

Routledge Series on Practical and Evidence-Based Policing

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# Public Corruption in the United States

**Analysis of a Destructive Phenomenon**



Jeff Cortese

“This work could only have been written by a true dedicated law enforcement professional who lived it for years, day in and day out. To a DOJ veteran like myself, it is powerful, authentic, accurate, and remarkably complete – demonstrating how pervasive corruption is across the entire social and political spectrum. Most importantly, it is straightforward and completely apolitical. No agendas here. Just remarkable knowledge and experience.”

**Jim Letten**, *U.S. Attorney (Retired), Eastern District of Louisiana*

“*Public Corruption in the United States* is a must-read front-line perspective for those considering a future in fighting corruption, law and business professors, as well as in-house personnel tasked with addressing corruption in their work and roles. Mr. Cortese brings a clear-eyed view as to the causes and consequences of corruption, starting with how to define it, recognize it and address it, as to protect people, organizations and society at large. If we want to have a world free of corruption, where integrity never has to be sacrificed, it needs to start with making difficult issues discussable, as Mr. Cortese has done in this well researched treatise that is foundational for any corruption or compliance library.”

**Richard Bistrong**, *CEO, Front-Line Anti-Bribery LLC,  
and former FCPA violator*

“*Public Corruption in the United States: Analysis of a Destructive Phenomenon* is the ultimate guide for anyone interested in understanding how and why corruption eats away at trust in our institutions while also providing clear guidance on preventing it. Mr. Cortese makes an ironclad case why everyone interested in democracy needs to pay attention and get involved in stopping corruption at all levels, regardless of ideology or partisanship.”

**Ethan Bearman**, *Attorney, Political Analyst,  
and co-host of the Law Junkie Show*

“Jeff Cortese’s work should be required reading for elected officials and newsrooms. Cortese brings a rare depth of expertise as someone who has investigated breaches of integrity in government at the highest levels. Thinkers like Cortese safeguard our way of life in the United States and I cannot overstate how necessary they are at this moment in history.”

**Adam S. Lee**, *Chief Security Officer, Dominion Energy  
(former FBI Special Agent in Charge and national program  
executive over Public Corruption and Civil Rights Programs)*



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# Public Corruption in the United States

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*Public Corruption in the United States* provides a comprehensive view of public corruption, including discussion on its types, methods, trends, challenges, and overall impact. It is the first book of its kind to examine in plain language the breadth of criminal public corruption in the United States, not just at a superficial level, but in a deeper context. By critically examining acts of corruption of elected, appointed and hired government officials (legislators, law enforcement, judges, etc.) at the local, state, and federal levels, the reader gains insight into the inner workings of corruption, including its relationship to terrorism and organized criminal networks.

Using simple language and easy-to-understand examples, this book is about empowering investigators, compliance professionals, educators, public officials, and everyday citizens who seek to better serve, support, and protect their communities and their country.

**Jeff Cortese** is an investigation, intelligence, and risk management professional who served in federal law enforcement with the United States Capitol Police as a member of the Speaker of the House's security detail and with the FBI having been assigned to offices in New Orleans, Tucson, Washington D.C./FBI HQ, and San Francisco. Cortese, formerly the Acting Chief of the public corruption unit at the FBI, was assigned throughout his career to various investigative squads responsible for investigating public corruption, southwest border violence (sicarios and bajadores/hit-men and rip crews), and OCDETF matters. Since his departure from law enforcement, Cortese has provided extensive analysis for local and national outlets as a law enforcement analyst and student of corruption.

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### **Public Corruption in the United States**

Analysis of a Destructive Phenomenon

*Jeff Cortese*

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Analysis of a Destructive Phenomenon

Jeff Cortese

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To the relentless men and women in law enforcement – and the families who support them – responsible for holding accountable the public officials who exploit their position, community and country for personal gain.

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. . . and many many more.

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# Foreword

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It is undeniable the impact that incidents of public corruption have on the implied trust elected officials and persons in positions of power earn simply by election or direct appointment. Nothing so violently rips at the fabric of our republic more than the betrayal of trust by venal public servants who break the solemn oaths they once swore. The caricature of the rapacious politician lying, cheating, and stealing to gain – or retain – power is ubiquitous in American culture. These crimes though are serious enough that the Federal Bureau of Investigation (FBI) has prioritized combatting public corruption at all levels amongst its top mission priorities.

Susceptibility to corruption remains a stubborn and insidious feature of our political system. Nineteenth-century British politician Lord John-Dahlberg Acton is credited with the incontrovertible proverb that “[p]ower tends to corrupt and absolute power corrupts absolutely.” Yet, why is this? Are not wholly good and decent men and women drawn to public service? The answer is – of course. But for a contemptible few, somewhere along their career path, the intoxicating allure of gathering and maintaining increasing levels of power and influence, via shortcuts, ultimately becomes too addictive a drug. Fallible humans falling prey to one of their basest impulses.

The erosion of public trust occurring when corruption pervades any level of government has always been troubling to California native, Jeff Cortese. Thus, following a distinguished career in U.S. law enforcement, he was impelled to write this book. The universe he once occupied while serving with the United States Capitol Police (USCP) in Washington, D.C. afforded example after mind-boggling example of once-honorable public servants committing betrayals of their sacred service contracts. Cortese spent years in close contact with members of the House of Representatives – even serving on the Speaker’s security detail. These experiences served as an inflection point in his young professional career that led to his joining the FBI.

In 2005, Cortese embarked on a remarkable Bureau career that included a myriad complex investigative and tactical assignments. Identified early on as a model agent and leader of the highest caliber, he was deservedly promoted to Supervisory Special Agent (SSA), transferred to FBI headquarters, and assigned to the vaunted Public Corruption Unit – the FBI’s priority program in the criminal division. Cortese’s talents in the public corruption investigative arena led to stints as the Acting Chief of the FBI’s Public Corruption Unit, followed by assignments providing public corruption training to senior law enforcement officials around the globe.

With FBI careers that overlapped, the author and I served during a period where public corruption cases investigated by the Bureau reached critical mass. Recent history highlights high-profile federal investigations, such as ABSCAM’s political influence-peddling, Watergate’s bringing down a sitting U.S. president, and a 2005 case against U.S. Representative

William Jefferson (D-La.), convicted of using his official position to solicit bribes and notorious for keeping the illicit cold cash in his home freezer, that continue to shock the senses.

These shameful episodes indicate a persistent and pervasive threat to a democratic society and have firmly affixed the protagonists in American criminal lore; continuing to cast a pall over our political landscape. Teddy Roosevelt pithily recognized the ubiquity of corruption in our political system when he famously quipped about the world's greatest deliberative body: "When they call the roll in the Senate, the Senators do not know whether to answer 'Present' or 'Not Guilty'."

Yet, Cortese's text expertly highlights the cross-boundary virus of corruption. While he squarely aims non-partisan scrutiny at politicians who betray the public trust, he also critically assesses corrupt law enforcement officers, judges, and bureaucrats (non-elected government officials). Even more timely is his analyses of the relationship corruption has with organized criminal enterprises and terrorist networks. An easy read for any casual consumer of investigative protocols, this book serves as a clear roadmap for academics, investigators, and compliance professionals alike. Exceedingly well-researched, Cortese's experiences in the realm provide a unique and invaluable first-person perspective and aid this tome in reading like a crime novel.

*Public Corruption in the United States: Analysis of a Destructive Phenomenon* should serve as a cautionary tale of just how simple it is for fundamentally decent human beings to fail when temptations present. It also serves as a direct warning to those easily persuadable or inclined to illegally game the system. The criminally corrupt always sense they are smarter than the rest of us and that they'll never be caught. Well, they are not, and ultimately, they will be. We all owe a huge debt of gratitude to public servants like Jeff Cortese who hold the powerful to account.

James A. Gagliano

*Retired FBI Supervisory Special Agent*

*Adjunct Professor in Homeland Security at St. John's University*

*CBS News Security and Law Enforcement Analyst*



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# Introduction

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One of the biggest challenges for law enforcement in combatting corruption is educating the agents responsible for conducting the investigations, but a bigger challenge is educating the communities in which they serve. In a healthy law enforcement/community relationship, communities are a force-multiplier for law enforcement. They are a necessary extension for any successful law enforcement program. That symbiotic relationship is critical to identifying, investigating, and successfully prosecuting corruption. If communities do not understand what corruption is and what it looks like, then they cannot report it. If allegations are not reported, then law enforcement's anti-corruption efforts are greatly diminished and the impact of corruption becomes more significantly realized. This was a hard lesson I learned while working corruption investigations in the field and eventually running the FBI's program as Acting Chief of the Public Corruption Unit at FBI Headquarters.

The topic of corruption can be dissected and explored to such breadth and depth that any one element covered in this text could be expanded to fill the pages of its own standalone book. That more exhaustive and detailed approach is most common among academics who dive deeper than this book is intended. Though often masterfully researched and articulated, academics do not tend to write for the people most impacted by corruption, they tend to write for other academics. There is a saying in the FBI, "you don't have to be a brain surgeon to catch one." And while being smart helps knowing where to look and what to look for, the discussion is not nearly as complex as the topic is often made to seem. *This book is written for simple people because that is what I am and that is the person most commonly impacted by corruption and the person most commonly responsible for fighting it.*

*Public Corruption in the United States: Analysis of a Destructive Phenomenon* was written from the perspective of an investigator and program head, exploring corruption types, forms, levels, methodologies, challenges and overall impact, as well as the steps to combat corruption. It is an apolitical analysis specifically intended for those who would most benefit from a broad and thorough discussion using simple to understand language. To some this could be viewed as an introductory discussion, but for others, it is a broad assessment intended for anyone who lives or works in and around areas potentially vulnerable to corruption, which is all of us. This book examines the various aspects of criminal corruption in the United States in a context suitable for educators, investigators, government employees, compliance professionals, and everyday citizens.

Corruption is *the* topic of the last few years. People are enthralled by the discussion like never before. In fact, thanks in large part to the long arm of social media, there have never been more widespread public allegations of corruption. Social media and the internet have provided a voice to faceless individuals in disparate parts of the country who look to use that



voice to suggest criminal behavior is rampant among government officials of all stripes, as well as the rich and powerful.

The word “corrupt” is thrown around with reckless abandon by people who typically do not realize they are being reckless. The word has become more of a rally cry among like-minded people than a serious complaint. This overuse and misuse of the word normalizes the behavior and diminishes the country’s ability to legitimately identify, and by extension root out corruption. Despite that, people do care deeply about corruption. They hate it because they hate being taken advantage of and they hate the idea of their money being stolen, misused, or misappropriated. They also care deeply about politics and their political party, sometimes to a fault. That passionate conviction for their party can leave some more concerned about believing they are right than actually being right. And that, unfortunately, makes them easy targets for manipulation.

The media, for example, has two primary goals: to be first with the story and to attract the attention of more consumers so they can make more money (it is a business after all). Being first can mean being wrong, but that is sometimes viewed as less significant than being late. The more shocking the story, the more angry we get; the more angry we get, the more vocal we get; the more vocal we get, the more news we consume. Anger is gold for the media and they know we like to be angry. If being early on an offensive story means possibly being wrong, media will justify the decision to proceed based on their willingness to correct any errors after the fact. However, corrections usually hit well after the damage is done and do not spread with near the same enthusiasm as the original story. Mark Twain was attributed, likely in error according to a *New York Times* article from 2017, with saying “a lie can travel halfway around the world while the truth is still putting on its shoes.” Regardless of who said it, social media has proven this to absolutely be true.

Politicians too, generally, want us angry because anger facilitates division. Division is how one politician differentiates himself from another. This can be effectively accomplished by driving a wedge between us with half-truths and manipulations. While lying to the government can land you in prison, the same is not true for them lying to us.

There are numerous external forces conflicting with our ability to identify truth, but we sometimes do not help ourselves out. Confirmation bias, for example, is a struggle we must all work to overcome if we are to decipher truth amidst all the chaos. If we prematurely become engrossed in a narrative we can become blind to the evidence as it is. It is a human response that inclines us to seek comfort in evidence that supports our beliefs above taking an objective view of the evidence to find out what to believe.

### **Many Do Not Know the Truth; Many Cannot Find the Truth; and Many Who Know Better, are Lying About the Truth**

Corruption is far broader than the potential self-serving criminal behavior of elected officials. It is an extensive threat that lingers in the shadows of every single government building in the country. Prison officials, police officers, federal agents, judges, city council members, mayors, governors, school board members, motor vehicle employees, and government contractors are just a few of the many government roles discussed in the following chapters.

This book critically examines past and present corruption at the local, state, and federal levels involving both elected officials and appointed/hired officials, and then provides insight into the inner workings of their methodologies and behavior, including the relationship corruption has to terrorism and organized criminal networks. *Public Corruption in the United States: Analysis of a Destructive Phenomenon* is about empowering students of criminal justice, investigators, compliance professionals, government employees, and everyday citizens looking to better serve, support, and protect their communities.

Part I

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# Identifying Corruption

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# The Basics

## What is Corruption?

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Context is key when trying to understand corruption. Its application, connotation, and interpretation vary by perspective and discipline. In its broadest use, which is more of an abusive oversimplification used most frequently by politicians and pundits, it is a term used to describe a political enemy or opponent; however, a more precise application is in the identification of behavior resulting in criminal liability.

In recent years, the academic, economic, political, and social implications of corruption have gained greater attention in the United States, but this newfound mindfulness has not resulted in an authentic and accurate understanding by those most impacted by corruption. This increased awareness has come in large part from the increased popularity of emotionally charged ad hominem attacks leveled by political types against their political opposition. The intensity and frequency of the claim increases the public's sense of corruption in leadership, but it does little to actually educate people on what corruption is, what it looks like, and the stench it leaves behind.

Repeatedly witnessing intense and passionate claims of corruption without observing any consequences or accountability, undermines citizen confidence in the government. To partisans, claims of corruption are merely a political weapon, but to those outside of politics, it is personal. Every act of corruption makes victims of the people that politicians and government officials are supposed to serve. So, the more corruption is alleged without consequence the less citizens believe the government is working on their behalf and the more rampant they believe corruption has become, making the war on corruption far more difficult. People have to believe corruption can be rooted out if they will take the steps necessary to assist law enforcement in their effort to combat it. Less confidence equates to less assistance. Less assistance equates to less law enforcement effectiveness. Less law enforcement effectiveness equates to more corruption.

In simplest terms, **corruption** is the abuse of one's office or position for personal gain. It is the exercise of entrusted power or influence within any hierarchical structure in exchange for an illicit benefit. The risk of corruption ultimately exists anywhere power and/or influence determine the distribution of resources or the outcome of decisions. Sometimes it is the absence of a decision that is sought, as opposed to a decision in favor of one thing or another. It can be sufficiently useful to have someone in authority "look the other way" as opposed to taking overt action. For example, paying a city fire inspector to ignore safety violations, or paying a Customs and Border Protection officer to not stop a vehicle traveling through a point of entry at one of the nation's border checkpoints. In criminal investigations, proving that the inaction of an individual constitutes corruption and not incompetence can be difficult, but it is not impossible.

History has proven corruption to be as old as any government, industry, organization, tribe, union, or club. Royal families, democratic governments, dictatorships, businesses, and religious organizations all contain hierarchies, and all hierarchies are susceptible to internal acts of corruption whereby illicit means are used to elevate one's place within the hierarchy. An example might be when someone bribes their boss or a person higher in the hierarchy with acts of intimacy, an expensive gift, or something else of value in exchange for a promotion. A **bribe** is the illicit payment made in exchange for a benefit. There is no hierarchy that is immune to the threat of corruption. As long as there are people on different levels of the hierarchy, there will always be people willing to engage in illicit behavior to elevate themselves within that hierarchy.

Sometimes, however, corruption exists between hierarchies. This could include any number of scenarios, but two common examples would be business-to-business and business-to-government. Business-to-business corruption could manifest in bid rigging or price fixing schemes whereby businesses illicitly coordinate to manipulate prices or the market in some other way. Business-to-government corruption is when a business bribes a public/government official with something of value in exchange for some benefit.

The deliberate act of corruption, regardless of type, merely requires someone with sufficient access and motivation. These corrupt motivations are most frequently propelled by a narcissistic desire for money, fame, sex, power, or the perception of power and influence over individuals or decisions.

**Public corruption** (also referred to as **government corruption**) occurs when an elected, appointed, hired, or contracted public official (government official) abuses his or her public office or government position for personal benefit, or when another person corrupts or attempts to corrupt a public official or government office. Public officials engaging in criminal activity outside of their official capacity are not engaging in corruption. For example, mortgage fraud committed by a law enforcement officer whereby no official act was committed by the officer in furtherance of the fraud is not corruption, at least in the criminal sense. It is fraud committed by an individual who happens to be a law enforcement officer. However, if the same law enforcement officer agreed to "fix" future moving violation citations received by the mortgage underwriter in exchange for her looking the other way on mortgage application discrepancies, that would be an act of public corruption.

*Fun Fact: Some states have defined their Homeowner's Association (HOA) board members in a way similar to other public officials in their respective states. As a result, the FBI can investigate HOA board members in those states as if they were like any other public official, subject to applicable federal criminal statutes.*

### Forms of Public Corruption

Criminal corruption involving public officials in the United States most frequently includes at least one of the following three forms of corruption: bribery, extortion, or embezzlement.

**Bribery** is the offering of something of value to a public official in exchange for an official act, *quid pro quo* ("something for something" or "this for that"). Something of value can include cash, campaign contributions, tickets to sporting events, collectibles or art, plane tickets, home upgrades and renovations, prepaid credit cards, access to credit lines or debt, dinners, poker chips, and other types of entertainment funds, vacation packages, etc. Sex itself is not deemed a "thing of value" when considering elements of federal bribery and extortion statutes. If money is paid for a prostitute, then the money could be a "thing of value," but not the sex act itself. This, however, is at the federal level, and not necessarily true when charging state level violations.

*Example: In 2019, attorney Noe Perez and state District Judge Rodolfo Delgado from South Texas were convicted in federal court for their involvement in a decade's long bribery scheme whereby the judge accepted cash in exchange for providing Perez with "favorable judicial consideration" on criminal cases. Despite having already been charged, Judge Delgado was voted by local constituents onto the state's 13th Court of Appeals. He resigned following his conviction. Judge Delgado was sentenced to 60 months in federal prison.<sup>1</sup> Noe Perez was a cooperater in the investigation and was sentenced to 24 months.<sup>2</sup>*

**Extortion**, according to 18 U.S.C. § 1951 (Hobbs Act Extortion) in the Federal Criminal Code and Rules, is "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence or fear or under color of official right." Despite the fact that the threat of violence or coercion exists in an extortion, any completed act of extortion results in both sides of the corrupt arrangement being susceptible to prosecution. Federal law holds both parties accountable for their involvement in the extortion. The extortionist (demander) and the compliant briber (willing participant) can both be charged criminally for a single act of extortion. Under circumstances where sex is demanded by the public official in exchange for an official act or through the use of fear or coercion, charges other than federal bribery and extortion would need to be used.

*Example: Between 2007 and 2011, Arkansas parole/probation officer Roxanne Davis accepted cash from Torrence Turner who was on parole related to a first-degree murder conviction. Davis demanded the money in exchange for not enforcing the conditions of Turner's parole. Davis pleaded guilty to one count of extortion under color of official right (18USC 1951) and was sentenced to 18 months in prison.<sup>3</sup>*

**Embezzlement** is the theft of funds by a public official from a government entity.

*Example: In 2010, former Virginia Secretary of Finance John Forbes was sentenced to 120 months in federal prison for embezzling \$4,000,000 from the Virginia Tobacco Indemnification and Community Revitalization Commission (VATIRC). The VATIRC was created to promote economic growth in tobacco-dependent areas within Virginia. Forbes was able to embezzle the money by creating the Literary Foundation and subsequently winning a \$5,000,000 grant on the basis the money would be used for education related purposes. Only approximately \$100,000 was used for its stated purpose. The remaining was syphoned for personal use by Forbes and his wife.<sup>4</sup>*

Fraud and kickback schemes are most common when private corporations engage in government contract work. **Fraud**, according to the Association of Certified Fraud Examiners, can encompass any crime for gain that uses deception as its principal modus operandus. Some element of fraud is often present in public corruption. **Fraud against the government** is the intentional concealment or deliberate misrepresentation of material facts in order to entice the government, to their detriment, to give up property, money or something else of value. **Kickbacks**, a type of bribe, are the illicit payments made by a company to a public official after the awarding of a government contract. A kickback can be paid in a single lump sum or in installments over weeks, months, or years.

Nepotism and conflicts of interest are forms of corruption that by themselves may or may not constitute criminal corruption. **Nepotism** is the hiring of a family member or someone close to the family instead of the most qualified applicant. **Conflicts of interest** involve the personal or familial financial gain or benefit, or potential thereof, directly tied to policies, decisions, or influence as a public official. For example, a public official having regulatory oversight responsibility over an industry in which a family member owns a company. Although not necessarily indicative of criminal corruption, nepotism and conflicts of interest can have the same impact on society as criminal corruption because the appearance of corruption can be just as damaging as actual corruption.

For most who reside outside of politics and government, money is power; but for those corrupt individuals in politics and government, power is what pays. And it can pay very well. At least until they get caught. It is the government position they hold that gives public

officials the access and opportunity to engage in behavior that undermines their responsibility to the people they serve. It is also that position that makes them attractive to people looking to benefit from some government action. Corruption in government does not exist without the active participation of public officials. Because while the offering of a bribe by a non-government person is public corruption from an investigative standpoint, the corruption itself is not realized and the impact is not felt without the willing engagement by the public official. Thus, those who exclusively blame big business, the wealthy, or anyone outside of government for the corruption within the government forget that *integrity, honor, honesty, and intestinal fortitude from the public official is sufficient to end corruption in its tracks.*

As long as human beings are in positions of authority corruption will exist. The rate and degree of corruption may differ from person-to-person, region-to-region and country-to-country, based on various factors, but human nature will always be a threat to the honest services expected to be delivered by those in power.

### Global Perspective

Corruption exists around the world, but the world does not share a consistent view of corruption. Activities that are considered corrupt in one country are advanced business or good sales techniques in another country. Some countries define only certain narrow aspects of corruption as criminal in nature, and some countries, or branches within a country's government, excuse corruption as a necessity for public officials "not quite paid enough to serve." This is often seen in countries where lower level corruption (petty corruption) is not steadfastly rebuked. Particularly in places where it is common and open practice to pay illicit funds for favorable government services (for example: getting out of traffic violations).

