

Index

abolitionism, 210–12 capitalism, critiques of, 210-11 American Law Institute, 77, 206 ceiling rights, 67-71, 201 Andersen, Arthur, 27-28, 97-98, 148 charge-stacking, 62-63, 318.80. See also count-Annual Statistical Report (ASR), 51-52 stacking Christie, Chris, 2-3 Arlen, Jennifer, 98 arrests, quantitative data on, 51-52, 69 CIUS report. See Crime in the United States ASR. See Annual Statistical Report report attempts, criminal liability for, 161, 199 civil liability, 130-31, 163-64 Clinard, Marshall B., 136 code design, 6-7, 206-7, 208, 209-10 back-end sorting, 73, 74, 77, 79-80 code reform and, 174, 204-5, 214 banking fraud, 178 Barkow, Rachel, 212 flatness and, 200 Bear Stearns, 111-12, 114-15 grading, 200 Bellin, Jeffrey, 73 ground rules, 175 Benson, Michael, 55-56, 212 information and, 170-74 Bharara, Preet, 81-82 after Sentencing Reform Act, 207 Coffee, John C., Jr., 131-32, 156-57 biased assimilation, 157 BJS. See Bureau of Justice Statistics Cohen, Steven, 82 Boldt, Richard, 213 Collins, Chris, 60-66, 70 compliance, 40, 121-22, 151 Bookman, Zachary, 57 Bratton, William, 29 compound statutes, 67 bribery, 171-72 computer fraud, 1, 203 federal code on, 71-73, 171, 173, 176-77 concurrent sentencing, 63-64 fraud and, 171–77 Congress Supreme Court on, 85, 176 criminal outsourcing and, 5-6, 86-88 Buell, Samuel, 113, 121-22, 213 FCPA, 136 Hobbs Act, 172, 173, 176 bundling, 174, 175-76 on insider trading, 91-92, 94-96 grading and, 174 information and, 173-76 Sarbanes-Oxley Act, 94-96 mislabeling and, 174-78 Securities Exchange Act, 88-89, 91, 94-95 unbundling, 174–79, 180 Sentencing Reform Act, 72-77, 207 Burch, Elizabeth, 162 SORNA, 87 Bureau of Justice Statistics (BJS), Travel Act, 72 37-38, 57-58 consolidation, 180, 185-87 sentencing data of, 54 of fraud statutes, 184-85, 187, 201 white-collar crime defined by, 42-43 information and, 180, 185



216 Index

Federal Principles for Charging Business conspiracy, 92 Organizations, 97 in fraud, 116-17 grading and, 201-2 Fraud Section, 52-53 cooperation, 126-27 Main Justice, 52-53, 59, 136 corporate, 126-27, 128 National Caseload Data, 51 2008 Financial Crisis and, 108-9 criminal, 125-26, 127, 128 corporate crime, 43, 126 detection avoidance, 123, 129-30 Corsey. See United States v. Corsey civil liability and, 163-64 of fraud, 147, 148-51, 197 failure to punish and, 21-22 tracking costs of white-collar crime, 44-45 grading and, 190 count-stacking, 201 information and, 161 credit card fraud, 203 Dirks v. SEC (Supreme Court), 92-93 Cressey, Donald, 7-8, 18-19, 135, 168 discourse, white-collar crime, 134-35 Crime in the United States report (CIUS), 48-50 on enforcement failure, 137-38 myths and, 140, 155-58 criminal cooperation, 125-26, 127, 128 criminal law DOJ. See Department of Justice decentralization of, 20 DPAs. See deferred prosecution agreements expansion of, 31-32 drug laws, federal, 73, 75 flaws in, 202 Dyck, Alexander, 147, 148-50 information and, 166-69 Edelhertz, Herbert, 43 as statutory, 83-84 criminal outsourcing, 5, 84, 153.90. See also elite bias, undercharging and, 14-17 delegation embezzlement, 7-8, 150-51, 176 insider trading and, 5, 83, 84, 88-89, 90, 92-96, enforcement, tracking, 45-46, 47, 55-56 arrests, 51-52, 69 99-100, 104-5 of fraud, 48-49, 55 legality principle and, 5, 100 nondelegation doctrine limiting, 86-87 grading and, 69-71 respondeat superior liability and, 88-89, 90, 96, LIONS database, 37-38, 50-51, 55, 57 97-100 sentencing data, 53-54, 69 suggested reforms for, 56-59, 185 underwritten laws and, 87-90, 99, 104-6 TRAC, 54-55 D. C. Circuit. See United States Court of Appeals Enron, 27-28, 29, 97-98 Eren, Colleen, 184 for the District of Columbia Circuit data systems, centralization of, 56-59 ethical fading, 117 deferred prosecution agreements (DPAs), 90, extortion, 172, 173, 176 98-99, 102-3, 105, 108, 167 definitional debate, in white-collar crime false statements, 174 FBI. See Federal Bureau of Investigation FBI definition, 42 offender-based definition, 4-5, 41-42, 45, 162-63 FCPA. See Foreign Corrupt Practices Act Federal Bureau of Investigation (FBI), 48 offense-based definition, 4-5, 41-43, 161, 162-63 quantitative data on misconduct and, 39-40, CIUS report, 48-50 55-56 white-collar crime defined by, 42 delegation, 86, 88-89 federal code fractured, 90, 104 classifications in, 70 nondelegation doctrine, 86-88 grading and, 71-74, 187-88 sequential, 100, 104 historical explanation of flatness, 75-76 Supreme Court on, 86-88 federal drug laws, 73, 75 unitary, 90, 100, 104 federal law, state law overlapping with, Department of Justice (DOJ), 159 See also Bureau 76, 178-79 Federal Principles for Charging Business of Justice Statistics; Federal Bureau of Investigation Organizations, 97 ASM and, 153-54 federal prosecutors, 32, 143-44

