it to five others, and so on, that means that almost 10 million people have to respond before you collect a dime.[56] Good luck.

The Great Depression

Public skepticism about the morality of big business, which had been fostered by writers like Brandeis and Ross, intensified during the Great Depression of the 1930s. The stock market crash of 1929 had laid bare the reckless speculation and rampant frauds that had fueled the economic boom of the 1920s. One sardonic journalist of the time quipped: "If you steal $25, you're a thief. If you steal $250,000, you're an embezzler. If you steal $2,500,000, you're a financier."[57]

In 1933, the nation was rocked by a monetary crisis that eventually led to the closure of over 500 banks. This was before the establishment of federal deposit insurance, so depositors simply lost their money in one stroke, wiping out the life savings of thousands of working men and women. Quite understandably, there was great public resentment toward banks and bankers—an attitude that was captured in the bitter lines of a popular folk song about the colorful bank robber Pretty Boy Floyd.

The notorious gangsters who captured the public's attention during the 1930s often became unlikely folk heroes because, in a perverse way, they exemplified the populist spirit of defiance of big business and big government. Part of the admiration of "public enemies" was probably based on a few well-publicized acts of community benevolence. Pretty Boy Floyd, for example, was noted for distributing turkey dinners to the poor on Thanksgiving Day. But another aspect of that popularity undoubtedly stemmed from the deep antipathy that many victims of the Depression felt toward big business and their sense, however misguided, that outlaws represented the struggles of the "common man." This, then, was the environment in which Sutherland developed his ideas about white-collar crime—an environment where the battered masses were openly hostile to the economic elite.

Despite its resonance, however, Sutherland's message did not spark an immediate stampede of academic attention. Indeed, it was not until the 1970s that his ideas would be more fully applied to empirical research. This delay was due mainly to historical circumstance. Sutherland's seminal work *White-Collar Crime* was not published until 1949. It coincided with the dawn of an era of conformity which spanned nearly 20 years, during which the populist antiauthority spirit was replaced by an atmosphere of public confidence in the ability of corporate America to guide the country to new heights of prosperity. Even within the discipline of sociology, the dominant theoretical position was functionalism, a perspective that focused on societal equilibrium and the maintenance of the status quo, rather than on inequality and flaws in the social system.

Often enough this faith in the good intentions of corporate America proved to be misplaced. The "Great Salad Oil Swindle" of 1963 stands out as such an instance. The Allied Crude Vegetable Oil Refining Corporation devised an elaborate and ingenious way of vastly inflating its inventory of salad oil.

> [The company] filled many of its vats with water, adding only a top layer of oil. Pipes connected the vats underground, so that the layer of oil could be shifted across the vats as needed during the inventory observation procedure.[58]

By the time this massive hoax was uncovered, Allied had sold its financiers $175 million worth of phantom salad oil.[59]

The flamboyant Texas wheeler-dealer Billie Sol Estes perpetrated a similar deception during this same era. Estes had cornered the liquid fertilizer (anhydrous ammonia) market in 1959 by dropping his retail price from $100 a ton to $20, running his competitors out of business. Since his wholesale cost was $80, the price war inevitably drained Estes's capital, and he could not pay his bills. His wily solution was to keep borrowing large amounts of money from his creditors. Billie Sol later explained: "You borrow enough from a banker and you no longer have a creditor.… You get into somebody deep enough, and you've got a partner."[60]

As collateral, Estes used government contracts he had received to store surplus grain in his warehouses, along with his assurances that he would be receiving many additional contracts—with the help of his friend and political benefactor, then Senator Lyndon Johnson of Texas. Estes later "borrowed" millions more from other lenders, this time using as collateral suspicious mortgages he held on huge metal tanks in which his liquid fertilizer was stored. Unlike the Great Salad Oil Swindle, it was not the contents of the tanks that did not exist—it was the tanks themselves. They had not even been built.

Estes was arrested and later convicted on a bevy of charges related to his invisible assets. He was sentenced in 1963 to 15 years in federal prison.[61] Lyndon Johnson, who had adroitly distanced himself from his former crony, was never formally implicated and remained largely untouched by the scandal. Twenty months later, he was the president of the United States.

Despite such revelations as the oil and fertilizer tank frauds, and the huge electrical equipment price-fixing conspiracy detailed in Chapter 2, most Americans of that time were less inclined to view business as a problem than as a solution. This mood changed abruptly, however, during the late 1960s and early 1970s, when social unrest once again brought into question the legitimacy of those holding power. A number of important events reinforced this renascent skepticism: the Watergate scandal, the unpopular Vietnam War, stories of unlawful conduct on the part of the CIA and FBI. The complicity of large corporations in these abuses of power served to discredit the integrity of the economic, as well as the political, elite. Surveys conducted during this period found that the public's trust in business and political leaders had diminished significantly. One poll reported, for example, that the proportion of Americans who indicated "a great deal of confidence" in the people running major companies declined from 55 percent in 1966 to just 16 percent in 1976.[62]

A by-product of this revival of mass cynicism was a heightening of interest in white-collar crime. In the 1970s, the Justice Department undertook some unusually vigorous prosecutions of white-collar offenders, including such corrupt politicians as Vice President Spiro Agnew, several state governors, and White House budget director Bert Lance.[63] Even the FBI, which had never before demonstrated much passion in this area, substantially increased its budget for white-collar crime investigations.[64]

The disillusionment with political and business leaders in the 1970s also generated a resurgence of academic work on white-collar crime, as sociologists and criminologists rediscovered many of the notions raised by Sutherland decades earlier. An important study by Clinard and Yeager utilized some of Sutherland's empirical methods to reveal high levels of lawbreaking among major American corporations.[65] A number of other studies documented the dynamics of white-collar criminality in such industries as securities,[66] automobiles,[67] liquor,[68] and prescription drugs.[69]

In addition, criminologists undertook examinations of the justice system's response to white-collar crime, testing the hypothesis that higher-status offenders received preferential treatment.[70] Theorists also began to look for the sources of white-collar criminality in organizational characteristics[71] and to acknowledge the uniqueness of corporate crime.[72]