Even a country's anti-corruption posture, in terms of their law enforcement effectiveness and allocation of anti-corruption resources varies. Some countries have an honest and authentic anti-corruption stance whereby they establish strong freedom of the press and whistleblower protections, enforce corruption laws, and provide sufficient resources for law enforcement to ensure compliance and accountability. Other countries, however, either pretend they do not have corruption, feign outrage over their corruption with no real intention to address it, or have elements within their country seeking to address corruption while battling with less enthusiastic elements looking to exploit the personal financial benefits of corruption.

Some of these differences are cultural and some are brought about by social class or financial disparities, but all systemic corruption exists due to a lack of education, oversight, transparency, and accountability. More specifically, they lack an effective level of intolerance.

The Corruption Perceptions Index (CPI) scores and ranks countries/territories based on how corrupt a country's public sector is perceived to be by experts and business executives (Table 1.1). It is a 100-point composite index, a combination of 13 surveys and assessments of corruption collected by a variety of reputable institutions. The CPI is the most widely used indicator of corruption worldwide.<sup>5</sup>

According to data compiled by Transparency International for their 2020 CPI rankings, two-thirds of the 180 countries measured scored below 50 on the 100-point index scale, with the average global score being 43.<sup>6</sup> The bottom of the list was rounded out by countries with notable levels of poverty and instability, and/or non-democratic leadership regimes (Table 1.2).

People in extreme poverty do not have the power, education, resources, or wherewithal to confront corruption in any meaningful way by themselves. Their need to eat and survive supersedes their need to combat corruption. This is true domestically in various segments and cities and internationally in countries where poverty can grip an entire nation. Internationally, extreme financial need often attracts extensive financial aid. Governments, in an act of righteous humanity or political gameplay, often provide massive amounts of financial aid to

Table 1.1 Corruption Perceptions Index (2020) Transparency International

Rank	Country	CPI Score
1.	Denmark	88
1.	New Zealand	88
3.	Finland	85
3.	Singapore	85
3.	Sweden	85
3.	Switzerland	85
7.	Norway	84
8.	Netherlands	82
9.	Germany	80
9.	Luxembourg	80
11.	Australia	77
11.	Canada	77
11.	Hong Kong	77
11.	United Kingdom	77
15.	Austria	76
15.	Belgium	76
17.	Estonia	75
17.	Iceland	75
19.	Japan	74
20.	Ireland	72
21.	UAE	71
21.	Uruguay	71
23.	France	69
24.	Bhutan	68
25.	Chile	67
<b>25.</b>	<b>United States</b>	<b>67</b>
27.	Seychelles	66
28.	Taiwan	65
29.	Barbados	64
30.	Bahamas	63
30.	Qatar	63
32.	Spain	62
33.	Korea, South	61

Table 1.2 Corruption Perceptions Index (2020), bottom nine

Rank	Country	CPI Score
170.	Korea, North	18
173.	Libya	17
174.	Equatorial Guinea	16
174.	Sudan	16
176.	Venezuela	15
176.	Yemen	15
178.	Syria	14
179.	Somalia	12
179.	South Sudan	12

other governments without the necessary assurances, oversight, and follow up, to ensure the aid actually reaches the people who need it most. As stewards of tax payer money, foreign aid without oversight is a government deficiency that violates their fiduciary responsibility. It is a disservice to the American people, but it is also a disservice to the people of the beneficiary country. An inflow of cash to countries with severe corruption actually feeds the corruption,



facilitates its expansion, and sends the country and its people further into despair. *Targeted foreign aid to corrupt governments without proper oversight is like giving heroin to a heroin addict with just their promise not to shoot up.*

Chaos and conflict, while at times the result of systemic corruption, also creates a ripe breeding ground for corruption due to the increased confusion and the inherent excuse for unconventional behavior. War time and widespread civil unrest, for example, provide opportunity to sidestep controls in order to move money and resources where they need to go as quickly as possible. “Necessity” is a superb defense for a lack of oversight and it excuses decisions otherwise easily identified as corrupt. In the United States, we see this on a micro level after natural disasters spark an influx of funds and resources to affected areas as part of disaster recovery. Beyond the obvious vulnerability of funds and resources allocated and reallocated during wartime or major events, is the vulnerability of funds and resources not directly linked to the events themselves. Often the chaos creates a fog for unrelated corrupt activity to be acted upon with little-to-no scrutiny or even general awareness. This is not unlike how illusionists use misdirection to hide what they are really doing.

The countries at the top of the Transparency International list with the highest corruption perception index (CPI) scores are perceived to have lower corruption levels, but that does not mean they do not have corruption, nor does it mean they do not export their corruption. Four of the top ten largest Foreign Corrupt Practices Act (FCPA) settlements in history (as of October 2020, see Table 1.3, top ten FCPA settlements in history) were companies from Sweden and Netherlands (ranked 3 and 8, respectively). The **FCPA** is an anti-corruption provision in the United States prohibiting United States and certain foreign companies from paying or promising to pay anything of value to foreign officials in exchange for official preferential treatment.

A nation’s total anti-corruption posture requires an analysis of activity occurring inside the border, but also activity beyond the border as their country’s companies participate in the global economy. Are members of the private industry willing to pay-to-play in foreign markets, and, if so, how aggressive are countries in holding accountable those companies who violate foreign corruption standards and laws?

According to a 2020 Transparency International assessment of the 47 leading global exporters, “including 43 countries that are signatories to the Organization for Economic Cooperation and Development (OECD) Anti-Bribery Convention,” only four countries surveyed (United States, U.K., Switzerland, and Israel) were considered to be engaging in the “active enforcement” of foreign bribery, with nine considered to have “moderate enforcement.”

Table 1.3 Top ten FCPA settlements in history

Year	Company (Country)	Settlement
2020	Goldman Sachs (United States)	\$3.3 bil
2020	Airbus SE (Netherlands/France)	\$2.09 bil
2018	Petroleo Brasileiro S. A. (Brazil)	\$1.78 bil
2019	Telefonaktiebolaget LM Ericsson (Sweden)	\$1.06 bil
2017	Telia Company AB (Sweden)	\$1.01 bil
2019	MTS (Russia)	\$850 mil
2008	Siemens (Germany)	\$800 mil
2016	VimpelCom (Netherlands)	\$795 mil
2014	Alstom (France)	\$772 mil
2018	Societe Generale S.A. (France)	\$585 mil

Source: FCPA Blog<sup>7</sup>

However, 34 of the countries surveyed, who also account for 46.1% of global exports, were deemed to have “limited enforcement” (including Netherlands, Denmark, New Zealand) and “little or no enforcement” (including Singapore and Finland).<sup>8</sup>

## Levels of Corruption

Many international students of corruption differentiate corruption by categorizing it as either grand corruption or petty corruption. **Grand corruption** is corruption at the highest levels of the government and involves the most powerful people (presidents, prime ministers, secretaries, royal families, and other senior public officials) and largest amounts of money. It is also, generally, what garners the most media attention. **Petty corruption**, however, tends to be more relatable to most as it involves lower-level public officials engaging in activity most likely witnessed or personally experienced by citizens on a daily basis.

Corruption in the United States can be broken out and investigated at the **local, state, and federal** levels of government.<sup>9</sup> Grand corruption is typically found at the senior federal level, while petty corruption can be found at the local, state, or federal level. But within the same hierarchical structure can exist both petty corruption and grand corruption, one being the result of the other, or one being inspired by the other.

Both grand and petty corruption include activities surrounding bribery and extortion for, among other things, preferable treatment in the distribution of government contracts, the passing of laws, regulations or ordinances, and/or embezzlement. However, petty corruption also includes law enforcement corruption like paying to get out of traffic violations, prison corruption, border corruption, tribal corruption, and various other types of corruption designed to gain favorable access to government resources or preferential treatment.

Generally speaking, grand corruption is viewed as a more significant threat than petty corruption because the effect of grand corruption is experienced by a greater number of people. A country’s reputation, which impacts foreign investment and voter confidence, among other things, is typically damaged at a level commensurate with the level of corruption. Petty corruption problems in specific cities tend to hurt those particular cities, but do not necessarily hurt the country as a whole. Whereas grand corruption problems adversely effect, and could potentially cripple, an entire country. That is not to say petty corruption cannot also cripple a country. It can and at times does. Particularly when the petty corruption is part of a larger systemic problem.

**Systemic corruption** is the normalization of corruption to such a degree that it becomes commonplace and void of accountability. Systemic corruption, in contrast to individual acts of corruption, is the consequence of a complete breakdown in the system. It is a paradox that manifests across entire elements, departments, or divisions of a government, or the whole of a government, that ultimately holds communities hostage and makes customary the practice of illicit payments in exchange for standard government services. According to University of Maryland Professor of Economics John Joseph Wallis, “Systemic corruption occurs when politics corrupts economics.”<sup>10</sup> With systemic corruption, the corruption is so entrenched that it becomes an acceptable way to earn a living and an acceptable way for citizens to gain a strategic advantage over their neighbors in the acquisition of resources.

Law enforcement is critical to an anti-corruption posture. But they are only effective when they themselves are not corrupt and are sufficiently resourced and supported. However, for corruption to become systemic within a system, law enforcement has to have already either proven themselves unable or unwilling to do their job. If they do not do their job, then trust in law enforcement deteriorates and the relationship between law enforcement and the community they serve becomes at odds.

Communities are essential to effective policing. They are essential to an effective anti-corruption effort. A break in the relationship between law enforcement and community is fatal to a civilized society. If communities do not trust law enforcement to do their job then citizens will stop reporting crimes. If alleged acts of corruption are not reported they cannot be investigated; if they are not investigated, they cannot be prosecuted; if they are not prosecuted there will be no accountability. The economic, environmental, national security, and political consequences of systemic corruption can be catastrophic to a nation and its people. This complete breakdown in the system leaves the affected entity resembling more organized crime than a government body.

**Individual corruption** is corruption that takes place within a system that attempts to deter and hold accountable those who commit acts of corruption. Corruption is not the norm, but an act of defiance against the norm. It is the result of human weakness overcome by any number of causes and/or contributing factors. That is not to say that cracks and deficiencies in the system do not exist and also do not serve as added motivation for individual corruption. On the contrary, it is often the cracks and deficiencies in the system that give corrupt officials the confidence their criminality will go undetected. And the fear of detection can be a valuable deterrent.

### **Causes and Contributing Factors**

Government employees and elected officials do not generally enter public service with an eye toward becoming corrupt. Most enter public service with an altruistic belief they are living out their calling or their purpose. They enter the life intent on serving. Unfortunately, as time goes on and complacency sets in, so too can weakness creep to the surface. It is at that point that the strength of their values becomes tested. Benjamin Franklin once accurately stated, “Keeping government honest, and hence our freedoms intact, requires eternal vigilance.”<sup>11</sup>

Greed, ego, a sense of entitlement, financial desperation, and a desire for more power and influence are best known as the primary causes of corruption, but there are contributing factors that drive those causes to overcome one’s desire, and will, to do the right thing. Different people are formed by different events throughout their life. Family, friends, religion, media and social media, society and celebrities, school, and political affiliation can all play, or have the potential to play, a role in the formation of one’s value system over time. It is through these interactions that people establish what is most important to them and that establishes their foundational strength, or weakness, to act with integrity. Fear too can play a key role in the establishment and commitment to one’s values. Which is why accountability plays such a critical role in the war against public corruption. Sometimes the fear of getting caught and the subsequent penalty is sufficient to propel someone toward a good and right decision.

Additional factors that contribute and/or help determine the prevalence of corruption within a given area, region, community, or country include low education and literacy levels, widespread poverty, a strong foothold of organized crime, a weak legal profession, and a pattern of blind loyalty to an organization, political party, or other person or group. Loyalty, which does not stand up well on its own, is often a vice masquerading as a virtue. When loyalty is not supported by a higher virtue like love it becomes blind. It is blind loyalty on which domestic and transnational criminal organizations rely when one of their own is arrested. They expect blind loyalty will be enough to keep the mouth shut and the criminal organization intact. People, political parties, and organizations that are surrounded by blind loyalty are more susceptible to corruption because blind loyalty conflicts with accountability and turns a blind eye to unethical or criminal behavior.

True **justice**, which should be rooted in love and not revenge, is the equitable and proportionate distribution of debt. It demands victims and perpetrators be paid their due.

## Corruption Myths

- **Wealthy public officials have so much money they do not need to be corrupt.**

Money is only one of many reasons someone may engage in corruption. Power, influence, and ego are a few others that wealth alone may not sufficiently satisfy. A wealthy candidate or public official is not above reproach and is just as prone to corruption as a poor public official. This is not to say money does not play a role, it does. Grossly under paying public officials can serve as a catalyst for corruption.

- **Wealthy businessmen/women are responsible for corrupting politicians.**

This is an allegation leveled by politicians and their advocates seemingly to shift responsibility elsewhere. Almost as if a defense is being prepared before they have ever actually been charged. Businesses absolutely have great power and influence. Some (or many) will withhold donations from public officials who do not “hear them out” or support their cause. But it is also true that some public officials will not take meetings with constituents who have not donated to their re-election campaign. Success in business is not a crime, and it does not take committing a crime to become successful. While they may have great influence, wealthy businessmen also have a responsibility to act with integrity. In the end, however, the public official’s complicity in corruption is essential for the corruption to manifest. Corrupt politicians are ultimately responsible for their involvement in corruption.

- **Men are more likely to be corrupt than women.**

This common misconception is likely rooted in the fact that more men are charged with corruption related crimes than women. Which has more to do with the volume of men versus women in political positions and government roles than it has to do with a predisposition. Professionals responsible for anti-corruption oversight and criminal investigations understand well that both men and women have equal capacity to become corrupt or engage in corrupt activity.

- **Corruption is sometimes necessary to overcome government inefficiencies.**<sup>12</sup>

Ironically, some of these very inefficiencies are put into place in order to create the need to overcome them. Government inefficiencies are to the advantage of the corrupt public official. Especially the public official who has the knowledge, ability, or access to circumvent the barrier/inefficiency. Corruption, by its nature, undermines the government and tilts the level playing field to the advantage of those willing to “pay to play.”

- **One political party is more prone to corruption than the other.**

The political weaponization of the word “corrupt” has left those of one party convinced members of their opposition party are co-conspirators in a massive corruption ring. The truth, however, is that party affiliation is not a catalyst or determining factor for corruption. Both Republicans and Democrats are well represented at defendant’s tables in courts all across the country.

- **Small-scale (local/petty) corruption is a small-scale problem with only a small-scale impact.**

In general, a single act of localized, small-scale corruption has an impact that is localized and small scale. But small-scale corruption can also be suggestive of a more systemic problem. Systemic small-scale acts, when viewed in their totality, can equate to a massive societal impact.

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# Investigating Corruption

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The rule of law is the cornerstone to a civilized society. According to the United States Federal Courts, the **rule of law** is a set of principles under which all persons, institutions, and entities are accountable to laws that are:<sup>1</sup>

- Publicly promulgated
- Equally enforced
- Independently adjudicated
- Consistent with international human rights principles

Numerous countries around the world endeavor to build and maintain an orderly society by following the ideals established by the rule of law. Within those countries are varying degrees of success. The effort is a daunting one that requires an equally vigorous commitment by legislators, law enforcement, and the judiciary to write sound laws, equitably enforce the laws, and objectively distribute justice to violators of the laws. Establishing the rule of law is nothing if these critical areas are not preserved and maintained. A breakdown at any level and at any point could eventually result in a complete breakdown of the rule of law, sending order into chaos. Also key to a nation's successful and peaceful implementation and execution of the rule of law is the active participation of its citizens and their willingness to submit and support its principles. William Golding's literary classic, *Lord of the Flies*, is an excellent allegory of what becomes of society when protecting the rule of law is not a priority. Unfortunately, there are a number of real life countries where clear, long term effects due to their leadership's betrayal of the rule of law have become evident. An example might be in countries like Mexico or parts of Eastern Europe where paying a bribe to law enforcement to get out of legitimate or illegitimate traffic violations have become commonplace.

According to Merriam-Webster, a **law** is "A rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling party."<sup>2</sup> It is essentially a way to communicate (**publicly promulgate**) acceptable versus unacceptable behavior to members of society. Laws should not be intended to limit or control behavior for the sake of limiting or controlling behavior, or to create an opportunity for public officials to solicit bribes. Rather, they provide an extremely important framework for promoting security, protecting rights, resolving conflict, and establishing expectations and consequences. The inherent predictability of laws (breaking them versus following them) helps bring stability and confidence to the entire system of government.

*Example: Let's assume a young newlywed couple just closed on the purchase of a new house. There were a lot of different people with a lot of different responsibilities involved in that process. There were real estate agents, lenders, underwriters, appraisers, notaries, office staff, etc. All are regulated by laws to*

*protect the young newlyweds (and other buyers and sellers). Now assume, tomorrow the government took their house. No warning. No justification. They just took it. Would anyone ever buy a house if there was no predictability, no cause and effect, just an arbitrary consequence with no violation to support it? No, of course not. But what happens to the people and the businesses involved in the home buying process if people are no longer willing to buy a house? They all go out of business and the economy plummets. Eliminating predictability adversely impacts stability. Instability erodes confidence. And a lack of confidence in the system leads to a collapse of the system.*

Laws are useless if not uniformly applied by law enforcement (**equally enforced**). Communities will not embrace the rule of law if they perceive the laws are not applicable to all people in the same way. It disenfranchises them to the point where they will likely refuse to report crimes and could even refuse to avoid participating in criminal activity altogether. The rationalization often turns to a question of “Why bother?” “If they can do it (whoever they are), why can’t I?” The absence of equitable justice is not justice at all, and it also empowers those who are outside the law to continue to operate outside the law.

*Example: A city manager who knows the law does not apply to her might lean over her fence and shoot her neighbor’s dog for barking in the middle of the night. But if she knows the law does apply to her, maybe instead she picks up the phone and calls her neighbor, or just puts cotton in her ears.*

Will citizens who believe laws do not apply to their public officials actually trust those public officials? Will they trust the system? Of course, the answer is no.

Judicial independence (**independently adjudicated**), according to the American Bar Association, “means that judges are not subject to pressure and influence and are free to make impartial decisions based solely on fact and law. An independent judge can assure that your case will be decided according to the law and the facts and not a shifting political climate.”<sup>3</sup>

**Due process**, as referenced in the 5th and 14th Constitutional Amendments, arguably establishes procedural (right to be judiciously heard) and substantive (reasonable laws) protections for the people and their life, liberty, and property. Due process is an essential element of law and order. Without it, law and order collapses in on itself. There cannot be law and order without due process. Evidence, facts, truth – they matter – and due process is where the evidence is presented, arguments are made, and the truth is sought. A lack of judicial independence negates any honest effort by legislators and law enforcement to create a system of accountability. It does not matter how appropriate the laws and how effective the enforcement of those laws; if the judiciary does not objectively and independently adjudicate, then due process and law and order have failed.

Finally, the exercise of the rule of law should not be in conflict with **international human rights principles**. These principles emphasize the preservation of rights inherent to all, including the right to: life and liberty, the right to work and education, freedom of opinion and expression, and freedom from slavery and torture, among others.<sup>4</sup>

## Corruption Investigations

According to the Department of Justice’s Public Integrity Section Annual Report to Congress for 2019, which “provides statistics on the nationwide federal effort against public corruption,” in 2019, 780 public officials (federal, state and local) and others involved in their crimes were federally charged, 734 public officials and others involved in their crimes were convicted, and 451 public officials and others were awaiting trial. Between 2000 and 2019, according to the same report, 21,212 public officials and others were charged and 19,303 were convicted. These statistics only account for corruption related violations charged at the federal level and do not account for state and local prosecutions.<sup>5</sup>

Former governor of Louisiana Earl Long once famously stated, “Don’t write anything you can phone. Don’t phone anything you can talk face to face. Don’t talk anything you can

smile. Don't smile anything you can wink. And don't wink anything you can nod."<sup>6</sup> Masters of corruption have learned to master this principle of evidentiary concealment and extend it to all aspects of their criminal activity in the hopes of avoiding law enforcement detection and staying out of prison. Like a game of cat and mouse, corrupt public officials use fraud, deception, and misdirection to get as much cheese as they can without leaving enough evidence to get caught.

"Bad guys" know the burden of proof rests on investigators and prosecutors, as it should, and the better they are at hiding their intent and masking their activity, the harder it is to collect the necessary evidence to convict them. Believing corruption is taking place is not the same thing as knowing corruption is taking place. And knowing corruption is taking place is not the same thing as being able to prove corruption is taking place. *When it comes to corruption, the truth is rarely clear, but the deception is hard to miss.* It is often times the obvious deception that leads to investigations being opened, but it is the investigation itself that hopefully blows away the haze and reveals the truth.

Unlike many other types of criminals, corrupt public officials do not tend to brag to their friends and/or colleagues about their criminal exploits. Corruption is a covert operation conducted "under the cover of night." It is most effective and has the longest lifespan when people are unaware it is happening. Even a hint or rumor of potential corruption could bring unwanted attention and eliminate future exploitable opportunities. It is the job of the investigative/prosecutorial team (investigators, analysts, and prosecutors) to pierce the darkness and bring the corruption to light.

There are two primary or general types of investigations:

#### 1. Real Time/Active

A real time investigation is an investigation into activity that is current and part of an ongoing string of criminality. It could be one where a crime was clearly committed (serial car jackings or murders, ongoing bribery/kickback scheme, active home invasion crew, gang or drug trafficking activity, string of bank robberies, etc.), putting the focus of the investigation on "who's doing it?" Or it could be one where an ongoing crime is merely *alleged* (bribery, mortgage fraud, securities fraud), putting the focus of the investigation on determining if a crime is really being committed and if so, who is the person, or people, involved.

#### 2. Historical

A historical investigation is an investigation into activity that has happened, in the past. Similarly broken out into "who done it" and determining if a crime was actually committed.

Historical public corruption investigations tend to be more difficult than real time investigations because the underlying crime/corrupt act already occurred, a cover up has likely already begun or has already concluded, and investigators' use of available investigative techniques may have been drastically reduced. That is not to say historical public corruption cases should not be pursued, on the contrary. They are often successfully investigated and prosecuted. While the corruption may have occurred in the past "behind closed doors," the cover up is often well documented and hard to erase.