FCPA enforcement and, 136

fiduciary duty, violation of, 90, 92, 93



Index 217

Financial Crisis (2008), 6, 29, 32, 107–8	Gorsuch, Neil, 87-88
Bear Stearns in, 111–12, 114–15	grading, 67, 105, 187, 189, 209
DOJ and, 108-9	ceiling rights in, 67-71, 201
fraud and, 108–9, 186	criminal outsourcing and absence of, 80
securities fraud statute following, 186	federal code and, 71-74, 187-88
subprime mortgage crisis, 107	federal drug laws and, 73, 75
underenforcement and, 14-19, 107-10,	fraud and, 71–73, 188–99, 202–3
136–37, 157	harm and, 189, 194–99
Fissell, Brenner, 101	incommensurability problem, 197–200
flatness, of criminal code, 5, 66-67	information and, 69-71, 180, 192
bundling and, 174	mechanics of reforms, 203-5
code design confronting, 209	MPC and, 77
historical explanation of federal, 75-76	proof rights in, 67–71
Foreign Corrupt Practices Act (FCPA), 136	gratuity, 71, 72-73
Fox Business School, 152-53	Green, Stuart, 77, 186
fraud, 70, 113, 114	Gundy v. United States (Supreme Court), 87
banking, 178	
in Bear Stearns case, 111–12, 114–15	health care fraud, 152
bribery and, 171–77	higher-education rankings fraud, 152-53
Collins prosecution for, 60–63	Hobbes, Michael, 150
computer, 1, 203	Hobbs Act, 172, 173, 176
conspiracy in, 116-17	Holder, Eric, 97
cost of, 147, 148–51, 197	homicide, 189–93
drop in cases, 55, 138	honest services fraud, 41-42, 85, 171-77
grading and, 71–73, 188–99, 202–3	HSBC. See United States v. HSBC Bank USA
health care, 152	Huffman, Felicity, 13, 20, 21-22
higher-education, 152–53	
honest services, 41-42, 85, 171-77	identity fraud, 203
identity, 203	incommensurability problem, in grading,
mail, 72, 134–35, 182–85, 187	197–200
materiality in, 116	information, 169, 180, 203-5
mens rea in, 30-31, 112-13, 190-99	bundling and, 173–76
occupational, 150–51	code design and, 170–74
pervasiveness of, 147–51	consolidation and, 180, 185
PricewaterhouseCoopers Crime and Fraud	deficits in, 162
Survey, 40–41	deterrence and, 161
prototype theory and cases of, 113–14	from DOJ, 166
in quantitative data, 40–41, 48–49, 55	feedback loops, 169
redundant statutes, 181, 182–85	grading and, 69–71, 180, 192
Sentencing Guidelines on, 72, 143, 154-55,	public and, 69–70, 159–62, 166
182–85, 186, 191	as public good, 161–62
tracking enforcement of, 48–49, 55	qualitative failures, 169–70, 172–73
2008 Financial Crisis and, 108–9, 186	quantitative failures, 169–70, 172–73
Fraud Section, DOJ, 52–53	insider trading
front-end sorting, 73-74, 79-80	Collins prosecution for, 60–66, 70
	Congress on, 91–92, 94–96
Gainer, Ronald, 77	criminal outsourcing and, 5, 83, 84, 88-89, 90,
gap-minding, 6, 111, 124, 132	92–96, 99–100, 104–5
gap-narrowing, 111, 128	misappropriation theory of, 89, 91
Congress and, 129–30	SAC prosecuted for, 81–83, 84, 88, 92
grading and, 131	SEC on, 88–89, 91, 92, 94–95
Garrett, Brandon, 156–57	Second Circuit on, 93, 94-95
Giannulli, Mossimo, 11	Supreme Court on, 5, 91, 92–93, 101, 104–5
Gilbert, Michael, 121–22	Insider Trading Prohibition Act, 92