Some argue, the investigative process is purely scientific. Each step is predetermined based on the events that transpire. If "A" happens, do "B"; if "B" happens do "C". While others would argue the investigative process is entirely artistic. Instinct and the "feel" of the case take you where you need to go. The truth is, the investigative process is the ultimate combination



of both, science and art. There are things you must do as they could create opportunities and provide useful evidence (run license plates, identify addresses, run criminal history, pull bank records, etc.) and there are steps that can only be done effectively by someone who has good instinct and a creative and strategic mind. Evidence drives the investigation, but in the absence of evidence, a creative mind and an understanding of human behavior could be what points the investigator in the direction to find evidence. Behavior often betrays the criminal's desire to go undetected. But it sometimes takes a keen investigative eye and years of experience to pick up on the signs.

Criminal investigators are, for the most part, motivated by a commitment to law and order and a desire to keep their families and their communities safe. This is why they do the job. This is why they work so hard to identify the truth, whatever it is and where ever it leads. But that desire to do something good, can also turn into an addiction. The addicted investigator cares about the process, cares about doing it right, cares about protecting the innocent, even if that means proving the subject of an investigation is not guilty. It is an addiction to the process, the dance, and catching the bad guys. It is the drive to continue the fight when others are willing to go home.

To some, the investigative process can mimic an unhealthy relationship. At the onset, everything is fireworks – exciting and new. Her complexity is intriguing and her elusiveness only makes her that much more compelling to chase. She begins to occupy every corner of the mind – the first thought in the morning, the last thought at night, and every thought in between. This love affair slowly morphs into an obsession. But nothing extinguishes the fiery passion you feel for her like catching her – the end of the chase. When the next case is opened, a new love affair begins.

This is not to say investigators who love their work and become infatuated with the chase will do anything for the chase, even operate outside the lines. All law enforcement personnel and corruption investigators have their personal, political opinions. But true investigative romantics can easily set aside any opinions and let the evidence drive the outcome. Public corruption investigators must always hold objective truth and justice above any and all personal or political opinions. They do it successfully all the time.

Investigations tend to be challenging, sensitive, and highly scrutinized (particularly in court). Public corruption investigations, because of who the subjects are, where they work, what they do, and/or where they may lead investigators, tend to be the most challenging, sensitive, and certainly most highly scrutinized investigations. Which means, there must be greater attention to every aspect of the investigation. Every single action, every single related agency policy, every single word written in the reports could end up being scrutinized at a level no other investigation is traditionally subjected to. Which means public corruption investigators must be at their best, all the time. It takes very little to sow the seeds of doubt into the mind of a juror or into the minds of the public (if information makes it to the public forum) and any doubt should never be linked back to the laziness, political bias, inappropriateness, unethical or inefficient behavior of an investigator. *Integrity is not a virtue often found in "dirty" public officials, but it is a virtue necessary to bring them to justice.*

Public corruption investigators are human like everyone else. They make mistakes. But mistakes open an otherwise righteous investigation up to criticism and criticism can lead to doubt. The mere appearance of political bias on the part of investigators is sufficient to cast a dark cloud over an investigation, or even the whole of an agency. While investigators are allowed to have their own personal opinions, of course, rules of discovery and agency policy should always be in the forefront of their minds to ensure even the appearance of political bias never enters the discussion. Beyond the need for investigators to protect against the appearance of impropriety is their responsibility to unequivocally avoid impropriety. An authentic

search for truth must always take priority over all personal or political feelings. This is not something investigators try to do, it is something they must do, without question. Accountability of wrongdoers, regardless of political affiliation, is the mandate. The evidence is the only thing that should drive the trajectory of an investigation.

The FBI has enjoyed more success combatting corruption across the country than any other law enforcement agency.<sup>7</sup> Their success can be attributed to a number of factors, including: partnering with local, state and federal law enforcement agencies; their vast financial and technical resources; numerous experienced public corruption agents geographically dispersed across the country; and their overall prioritization of the mission. The FBI investigates federal corruption related violations, but can also in certain situations investigate and support a prosecutorial effort at the state level. Other federal agencies with limited scope and jurisdictional authority include, but are not limited to, the various Offices of Inspectors General (OIGs), Customs and Border Protection Internal Affairs, and Immigration and Customs Enforcement Office of Professional Responsibility. Local and state law enforcement agencies have varying degrees of authority to enforce state corruption laws.

The FBI is broken up into two “sides of the house,” the criminal side and the national security side. Within the national security side of the house, the FBI focuses its investigative efforts on counter-terrorism and counter-intelligence. Within the criminal side of the house, the FBI focuses its investigative efforts on all federal criminal violations within its broad statutory authority, including: public corruption, mortgage fraud, securities fraud, healthcare fraud, bank robberies, violent crime, criminal cyber, child pornography, drug trafficking, gangs, and others. Among the FBI’s criminal priorities, public corruption is number one on the list.

Why is public corruption the number one criminal priority for the FBI?

Because of the **IMPACT** corruption has on society, the economy, and the country’s national security.

*Example: On December 17, 2010, as the story goes, Tarek al-Tayeb Mohamed Bouazizi (26 years old), a street vendor selling fruit from his cart in Sidi Bouzid, Tunisia, was solicited for a bribe by a local municipal employee. Bouazizi was operating his cart without the proper permit. After he refused to pay, the municipal employee allegedly slapped Bouazizi in the face and took his scales so he could not effectively work.irate, Bouazizi went to the local municipal office to complain. He waited to speak to any government official willing to hear him out. Bouazizi could not find anyone willing to listen to his complaints, so he left. In protest, he returned to the municipal building later the same day, doused himself with gasoline and set himself on fire. He miraculously survived, but suffered from third degree burns over his entire body.*

*The event sparked immediate outrage in the city of Sidi Bouzid that spread quickly throughout Tunisia. Bouazizi’s self-mutilation was being touted as a profound sacrifice against oppression that provoked and inspired the people of his country. The story gained so much traction that on December 28, 2010 Tunisian President Zine-al Abidine Ben Al visited Bouazizi in the hospital. It was viewed as a public media spectacle that did little to placate those protesting in the streets.*

*Bouazizi died on January 4, 2011 and the protests only grew from there. So much so, that on January 14, 2011, President Zine-al Abidine Ben Al, who had been in power since 1987, resigned.<sup>8</sup> Protests and “revolution” against oppression, corruption, and stifled freedoms spread throughout parts of the Middle East and North Africa.<sup>9</sup> The events surrounding an approximate ten dollar bribe payment were enough to bring down an entire country and inspire a multi-national uprising referred to as the so-called Arab Spring.*

*The accuracy of some events leading to Bouazizi setting himself on fire have been debated.<sup>10</sup> But the accuracy of the alleged corruption is irrelevant to the meaning behind the story. If the alleged bribe was false, for example, and did not actually happen, but the people believed it did happen, then it merely proves the perception of corruption can be as destructive as corruption itself.*

## Types of Corruption

Corruption can be broken out into a number of different ways for tracking and reporting purposes. Over time, as trends shift and problem areas evolve, so too can the corruption categories and types. A single investigation or even a single prosecutable act can involve multiple types of corruption. The FBI has historically viewed the primary types or categories of corruption as the following:<sup>11</sup>

- **Executive**

President, governor, mayor, their staff, and others within the branch of government at the local, state, and federal level

- **Legislative**

Members of the state and federal congress, city council members, their staff, and others within the branch of government at the local, state, and federal level

- **Judicial**

Judges, magistrates, prosecutors, defense attorneys, clerks, their staff, and others within the branch of government at the local, state, and federal level

- **Regulatory**

Licensing, permitting, inspections and others within those respective offices at the local, state, and federal level

- **Law Enforcement**

Police officers and agents, dispatchers, analysts, and others within the law enforcement community at the local, state, and federal level

- **Indian Country**

Tribal police, tribal council, and other government officials working on behalf of tribal land

- **International**

U.S. government officials and/or corporations operating outside of the United States

\*International corruption includes, but is not limited to, Foreign Corrupt Practices Act (FCPA) violations

Sub types are more specialized/targeted threat areas useful for tracking and reporting purposes. They might include:

- **Prison**

Local, state, and federal law enforcement/corrections officers/Bureau of Prisons personnel

- **Border**

Local, state, and federal enforcement, members of Transportation Security Administration (TSA), judges, defense attorneys, prosecutors

- **Disaster Recovery**

Mayor, governor, city council members, congress, and members of impacted government entities (includes distributors of funds and government beneficiaries of funds)

Table 2.1 Representative of common scenarios, not every possible scenario

	<i>Executive</i>	<i>Legislative</i>	<i>Judicial</i>	<i>Regulatory</i>	<i>Law Enforcement</i>	<i>Level</i>
<b>Prison</b>	X				X	local/state/federal
<b>Border</b>	X		X	X	X	local/state/federal
<b>Disaster</b>	X	X	X	X	X	local/state/federal

The sub types of corruption exist where the correlating activity exists. Jurisdictions with prisons could have prison corruption. Jurisdictions that are adjacent to an international border or contain a Port of Entry (POE), could have border corruption. Jurisdictions where government disaster recovery funds were sent, could have disaster recovery related corruption and fraud. There are, of course, jurisdictions that have all of the above sub types and those without any. Other sub types could present themselves over time or within different jurisdictions, regions or countries based on intelligence collected within the respective domain.

The above types and sub types/specialized areas of corruption will be explored in greater detail in the following chapters.

Specialized areas of corruption can occur as part of multiple primary types of corruption (see Table 2.1, Corruption Index).

Generally, with the exception of International Corruption and Indian Country, all forms of corruption can occur on the local, state, and federal levels. International corruption occurs on the international stage and Indian Country corruption occurs on sovereign land, so it typically occurs on the federal and local level.

## Prioritizing the Threats

Understanding where corruption takes place is essential to developing an effective intelligence apparatus that can collect, categorize, and track corruption, among other things, and subsequently assist in putting an appropriate and effective counter-corruption strategy together.

One of the first steps in creating a counter-corruption strategy is, after collecting intelligence, an assessment of the **intelligence**. What do we know? What is unknown (gaps)? And if we do not know, how do we find out? The assessment of intelligence is followed by an assessment of the threat. How many threats exist? Which are the most dangerous (in terms of probability and impact)? Generally, the highest priority investigations are those related to systemic corruption, the highest ranking public officials, any in which there is a risk of violence, and investigations involving multiple subjects and/or targets. Beyond that, however, is a need for investigative agencies to properly distribute their ever-finite resources. So knowing and prioritizing the threats at a deeper level within their area of responsibility will help drive the distribution of manpower, money, and attention. This further highlights the significance the FBI has placed on public corruption by making it their number one criminal threat.

Different types of corruption result in different types of activity, different vulnerabilities, different frequency and impact, and even different tradecraft (or methodology). Public officials across the various departments, agencies, and levels of government enjoy different spans of control and have access to different “sellable items” exchangeable for illicit funds. In other words, police officers do not write laws, they enforce them. Knowing this will eliminate the concern a police officer will be bribed by a lobbyist in exchange for writing a law favorable to the lobbyist and allow the counter-corruption strategy to focus on areas in law enforcement that are more conducive. Knowing which public officials are vulnerable and how they are vulnerable enhances threat awareness and facilitates the war on corruption.

*Fun Fact: Areas with a lower number of corruption cases, relatively speaking, can reflect a lack of understanding of the threat and/or suggest a poor counter-corruption strategy. Fewer cases does not necessarily translate to there being less corruption.*

### Initiating an Investigation

A full investigation may be opened at the FBI if there is an “articulable factual basis” to believe a federal crime has or may be committed. Its purpose is “to detect, obtain information about, or protect or prevent against federal crimes or threats to the national security or to collect foreign intelligence.”<sup>12</sup>

While different investigative agencies will have different policy language for opening criminal investigations, the sources of the information used for opening an investigation remain the same.

There are five primary ways in which law enforcement may obtain sufficient information to open an investigation:

1. Media
2. Case spinoff
3. Complaints
4. Referrals
5. Sources/cooperating witnesses/informants

\*Or any combination of the above.

The overall health of a public corruption program could be measured by viewing the agency’s success in initiating investigations using all five methods.

The **media** (which includes mainstream media, social media, blogs, boards, etc.) can play a key role in the criminal investigative process. Obviously, investigators need to be able to identify objective investigative journalism from targeted and selective bias reporting, but the volume and content contained within the media could provide verifiable information and areas of investigative relevance. Sometimes members in a community would rather report their crimes to the media than to law enforcement, or “tell their story” or repeat what they have heard anonymously in blogs or on internet boards. All of which, when viewed in their totality can provide leads worth pursuing/verifying and/or provide names of individuals worth finding and interviewing. An agency with little-to-no corruption investigations originating from the media should encourage their investigators and analysts to spend more time reading and exploring online platforms.

*Example: Between January and June of 1972, Randall “Duke” Cunningham, Navy Ace pilot and future Top Gun instructor, recorded five dog-fight victories against North Vietnamese pilots.<sup>13</sup> His military prowess and wartime heroics eventually helped win him a seat in the United States House of Representatives. In 2005, The San Diego Union Tribune reported a questionable home sale between Congressman Duke Cunningham and a defense contractor Cunningham was supporting in the defense appropriations subcommittee for tens of millions of dollars in government contracts.<sup>14</sup> A series of related, scathing articles followed. In July 2005, after multiple articles had been written, FBI agents served search warrants on Cunningham and the defense contractor.<sup>15</sup> In November of the same year, Duke Cunningham pleaded guilty to taking \$2.4 million in bribes and evading over a \$1 million in taxes.<sup>16</sup>*

A **case spinoff** is one that originates from information or evidence obtained in a separate investigation within the same agency. If an agency struggles to initiate public corruption investigations from other investigations within its own agency, then the agency should encourage cross programmatic education. Public corruption investigators should take the time to share with investigators working drug, gang, fraud, and other matters what questions

to ask witnesses, subjects, and sources, and what to look out for, to vet potentially criminal involvement by public officials.

*Example: Cities across the United States have had gang, organized crime, and drug investigations, among others, lead to corrupt law enforcement officers, attorneys, judges, and myriad other public officials.*

**Complaints** include the reporting of potential crimes by concerned or impacted citizens via telephone or walk-in to the agency. The ability for an agency to generate public corruption investigations is directly linked to the communities' confidence in the agency and their willingness and ability to successfully work corruption investigations. If an agency is not receiving a reasonable volume of corruption complaints then the agency should consider engaging with the community on the topic. Education and awareness (advising what to look out for) and publicizing successes are just a couple ways to inspire confidence in a community that their corruption complaints are heard. Complainants can include people who heard rumors or have theories, a direct witness, victim, and even jaded co-conspirators who recently found themselves cut out of a previously established "dirty" deal (or perceive some other personal benefit to making the complaint).

*Example: In 2016, former City of Chicago building inspector Roberto Uribe pleaded guilty to extorting a building owner.<sup>17</sup> According to the Department of Justice, "Unbeknownst to Uribe, the building owner was cooperating with federal authorities and had surreptitiously recorded the bribery demand."<sup>18</sup> The property owner was initially solicited for the bribe over the telephone. He subsequently contacted the FBI to report the crime, agreed to wear a wire<sup>19</sup> and recorded the in-person conversation which resulted in Uribe's guilty plea.*

**Referrals** from other law enforcement agencies reflect the agency's liaison effectiveness. There could be any number of reasons why one agency refers an investigation to another agency, but it is often due to jurisdictional limitations and it tends to increase in frequency when the two agencies have a good working relationship. Agencies, like people in a community, will not refer work to an agency if they do not know the agency works the violation or if they do not believe the agency has the willingness or ability. Instilling confidence in law enforcement partners, and sometimes providing specific information on violations of interest, may be necessary to enhance liaison relationships. Interagency liaison and equitable partnerships at every level of law enforcement (local, state, and federal) are critical to law enforcement's overall success.

*Example: In 2015, a Harford County, Maryland Detective initiated an investigation into heroin distribution. He believed a recent increase in heroin in the area was the result of "a rising drug crew in Northeast Baltimore."<sup>20</sup> His investigation eventually led to a catalogue of drug dealers and corrupt police officers. The FBI was contacted and the investigation took on different trajectories implicating drug dealers and the corrupt law enforcement officers. Eight police officers from Baltimore's Gun Trace Task Force and one Philadelphia police officer were convicted on charges related to the robbery and extortion of drug dealers over multiple years. "The officers allegedly pocketed hundreds of thousands of dollars they discovered while searching the homes and cars of criminals and some innocent civilians, too."<sup>21</sup>*

In simple terms, **sources** are individuals who provide intelligence to law enforcement. The motivations of sources vary from source-to-source (and their motivation is an important factor for law enforcement handlers to know and consider). The sensitive nature of operating sources limits the amount of content that can be provided in this text; however, source information is critical, as is law enforcement's responsibility to protect the identity and safety of the source, to the greatest extent possible. If case support and case initiation is lacking source information, the agency should work to better understand source credibility and quality and the available source coverage (where are agency sources and what can they report on?) in order to determine geographic, industry, and departmental or organizational gaps. The simple/complicated answer may be that the agency needs more sources, better sources, or different sources. It is also possible the agents/officers working sources require additional training to maximize the benefit of the technique.

*Example: In 2000, an ex-KGB officer working as an asset/source provided information to the FBI that ultimately led to the FBI identifying FBI agent Robert Hanssen as a spy working for decades on behalf of Russia. On February 18, 2001, Hanssen was arrested in Virginia by the FBI after making a “drop” of classified documents intended for his Russian handlers. When he was arrested, Hanssen famously exclaimed, “What took you so long?” Hanssen pled guilty to 15 counts of espionage and was sentenced to 15 consecutive life sentences.<sup>22</sup>*

### Investigative Techniques

Public corruption investigators have access to a number of investigative techniques that vary in sophistication and difficulty. They also vary in the degree of intrusion into the life of the person being investigated. The investigative process, in general, is inherently intrusive, but the level is relative to the investigative technique utilized. Interviews are less intrusive than reviewing telephone records, which is less intrusive than electronic surveillance. Each agency has their own policies and procedures for proper approval and use of these techniques. These policies and procedures are designed to protect the innocent from unnecessary intrusion by the government and to help focus the investigative process on the least necessary intrusive techniques to do the job.

The overly covert nature of corrupt public officials often requires more intrusive techniques to obtain the necessary evidence. According to the FBI, “The FBI is uniquely situated to combat corruption, with the skills and capabilities to run complex undercover operations and surveillance.”<sup>23</sup>

The following are the investigative techniques/tools typically available in a corruption investigation:

- Interviews
- Telephone analysis
- Surveillance
- Financial analysis of bank records/investments/etc.
- Open source research of social media and/or other news and information
- Address, vehicle, and driver’s license searches
- Trash covers
- Mail covers
- Search warrants
- Cell phone geolocation data
- Consensual recordings
- Source and undercover operations
- Electronic surveillance

A good memory, however, could be the single greatest tool at the investigator’s disposal. The best investigators have trained themselves to have the best memories. So much is seen, heard, read, and observed over the course of what can be a long investigation and sometimes the significance of an event is not fully known until days, weeks, or months after the fact.

Another investigative tool available to law enforcement that cannot be overstated and should not be under appreciated is the investigator’s sixth sense. It is the voice that tells someone something is wrong and/or nudges the person in one direction or another, but often for unknown reasons. It is a subconscious observation that generates a feeling or triggers a response. Investigators should not ignore the nudge.

*Example: Imagine a woman arrives home from work. She parks her car, walks to her front gate, and then goes through it. She approaches her front door, puts the key in, and then suddenly stops. She has*

*the uneasy feeling something is wrong and she should not go inside. She decides to leave and return with a friend. When she returns she learns someone broke into her house while she was at work. This type of thing happens in real life all the time (though not always with such potentially severe consequences on the line). How did she know something was wrong? Maybe she saw something out of place when she approached the house the first time, like a curtain in the window was not as she normally keeps it, or a movement out of the corner of her eye, or maybe the gate was not completely latched. Who knows?! But she picked up on something and that may have been the something that saved her life.*

The evidence collection process should not be limited to what is typical to the type of crime being investigated. Of course, all nuance to the violation and previous experience should be considered, but that should not limit or stifle creative problem solving. Investigations into other types of crimes could provide a nugget of usefulness when least expected.

*Example: In 2005, the FBI received information that United States Congressman William Jefferson from New Orleans was allegedly using his position to solicit bribes from companies interested in doing business in Africa. During the course of the investigation, Jefferson was caught on tape accepting \$100,000 cash from an FBI source that was intended to be used to pay off an African official. The investigation revealed numerous bribery schemes that netted Jefferson more than \$478,000 as part of his pay-to-play self-dealing. A few days after receiving the \$100,000, the FBI conducted a search warrant on Jefferson's Washington D.C. residence. \$90,000 in marked bills were found wrapped in foil and hidden in frozen food boxes in his freezer.<sup>24</sup> This is not a typical way for public officials to hide money, but experience in drug and gang cases led agents to, ironically, think "outside the box" by looking inside the box. Jefferson was convicted of 10 corruption charges in 2009 and sentenced to 13 years in federal prison.<sup>25</sup> However, the Supreme Court's decision in 2016 to overturn the corruption conviction of Virginia governor Robert McDonnell resulted in a judge determining "not all of Jefferson's behavior rose to the level of public corruption defined by the high court." As a result, the judge vacated seven of ten corruption charges.<sup>26</sup>*

Investigators and prosecutors do not want to go to trial. Trial is resource intensive and thoroughly unpredictable. There are no guarantees when an investigation goes to trial, and that has less to do with the evidence and more to do with finicky juries and a complex judicial system. There are parameters and instructions provided to jurors when tasked with considering whether the prosecution provided sufficient evidence to prove guilt beyond a reasonable doubt, but those instructions are just a guide. Jurors do not need to justify their final decisions, which means, any decision can be made for any reason by any juror.

For example, a defendant in a murder trial could be on tape committing a murder; his fingerprints could have been pulled from the weapon which was left at the scene of the crime; and he could have subsequently confessed to law enforcement that he committed the murder, and still not be found guilty in trial. Why? There are no guarantees that a jury will trust the prosecution, or approach the trial and the evidence objectively and honestly, without bias, or even understand the significance of the evidence. So, it is imperative that the most compelling evidence be collected prior to pitching the defense to make a plea. It is that evidence and the prosecutors/investigators ability to communicate the severity of the evidence to the defendant and/or the defense attorney, that increases the likelihood of obtaining the desired outcome, a guilty plea.

According to Pew Research, 98% of federal criminal defendants do not go to trial, and of those that do, most are found guilty by either a jury or a judge.<sup>27</sup> There are a number of reasons why people do not go to trial, not the least of which is the fact that losing at trial most likely results in a longer prison sentence than if the defendant accepts a plea deal. If a defendant is facing federal charges, he knows, or his attorney has shared with him, that federal investigators put strong cases together and federal prosecutors only charge the strongest of them. For the prosecution, a plea deal is heavily reliant on the quantity and quality of the evidence.



## Common Statutes

Misprision of a Felony 18 U.S.C. § 4  
 Bribery 18 U.S.C. § 201 (b) (federal officials)  
 Gratuity 18 U.S.C. § 201 I (federal officials)  
 Civil Rights 18 U.S.C. § 242 (useful in police brutality or beating cases)  
 Conspiracy 18 U.S.C. § 371  
 Theft of government property 18 U.S.C. § 641  
 Theft, fraud and bribery involving Federal money 18 U.S.C. § 666  
 Lying 18 U.S.C. § 1001  
 Identification Documents Fraud 18 U.S.C. § 1028  
 Unauthorized access to protected information 18 U.S.C. § 1030  
 Mail and Wire Fraud 18 U.S.C. § 1341 and 1343  
 Bank Fraud 18 U.S.C. § 1344  
 Honest Services Fraud 18 U.S.C. § 1346  
 Hobbs Act Extortion 18 U.S.C. § 1951 (useful for state and local officials)  
 Interstate Transportation in Aid of Racketeering 18 U.S.C. § 1956  
 Money Laundering 18 U.S.C. § 1956  
 Structuring 18 U.S.C. § 31 U.S.C. 5324 and 5331

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# Legislative, Executive, and Judicial Corruption

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Legislative, executive, and judicial corruption are categories of corruption that correspond with the three branches of government. The three branches provide a good framework for tracking historical investigative and prosecutorial activity, as well as for determining source coverage. Just as the three branches of government are represented at the local, state, and federal levels, so too can legislative, judicial, and executive corruption occur at the local, state, and federal levels.

Within each branch of government are positions either won by vote or appointment/hired. The specific corruption vulnerabilities between elected and appointed public officials can differ due to their varying job responsibilities, level of influence, and/or their access to government funds and resources. Elected officials have the added risk exposure that comes from their perpetual need to raise campaign funds and influence voters.

Different public officials have different roles and responsibilities and are thus able to provide different benefits to bad actors. A single public official cannot do it all. They are limited by the scope of responsibility that comes with the position they hold. A police officer, for example, cannot rezone a property, and a Department of Motor Vehicle employee cannot pass a city ordinance. Understanding the scope of authority for a public official is necessary to understanding what corruption vulnerabilities exist related to their specific job. Despite the differences between public officials in what may ultimately be their official act, the typologies and methodologies for the payment of illicit funds to the public official are often similar regardless of the branch or level of government in which the public official operates.

## Branches of Government

The legislative branch writes the laws.

The executive branch enforces the laws.

The judicial branch interprets the laws.

Understanding the precise makeup and key responsibilities of each branch helps plan for the corruption likely to occur within each branch and at each level of government.

The federal, state, and local governments have similar elements of the executive, legislative, and judicial branches, but they do not all look or act exactly the same. Every city and state would require an independent assessment and analysis in order to identify the differences between the branches in each jurisdiction. The only absolute consistency across the country regarding the branches of government are at the federal level.

At the federal level:

The **legislative branch** is comprised of the United States Congress (upper and lower house) and supporting legislative branch agencies. Congress consists of 100 elected

Senators (two from each state) who serve six-year terms and 435 elected Representatives of the House (proportionately divided between the states based on population) who serve two-year terms. There are also non-voting delegate Members from Washington D.C. and other United States territories. Members of Congress are not subject to term limits and can be re-elected indefinitely.

The legislative branch agencies include those with the specific mandate to support the work of Congress in various capacities, including:<sup>1</sup>

- Architect of the Capitol
- Congressional Budget Office
- Congressional Research Service
- Copyright Office
- Government Accountability Office
- Government Publishing Office
- House Office of Inspector General
- House Office of the Clerk
- Joint Congressional Committee on Inaugural Ceremonies
- Library of Congress
- Medicaid and CHIP Payment and Access Commission
- Medicare Payment Advisory Commission
- Office of Compliance
- Open World Leadership Center
- Stennis Center for Public Service
- U.S. Botanic Garden
- U.S. Capitol Police
- U.S. Capitol Visitor Center

The **executive branch**, which employs the most people among the three branches, is comprised of the president, vice president, the cabinet (from which flow the main agencies of the government), and other executive agencies, boards, commissions, and committees. The president is limited to two four-year terms and the cabinet are nominated by the president and confirmed by the Senate. Cabinet members serve at the pleasure of the president until they die, resign, are removed, or replaced by a new administration.

The **judicial branch** is comprised of the Supreme Court, 94 district courts, and 13 appellate courts. Judges within the federal judiciary are nominated by the president and confirmed by the Senate. They maintain their seats until they die, resign, or are impeached and removed by Congress.<sup>2</sup>

Within each state government exists a state constitution and defined state government, whose general makeup is similar in nature to the federal government. Their respective state congress and related entities make up the legislative body, the governor, deputy governor and related agencies make up the executive body, and their judicial system makes up of their defined judicial body.

This general structure, with some nuance unique to the different jurisdictions, trickles down to the local governments.

## **Elected Officials vs Non-elected Officials**

Elected public officials are voted into office by eligible voters (constituents) residing within defined jurisdictions, making elected officials ultimately subject to their constituents.

Appointed and hired public officials are bureaucrats and other government types subject to the authority of the individual, agency, organization, committee, board, and/or immediate institutional leadership with whom they are employed. Corruption involving either class of public official is an offensive betrayal, but betrayals from judges and elected officials are some of the most offensive because of the amount of trust and authority inherent to their positions.

Judges, some of whom are elected (though not within the federal system), have been entrusted with immense power and authority. They regularly make decisions that have significant impact on individuals and organizations. They have the ability to take away someone's freedom and/or strike a swift and painful blow to their financial wherewithal. This is an enormous responsibility that requires an equally enormous level of integrity.

Elected legislators, on the other hand, enact laws that impact the distribution of services and resources and directly impact the safety and security of entire communities. Any self-serving betrayal of these responsibilities leaves people feeling less socially and economically secure, which weighs heavily on communities and undermines their need for a just and citizen-minded system.

There is a notable difference in perception between how elected public officials and non-elected public officials are viewed, which adds to the sense of betrayal that follows corrupt elected officials. There is a prevailing belief, even if only expressed in tongue-in-cheek fashion at cocktail parties and on social media, that government employees are generally incompetent and lazy. Politicians have also publicly ridiculed non-elected government employees, presumably, at times, to detract from their own failures. Robert Lavigna once pointed out in an article for *Harvard Business Review*, "Critics of government, including politicians and some media, portray public sector employees (i.e., 'nameless and faceless bureaucrats') as overpaid and underworked."<sup>3</sup> This is not to say the stigma has not been well-earned by some within the system; rather, it is to point to another reason why some see corruption involving appointed/hired government employees more predictable and less shocking than corruption involving elected public officials.

In addition to the poor perception some have of hired government employees is the extremely favorable perception people have of themselves. Elected officials were not selected by a bureaucrat, they were selected by the voters. And voters think very highly of themselves and their ability to read the character of a man or woman. Corruption involving elected officials is more personal to the voter because of the role the voter plays in "hiring" the elected official.

There is also a segment of the population who has completely lost faith in the whole political process. They do not trust elected officials, they dislike the manipulation of contrived narratives, they despise political spin, and believe politics to be a "game" involving two teams and their diehard fans. These individuals are not, generally, surprised by corruption from elected officials or non-elected officials, they expect it. People who fall in this category tend to be surprised when a public official is held accountability for their corruption.

Ronald Reagan once stated, "It has been said that politics is the second oldest profession. I have learned it bears a striking resemblance to the first."<sup>4</sup> Considering successful politicians thrive in a world of eternal compromise, this is not a surprising takeaway. In a job where compromise is rewarded with more power, some are seduced into compromising everything just for a chance to gain a little more of it.

### **The Integrity of a Man Tends to Deteriorate Lock-Step With the Surrender of His Conviction**

Successful politicians tend to have high levels of confidence that flirt with an inflated sense of self-worth. They speak well, think on their feet, and present themselves as polished and intelligent. Over time, the power and influence they obtain in political office sometimes morphs

confidence into narcissism, which leads to a sense of entitlement. Entitlement can nudge a person into rationalizing behavior he or she would otherwise find reprehensible.

*Example #1: Edwin Edwards, former four-term Governor of Louisiana, said in 1983 the night before a re-election vote, “The only way I can lose this election is if I’m caught in bed with either a dead girl or a live boy.”<sup>5</sup> Rumored for years to be a compromised public official, he actually did win that election. However, in 2001 Edwards was sentenced to 10 years in federal prison and fined \$250,000 after being convicted on 17 counts including conspiracy, extortion, fraud, and racketeering. Edwards and others, including former San Francisco 49er’s owner, Ed DeBartolo Jr., were caught up in an FBI investigation involving the licensing of a riverboat casino in Louisiana. DeBartolo paid Edwards \$400,000 cash to ensure there would be no “serious problem with . . . licensing application.”<sup>6</sup>*

*Example #2: In 2008, former United States Senator from North Carolina, one-time vice presidential nominee, and two-time presidential candidate John Edwards told ABC news in an interview after becoming embroiled in a high profile sex scandal, “[My experiences] fed a self-focus, an egotism a narcissism that leads you to believe you can do whatever you want . . . You’re invincible. And there will be no consequences.”<sup>7</sup> In 2011, Edwards was charged, following an FBI investigation, “with one count of conspiracy to violate the federal campaign finance laws and to make false statements to the Federal Election Commission (FEC); four counts of accepting and received illegal campaign contributions from two donors in 2007 and 2008; and one count of concealing those illegal donations from the FEC.”<sup>8</sup> In 2012, a North Carolina jury acquitted Edwards on one charge and were deadlocked on the other five causing a mistrial. The Department of Justice decided not to retry Edwards on the five deadlocked charges.<sup>9</sup>*

## **A Ride on the Slippery Slope Toward Corruption is Not Necessarily What Was Intended When Entering Political Office, But It Can Be What’s Necessary to Stay in Office**

Samuel Lopez De Victoria, a Miami-based psychotherapist, claimed narcissists get a high from attention and are unaware their actions could result in consequences. “There is a euphoria attached to the relentless feeding of the ego,” he said. “The grandiosity in their own mind tends to make them so vain that an illusion of invincibility is created.”<sup>10</sup> This could be what has fed in such disastrous fashion a political environment so entrenched in the unapologetic and perpetual twisting, stretching, and sidestepping of the truth. Among politicians and other political types, deception and half-truths are merely a case of the ends justifying the means. But as French author Georges Bernanos once wrote, “The first sign of corruption in a society is still alive is that the end justifies the means.”<sup>11</sup> Most shocking about the frequency in which deception is used in politics is the fact that the deception is often so easy to uncover. In other words, proving a lie is a lie is seldom a challenge, but that seldom seems to matter.

There are two common reasons the politically active are willing to engage in, or accept from their own “team,” deception:

1. Political statements are a rally cry for the likeminded. Many active partisan voters prefer to have their outrage about the opposition party validated rather than be provided a truth that conflicts or threatens their belief system. Political types use deception within the echo chamber where most reside, because not only does it not matter, it is welcome if it reinforces the voter’s personal bias.
2. If a lie is told enough times, it becomes the truth. Politicians and pundits strategically spend a good amount of time recreating history and truth so that both fit their desired narrative. They say it, repeat it, and never deviate from it (until it becomes politically advantageous to do so). Even though a statement might be false, the repetitiousness of it eventually transforms the lie into a new “truth.” This widely practiced technique is what makes politics, essentially, the manipulation of the governed by those who govern.

In politics, where both parties claim ownership of the absolute truth, the actual truth can be an inconvenience that undermines the party narrative. Politicians are not willing to stand on their own and deviate from the party message because they are too dependent upon the party for money, fundraising, and other support for re-election. So even those who do not actively participate in the deception perpetuate it by sitting silent in the face of it. Politics is a team sport that requires team play.

*The inherent deception in politics deteriorates all things, not just politics, so voters should be cautious about how indifferent they become about political deception.* Those indifferent about the lie are equally indifferent about the truth and that makes people far easier for the politicians to control. Empowering bad behavior only breeds additional bad behavior.

### **Common Areas of Executive and Legislative Corruption**

- **Creation of laws and/or ordinances**

Elected officials responsible for the writing of laws can be illicitly solicited to use their political contacts and influence over witting or unwitting voting members of a board, council, or congress. Legislators can be bribed into writing and presenting specific laws that result in a financial benefit to a person or organization.

- **School Boards**

School boards and administrations receive vast amounts of funding and have authority over the issuing of certain projects and positions. Understanding the structure of the school board and their authority and responsibilities will help determine where the vulnerabilities exist. Particular emphasis should be placed on declining public education systems.

- **Economic Development**

Massive government funded projects like stadiums or infrastructure improvements (like “the big dig” in Boston) attract businesses of all kinds interested in bidding for lucrative pieces of the project (construction and/or management). The oversight of which is typically handled by a board or oversight committee with authority to award contracts. Other areas of interest include the issuance of tax credits, which are typically designed to attract business to a state or region.

*Example: In 2009, the Louisiana Film Commissioner (state level public official), Mark Smith, was sentenced to 24 months in federal prison following a joint investigation by the FBI and IRS. Smith pleaded guilty to conspiracy and bribery, admitting that “between 2003 and 2005, while serving as the Director of the Louisiana Film Commission, he approved fraudulently inflated movie budgets submitted by a film production company [Louisiana Institute of Film Technology] in order for the company to receive state tax credits. In return, Smith accepted [from Emmy award winning producer and attorney, Malcolm Petal] cash bribes totaling over \$65,000.” The bribes were passed to Smith through a conduit third party attorney, William Bradley.<sup>12</sup> Louisiana was known at the time as Hollywood South due to the massive influx of film production projects in the state that were generated as a result of the state film tax credit.<sup>13</sup>*

- **Consulting**

Bribes and/or the funneling of bribe payments are often masked under the guise of consulting fees or service agreements whereby little-to-no real service is provided. The difficulty for law enforcement to dissect the relationship given the absence of a tangible product makes tying the bribe to an unlawful exchange of an official act

harder to prove. This is particularly true given the consultant is harder to identify in open source and their overt relationship is generally with a non-government entity. Consultants who are bad actors often have a personal or familial connection to the public official engaging in the unlawful activity.

- **Competitive and No-Bid Contracts**

Government contracts (defense, asphalt, construction, management, etc.) tend to be worth a lot of money and are backed by the government, which means the customer (government) will pay on time. This makes government contracts attractive, but vulnerable. Contract steering by government officials can sometimes be evidenced by the issuing of contracts to companies who do not provide the best bid and/or companies that consistently outbid the competition. No-bid contracts, which are sometimes the result of a major disaster, are particularly ripe for abuse. In these instances, the government wants to get the necessary resources to the affected area(s) as quickly as possible. Different levels of government handle contracts in different ways at different times. In order to identify the corruption, each contract and contract process must be understood so unusual behavior can be accurately identified.

- **Campaign Finance**

The two most common corruption occurrences involving campaign funds are donations masked as bribe payments and embezzlement. The challenge with identifying campaign contributions as bribe payments is in the fact that campaign donations are lawful. The burden for investigators is proving the campaign contribution would not have been made if not for the public official's willingness to act – or the official act would not have occurred – if not for the campaign contribution. This is a popular practice among corrupt public officials because they believe it adds a layer of protection to the discovery of the true purpose behind the contribution. They are not wrong either. However, law enforcement has had a lot of success uncovering otherwise legal campaign contributions as being illicitly tied to official acts.

The embezzlement of campaign funds can be attributed to the access public officials have to a significant amount of money and the, general, lack of transparency and auditing of how those funds are spent. Sometimes the funds are funneled to associates and family through service agreements, consulting, and/or other no-show jobs, and sometimes the funds are just directly spent on personal purchases. Foreign campaign contributions, use of straw donor, and improper coordination with PACs/Super PACs are additional areas of concern within the world of campaign finance corruption.

*Example #1: In 2019, Steven V. Stenger (St. Louis County Executive) was convicted and sentenced on three federal felony counts of honest services bribery and mail fraud. Stenger was involved in a scheme whereby he secretly enriched himself through bribes in the form of campaign contributions in exchange for steering government contracts and grants to individuals and their businesses. Stenger was sentenced to 46 months in prison, a fine of \$250,000, and \$130,000 in restitution. "For over four years, Stenger treated important county contracts and grants as something to barter away as if they were his own personal thank you gifts."<sup>14</sup>*

*Example #2: In 2013, former United States Congressman Jesse Jackson Jr. and his wife (a former Chicago Alderman) pleaded guilty to federal charges related to the illegal misuse of campaign funds. Jesse Jackson Jr. admitted to using approximately \$750,000 of campaign funds between 2005 and 2012 for personal use. His wife, Sandra Stevens Jackson, pleaded guilty to filing a false tax return in connection*



with the illegal misuse of Jesse Jackson Jr.'s campaign funds.<sup>15</sup> They were sentenced to 30 months and 12 months, respectively.<sup>16</sup> Jesse Jackson Jr. used some of the money to buy a \$43,000 Rolex, fur coats, and memorabilia from Bruce Lee, Martin Luther King Jr., Malcolm X, and Michael Jackson.<sup>17</sup>

*Example #3: In 2020, former United States Congressman Duncan Hunter and his wife pleaded guilty to federal charges related to their illegal misuse of campaign funds. Duncan Hunter illegally accessed approximately \$250,000 from his campaign from 2010 to 2016 and used the funds for personal use. They were sentenced to 11 months in prison and eight months home confinement, respectively. The stolen funds were used to maintain their lifestyle through the purchase of “items as inconsequential as fast food, movie tickets and sneakers; as trivial as video games, Lego sets and Playdoh; as mundane as groceries, dog food, and utilities; and as self-indulgent as luxury hotels, overseas vacations and plane tickets for their family.”<sup>18</sup>*

Other common areas of potential executive and legislative corruption include:

- Motor Vehicle Departments (MVD)/Department of Motor Vehicle (DMV)
- Lobbying
- Municipal Bonds and Public Financing
- Minority/Small Business Programs
- Insurance
- Earmarks and “pork” attached to legislation
- Regulatory agencies (zoning commissions, liquor boards)
- Procurement offices
- Corrections departments
- Non-profits and charities (often as conduits and/or money laundering facilities)

Geographic areas with high government spending and a dense government employee population tend to have the greatest number of instances of corruption, but corruption is certainly not limited to those places. Corruption can occur anywhere government resides. That said, not everything distasteful is corruption. Government oddities and poor leadership decisions can be an indicator of corruption, but can also just be wasteful spending or incompetence. Voters expect a degree of competency from their leaders in government, especially their elected leaders. The harsh reality is that being competent is not the same as being perfect, just as being incompetent is not the same as being corrupt. Even the most qualified government employee or elected official begins his/her career or position with much to learn. Elected officials, for example, are not immediately qualified to handle the complexities of government (military, law enforcement, foreign affairs, etc.) just because they won an election, and yet they are expected to do so. So, while incompetence can resemble corruption, the two are not the same.

*Fun Fact: Public corruption cannot be completely eliminated, only disincentivized through transparency, education, and accountability.*

### **Middlemen/Bagmen and Rainmakers**

Middlemen (or “bagmen”) are brokers or intermediaries who receive bribe payments on behalf of the public official. They provide a layer of protection for the public official who is eager to create distance between himself and the person paying the bribe as it makes identifying the corruption more difficult for law enforcement to uncover.

Rainmakers, on the other hand, are individuals who deceptively claim to have the ability to illegally influence a public official or who claim to be bagmen. Rainmakers are often, though not always, attorneys, consultants, or lobbyists as their connections to elected officials

are easy to sell and easy to authenticate. Rainmaker schemes are designed for the rainmaker to financially benefit from the ill intent of individuals willing to pay bribes to public officials. The person paying the bribe is unaware his bribe is not being delivered to the public official and is unlikely, if and when he figures it out, to report it to law enforcement.

## Benchmark Investigation

Operation Blighted Officials: The FBI field offices in Newark, Chicago, New York, and New Orleans are home to among the busiest and most productive corruption squads in the country. The corruption within each of those locations produce stories of legend. It is the source of jokes to outsiders and a painful reality to those who live amongst it. Of those four FBI offices, New Orleans is the only one not considered by the FBI to be a large office, but their corruption is of epic proportion. A *Chicago Tribune* article from 2009 pitted Louisiana against Illinois in a corruption “smackdown” with a visual chart of March Madness-type brackets of the great offenders from each state simulating a competition between the egregious. The outcome of the on-paper battle royale was reflected in the title of the article, “La. sleaze easily tops Illinois.”<sup>19</sup> The 2005 landfall of Hurricane Katrina and the devastation she brought with her was followed quickly by a substantial amount of government recovery funds. All that money amplified a corruption problem already sewn deep into the fabric of an entire community. Over the following years, a number of local, state, and federal investigations resulted in massive arrests, not the least of which was the eventual conviction of Mayor Ray Nagin (mayor of New Orleans during and after Katrina).

The FBI initiated an investigation into the then mayor of St. Gabriel, Louisiana and former president of the National Conference of Black Mayors, George Grace, predicated upon allegations of criminal activity. The multi-year investigation utilized a broad range of investigative techniques, including an undercover operation. The FBI undercover(s) represented themselves as affiliates of a company responsible for producing a product known as “Cifer 5,000.” The product was promoted as a specialty truck designed and outfitted with a self-contained, environmentally friendly, residential and commercial waste container cleaning system. The potential customer base for the product consisted primarily of government entities and municipalities.

The multi-year investigation started with George Grace and led to multiple other public officials who revealed themselves as interested in taking money, box seats at professional sporting events, and other things of value in exchange for using their positions to promote and facilitate the “roll out” of the Cifer 5,000 truck. They were even willing to introduce and pass new ordinances that specifically and significantly benefited the undercover agents and the Cifer 5,000 company. The FBI allowed for those ordinances to be drafted and presented, but the FBI would not allow legislation influenced by the FBI to make it to a final vote, protecting the integrity of local laws.

Near the end of 2008, while discussing details of an investor letter Grace was providing in support of the Cifer 5,000, Grace requested money to pay for a business class plane ticket for an associate of Grace who was traveling with him to Uganda and Libya. In 2009, after multiple requests by Grace for reimbursement of the travel expenses, Grace was wired \$8,000 to offset the expense of the trip. The reason behind Grace’s trip to Uganda and Libya was not made public.