218 Index

```
Johnson, Brian D., 70
                                                    MPC. See Model Penal Code
Justice Department. See Department of Justice
                                                    Mueller, Robert, 36, 137, 141, 144
Justice Manual, DOJ, 97
                                                    myths, 138-40, 159-60
                                                      discourse on white-collar crime and, 140,
Kagan, Elena, 2, 26-28, 87
                                                         155-58
                                                      about harm, 147-51
Kelly, Bridget Anne, 2-3
Kennedy, Jay, 55-56
                                                      about offenders, 150-51, 152
Koh, Steve, 75
                                                      about prosecutors, 142-45
Kwok, David, 50
                                                      about punishment, 152-55
                                                      about victims, 150-51, 152
Lahav, Alexandra, 162
                                                   Natapoff, Alexandra, 144-45
Langer, Máximo, 212
Langevoort, Donald, 138-40
                                                    National Caseload Data, 51
Larkin, Paul, 56-57
                                                    National Incident Based Reporting System
legality principle, criminal outsourcing and, 5, 100
                                                        (NIBRS), 37-38, 46-50, 56-57
                                                   National Public Survey on White Collar Crime,
lenity, 84-85
Levin, Benjamin, 24, 211, 213
Levitin, Adam, 29
                                                    New York Central and Hudson River Railroad
liability, civil, 130-31, 163-64
                                                        Company v. United States (Supreme Court),
liability, corporate criminal. See respondeat
                                                        96, 100
    superior liability
                                                   Newman. See United States v. Newman
liability threshold, 117
                                                    NIBRS. See National Incident Based Reporting
  gap-minding for, 6, 111, 124-28, 132
  gap-narrowing for, 111, 128-32
                                                   Nixon, Richard, 136
                                                   nondelegation doctrine, 86-88
  underenforcement and, 121
LIONS database, 37-38, 50-51, 55, 57
                                                   nonprosecution agreements, 90, 98, 167
Logan, Matthew, 55-56
                                                   Nou, Jennifer, 177-78
Loughlin, Lori, 11
Lynch, Gerard E., 122-23, 163, 171, 186, 189,
                                                   obstruction of justice, 67, 174, 176
                                                   occupational crime and fraud, 43, 150-51
                                                   offender-based definition, in white-collar crime,
Madoff, Bernie, 64, 184, 186
                                                        4-5, 41-42, 45, 162-63
Madrick, Jeffrey, 109
                                                   offenders, myths about, 150-51, 152
mail fraud, 72, 134–35, 182–85, 187
                                                   offense-based definition, in white-collar crime,
Main Justice. See Department of Justice
                                                        4-5, 41-43, 45, 161, 162-63
Manafort, Paul, 35-37
                                                   Office of Inspector General, DOJ (OIG), 49
Martoma, Mathew, 81-82, 83, 88, 92, 94-95
                                                   OpenGov, 57
mass incarceration, 24, 202
                                                    O'Sullivan, Julie, 67
materiality, in fraud, 116
                                                   Ouziel, Lauren, 17, 32, 66
maximalism, white-collar, 211-12
                                                   overcriminalization, 3-4, 24-25, 28-30, 110
McAdams, Richard, 165
                                                      overcharging, 68-69, 70, 73
                                                      prosecutors in, 33-34
McCarthy, Andrew, 36-37
mens rea, 175-76
                                                      redundant statutes and, 184
  in fraud, 30-31, 112-13, 190-99
                                                      underenforcement and, 33-34
  in grading, 189-99
                                                      underwritten laws and, 34
  premeditation, 189-91, 193-97
                                                   oversight, of enforcers and agencies,
menu, code as, 170-71
                                                        160
Mills, David, 95-96
minimalism, criminal, 212-13
                                                   Packer, Herbert, 187
mislabeling, 67, 174-78, 311.150. See also
                                                   Partnoy, Frank, 109
                                                    The Pathological Politics of Criminal Law (Stuntz),
    relabeling
Model Penal Code (MPC), 77, 174, 206
                                                        206-7
modernization, of data systems, 56-59
                                                    Pfaff, John, 142
Morse, Adair, 147, 148-50
                                                   Porat, Moishe, 152-53
```



Index 219

PricewaterhouseCoopers Crime and Fraud	DPAs and, 90, 98–99, 102–3, 105
Survey, 40–41	prosecutors and, 97–99, 102–4, 105
probability neglect, 154–55	Supreme Court on, 96, 100
proof rights, 67–71	retributivist theories, of punishment, 20–21, 189–90
prosecutors, 32, 137, 141, 170	revolving door, 14–15, 17, 145–47
ceiling and proof rights restraining, 68-69	Ribstein, Larry, 29
criminal outsourcing and, 5, 100, 103-4	Richman, Dan, 87–88
information failures and, 172-73	rights, grading and, 67–71, 201
plenary power attributed to, 142–45	risk
redundant statutes and, 181, 184	in fraud, 194–99
respondeat superior liability and, 97–99, 102–4, 105	grading according to, 189, 194–99
in underenforcement, 33–34	taste for, 131
viability and viewpoint of, 118–19, 120, 131	Robinson, Paul, 198
prototypes, 112–14, 131, 134	Roth, Jessica, 156–57
proxy statutes, 130	Rule 10b-5 (SEC rule), 88–89, 91, 94–95
public information and 60 70 170 62 166	Rumsfeld, Donald, 35, 55–56
information and, 69–70, 159–62, 166	SAC Capital 8: 82 84 88 02 04 05 06
National Public Survey on White Collar Crime,	SAC Capital, 81–83, 84, 88, 92, 94–95, 96
40 surveys of perception, 40–41	Salman v. United States (Supreme Court), 93, 94–95 Sarbanes–Oxley Act, 94–96
on white-collar crime, 134–37	savings and loan scandals, 107–8, 136
on white-collar crime enforcement, 9–10, 137	Scalia, Antonin, 2, 42
punish, failure to, 14, 19, 20–21	scheme, in fraud, 116–17
punishment	SEC. See Securities and Exchange Commission
grading and theories of, 20–21, 189–90	Second Circuit. See United States Court of
myths about, 152–55	Appeals for the Second Circuit
Purdue Pharma, 167	Securities and Exchange Commission (SEC)
	Dirks on, 92–93
quantitative data, on misconduct, 55-56	on insider trading, 88–89, 91, 92, 94–95
arrests, 51–52, 69	whistleblowing and, 127–28
ASR, 51–52	under White, 141
centralization and modernization for, 56-59	Securities Exchange Act, 88–89, 91, 94–95
definitional debate and, 39–40, 55–56	self-dealing, 41–42
LIONS database, 37-38, 50-51, 55, 57	sentencing
National Public Survey on White Collar Crime,	concurrent, 63–64
40	consecutive, 63–64
NIBRS, 37–38, 46–50, 56–57	data, 53-54, 69
PricewaterhouseCoopers Crime and Fraud	fraud sentences, 60-64, 72
Survey, 40–41	reform, 72–77, 78, 207
sentencing data, 53-54, 69	Sentencing Commission, United States, 53-54,
surveys of public perception, 40-41	72–77, 138, 139, 182, 207
TRAC, 54–55	Sentencing Guidelines, United States, 78, 181
tracking enforcement, 45-59, 69-71, 185	criminal history analysis, 198
quantitative information failures, 169–70, 172–73	criticisms of, 160
	on fraud, 72, 143, 154–55, 182–85, 186, 191
Rakoff, Jed S., 156–57	redundant statutes and, 182–85
recidivism, 18	Sentencing Reform Act and, 72–77
reckless fraud, 31, 193-94, 199	Sentencing Reform Act, 72–77, 207
redundant statutes, 180–85	sequential delegation, 100, 104
relabeling, 174–78, 180	Sex Offender Registration and Notification Act
respondeat superior liability, 96, 210	(SORNA), 87
Congress on, 97	shadow law, of liability, 97–98, 102, 103–4, 106
corporate cooperation and, 126	Shapiro, Susan, 43, 46
criminal outsourcing and, 88–89, 90, 96, 97–100	Shermer, Lauren O'Neill, 70