George Grace was indicted in 2010 on federal charges including violations to the Racketeering Influenced Corrupt Organizations Act (RICO), extortion, obstruction of justice, false statements, bribery involving a federally funded entity, and mail and wire fraud. Much of the evidence was recorded by the undercover agents as they engaged with Grace and the other

subjects. In one reported recording, Grace was captured coaching a “Baton Rouge Business-man” on what to say if/when questioned by the FBI about payments made to Grace:

“Doesn’t nobody know nothing but me and you. . . . I can promise you, they don’t know a fucking thing about me and you. . . . You don’t want to tell ‘em you gave me no cash. . . . Nobody in the world know it but me, you and God. Promise you that. You know how careful we have been with that shit. . . . They don’t know a fucking thing ‘bout that. . . . There was never a time when you gave me anything that I went rushing, put it in the bank . . . cause I’m very careful about that kind of shit.”<sup>20</sup>

Adding to the complexity of the investigation was the fact that, ironically, part way through the investigation, one of the undercover agents was federally charged with mortgage fraud related charges in his personal life. This naturally created a number of challenges not the least of which was introducing new undercover agents, which can be a challenge. A successful transition was made and the agents were able to salvage the investigation, which, along with the subsequent trials, lasted several years.

The following public officials were convicted as part of Operation Blighted Officials:<sup>21</sup>

George Grace, Mayor of St. Gabriel, Louisiana

- Grace was convicted at trial of RICO, bribery, mail and wire fraud, false statements, obstruction of justice, and use of an interstate facility in aid of racketeering and sentenced to 22 years in federal prison (re-sentenced to 20 years).

Thomas Nelson, Mayor of New Rhodes, Louisiana

- Nelson was convicted at trial of RICO, bribery, mail and wire fraud, false statements, and use of an interstate facility in aid of racketeering and sentenced to 11 years in federal prison.

Maurice Brown, Mayor of White Castle, Louisiana

- Brown was convicted at trial of RICO, wire and mail fraud and use of an interstate facility in aid of racketeering and sentenced to 10 years in federal prison.

Derek Lewis, Mayor of Port Allen, Louisiana

- Lewis pled guilty to violating RICO and was sentenced to 40 months in federal prison.

Frederick Smith, Chief of Police for Port Allen, Louisiana

- Smith was convicted at trial of 11 counts including RICO, wire and mail fraud, and using interstate facility in aid of racketeering and was sentenced to 90 months in federal prison.

Richard Chambers, Deputy commissioner of the Louisiana Department of Insurance

- Chambers pled guilty to using an interstate facility in aid of racketeering and was sentenced to 30 months in federal prison.

Johnny Johnson, City Councilman for Port Allen, Louisiana

- Johnson pled guilty to using an interstate facility in aid of racketeering and was sentenced to two years’ probation.

The prosecution was led by Assistant United States Attorney Corey Amundson who is now Chief of DOJ's Public Integrity Section at Main Justice in Washington DC. The prosecutorial team from DOJ and FBI were awarded the Director's Award for Superior Performance by a Litigation Team in response not only to the remarkable investigation, but also in response to the massive trial prep undertaking that resulted in so many corruption convictions.

## Judicial Corruption

Judges at every level of government have either been voted or appointed with the expectation their honor, integrity, wisdom, and impartiality would drive every discretionary act they exercise inside the courtroom. There rests a heavy burden on judges to interpret laws, decision motions, and weigh precedent with the potential for cascading consequences across both geography and time. While there are rules of ethics and law enforcement serving as guard rails, the mere need for such things reveals a weakness that prevents the judicial system from ever living up to what some expect it already is, and others hoped it might one day become. But it is impossible to eliminate humanity entirely from any system. Steadfastness in those guardrails and a continued expectation of integrity from our judges will, overall, ensure the system works and works well.

Judicial corruption can include anyone who operates within the system and is not limited to judges being illicitly influenced for favorable guilty/not guilty verdicts. It can also include any and all decisions made through the criminal or civil litigation process, including:

- Providing favorable or unreasonable high/low bonds
- Reducing or dismissing charges
- Witness/jury tampering
- Fixing tickets/moving violations
- Manipulation/destruction of court documents, evidence or files
- Preferential sentencing or settlement amounts
- Steering cases to a particular court or judge
- Court appointment kickback schemes
- Speeding up or delaying cases
- Etc.

**Judicial corruption** is the illicit influencing of judges and/or other court personnel in any judiciary matter. Potential violators include:

- Judges and magistrates
- Clerks
- Bailiffs
- Prosecutors
- Defense attorneys (non-public official)
- Bondsmen (non-public official)
- Other public officials with access to protected information

The vast majority of judges and judicial personnel live up to their professional obligations with great integrity. But when the judicial system is compromised it tips the scales of justice creating an imbalance that punishes everyone (most often the poor) and diminishes the rule of law. The greater the systemic corruption within the system, the harder it can be to stop it. According to Transparency International, "Opaque court processes that foster bribery can

also prevent the media and civil society from monitoring court activity and exposing judicial corruption.”<sup>22</sup>

*Example: In 2009, elected St. Bernard Parish (Louisiana) Judge Wayne Cresap and defense attorney’s Victor “V.J.” Dauterive and Nunzio “Sal” Cusimano pled guilty to conspiracy charges after an FBI investigation revealed their bribery scheme to convert secured bonds (which require money or property to be pledged) into personal surety bonds (which require only a written agreement money will be paid if the defendant does not show in court).*

*According to the Bill of Information, the corruption scheme lasted from around December 2004 until April 2009. During that time, Cusimano and Dauterive “were contacted by representatives of individuals being held in St. Bernard Parish prison under a bond obligation they could not afford. Unable to secure the inmate’s release, the representative would then contact attorney Cusimano or attorney Dauterive to facilitate the inmate’s release.” At this point, Cusimano or Dauterive would telephonically contact Judge Cresap to have the secured bond converted to an unsecured bond. After the inmate was released, the representative would provide Cusimano or Dauterive with a cash payment that would later be split with Judge Cresap.”<sup>23</sup>*

*The scheme resulted in the release of nearly 100 inmates. Both Judge Cresap and Dauterive pled guilty to accepting between \$70,000 and \$120,000 over the life of the scheme. Cusimano pled guilty to taking between \$10,000 and \$30,000 over the same timeframe. Judge Cresap was sentenced to five-years in federal prison. Cusimano and Dauterive were sentenced to 33 months and 48 months, respectively.”<sup>24</sup>*

Corruption can occur in any stage of the criminal or civil process, including:

- Summons, subpoena, or arrest
- Filing and dispositioning of charges or complaints
- Discovery
- Scheduling/docketing (directing cases to a specific court or judge)
- Hearings/motions/trials/sentencing
- Appeals
- Etc.

There are a number of challenges to identifying and investigating judicial corruption, including:

- Complaints of corruption do not always translate to an actual federal violation and may be the result of bitterness or displeasure over a judge’s ruling or judicial decision (personal animas could be the motivation behind any corruption allegation). Also, decisions made by a judge as the result of political pressure, personal feelings, and even those made for the benefit of judicial re-election do not, by themselves constitute criminal corruption.
- Judges are less inclined to “turn in” or “turn on” other judges as they tend to give their peers the benefit-of-the-doubt or decide the conduct is, at least, behavioral or, at worst, “just” unethical.
- At the local level, prosecutors may see investigations into the judicial system as a political detriment to their careers.
- The investigations themselves are long, complex, and heavily scrutinized.
- Judges are provided a great deal of latitude to make decisions in the courtroom. Tying those decisions to a criminal act sufficiently to meet the elements of the crime and convince a jury, can be difficult.
- Concern by law enforcement that a successful investigation could have dire consequences on righteous rulings previously handed down.

*Example: In 1981, a grand jury indicted then federal judge Alcee Hastings along with his friend and associate William Borders, a Washington D.C. lawyer. Judge Hastings was charged with conspiracy and obstruction of justice after allegedly soliciting a \$150,000 bribe in return for reducing the sentences of two mob-connected convicts.<sup>25</sup> Borders was convicted in 1982 of conspiracy to solicit a bribe and obstruction of justice.<sup>26</sup> Judge Hastings was criminally tried a year after Borders was convicted, the result of an FBI sting. Despite Borders' conviction, and the fact that Judge Hastings had actually reduced the sentences of the two felons, as was the nature of the alleged bribe, Judge Hastings was acquitted. Judge Hastings returned to his judicial post.*

*Subsequently, however, a special committee of the 11th Circuit Court of Appeals began a new probe into Judge Hastings. The three-year investigation ended with the panel determining Judge Hastings did in fact commit perjury, tamper with evidence, and conspire to gain financially by accepting bribes. The panel recommended further action to the U.S. Judicial Conference. The United States House of Representatives was advised in 1987 that Judge Hastings should be impeached and removed from his position.*

*In 1989, after hearing from numerous witnesses, the Senate voted on 11 of the 17 articles of impeachment, convicting Hastings on eight of the articles.<sup>27</sup> Judge Hastings was removed from the bench, but was not precluded from holding future government positions. Four years later, Alcee Hastings was elected to the United States House of Representatives where he continues to serve as a Member of Congress.*

Overall, an understanding of the specific judicial system is important to understanding the vulnerabilities that may exist within the system. Questions to ask and answer include:

- Who are the different people involved in making the system work and what do they do?
- What information and/or outcome is potentially beneficial to the prosecution and the defense?
- Are the judges appointed or elected?
- If judges are elected, who are their supporters (and contributors) and how do they raise funds?
- What are the bond procedures and options? And who are the bondsmen?
- Are there any judges consistently setting high/low bonds relative to their peers?
- Are there particular attorneys who seem to receive favorable rulings/outcomes inconsistent with other attorneys in their position?
- Do allegations exist within open source about members of the judicial system (by itself, and depending on the sources and volume, this could be insufficient to make a useful determination)?
- Are judicial staff selected by the judge or is there a separation of responsibilities in the hiring of personnel?

## **Benchmark Investigation**

Operation Greylord: Chicago has carried the nickname “the windy city” for many years, but it remains unclear as to the actual reason behind the coining of the phrase. Thanks to its proximity to Lake Michigan, it is quite literally a windy city. A particular fact felt most intensely during the wind whistling winter months. But it is also a great city – just ask any of the wind blowers that live there. Truth is, Chicago really is an amazing city with a uniquely rich and culturally diverse makeup and strong professional sports history. So, who really knows why Chicago is called the windy city? Maybe because the city is windy and maybe because its residents are full of hot air – maybe a little bit of both. This is the source of lively discussion that will undoubtedly continue with residents and non-residents alike for many years to come.

While the source of her nickname may be an ongoing debate, Chicago's place in history as one of the most corrupt American cities is not. Decades upon decades of corruption in

Chicago have been extremely well documented and reported, as has the long history of violence. A correlation between corruption and violence is anecdotally evidenced in major cities with areas of widespread poverty and educational deficiencies. The poor and under educated are, candidly, easy to steal from. This provides an incredible opportunity and incentive to those in leadership looking to exploit their communities and not really lift them up beyond giving faux passionate speeches. The violence itself is a byproduct of being ignored and betrayed by leadership inside and outside the community.

Operation Greylord, a name referencing the curly gray wigs worn by British judges, was the first investigation of its kind, in terms of size and scope. This was an enormous multi-year investigative and prosecutorial endeavor in the 1980s that cut at the heart of rampant, systemic judicial corruption in Cook County, Illinois.

The investigation was initiated based on allegations of corruption involving court officials fixing everything from traffic violations to major felonies. The investigative process itself involved numerous, simultaneous sophisticated investigative techniques including the use of multiple sources inside the judicial system (judges, attorneys, and staff), undercover operations involving agents with legal backgrounds posing as prosecutors and defense attorneys, and reel after reel of consensual recordings, among many others techniques. One of the many lawyers caught on tape bragging about his criminal exploits even suggested “a murder case can be fixed if the judge is given something to hang his hat on.”<sup>28</sup>

The courageous contributions of those within the judicial system who were fed up with the corruption in Cook County and the resilience and creativity of the FBI agents and supporting agencies resulted in “92 officials being indicted, including 17 judges, 48 lawyers, eight police officers, 10 deputy sheriffs, eight court officials, and one state legislator.”<sup>29</sup> Multiple additional successful undercover operations targeting various other elements within the city of Chicago and surrounding areas were spun from this investigation. Operation Greylord was symbolic of the dramatic stand the FBI was making against corruption in the Chicago area and across the country.

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# Law Enforcement and Regulatory Corruption

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Law enforcement and regulatory agencies parallel in that they are both responsible for enforcing laws. One of the major differences between the two, among others, is that law enforcement agencies do not establish the laws they are expected to enforce, while regulatory agencies often (though, not always) set at least some of the standards they enforce.

### Law Enforcement Corruption

According to the FBI's Uniform Crime Reporting Program, law enforcement officers are "individuals who ordinarily carry a firearm and a badge, have full arrest powers, and are paid from governmental funds set aside specifically for sworn law enforcement representatives."<sup>1</sup>

The term law enforcement can have somewhat of a negative or dystopian connotation. It implies "enforcement of the law" over the welfare of the people who are expected to follow those laws. Knowing this, many law enforcement agencies adopt slogans or mottos they often display on their police cruisers. The Los Angeles Police Department, for example, has the motto, "to protect and to serve." The motto is a reference to protecting and serving the people of Los Angeles, but in a way, it also communicates the duality of their role. They provide service to and protection of the people, through their service to and protection of the law. The slogan "to protect and to serve" has been adopted by a number of law enforcement agencies, and rightfully so, because that is the job.

Law enforcement has an awesome responsibility and has been entrusted with immense power. These men and women are provided with firearms that can take a life, and the arrest power and investigative authority that can lead to an individual's freedom being completely taken away. That degree of power demands the highest ethical standards. It demands a constant watchful eye. Business guru Warren Buffet once said "We look for three things when we hire people. We look for intelligence, we look for initiative or energy, and we look for integrity. And if they don't have the latter, the first two will kill you, because if you're going to get someone without integrity, you want them lazy and dumb."<sup>2</sup> Fortunately, a great majority of law enforcement professionals retire with the same conviction and adherence to integrity as when they entered the field.

The law enforcement community in the United States, in its totality, is large, but individual departments and agencies could range from just a few sworn officers or staff in small towns to robust and complex organizational structures in larger cities. For context, there are approximately 700,000 law enforcement officers in the country.<sup>3</sup> The New York Police Department alone has approximately 36,000 officers and 19,000 civilian employees,<sup>4</sup> the Los Angeles Police Department has below 10,000 officers,<sup>5</sup> and the Los Angeles Sheriff's Office, which is the largest sheriff's office in the country, has approximately 9,300 full-time sworn personnel.<sup>6</sup>

By contrast, the Gaines Township Police Department in Michigan was made up of three officers and the Chief until mid-2021 when budget cuts led to layoffs of the three officers.<sup>7</sup>

Law enforcement agencies are charged with policing their communities, but they have an equal responsibility to police themselves, regardless of their size. It is imperative that law enforcement agencies do what they can to attract sufficiently qualified candidates and keep out those who present a risk to the agency and/or the community for aptitude or ethical reasons. Unfortunately, the larger the organization, the more complicated it is to keep the wrong people out. Establishing, documenting, and socializing suitable hiring practices (standards) and ongoing/on-the-job monitoring controls are just the first step in quality control effectiveness. *The mere existence of internal standards and controls is insufficient without a faithful commitment to their adherence.* They must be enforced if they are to work.

Typical law enforcement hiring standards might include educational requirements, polygraph exams, interviews, background investigations, psychological tests, physical ability tests, and written competency exams. Candidates must meet established minimum requirements in the various categories of testing to be considered for a role with the hiring agency. Compromising the hiring standards will result in compromising the quality of the candidates and, thus, compromise the quality of the agency's service to the community.

*Example: On March 4, 1995, New Orleans Police Department (NOPD) rookie officer Antoinette Frank partnered with then 18-year-old Rogers La Caze in the robbery of a Vietnamese restaurant (Kim Anh) in eastern New Orleans. Frank was aware the restaurant had a lot of cash on hand as she had previously moonlighted at Kim Anh as security. According to sources, upon Frank's and La Caze's arrival at Kim Anh at or around 1:50 a.m., La Caze fired a shot at Frank's one-time partner, officer Ronald Williams, who was in the restaurant moonlighting as security at the time of the robbery. Frank, who was in her NOPD uniform, subsequently stood over Williams and fired a final fatal round into his head. Frank and La Caze killed two additional people in the family owned restaurant before departing.*

*Frank returned to the scene shortly after in her police cruiser under the guise of responding to help. Witnesses who survived by hiding during the shooting identified Frank as the shooter.<sup>8</sup> Frank ultimately admitted her involvement and was sentenced to death. She remains on death row, pending appeals. It was learned after the Kim Anh murders that Frank had failed portions of the psychological exams given to her prior to her admittance into the police academy.<sup>9</sup>*

On-the-job controls help ensure those who have been hired continue to represent the agency with high ethical standards. Individuals may enter law enforcement intent on doing the right thing, but over time, could gradually become compromised for any number of reasons; the stress of the job or stress at home, financial turmoil, etc. The ongoing evaluation of personnel helps identify those who maybe should not have been hired in the first place and/or those who no longer represent the badge with the competency or integrity suitable for the vocation. While other agencies, like the FBI who work public corruption investigations, may help identify the corrupt within a department or agency, each individual agency should consider it part of its mission to police its own and eliminate the corrupt, unethical, and incompetent. Some common internal controls include: financial disclosures, drug testing, regular and ongoing training, an internal affairs department, anonymous hotlines for reporting abuse or ethical violations, whistleblower protections, training officer/agent programs, peer and supervisor evaluations, body cameras, use-of-force review committees/boards, well-documented and articulated ethical standards and training, internal announcements and notifications of disciplinary action taken against officers who violated policies or laws, among others. This is not to suggest all who carry a gun and wear a badge must be perfect. That is impossible. *But the inability to achieve perfection should never sway someone from striving for perfection.*

Law enforcement professionals are human. They are fallible. They make mistakes. And their senses are regularly exposed to people, images, and events that leave lasting scars and unforgettably horrific memories. Which at least partially explains why police are more likely

to die by suicide than in the line of duty, according to BLUE H.E.L.P, a national organization that helps police officers with mental health issues.<sup>10</sup> In addition to the horrors they witness, police officers are expected to make split-second life and death decisions that are sometimes critiqued for weeks, months, and years by people who do not necessarily understand the job, the calculations, and the sheer speed in which events can change. These, however, are an unavoidable reality that only highlights the need for law enforcement to focus more attention on regularly updating their training and ensuring they have the right, sufficiently prepared, and resourced personnel.

Social media sometimes creates a controversy where a controversy does not exist. Those who do not know any better might opine on law enforcement action they believe to be reckless, criminal, racist, or at least the result of poor judgment, but in reality was entirely appropriate and justified. This creates an opportunity for agencies to provide communities with education. Communities do not want to feel like their law enforcement agencies are withholding information or “protecting their own” above the community. They are thirsty to understand why law enforcement makes certain decisions and takes certain investigative and tactical steps. They will listen and are willing to be educated if law enforcement is willing to teach them. But if law enforcement does not educate them, they will drink up the information others provide. Many of whom, sadly, intentionally provide the public with false information about specific events or law enforcement in general. Too often certain politicians, pundits, and activists spin fact into fiction in service of their own desired political narrative. Too often those who know better whip those who do not know better into a frenzy using lies and deception, at the expense of law enforcement and the community. But, while the betrayal is unfortunate, it should be expected. Thick skin is required for this job. Those without, need not apply.

*Every individual in law enforcement must hold themselves and each other accountable for who they are, how they act, and whether or not the badge on their chest shines. One tarnished badge takes the luster out of all of them. Rooting out law enforcement corruption is the responsibility of all who wear the badge.*

Law enforcement corruption often starts with small acts of unethical behavior that escalate over time – slippery slope. The **slippery slope** is the gradual decline in judgement brought about by the repetitive compromising of one’s principals. The further down the slope a person travels without consequence, the more egregious the abuses tend to become. That is not to say all law enforcement who engage in corruption are slow or gradual in their decline. Desperation or opportunity could send a person into a free fall from ethical to massively corrupt.

The profile of those potentially engaging in misconduct or corruption cannot be linked to a specific demographic profile. There are, however, behavioral clues that could suggest a potential problem or vulnerability exists. Financial problems (caused by being underpaid or living beyond one’s means, illness of a family member, gambling or drug and alcohol addiction, divorce), defending the unethical or corrupt behavior of fellow law enforcement, misuse of law enforcement computers, the exercise of increasingly borderline judgement on the job, inappropriate sexual relationships or other ethical declines in personal life, and frequent travel (domestic or international) represent some of the most common potential behavioral clues.

*Fun Fact: Law enforcement corruption is perpetrated by a relatively small number, but the impact on society’s perception of law enforcement is enormous.*

Corruption in policing has been around as long as policing. In fact, its prevalence is not just long lasting, but far reaching. According to research conducted by Transparency International, law enforcement corruption is rated by citizens from dozens of countries among their top concerns.<sup>11</sup> Which is no surprise when you consider the poor reputations of law enforcement in certain countries within Latin America, Asia, and Africa.

There are several unique challenges to identifying and investigating members of the law enforcement community. One of the most significant challenges is the simple fact that the potential subjects will be well-versed in the investigative techniques utilized by law enforcement. This is not insurmountable, but it can require more creative problem solving to overcome. Other challenges include the distorted and dysfunctional view by some of the “thin blue line,” which could reduce reporting and cooperation; a higher than normal degree of fear by victims and witnesses that could lead to an unwillingness to cooperate; and potentially combative interagency interaction during and after the investigation. The best way to overcome these challenges is by the organization conveying to both the community and its personnel a culture reliant upon the highest ethical standards that will unflinchingly hold accountable those who violate policies, standards, and laws. If the community trusts the organization and believes they really care about protecting and serving, and the personnel within the organization know the culture demands consistently high ethical standards, then some of the challenges in investigating law enforcement fade.

### **Common Methodologies of Corrupt Law Enforcement**

- Unauthorized access and/or release of protected information

*Example: Thomas Kantzos, a 17-year veteran with the Arlington Police Department (Texas) was arrested in 2013 for accessing protected law enforcement information and sharing it with his steroid supplier. On one occasion, Kantzos was asked by his supplier to run the license plate of a suspicious vehicle parked near the supplier’s residence through law enforcement databases. Kantzos informed his supplier that the truck was that of a police officer on a drug task force. The information led the supplier to check his own vehicle where he eventually found a law enforcement tracking device. The investigation revealed multiple officers engaging in the purchase of illicit steroids, one of whom killed himself after being implicated in the investigation. Subsequently, the Arlington Police Department chief mandated ongoing random drug tests for all employees. Kantzos was sentenced to a year and one day in prison.<sup>12</sup>*

- Protection of drug and human trafficking/smuggling activity

*Example: In March 2021, three deputies with the Orangeburg County Sheriff’s Office (South Carolina) were sentenced after an FBI undercover operation discovered the three officers, Carolyn Franklin, Allan Hunter, and Nathaniel Shazier, were engaging in drug conspiracies and visa fraud. Evidence revealed that between 2018 and 2019, the three deputies agreed to protect vehicles they believed were transporting drug proceeds on behalf of a Mexican drug cartel. The deputies also agreed to protect future cocaine and methamphetamine loads. Additionally, Franklin and Hunter created fraudulent documents to help non-immigrants receive U-Visas, which are reserved for victims of certain types of crimes who aided law enforcement. Franklin was sentenced to 61 months in federal prison. Hunter was sentenced to 63 months in federal prison. Shazier was sentenced to 46 months in federal prison.<sup>13</sup>*

- Transportation of drugs and/or illicit proceeds

*Example: A joint investigation involving the Seattle Police Department, DEA, and FBI resulted in the arrest and conviction of multiple individuals involved in the interstate transportation of marijuana from Seattle to Baltimore, as well as the return of the illicit proceeds. The marijuana was either shipped or driven across the country between 2015 and 2017. One of those identified as part of the conspiracy was 16-year police veteran Alex Chapackdee who personally participated in multiple trips, driving his RV one or both ways. Chapackdee admittedly made the cross-country trips while in possession of his badge and duty weapon. Chapackdee was sentenced to six years in federal prison.<sup>14</sup>*

- Drug, money, or gun “rips” and theft of evidence/planting of evidence

*Example: In 2017, a former Detroit Police Department lieutenant and former officer were sentenced for arranging drug deals, so they could “rob and extort them.” Additionally, former Lieutenant David Hansberry and former Officer Bryan Watson engaged in traffic stops and fake arrests in order to steal drugs, money, and personal property. Hansberry and Watson wore their police uniforms, drove their police cruisers, and carried their agency issued badges and firearms while engaging in various corrupt acts in an effort to intimidate people into compliance. In 2010, “Hansberry and Watson participated in a drug seizure that netted more than \$3 million, the largest cash seizure by the Detroit Police Department at that time. Only \$2.2 million, however, was placed in the evidence room.” Hansberry and Watson were sentenced to 12 ½ years and nine years in federal prison, respectively.<sup>15</sup>*

- Time theft/Overtime fraud

*Example: In March 2021, an indictment was unsealed that revealed multiple federal charges against a captain with the Boston Police Department. The captain was accused in the indictment of conspiring with fellow officers he supervised in the Boston Police Department to steal money that was paid as the result of work not actually performed over a five-year period. According to the DOJ press release, the captain was charged with “one count of conspiracy to commit theft concerning programs receiving federal funds, one count of embezzlement from an agency receiving federal funds, one count of conspiracy to commit wire fraud and three counts of wire fraud.”<sup>16</sup> This investigation has not yet been fully adjudicated. All are considered innocent until/unless proven guilty.*

Additional methodologies to be discussed in later chapters, include:

- Smuggling of contraband into prison/jail (Prison Corruption)
- Border related crimes (Border Corruption)

## Civil Rights

Police brutality, sextortion (extortion for sex) and sexual assault, and false arrests are typically investigated and prosecuted as “color of law” civil rights violations. “The FBI is the lead federal agency for investigating color of law violations, which include acts carried out by government officials operating both within and beyond the limits of their lawful authority. Off-duty conduct may be covered if the perpetrator asserted his or her official status in some way.”<sup>17</sup> Civil rights investigations fall within the civil rights program at the FBI. The civil rights program and the public corruption program are sister programs within the same section at FBI Headquarters.

## Investigative Considerations

Why is law enforcement corruption (and civil rights matters) so important to address? Because law enforcement corruption:

- Undermines the rule of law
- Makes communities less safe by empowering criminals and protecting their illegal activity
- Increases the national security threat
- Erodes the trust of the community – communities stop reporting crimes
- Encourages corruption at other levels when the enforcers of corruption are corrupt
- Makes policing more dangerous for those doing it right

- Could result in innocent people being convicted of crimes they did not commit
- Jeopardizes the integrity of active or previously investigated and adjudicated investigations

*Investigating corruption is a meaningless gesture if the prosecution does not hold accountable the highest ranking corrupt public official involved in the conspiracy, activity, or scheme.* This is an important step in earning back trust with the community after the betrayal of corruption because it communicates to leadership they are not above the law, and it reinforces an anti-corruption culture among all agency personnel. Failure to hold all accountable, regardless of elevated rank or position, undermines the fight against corruption and could suggest greater systemic corruption exists.

## **Benchmark Investigation**

Operation Guard Shack: Puerto Rico, an island neighbor to the Dominican Republic and territory of the United States, has a culture as beautiful as its beaches and culinary contributions. Home to a very proud people, Puerto Rico has been ravaged for many years by incessant poverty, relentless violence, and periods of systemic corruption.

In 2018, Puerto Rico had a poverty rate of 43%, which is extreme compared to a U.S. national poverty rate of 13%.<sup>18</sup> Unfortunately, where there is poverty, there tends to also be violence and corruption (or is it the corrosive nature of corruption that leads to poverty and violence?), and Puerto Rico has been no exception. In 2019, the Special Agent in Charge of the FBI's Puerto Rico field office claimed the island was suffering from a "crisis of violence."<sup>19</sup> And in terms of corruption, the island has been riddled with all types of corruption at every level and in every form. The FBI has arrested a number of high level public officials in recent years highlighting Puerto Rico's continued corruption issues.

In 2010, the FBI initiated an undercover investigation that ultimately resulted in the largest law enforcement corruption takedown in history requiring the assistance of over 1,000 personnel from 50 of the 56 FBI field offices. Investigators could have never anticipated at the case's inception that simply having an FBI agent posing as a cocaine trafficker in need of protection would result in such an aggressive response by the law enforcement community. Corrupt law enforcement officers came from all over the island and "actively took part in the transactions by carrying weapons and patting down the drug buyers – who were actually FBI informants. For their protection efforts, the cops were paid between \$500 and \$4,000 for each drug deal. In all, more than \$500,000 was paid in protection money."<sup>20</sup>

In less than a year, the FBI's undercover investigation collected sufficient evidence to arrest 133 individuals in Puerto Rico involved in providing protection to drug dealers. Of those arrested were "60 members of the Puerto Rico Police Department, 16 members of various local police departments, 12 correctional officers, eight former law enforcement officers, three National Guard soldiers, two U.S. Army officers, one administrative examiner in child support matters, one Social Security Administration employee and 30 other civilians."<sup>21</sup>

## **Regulatory Corruption**

Regulations generally seek to address workplace safety, construction and building safety, consumer health and wellness, over billing and underperforming of contracts, and environmental hazards, among others. They provide a framework, that when adhered to, standardize safety protocols and level the playing field within an industry by level-setting expectations. While regulatory policies flowing from local, state, and federal agencies are often the result of good intentions, their existence makes living up to those intentions difficult.

Some regulatory bodies (liquor, marijuana, taxi) create financial opportunities for those seeking entrants into a regulated industry, while other regulatory bodies (permits and inspections) add a financial burden by charging for activity that could otherwise be accomplished without paying for permits or inspections. In either case, there is money to be made or saved by circumventing clearly defined regulatory processes. The potential financial benefits make regulators vulnerable to being bribed, but to the opportunistic public official, it could entice regulators to over-regulate in an effort to create a market that encourages corrupt behavior (extortion).

## Licensing

Liquor and marijuana dispensary and taxi licenses are typically limited within specified geographic areas. Limiting competition enhances the potential for greater financial return for those able to obtain a license. They are limited, so they are lucrative. The anticipated value of having a license makes the person or people responsible for awarding licenses targets to individuals willing to do anything, or pay anything, to get a coveted license.

*Example #1: In 2018, Dave Vo, former member of the Westminster, California Planning Commission was sentenced to 18 months in federal prison for accepting cash bribes in exchange for navigating a liquor license through the approval process. In 2011, Vo solicited a bribe from a confidential informant who was seeking a liquor license. The confidential informant notified the FBI, who over multiple meetings collected audio and video evidence of Vo accepting \$15,000 in exchange for helping with the acquisition of the license. Vo was recorded telling the confidential informant to “stay quiet” and “don’t even mention what’s going on.”<sup>22</sup>*

*Example #2: In 2020, former Maryland state legislator Cheryl Glenn, who was instrumental in creating Maryland’s medical marijuana industry, was sentenced to two years in federal prison for taking a series of bribes totaling more than \$33,000 in exchange for legislative favors, including writing specific legislation and voting to benefit a medical marijuana company.<sup>23</sup>*

## Inspections and Permitting

Constantly evolving regulations within inspections and permitting can make it an expensive and challenging endeavor to keep pace with. Circumventing health and building codes or permit requirements can quickly become an enormous money saving effort, but not without a cost. Building and health codes and permitting requirements, while burdensome, expensive, and at times overdone, do have elements the lack of which result in an unsafe or deadly scenario. Building collapses around the world as the result of corruption that allowed for builders to sidestep requirements have been well documented.

*Example #1: In 2010, the FBI initiated an undercover investigation into the Los Angeles Department of Building and Safety after an informant advised the FBI that inspectors in the office were accepting bribes in exchange for permit approvals. According to the informant, building inspectors would accept bribes at the first stage of the inspection process, which covered relevant expenses and inspections, to include the final inspection. As a result of the investigation, inspector Raul Germain was sentenced to 21 months in federal prison for accepting thousands in bribe payments.<sup>24</sup> A second inspector, Hugo Joel Gonzalez, also pled guilty and was sentenced to a year and a half in federal prison.<sup>25</sup>*

*Example #2: In 2012, former health inspector Maryann Koll was sentenced to 2 ½ years in federal prison after pleading guilty to one count of bribery. Between 1995 and 2007 Koll was providing mandated sanitation certification courses in Chicago. Sometime in 2004, Koll began accepting bribes in exchange for certifying individuals who did not take the course or take the corresponding exam. Koll certified over 500 individuals in exchange for bribes.<sup>26</sup>*

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# International Corruption and Indian Country

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**International corruption** is corruption that takes place outside the nation's borders or is for the benefit of, or directly involving, foreign entities, individuals, and/or foreign public officials.

The three primary categories of international corruption, include:

1. Foreign-Only – Foreign public officials engaging in corruption involving foreign entities or individuals in a foreign country.
2. Foreign Corrupt Practices Act (FCPA)/Foreign Bribery – Domestic or other qualified entities paying foreign public officials to obtain or retain business.
3. International Corruption of Domestic Public Officials – Includes international fraud against the government, international contract corruption, and foreign entities or individuals paying domestic public officials for a competitive advantage outside the United States.

The FBI's international corruption investigative squads were created to address foreign bribery/FCPA, kleptocracy, international corruption of federal public officials, and international anti-trust matters. "Investigations conducted by these squads generally focus on criminal acts occurring outside U.S. borders but having a nexus to the U.S. The squads routinely partner with foreign law enforcement and FBI legal attache offices [LEGATs] as a force multiplier to combat international corruption matters."<sup>1</sup>

International corruption has far-reaching and long-lasting implications, not just in terms of the global economy, but also on those specifically victimized by the diverting of funds from necessary resources like education, infrastructure, and health and wellness programs. International corruption is a scourge on the oppressed as it disrupts competition by eliminating free markets, it erodes confidence, results in sub-standard products, stifles innovation and economic development, and facilitates poverty and injustice.

**Kleptocracy**, literally meaning "the rule by thieves,"<sup>2</sup> is the corruption of a ruling government at the expense of the governed. Typically, though not exclusively, through the embezzlement of government funds, the heads of state acquire massive wealth at grave cost to the citizens of what is usually a highly impoverished country. This theft of state funds frequently results in funds being concealed and moved out of the country (laundered/moved offshore) for use at a later date.

**Foreign-only** international corruption would appear on its surface to be a problem only for the governed directly victimized by the corruption, but that is not the case. Significant evidence exists showing foreign-only international corruption and kleptocracy has cascading economic and political effects that can ripple throughout a region and even across the

globe. A 2010 United States Senate report (“Keeping Foreign Corruption Out of the United States: Four Case Histories”), for example, revealed how United States based lawyers, real estate agents, escrow agents, and lobbyists were used, along with banks, shell companies, and offshore corporations, to launder millions in illicit funds in an effort to circumvent anti-corruption controls and avoid detection.<sup>3</sup> Beyond the undeniable financial impact on communities and the economic impact of infusing illicit funds into the financial system, is the day-to-day impact on the quality of life for individuals victimized by corruption that lines the pockets of those in power.

*Example: Rabid corruption in Mexico and Central America has resulted in major income disparities, high crime statistics, and widespread poverty. The result of which has led to massive migration to the United States as desperate people go looking for a better life for their families. The illegal immigration of foreigners into the United States, however, creates a national security threat and economic hardship that has not gone ignored. Vicious political debate has been waged in recent years over what is considered humane, moral, and right when discussing matters of illegal immigration and its subsequent consequence to the well-being of American citizens. So, not only are the citizens of the country of origin affected by corruption, but so too are the citizens of the countries they pass through and in which they eventually settle.*

Inhumane living conditions exist in many impoverished countries despite the often vast millions provided in aid by the United States and other countries. The amount of money gifted is irrelevant if the money does not actually get where it needs to go. Corruption is the enemy of recovery. It is an impenetrable barrier separating aid from those who actually need it.

So, while securing the border is an important aspect of addressing the national security threat to the United States, so too are finding ways to reduce the desire for families to risk their lives trekking to and entering the country illegally. Driving down demand for illegal immigration into the United States is heavily reliant upon improving living conditions in their country of origin. There is little the United States can directly do to improve living conditions in a foreign land, but there are indirect options that can be exercised to affect change.

The best first step to “encouraging” countries to improve their living conditions is convincing them to no longer tolerate, facilitate, or turn a blind eye to corruption. The United States has no authority to prosecute foreign officials engaging in acts of corruption in a foreign country, but they can, and do, seize (and attempt to return to the victims) illicit funds identified as having been laundered through the United States financial system by corrupt foreign officials. Additionally, the FBI has worked closely for many years with the international law enforcement community through their 93 international offices<sup>4</sup> and through the State Department’s International Law Enforcement Academy in Europe, Asia, Africa, and Central America, to build relationships and educate professionals on investigative techniques to address public corruption. The International Law Enforcement Academy,<sup>5</sup> in partnership with the FBI, State Department, and other federal agencies, does not just strengthen the bond between the United States and foreign law enforcement, but it also strengthens relationships among the countries within the given region. The hope being that through these relationships will be born an anti-corruption conviction that will eventually take hold and improve lives. But liaison and education do little for a country run by people who do not support public corruption investigations. Just because law enforcement has the desire and knows how to conduct an investigation does not mean those in a position of authority will allow public corruption investigations, let alone prosecutions.

From a foreign policy, non-law enforcement perspective, the United States has also attempted to incentivize countries to dismantle corruption by withholding aid and using sanctions to cut off access to the global financial system. While it can be an effective tool, it is not without its challenges and weaknesses. Other viable techniques include expanding and

further developing anti-money laundering strategies within the domestic banking system and enhancing financial intelligence capabilities.

Politically, focusing on foreign-only corruption sells well among constituents. People appreciate, and want, a government that is anti-corruption. However, sometimes focusing too heavily on solving the world's corruption can leave a country vulnerable to its own corruption. The overemphasis on how bad things are in a foreign land sometimes leads people to forget corruption is life altering for many at home as well. Only focusing on the corruption of others is not the same as being anti-corruption.

The **Foreign Corrupt Practices Act** (FCPA) was enacted (and subsequently amended) by Congress in 1977 in the wake of the Watergate scandal and in response to the Securities and Exchange Commission's (SEC) revelation that United States companies were building bribery of foreign public officials into their normal cost of doing business and then subsequently using deceptive accounting to conceal the illicit payments.<sup>6</sup> Over 400 companies admitted to "making questionable or illegal payments" in excess of \$300 million to foreign public officials. Of the 400 companies, over 117 of them ranked in the top Fortune 500 industries.<sup>7</sup>

Charles Marshall wrote, "Integrity is doing the right thing when you don't have to – when no one else is looking or will ever know . . ." <sup>8</sup> The FCPA was enacted when it was revealed someone needed to be looking.

Congress recognized such behavior tarnished the reputation of the United States abroad and diminished investor and employee confidence in corporate financial integrity.

"The payment of bribes to influence the acts or decisions of foreign officials, foreign political parties or candidates for foreign political office is unethical. It is counter to the moral expectations and values of the American Public. But not only is it unethical, it is bad business as well. It erodes public confidence in the integrity of the free market system. It short-circuits the marketplace by directing business to those companies too inefficient to compete in terms of price, quality or service, or too lazy to engage in honest salesmanship, or too intent upon unloading marginal products. In short, it rewards corruption instead of efficiency and puts pressure on ethical enterprises to lower their standards or risk losing business. Bribery of foreign officials by some American companies casts a shadow on all U.S. companies."

Some critics of the United States' anti-corruption posture overseas believe United States corporations are at a significant competitive disadvantage to other countries' corporations who are willing and able to pay bribes to foreign officials to win and/or retain business. In the short term, this is true. The main reason companies pay bribes to foreign officials in certain countries is because paying bribes wins business. If that is true, then the inverse is also true. Companies who do not pay bribes to foreign officials in certain countries will NOT win business.

Over the long term, however, the United States and its companies will benefit from an international corporate environment of high ethical, anti-corruption standards. Adherence to these high standards has already encouraged other countries to embrace the same, as evidenced by the fact that more countries have enacted laws to make bribery illegal (U.K. Bribery Act); international enforcement participation and cooperation has significantly improved over the years; the elimination of the bribery tax deduction in Europe; and enhanced international agreements among trading partners.

Industries historically prone to high incidents of FCPA violations include:

- Oil and gas (energy)
- Telecommunications
- Precious metals

- Chemical
- Medical devices and pharmaceuticals

Emerging markets like in China, Mexico, Brazil, India, and Indonesia historically tend to be where companies are most frequently solicited for bribe payments by foreign public officials. However, solicitations for bribes can occur in any market and in any country.

Foreign officials can be bribed for any number of benefits, including:<sup>9</sup>

- Winning a contract
- Influencing the procurement process
- Circumventing the rules for importation of products
- Gaining access to non-public bid tender information
- Evading taxes, fines or penalties
- Influencing the adjudication of lawsuits or enforcement actions
- Obtaining exemptions to regulations
- Avoiding contract termination

There are two provisions to the FCPA:

### 1. **Anti-bribery**

“The anti-bribery provisions prohibit U.S. persons and businesses (domestic concerns), U.S. and foreign public companies listed on stock exchanges in the United States or that are required to file periodic reports with the Securities and Exchange Commission (issuers), and certain foreign persons and businesses acting while in the territory of the United States (territorial jurisdiction) from making corrupt payments to foreign officials to obtain or retain business.”

Extortion that includes the threat of serious bodily injury or death is a mitigating factor and does not violate the FCPA. The law provides a certain amount of latitude for instances where individuals representing domestic entities could be threatened with the fear of violence by foreign public officials as motivation for paying a bribe. Economic extortion, however, does not apply in the same way and could still rise to the level of FCPA liability.

### 2. **Accounting**

“The accounting provisions require issuers to make and keep accurate books and records and to devise and maintain an adequate system of internal accounting controls. The accounting provisions also prohibit individuals and businesses from knowingly falsifying books and records or knowingly circumventing or failing to implement a system of internal controls.”<sup>10</sup>

*Fun Fact: Foreign public officials cannot be prosecuted in the United States for FCPA violations.*

The Department of Justice, along with investigative support from the FBI, has criminal FCPA enforcement responsibilities. The FBI's International Corruption Unit at FBI Headquarters manages the investigative program and supports the investigative needs of the dedicated FCPA agents and support personnel in Washington D.C., New York, Miami, and Los Angeles. The investigative and prosecutorial emphasis is on the companies, their agents, employees, and officers given that foreign public officials cannot be prosecuted under the FCPA.

The SEC, along with DOJ, has civil FCPA enforcement responsibilities. The FBI, SEC, IRS, and numerous international partners often work in concert to conduct thorough FCPA investigations that could result in civil and/or criminal fines and penalties.

*Example: In 2020, the global financial institution Goldman Sachs Group Inc. and its Malaysian subsidiary Goldman Sachs (Malaysia) Sdn. Bhd. admitted to their involvement in a massive conspiracy to violate the FCPA by paying bribes totaling approximately \$1.6 billion to 11 foreign public officials in Malaysia and Abu Dhabi. Goldman Sachs was willing to avail itself the over \$1 billion in bribes in exchange for a role underwriting three multi-billion dollar bond deals for 1Malaysia Development Bhd. (1MDB).<sup>11</sup>*

*1MDB was a Malaysian state-owned fund set up with the help of Malaysian businessman Low Taek Jho (aka Jho Low) to promote economic development. Between 2009 and 2013, the fund raised billions of dollars through the issuance of bonds for projects and ventures. The DOJ claimed \$4.5 billion of that money was syphoned and laundered by Jho Low. Jho Low and multiple former Goldman Sachs officials have been criminally charged. Jho Low, however, is currently on the lam having evaded capture.<sup>12</sup>*

*Goldman Sachs was ordered to pay a combined \$2.9 billion to settle criminal and civil liabilities in the United States, United Kingdom, Singapore, and elsewhere.*

FCPA liability can be realized by individual employees and executives through fines, imprisonment, or both, but the violation does much more in terms of the impact it has on public perception of the reputation and culture of the company. As a result, corporations are incentivized to build and maintain policies and procedures to mitigate the risk of bribery and corruption within their domestic and international operations. Corporations self-govern and self-regulate not just to protect their reputation, but also because the quality of the steps they take to mitigate the corruption risk are considered by DOJ and the SEC when determining ultimate liability and appropriate resolution.