220 Index

signaling value, of grading, 78-79 criminal outsourcing and, 87-90, 99, 104-6 Simpson, Sally, 39, 57-58 insider trading as, 88-89, 91-92, 104-5 Skilling v. United States (Supreme Court), 42 respondeat superior liability as, 88-89, 105 Soltes, Eugene, 147-48, 151 ungraded codes. See grading SORNA. See Sex Offender Registration and Uniform Crime Reporting (UCR), 38, 48 Notification Act United States Attorneys, Annual Statistical Report Sorting out White-Collar Crime (Baer), 77, 214 of. See Annual Statistical Report state law, federal law overlapping with, 76, 178-79 United States Court of Appeals for the District of state practice, 7, 78 Columbia Circuit (D. C. Circuit), 99 statutory design. See code design United States Court of Appeals for the Second Stiglitz, Edward H., 177-78 Circuit (Second Circuit) Stith, Kate, 75 Corsev, 200 Stuntz, William J., 31-32, 170, 206-7, 214 HSBC, 99 Sunstein, Cass, 154, 157-58 Newman, 93, 94-95 Supreme Court United States Sentencing Commission. See on bribery, 85, 176 Sentencing Commission, United States on delegation, 86-88 United States Sentencing Guidelines. See on gratuity, 71 Sentencing Guidelines, United States on honest services fraud, 41-42, 85 United States v. Corsey (Corsey) (Second Circuit), on insider trading, 5, 91, 92-93, 101, 104-5 United States v. Fokker Servs. B. V. (D. C. narrow construction cases, 85-86 Sutherland, Edwin, 4-5, 41-42, 135, 162-63 Circuit), 99 Swartz, Aaron, 1 United States v. HSBC Bank USA (HSBC) (Second Circuit), 99 United States v. Newman (Newman) (Second Taub, Jennifer, 59, 146, 157, 211 Temple University, 152-53 Circuit), 93, 94-95 theft, employee, 150-51 Thomas, Clarence, 176, 183 vagueness, 84-85 Transactional Records Access Clearinghouse Van Loo, Rory, 160 (TRAC), 54-55 Varsity Blues scheme, 11-14, 20, 21-22 transparency, 9-10, 127-28 viability. See also liability threshold Travel Act, 72 detection avoidance and, 123, 129 Trump, Donald, 8, 36–37, 137, 141 gap-minding and, 6, 111, 124–28, 132 Trump, Donald, Jr., 144 gap-narrowing and, 111, 128–32 Trump Organization, 8 prosecutor viewpoint and, 118-19, 120, 131 underenforcement and, 121 UCR. See Uniform Crime Reporting victims, myths about, 150-51, 152 umbrella statutes, 59, 71-73, 74, 79, 171, 183 wage theft, 211, 213 unbundling, 174-79, 180 underenforcement, 3-4, 23-24, 110. See also Wall-Parker, April, 147, 150-51 Warren, Elizabeth, 141 enforcement, tracking elite bias and, 14-17 Watergate investigation, 136 failure to charge, 14-17 Weisberg, Robert, 95-96 failure to punish, 14, 19-23 whistleblowing, 124-25, 127-28 failure to reform, 14, 19 White, Mary Jo, 141 fear of losing and, 14-16, 17 willful blindness doctrine, 30-31, 195 liability and viability gap in, 121 wire fraud, 182-85, 187 revolving door and, 14-15, 17 Yates v. United States (Supreme Court), 1-2, 2008 Financial Crisis and, 14-19, 107-10, 136-37, 157 26–28, 85 Varsity Blues scheme and, 13-14 Yeager, Peter, 57-58, 136 underwritten laws, 5-6, 34, 59, 134. See also flatness, of criminal code Zaring, David, 17, 146 Congress and, 106 Zingales, Luigi, 147, 148-50