**International corruption of domestic public officials** often involves international contracts and overseas government spending managed by United States military or other public officials operating overseas and/or responsible for the awarding of contracts for foreign work. “These cases typically involve bribery, gratuities, contract extortion, bid-rigging collusion, conflicts of interest, product substitution, items/services invoiced without delivery, diversion of goods, and corporate and individual conspiracies at various levels of U.S. government operations.”<sup>13</sup>

The United States’ military engagements in international conflicts, like those over the last two decades in Afghanistan and Iraq, generate enormous budgets and require the distribution of equally enormous contracts. Between 2002 and 2011 alone, the United States spent over \$770 billion on private sector contractors supporting the military and the reconstruction effort in Iraq, Afghanistan, and Kuwait. Between 2005 and 2015, 115 military professionals deployed to Iraq and Afghanistan were convicted of crimes (theft, bribery, and bid-rigging) valued at more than \$50 million.<sup>14</sup> These government contracts are lucrative, highly sought after, generally lack sufficient oversight, often involve countries with a questionable corruption culture, and are typically managed by public officials (or government contractors) making a modest salary amidst the chaos of war. These particular investigations are not just important to the fiscal integrity of the government, but also to the life and well-being of the United States military and/or other government personnel and those whom the government is attempting to aid. Inferior products or product substitutions can be the difference between life and death in the time of war, so maintaining integrity in these contracts is paramount to more than just the country’s bottom line.

*Example: A corruption probe by the International Contract Corruption Task Force into activity related to Camp Arifjan in Kuwait resulted in more than 17 individuals pleading guilty or being convicted at trial for a bribery scheme involving activity that took place between approximately 2004 and 2007. The investigation revealed that contractors providing tens of millions of dollars worth of services for forces in Kuwait and Iraq, including erecting fences and providing bottled water, had paid millions in cash and other items of value to contracting officials stationed at Camp Arifjan, including U.S. Army Majors John Cockerham, James Momon, Christopher Murray, Eddie Presley, and Derrick Shoemake, in exchange for being awarded contracts. Sophisticated money laundering techniques were utilized in some instances to*

*move the bribe payments, including setting up bank accounts in Dubai and the Cayman Islands for shell companies controlled by family members of the corrupt military personnel.*<sup>15</sup>

## Indian Country

The proud and vibrant history of the Native American people can be found, among other places, within the vast borders of the myriad disparate sovereign territories spread across the country. For context, there are approximately 574 federally recognized Indian Nations (also referred to as tribes, bands, pueblos, native villages, and communities). Of these, approximately 230 are located in Alaska with the remaining federally recognized tribes located in 35 of the lower 48 states. In addition to the 574 federally recognized tribes are the state sanctioned tribes, recognized by the respective state governments. The total Indian Country land mass under Native American control in the United States is greater than 100 million acres. This would, in terms of geography, make the consolidation of all sovereign tribal lands in the United States the fourth largest state in the country. The Navajo Nation alone would be the 40th largest state, bigger than Maryland, Delaware, New Jersey, West Virginia, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont, and Hawaii.<sup>16</sup>

The hundreds of treaties between the United States and Native American people, along with affirmative rulings from the Supreme Court and statements from Congress and the president of the United States, have confirmed federally approved tribes maintain their own sovereignty. This authority to self-govern has entitled them the ability to write their own laws, maintain their own tribal government and leadership (tribal council), and enforce and even adjudicate their own laws (tribal court), with exceptions. Indian Nations and their members do, however, remain subject to federal law. With that subjugation to federal law comes federal funding to support the health, education, and infrastructure of the various tribes and their members. Unfortunately, even with the billions spent in federal funding over the past several decades, many of the reservations are reminiscent of third world countries.

According to the 2013 American Indian Population and Labor Force Report published by the Department of the Interior, approximately *18% of Native Americans are unemployed* (with a mid-point range estimate of 3% up to 28%, depending on the state within which a tribe is located). According to the same report, an estimated *23% of Native American families live below the poverty line* (see Table 5.1 for comparison).<sup>17</sup>

According to the National Congress of American Indians, “Indian health, education and income statistics are the lowest among all racial groups nationwide.”<sup>24</sup> This is of particular concern when considering the tendency for public corruption to exist with greater frequency among communities who suffer from low education and high poverty. There is no race or nationality that is more corrupt than another, but the human condition being what it is, means that certain factors may exist that can increase the probability of corruption, such as need and opportunity. Aside from the threat to health, education, and wealth is the fact

*Table 5.1 Sample selection for comparison*

<i>Country</i>	<i>Unemployment Rate</i>	<i>Below Poverty Line</i>
United States of America <sup>18</sup>	3.8%	15.1%
Argentina <sup>19</sup>	9.8%	35.5%
Bangladesh <sup>20</sup>	4.4%	24.3%
Botswana <sup>21</sup>	20.0%	19.3%
Nigeria <sup>22</sup>	16.5%	40.1%
Venezuela <sup>23</sup>	6.9%	33.1%

Source: Data obtained from CIA World Factbook.

that economic development is a constant struggle (outside investment can be hard to attract) and many of the reservations have sub-par infrastructure resulting in extremely high rates of homes without complete plumbing, kitchens, or even electricity. Adding to the difficulties are high rates of alcohol and sex abuse and their geographic isolation (not just of the reservation itself, but often between the residents residing on the reservation).

Investigating and prosecuting crimes on tribal land can involve different processes, investigative elements, and jurisdictions. Various factors determine investigative and prosecutorial authority, for example, the victim's and/or alleged criminal's tribal membership status, the tribe and/or state where the crime allegedly took place, and the crime itself. Generally, the following remains constant:

- Tribal courts have jurisdiction over tribal members committing misdemeanor crimes on tribal land, but all felonies must be adjudicated within a federal court.
- FBI and Bureau of Indian Affairs (BIA), along with state, local, and tribal investigators who have obtained their BIA Special Law Enforcement Certification, investigate felonies that fall under the Major Crimes Act (murder, manslaughter, kidnapping, sexual abuse, incest, assault with a deadly weapon, etc.).

The corrupt acts committed by public officials from Native American tribes are not necessarily different or unique compared to those perpetrated by public officials outside of tribal land, but the investigative process of public corruption violations can come with heightened challenges for investigators.

Primary challenges to Indian Country public corruption investigations:

- **Trust**

Generally, Native Americans within tribal land have a difficult time trusting non-Native Americans, especially those who represent the federal government. This lack of trust can sometimes manifest in an unwillingness to cooperate during law enforcement interviews and investigations, to include the collection of financial, bookkeeping, or other records sought via subpoena.

- **Geographic Size of Area of Responsibility (AOR)**

This particular challenge is one the Indian Country agents deal with for every type of investigation. Typically, the AOR for agents working Indian Country is far larger than what agents working outside of Indian Country are accustomed to. This is particularly relevant when interviews and evidence are spread throughout hundreds of square miles. The distance needed to travel can significantly slow the investigative process.

- **Limited Agents and Resources**

The FBI and the BIA have extremely limited agents and resources available to investigate crimes taking place potentially over enormous areas of land. Many of the FBI's tribal Resident Agencies (satellite offices) are extremely understaffed and the agents are required, unlike most larger offices, to work all types of investigations, from the various criminal to even national security related investigations. On top of possibly only having two or three agents in an office, they tend to work far from resources most FBI agents get to utilize. Indian Country agents are often responsible for processing complex crime scenes, transporting deceased victims, collecting specialized evidence, and more, that other case agents do not have to do themselves, if at all. This can sometimes slow investigations down as it takes longer to accomplish the



necessary investigative steps. The longer it takes to collect the necessary evidence to prosecute, the more likely these agents will be confronted with new, higher priority investigations, forcing lower priority investigations to be put on hold.

- **Investigative Priorities Differ**

FBI agents assigned to Indian Country, by the nature of the unique jurisdictional issues, work violations no other agents in the FBI work, including arson, child sex abuse, drunk driving resulting in death, and murder. Outside of Indian Country these violations would not likely be investigated by the FBI, but because of the impact on the community and the nature of the crimes, they become higher priority cases for Indian Country agents. So, while public corruption investigations might be the FBI's number one priority nationwide, in Indian Country, other more imminent life and death or child abuse cases will likely take priority and consume more investigative attention. This can lead to public corruption cases in Indian Country going unaddressed.

According to the FBI, nearly 75% of the crimes investigated by the approximate 150 agents working Indian Country “fall under the following priority violations”: death investigations, physical abuse of a child, sexual abuse of a child, violent felony assaults, and rape.<sup>25</sup>

- **Surveillance**

Investigators and agents of all kinds are accustomed to long hours of surveillance, particularly in public corruption investigations. The non-Native status of the majority of FBI agents as well as the close-knit communities in which they operate, make conducting effective surveillance in Indian Country more difficult than in most places outside of Indian Country.

- **Expertise of Investigators**

FBI agents who work Indian Country are some of the best all-round agents in the FBI, if for no other reason than their sheer experience in a broader range of criminal investigations and processes, and their need to become far more self-sufficient than other agents, but their diverse experience can actually limit their overall proficiency in working public corruption investigations. Public corruption investigations, by their nature, are more sensitive and thus require a more methodical and strategic approach, a different type of investigative hat, so-to-speak. Changing the investigative thought process after working a murder or child sex abuse case to then investigating a tribal leader for taking bribes is a big mental shift. The same would be true for putting a public corruption agent into a situation where he/she had to investigate a child sex abuse case.

- **Politics**

The relationship between the federal government and the Native American people has, for the most part, always been contentious. Notwithstanding the recent cultural trend of throwing around accusations of racism, this contentious relationship can sometimes limit the government's willingness to devote too many resources to addressing crime on Native American land. “Too many” successful investigations involving Native American public officials and leaders could generate unwanted attention for

the federal government. This is arguably why most Americans are completely unaware of the living disparity between those on Native American sovereign land and those who live in the rest of the country. Some within the FBI have viewed this general lack of awareness about the glaring infrastructure, health, education, and safety issues on tribal land as the country's "dirty little secret" kept under wraps as a way to manage racial provocations and appease the Native Americans' desire for independence with the least oversight possible.

*Example: In 2015, Jason Brent Merida (Executive Director of Construction for the Choctaw Nation in Oklahoma) and Mark Allan Franklin (executive with the Choctaw Nation in Oklahoma) were convicted along with six other individuals as part of a bribery scheme involving the Durant Casino and other construction projects between 2008 and 2010. Testimony revealed Merida received a Cadillac Escalade, cattle guards, plumbing fixtures, and other items of value from construction subcontractors in exchange for work on the Choctaw Nation reservation. Merida was also convicted for embezzling approximately \$500,000 from the Choctaw Nation by submitting and approving fraudulent work invoices.<sup>26</sup>*

*This case was investigated by a Native American FBI agent and member of the Choctaw Nation working out of the Durant Resident Agency (RA). The Durant RA, which is approximately one hour north of Dallas, Texas, is manned by only two FBI agents responsible for covering a six county area, much of which includes the Choctaw Nation.<sup>27</sup>*

*Jason Brent Merida was sentenced to 144 months (12 years) in prison and was ordered to pay \$577,000 in restitution.*

*Mark Allan Franklin was sentenced to three years' probation.*

*Brent Alan Parsons (construction company executive) was sentenced to 60 months in prison and ordered to pay \$3,997,200 in restitution to the Choctaw Nation.*

*Laurie Ann Parsons (construction company executive) was sentenced to 48 months in prison and ordered to pay \$3,535,498.24 in restitution to the Choctaw Nation.*

*James Winfield Stewart (construction company executive) was sentenced to 21 months in prison and ordered to pay \$345,000 in restitution to the Choctaw Nation.*

*Cordell Alan Bugg (construction company executive) was sentenced to three years' probation.*

*Robert DeWayne Gifford (construction company executive) was sentenced to 48 months in prison and ordered to pay \$345,000 in restitution to the Choctaw Nation.*

*Jerry Mark Eshenroder (construction company executive) was sentenced to three years' probation.*

*Aside from encouraging and facilitating self-reliance and economic development, aggressively fighting the corrupt exploitation of Native Americans by their public officials, and others inside and outside of the tribes, will do more for the quality of life of the Native American people, and the sustainability of their culture, than anything else the federal government could provide.*

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# Prison Corruption

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Incarceration is a government-imposed penalty doled out to individuals who violate the system of rules established by the government.

Taking a person's freedom away is a substantial punitive act that shifts the responsibility of managing the most fundamental human needs of the incarcerated individual to the government. According to the United Nations Office on Drugs and Crime, "By depriving individuals of their liberty, the state automatically assumes a heightened duty to ensure that custody is enforced in a secure, safe, and humane manner."<sup>1</sup> This custodial responsibility means the government, and by extension law enforcement and the correctional facility, do not just become arbiters of basic eating, drinking and exercising needs, but are also required to provide inmates protection from themselves and others, which includes protection against violence and corruption.

There are a number of different types of correctional facilities within the criminal justice system in the United States, including jails, state prisons, federal prisons, juvenile detention centers, and others. **Jails**, which are operated by local governments, typically provide housing to inmates for short periods of time, usually while awaiting trial or for sentences that are less than one year (misdemeanors). **Prisons**, which are run by the state or federal government, typically provide housing to inmates for longer periods of time, usually greater than one year (felonies).

**State prisons** house inmates who commit state crimes, while **federal prisons**, managed by the Federal Bureau of Prisons (BOP), house inmates who commit federal crimes. The federal prison system is comprised of 122 prisons of various security levels designed to meet the specific needs of the inmate, relative to the type of crime committed, length of prison sentence, and/or criminal or incarceration history.

Federal prisons fall within the following five security levels:<sup>2</sup>

1. Minimum security, also referred to as Federal Prison Camps (FPCs), are work and program oriented institutions with a relatively low staff-to-inmate ratio, limited or no external perimeter fence, and dorm-like housing.
2. Low security Federal Correctional Institutions (FCIs) have strong work programs, a higher staff-to-inmate ratio than FPCs, a double-fenced perimeter, and dorm-like or cubicle housing.
3. Medium security FCIs have a wider variety of work and treatment programs, a higher staff-to-inmate ratio than low security FCIs, more robust perimeter security with double fence and sophisticated electronic detection systems, enhanced internal operating controls, and housing in cells.

Table 6.1 Number of Federal Inmates by Facility Type

Type of Facility	Number of Inmates	Percentage of Total
Bureau of Prisons Custody	130,127	84%
Privately Managed	9,427	9%
Other	15,042	7%

Source: The Federal Bureau of Prisons (July 26, 2021).

4. High security, also referred to as United States Penitentiaries (USPs), have the highest staff-to-inmate ratio, enhanced security perimeters with either walls or specially reinforced fences, tighter hands-on control procedures for inmates, and single or double occupancy cell housing.
5. Administrative facilities are specialized institutions that serve a specific mission, such as the housing of offenders awaiting trial (pretrial offenders), the treatment of inmates with serious or chronic medical issues, or the detention of extremely violent or escape-prone inmates. Each of the different administrative facilities, with the exception of the Administrative-Maximum Security Penitentiary (“Supermax”), are capable of housing inmates at all of the different security levels.

The prison population sometimes exceeds the capacity of state and federal prisons. In those instances, the local, state, or federal government will contract with for-profit **private correctional institutions** who house inmates on a price per inmate basis (see Table 6.1).

### Federal Inmate Population<sup>3</sup>

Currently, there are approximately 2.3 million inmates housed in the approximate 1,800 state prisons, 120 federal prisons, 1,700 juvenile correctional facilities, 3,100 local jails, 200 immigration detention facilities, and 80 Indian Country jails, as well as military prisons, state psychiatric hospitals, and other facilities.<sup>4</sup>

**Prison corruption** is corruption engaged in by jail or prison (or any type of correctional facility) staff/officials. Anyone employed within the system can be corrupt, not just the prison guards, correctional officers, or Sheriff’s deputies. Senior staff, administrative officials, contractors, educators, counselors, groundskeepers, Human Resources personnel, and all others employed by the correctional facility can become embroiled in prison corruption. (For the remainder of this chapter, “prison” will be used as all-encompassing term referring to prisons, jails, and all other types of corrections/detention centers found within the United States.)

*Example: On June 5, 2015, convicted murderers Richard Matt and David Sweat masterfully escaped from the Clinton Correctional Facility, a maximum-security prison operated by the state of New York. Matt and Sweat put their three-month plan into action when they exited through holes they cut in the back walls of their cells and then lowered themselves three levels down a tight space behind their cells. When they reached the subterranean level, they navigated a maze of tunnels and narrow openings in walls along a pre-planned path. At approximately midnight, they emerged from a manhole cover a block outside the prison walls in the Village of Dannemora. Matt and Sweat were discovered missing by prison staff at 5:17 a.m. on June 6, 2015. Approximately 1,300 members of various local, state, and federal agencies were involved in the manhunt that culminated in Matt being shot and killed by law enforcement on June 26, 2015 and Sweat being shot and apprehended on June 28, 2015.<sup>5</sup>*

*A State of New York Inspector General investigation determined a combination of factors contributed to their successful escape, including previously unaddressed security deficiencies, lax adherence to policies and procedures, complacency, and willful criminal conduct.*

*Joyce Mitchell, a civilian supervisor in the prison tailor shop where Matt previously worked and where Sweat was employed leading up to the escape, was recruited at the onset of the planning stage. Mitchell had multiple intimate encounters with each of the men, both of whom expressed their love to her at one point. She aided their escape by smuggling hacksaws, chisels, drill bits, a steel punch and other tools into the prison. Mitchell was supposed to pick Matt and Sweat up when they emerged from the manhole cover, but became afraid and did not show.*

*Mitchell was convicted in September 2015 for providing material support to Matt and Sweat during their escape from the Clinton Correctional Facility and was sentenced to between 2 1/3 and 8 years.<sup>6</sup>*

The inmate population of a prison, which can include rival gang members and organized crime groups, as well as other individuals with competing interests and various levels of violent tendencies, naturally make prison very dangerous for the inmates, prison personnel, and other prison staff and management. Effective security is heavily reliant upon comprehensive policies, clearly defined protocols and procedures, and persistent order. Nothing that happens within the walls of a prison is without some level of heightened risk to the prison staff and the inmates. Public corruption adds to the severity of that risk by becoming an obstacle to the application of prison policies and procedures. Incarceration is supposed to be an opportunity for an inmate to pay his/her debt to society and experience some degree of rehabilitation, but little focus can be placed on personal growth when a constant risk to personal safety exists.

*Example: In 2011, notorious Boston mobster James “Whitey” Bulger, one of the FBI’s Ten Most Wanted, was arrested in Santa Monica, California along with his longtime girlfriend, after 16 years on the run. He was convicted in 2013 for the murders of 11 people and sentenced to life in prison. In 2018, Whitey was transferred from a Florida correctional facility to the high security prison USP Hazelton in West Virginia. On October 30, 2018, less than a day after his transfer from Florida, the 89-year-old was bludgeoned to death in his cell with a padlock in a sock.<sup>7</sup> Whitey was suspected to have been killed by someone with known Boston mob ties, but it has been three years and still nobody inside the high security prison has been arrested for his slaying and nobody outside the prison has been arrested for ordering it.*

*There remains a lot of intrigue surrounding Whitey’s murder. His brother was an extremely powerful politician and Whitey’s first identifiable holdup spot when he went on the run was in southern Louisiana, which is home to an infamous number of corrupt politicians. Whitey then went on the run for 16 years, which likely would have required some assistance from people who knew his true identity. No known individuals were arrested for assisting Whitey while he was on the run. Then, of course, was the fact that Whitey was a source for the FBI during his tenure as a mobster in Boston. Whitey denied being a source for the FBI, claiming law enforcement worked for him, not the other way around. He denied the relationship was a two-way street. This denial was as predictable as his eventual death in prison, whether from natural causes or the hand of another inmate, his death in prison was imminent. He did not want to spend that time trying to avoid being killed by people who despise “snitches,” especially if those same people were connected to Whitey’s old life in Boston.*

*Final intrigue surrounds the fact that within 15 months, arguably the two most significant, high profile criminals (Jeffrey Epstein and Whitey Bulger) in the country at the time (if not the world), both believed to have vast criminal secrets and information about other corrupt and powerful individuals, predictably died while incarcerated in the United States.*

Prison corruption can manifest in the form of bribery, extortion, or embezzlement and involve the misappropriation of funds otherwise intended to provide prison resources or improve infrastructure, inmates paying for access to basic services or privileges, procurement

fraud or the favorable issuance of private prison contracts, illicit hiring practices, and the smuggling of contraband, among other corrupt prison practices. Anecdotally, the highest volume, and arguably the most impactful on the inmate population, is corruption involving the smuggling of contraband, which can include tools for escape, cigarettes, drugs, weapons, cellphones, or anything not otherwise accessible, or otherwise withheld, within the walls of the prison.

Contraband smuggled into prison are often used for black market prison exchanges (the sale and trading of goods with other inmates), personal protection, assault against guards or other inmates, and even running criminal enterprises. It is not uncommon for gang leaders to run their criminal enterprises outside the walls of the prison from inside the walls of the prison with nothing but a cellphone. These smuggled resources are also at times used as peace offerings or gifts to garner favor with fellow inmates or to develop new criminal relationships with fellow inmates.

*Example #1: Andre Lamonte Dickerson, a corrections officer at the Jackson County Detention Center in Missouri, advised a person he did not realize was a confidential informant, that he could smuggle two packs of cigarettes, a cellphone charger, and a cellphone into the prison for \$500. The next day, Dickerson did as promised and delivered the items to an inmate's cell. Dickerson asked the inmate if he would like to establish a more regular smuggling relationship with him for a \$2,500 per month retainer fee. In exchange, Dickerson would guarantee the inmate cornered the market on cellphones, cigarettes, and drugs, so other inmates needed to shop through the inmate for their contraband. The inmate's prison cell was searched later in the day and the smuggled items were retrieved, with the exception of one pack of cigarettes that had already been smoked. The investigation revealed text messages about drug deals Dickerson had facilitated with other inmates in the prison.*

*Dickerson was arrested on June 27, 2017 and he subsequently "pleaded guilty to two counts of using his cell phone in the furtherance of unlawful activity of acceding to corruption, related to a public servant taking a bribe in return for violating his legal duty." Dickerson was sentenced to one year and four months in federal prison.<sup>8</sup>*

*Example #2: A known cartel affiliate from Tucson, Arizona developed a new marijuana distribution channel for his criminal organization when he met Shannon "Thumbs" Williams, head of the South Family Bloods in Omaha, Nebraska, while both were inside a federal correctional institute. A new drug trafficking operation moving thousands of pounds of marijuana between Arizona and Nebraska was born and initially managed by both men while both were behind bars. The separate organizations were dismantled as the result of two separate, but related, Organized Crime Drug Enforcement Task Force (OCDETF) investigations.<sup>9</sup>*

Inmates are not limited to bribing prison staff just for the smuggling of contraband. Bribery is also commonly used by inmates to buy a less restrictive environment (more time "out in the yard"), influence housing and accommodations (preferred cell blocks or dormitories), obtain preferred work assignments, or obtain waivers from having to work at all. Every aspect of an inmate's life is in the control of the prison, which means a bribe could be paid to a prison official for nearly anything, even the slightest additional comfort.

Investigating prison corruption can be difficult due to the closed-off nature of prisons, the lack of local resources to investigate the prison staff, and the unwillingness of inmates to report corruption. The FBI recognized systemic corruption within certain prisons and in 2014 established their Prison Corruption Initiative. The initiative was designed to specifically address the smuggling of contraband by federal, state, and local prison officials in exchange for bribe payments. The FBI uses the initiative to partner with state and local corrections departments and the U.S. Department of Justice Office of Inspector General to identify smuggling operations in prisons and deploy investigative techniques to counter the threat.<sup>10</sup>

The corrupt relationship between an inmate and a member of the prison staff can be initiated by either party (the inmate or the prison official), but in instances where inmates initiate contact, the FBI identifies three primary recruitment methods:

- **Testing:** Seeing if the prison official will commit a small violation like accepting items from the prison commissary and then holding the threat of reporting the misconduct over their heads.
- **Active recruiting:** Criminal associates with no criminal history being encouraged to become correctional officers with the promise of sharing in the profit made by the inmate's criminal enterprise.
- **Empathy:** Similar to the previous example with Joyce Mitchell at the Clinton Correctional Facility, this method is a slow and methodical ploy whereby inmates study prison staff to determine their vulnerabilities. This often results in inappropriate relationships that are exploited for the inmate's benefit.

Prisons are particularly vulnerable to corruption for the following reasons:

- The facility is exclusively occupied by convicted criminals who have already shown themselves prone to breaking the rules.
- The custodial environment is stifling. The more freedom taken from an inmate, the more desperate they become to get some of that freedom back. Under these circumstances, bribing a prison official is often viewed as a small risk with a big potential payoff.
- Gangs make up a large portion of the prison population. Gang members do not fear public embarrassment if caught trying to bribe an official. On the contrary, it bolsters their "prison cred" to have a corrections officer "in their pocket." They are also more likely to become embroiled in violent encounters with rival gangs, which is a big incentive for them to try to gain access to weapons.
- Drug users and addicts also make up a large portion of the prison population. Feeding the addiction or just looking for the mental escape provided by illegal drugs can be a big motivating factor.
- Prisons are a closed off system with little-to-no transparency and limited external and internal oversight. This often leads to security deficiencies going unnoticed or unaddressed and easily exploited.
- Corrections officers and prison guards have an extremely stressful and difficult job, but are often left feeling underappreciated given they are consistently underpaid, undertrained, and provided with few advancement opportunities. Low job satisfaction and low pay make corrections officers more vulnerable to corruption.
- There is an implicit deniability some corrections officers believe will protect them from investigation or at least conviction, "It's my word against their word and they're all criminals."

*Fun Fact: Aside from the obvious abuse by the trusted public official, prison corruption is particularly egregious because it interferes with the road to contrition and rehabilitation for the inmates.*

Individual incidents of prison corruption (individual corruption) are usually accompanied by a general lackadaisical approach to prison security policies and procedures either by management, staff, or both. Whether rooted in complacency or incompetence, these breakdowns in security are what create the opportunity for corruption to emerge. Not frisking inmates when they return from their designated work site; not conducting thorough, timely or consistently unpredictable inmate counts or cell searches; inoperable security cameras; and not



conducting thorough searches of prison staff and/or appropriate visual inspections of their belongings upon arrival, are just a few examples of the types of security breaches that can leave a prison not just vulnerable to corruption, but far less safe for the inmates and the staff.

*Example: Billionaire financier and friend of the most rich and powerful, Jeffrey Epstein, was arrested by the FBI at Teterboro Airport in New Jersey on July 6, 2019 for child sex trafficking related charges.*

*On July 23, 2019, Epstein was found partially unconscious in his Metropolitan Correctional Center (Manhattan) cell with bruises around his neck. His cellmate at the time, a former Westchester County, New York, police officer who was being held “without bail on charges related to the drug-connected murders of four people,” claimed to have saved Epstein’s life after an attempted suicide.<sup>11</sup>*

*A few weeks later, on August 10, 2019, Epstein was found dead hanging in his prison cell after an apparent suicide. He was without a cellmate at the time. Based on publicly available information, it appears prison management and other personnel failed in more than one way to protect Epstein from himself.*

*Preventing suicide and other acts of self-harm in prison are extremely difficult, often more so than even protecting inmates from others looking to do them harm. The first step is figuring out whom within the population is at greatest risk of actually committing suicide. In the case of Jeffrey Epstein, this was not a difficult calculation to make as sufficient information existed to show he was not only a high risk of suicide, but also a high risk of being killed. To further support the added expense that would be required to adequately protect Epstein is the fact that any loss of his life jeopardized, on a global scale, public perception of the United States’ prison system and the government as a whole.*

*Why was Epstein at a heightened risk of suicide? Three reasons:*

- 1. His lavish billionaire lifestyle was likely to be taken from him. The opulence he enjoyed and the excessive power he exercised created a certain lifestyle expectation, the loss of which would be mentally devastating.*
- 2. The nature of his alleged crimes would garner him no favor from the other inmates. Sex-related crimes, and specifically sex-related crimes involving children, are extremely offensive even to the worst of inmates. The type, frequency, and severity of abuse Epstein could expect from other inmates would not be lost on him.*
- 3. Less significant than the first two is the possibility Epstein would fear violating the loyalties of the rich and powerful who shared in his depravity, and that somehow this disloyalty would come back to hurt him even more. In order to help himself, Epstein would have to name names. But by naming names he would potentially be exposing himself to allegations and evidence implicating him in even greater depravities than were previously known by law enforcement.*

*Why was Epstein at a heightened risk of being murdered? Two reasons:*

- 1. The sex crimes against children, as referenced earlier, would not be welcomed by other inmates and could lead to intense violence and even death.*
- 2. More significant were the allegations that some of the world’s most rich and powerful men shared in Epstein’s crimes. All of these men would be incentivized to ensure Epstein did not provide information about their participation in his child sex abuse ring. It is not unreasonable to assume an inmate (or his family) could be paid on behalf of someone outside of prison to kill Epstein in order to prevent him from providing certain egregious information to law enforcement.*

*Why was there a heightened risk to the government if Epstein died? Two reasons:*

- 1. The world was watching. Domestic and international media outlets were talking about Epstein and the “sweetheart deal” he received years earlier in Florida for similar crimes. Allegations of corruption swirled around those involved in giving Epstein that deal. The Epstein investigation was arguably*

the most talked about investigation in the world at the time, so any subpar handling of the investigation would further undermine the government and its agencies.

2. The main stream media and social media were riddled with concerns about Epstein potentially taking his own life or being killed because of what he knew. If the threat of death was so obvious to the “lay person”, then failing to protect Epstein from himself and others would make it appear the government was involved in a cover-up.

As if the lack of preparation was not enough, the two prison guards on duty leading up to Epstein’s suicide, Tova Noel and Michael Thomas, were accused of not checking on Epstein every 30 minutes as they were supposed to and then falsifying the official prison records to cover up their incompetence. Incompetence is not a crime, but lying about incompetence to investigators and falsifying government records are crimes. According to prosecutors, the two guards spent their time on duty that night surfing the internet and even appeared to nap for two hours each. They admitted to “willfully and knowingly” falsifying records to make it appear they were conducting their required checks on Epstein. The two were granted a deferred prosecution and sentenced to six months of supervised release and 100 hours of community service.<sup>12</sup>

Systemic prison corruption is the result of a more corrosive culture within the prison. It is a far greater problem than individual corruption because it impacts a far greater number of people. Therefore, more significant resources should be dedicated to combatting systemic corruption than individual corruption. However, while systemic corruption requires the highest level of attention, individual acts of corruption cannot be ignored. It is the individual acts of corruption that, if unchecked, can devolve over time into systemic corruption.

*Example: In February 2016, the FBI announced a widespread corruption investigation into the Georgia prison system known as Operation Ghost Guard. The successful investigation uncovered extensive crimes engaged in by inmates with the cooperation of prison guards that culminated in the indictments of nearly 65 current and former Georgia Department of Corrections Officers, 19 civilians, and 19 inmates. The investigation revealed corrupt activity in 11 of the state’s 35 prison facilities and resulted in a large recovery of drugs, weapons, and cellphones.*

*Operation Ghost Guard investigators learned corrections officers were being paid between \$500 and \$1,000 per cellphone smuggled. For context, between 2014 and 2015, approximately 23,000 cell phones were seized in Georgia, a state that houses an approximate population of 50,000 inmates. The cellphones were being used “for a variety of crimes that put prison security and public safety at risk.”*

*The investigation was initiated in May 2014 after an inmate in North Carolina who was sentenced to life in prison used a smuggled cellphone to solicit the help of gang member associates to kidnap, torture, and kill the father of the prosecutor who put him in prison. The FBI’s elite Hostage Rescue Team was able to intervene and rescue the prosecutor’s father before he was killed. This singular event helped serve as a catalyst for the FBI’s Prison Corruption Initiative in 2014. Between 2014 when the initiative was introduced and February 2016 when Operation Ghost Guard indictments were announced, the FBI’s prison corruption caseload tripled.<sup>13</sup>*

Prisoner abuse is viewed by many as a form of prison corruption, but it is more accurately labeled a civil rights violation. Whereas corruption is defined as an abuse of one’s official position for personal gain, abusive prison guards are generally engaged in the mistreatment of inmates without personally profiting. However, it is worth noting that in instances where systemic prison corruption is found, systemic prisoner abuse will likely also be found, and vice-versa.

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# Border Corruption

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Addressing foreign public corruption and economic disparity as root causes behind migration from Central America, specifically the northern triangle (Guatemala, Honduras, and El Salvador), was an early foreign policy initiative for the Biden administration. The hope being that if the United States could influence positive change in Central America, then Central Americans would be less inclined to migrate to the United States. As pointed out by the White House, “migration to our border [United States] is also a symptom of much larger issues in the region.”<sup>1</sup> Poverty, violent crime, systemic corruption, and unemployment all contribute to the poor living conditions in Central America that inspire people to leave. While it is true that improving the quality of life in Central America could reduce the volume of people trying to illegally enter the United States, the road to fixing the root causes is longer and far more complex than politics allows.

Central Americans are not the only foreign nationals attempting to change their country of residence to the United States for a better life. And not every foreign national hoping to live in the United States does so by crossing into the country illegally. Many foreigners become citizens by patiently going through the long government mandated process.

Obtaining legal citizenship can be an arduous and expensive process that, coupled with the potential to have to wait for many months or more, can be enough for some to justify the risk of being caught entering the United States illegally. Living conditions in some parts of the world are so horrific, so dangerous, that a father’s decision to “steal a loaf of bread to feed his family” (enter illegally into the United States) can be an easy calculation for him to make. Empathy toward his situation does not negate the United States’ responsibility to prevent it from happening. Understanding what drives those who seek the comfort of American liberty is as important as understanding the responsibility the United States has to preserve that liberty by securing its borders.

The grip politics has on the border discussion reduces the likelihood politicians will ever come to an amicable, or appropriate, conclusion. Neither side argues in good faith and the real reasons behind their immigration and border security platforms are likely not what they say they are. The power behind the Left likely does not want to make the borders more porous for the altruistic and compassionate reasons they claim. The power behind the Right likely does not want to strengthen the border because they care so much about the threat of terrorism and violent crime. Their agendas are rarely what they seem, even if the voting elements within their respective parties buy-in to the reasons they publicly claim. Politics cuts honesty from the debate and distills complex discussions down to two polar opposite sides between which all are expected to choose, based on their tribal affiliation. Intellectually sincere dialogue is not possible after removing honesty, and there are always more than just two

sides to any argument. That is one of the unfortunate roadblocks to healthy immigration and border security debates today. The issue is clouded by the fog of passionate partisan politics – intensely debated, but not honestly discussed.

The federal government and its agencies are responsible for the security of approximately 5,000 miles at the northern border (between the United States and Canada, including Alaska), approximately 2,000 miles at the southern border (between the United States and Mexico), and approximately 95,000 miles of shoreline (which includes the thousands of islands and border lakes in the United States and its territories). The border is not limited to the stretches of land and shore that separate the United States from other countries. It also includes the over 200 international airports strewn across the country. Any port – land, sea, or air – regardless of its geographic location is a gateway connecting the United States to foreign land, and therefore part of the border.

One of the primary agencies responsible for securing the border is the Department of Homeland Security's (DHS) Customs and Border Protection (CBP). CBP is also responsible for facilitating legal trade and travel with foreign countries through the 328 land, air, and maritime ports of entry (POEs). These security services are facilitated by multiple entities within CBP, including the U.S. Border Patrol (Border Patrol), Air and Marine Operations, and Office of Field Operations.<sup>2</sup> In 2020 alone, according to the Government Accountability Office, “over 650,000 passengers [which includes international airports] and pedestrians and nearly 78,000 truck, rail and sea containers carrying goods worth approximately \$6.6 billion entered the United States” daily.<sup>3</sup> These numbers were lower than typical due to a slowing of international trade and travel brought about by the COVID pandemic.

**Border security** is “Protecting our borders from the illegal movement of weapons, drugs, contraband, and people, while promoting lawful trade and travel . . .” which, according to DHS, “is essential to homeland security, economic prosperity and national sovereignty.”<sup>4</sup>

A thorough and holistic approach to border security requires a three-prong deployment of:

1. People (law enforcement, which includes intelligence collection)
2. Technology (radios, sensors, satellites, etc.)
3. Barriers (walls, gates, structures, natural terrain, etc.)

Honest dialogue must begin with two indisputable facts, the government has the responsibility to protect its citizens, and the security of a nation begins at the border. Securing the border and thoroughly identifying those seeking to enter the country is the only responsible option. However, compassion requires we extend empathy to the fathers and mothers willing to trek many miles under harsh conditions for the slightest chance to provide more for their family. Security for the American people does not translate to disdain for anyone who is not American. As G.K. Chesterton once wrote, “The true soldier fights not because he hates what is in front of him, but because he loves what is behind him.”<sup>5</sup>

There are many good and decent people seeking access to the freedom and opportunity offered by the United States, but among them are also truly those with unsuitable backgrounds or dangerous criminal histories, as well as those who seek access with specific nefarious intent. A lack of knowledge and a desire to err on the side of compassion has kept many people from fully appreciating the criminal and national security threats that can be realized from maintaining a soft border.

Transnational criminal organizations, terrorism, and foreign intelligence operations are among the most prolific threats to the nation's security at the border. Their operational success is contingent upon first entering the country (access), then moving about the country (mobility), followed by legitimizing their illicit funds (money laundering). At every step they risk detection. Even attempting to sneak into the country comes with the risk of detection

by border security elements (specifically, Border Patrol) put in place to prevent people from covertly entering without their identity being confirmed, cleared, and/or recorded. The most effective or safest way to smuggle people, drugs, and/or goods into the country is by having a well-positioned public official at the border who can facilitate entrants.

On a typical day in 2017, according to CBP,<sup>6</sup> the 59,000 CBP employees processed a million people through POEs resulting in the seizure of \$265,000 in illicit funds, \$3.3 million worth of intellectual property rights violations, and 5,800 pounds of narcotics; the identification of 1,607 national security concerns; the arrest of 21 wanted criminals; and the refusal of 592 inadmissible persons.

It is difficult to know exactly how many foreign nationals illegally enter the country on a daily basis, but some context can be gained by understanding the number of border apprehensions made separate and apart from the POEs. In 2019, the U.S. Border Patrol apprehended 859,501 individuals in total between the southern, northern, and coastal borders.<sup>7</sup>

Unfortunately, the harder it is to access the country legitimately or with the assistance of smugglers, the more attractive other methods become, including bribing border officials for access. The expense of paying a public officials at the border is nominal compared to the amount of money that can be made because of the access they provide. The harder it is to get in, the more money criminals are willing to pay in bribes. The more they are willing to pay in bribes, the more tempting it becomes for the public officials at the border.

Subjects of border corruption cases typically include local, state, and federal public officials, such as:

- Local and state law enforcement, including sheriff's office personnel
- Federal law enforcement (CBP, Border Patrol, FBI, ATF, DEA, etc.)
- Transportation Security Administration (TSA)
- Consulate and embassy employees (State Department personnel, Foreign Service Officers, etc.)
- Active duty or reserve military personnel (U.S. Coast Guard, etc.)
- Judges and other court employees
- Department of Motor Vehicle employees

A 2016 *New York Times* article<sup>8</sup> provided a rare glimpse into the lucrative world of border corruption. According to the article, in the ten years prior, nearly 200 DHS employees and contractors were paid nearly \$15 million in bribes, \$11 million of which was paid to CBP officials. They facilitated, among other things, the smuggling into the country of tons of drugs and thousands of undocumented immigrants. The numbers provided in the article only painted a fraction of the border corruption picture. First, because they did not account for arrests made of non-DHS employees. Second, the reported bribe payment totals only reflect an amount documented in court records and did not consider gifts, trips, sexual favors, and payments either not discovered or not reported within charging and/or sentencing documents.

The most frequent acts of border corruption involve the facilitation of human smuggling and drug trafficking, but are not exclusive to those areas. Specific activity for which public officials at the border are bribed, include:

- Allowing drugs, aliens, weapons, counterfeit currencies, counterfeit goods, or other contraband to be smuggled through POEs or checkpoints
- Providing a law enforcement escort (or some form of protection) for smuggled or trafficked drugs, people, or goods
- Releasing sensitive law enforcement equipment (radios, uniforms, badges, vehicles, etc.) or information (radio frequencies, agency policies and procedures, locations of sensors)

and other sophisticated surveillance and monitoring technology, criminal history or investigative information, etc.)

- Providing or expediting government documents (visas, immigration papers, driver's licenses, etc.)

*Example #1: Sam Herbert Allen Jr., a CBP Supervisor in Southern California responsible for overseeing the inspections of international shipping containers arriving at Free Trade Zones (FTZs), which are privately owned warehouses under the supervision of CBP, conspired with his ex-wife, Wei Lai, to smuggle counterfeit clothes through an FTZ operated by Lai. Allen received \$2,000 per container in exchange for allowing the shipments to go through and for falsifying CBP records to make it appear the goods were exported to another country. Between 2009 and 2010, Allen received approximately \$100,000 in bribe payments. In 2016, Allen was sentenced to 45 months in federal prison and ordered to pay over \$780,000 in restitution.<sup>9</sup>*

*Example #2: Border Patrol Agent Carlos Victor Passapera Pinott assigned to the Tucson, Arizona sector was arrested on August 9, 2020 on charges of conspiracy and possession with the intent to distribute. According to the criminal complaint, Pinott departed his residence at approximately 3:15 a.m. and drove to a remote area near the border, west of the Lukeville POE. He subsequently drove to the Phoenix airport [estimated two-hour-plus drive] where he loaded two duffel bags into a different vehicle. The other vehicle was stopped by law enforcement after departing the airport and the duffel bags were searched. The bags appeared to contain 21 kilograms of cocaine, one kilogram of heroin, and one kilogram of fentanyl. During a search conducted at Pinott's residence later the same day, agents discovered approximately \$329,000 in currency in the house and \$40,000 in the vehicle that was used to drop off the two duffel bags.<sup>10</sup> This investigation has not yet been full adjudicated. All are considered innocent until/unless proven guilty.*

*Law enforcement personnel willing to transport illicit drugs are highly sought after by criminal organizations as their badge allows for more seamless mobility and significantly reduces the risk the drugs will be seized.*

**Hanlon's razor** is a rule of thumb that basically says, "Never attribute to malice that which can be adequately explained by stupidity."<sup>11</sup> This is an important consideration when investigating corruption at a border checkpoint or POE. CBP officers who work at POEs and Border Patrol agents manning checkpoints can facilitate the trafficking or smuggling of drugs, people, or contraband by simply choosing to do nothing. Not stopping a vehicle for inspection is the least that is needed to facilitate trafficking or smuggling at the border. Successful border security officials working POEs and checkpoints are intuitive and observant, while unsuccessful border officials are either not very intuitive or observant, do not take their job seriously, and/or are corrupt. Distinguishing between the three negative possibilities can be extremely difficult. Border corruption investigations targeting activity at the POEs and checkpoints are, thus, some of the most difficult to conduct because there is little that distinguishes complacency from incompetence, or complacency and incompetence from corruption. It is the only place where a single act of corruption can be achieved by merely a waving of the hand (gesturing a car to drive through a POE or checkpoint without stopping).

*Fun Fact: It takes approximately three seconds to wave a car through a POE or checkpoint. At a bribe payment rate of \$5,000/car, a new CBP officer can nearly double his/her salary from bribes with only 30 seconds of work.*

The best way to prove inaction is not the result of incompetence is through a rigorous interrogation of evidence which can be collected through a number of different methods, including, consensual recordings, analysis of financial records, physical and electronic surveillance, telephone analysis, and/or other investigative techniques.

*Example #1: Arcelia Maria Betancis, a telecommunications officer for the U.S. Consulate in Ciudad Juarez, Mexico was convicted at trial on two federal counts of bribery for accepting money in exchange*

for expediting almost 500 visa applications for Mexican businessmen over an 18-month period. Betancis was paid between \$50 and \$2,500 for each application she expedited. In 2002, Betancis was sentenced to 21 months in a federal prison and ordered to pay \$1,000 fine.<sup>12</sup>

*Example #2: Julieta Quiroz, a naturalized citizen from Nicaragua and U.S. Embassy employee in Mexico City, was alleged to have conspired with a Colombian couple to obtain visas for foreign nationals who were otherwise ineligible to obtain visas. Quiroz collected a minimum of \$345,000 in exchange for approximately 180 visas. Some of the visas were obtained for drug traffickers and guerrillas with the Revolutionary Armed Forces of Colombia.<sup>13</sup> In 2004, Quiroz pled guilty to conspiracy to defraud the United States, making false visas, and bribery. She was sentenced to one year and one day in federal prison.<sup>14</sup>*

*Example #3: In 2007, the former Special Agent in Charge of the FBI's El Paso Division, Hardrick Crawford, was sentenced to six months in prison for concealing his relationship with Juarez, Mexico racetrack owner and businessman, Jose Maria Guardia, who was believed to be connected to drug traffickers.<sup>15</sup> According to the indictment, Crawford accepted gifts from Guardia including trips to Las Vegas and Mexico City, regular lawn service, and a country club membership. Crawford's wife was also employed by Guardia at a salary of \$5,000 per month. In return, the indictment alleged, Crawford assisted with visas and vouched for Guardia to investors. Crawford concealed the gifts and information about Guardia when questioned by investigators in 2003.<sup>16</sup>*

## Recruiting Corrupt Border Security Officials

The recruiting of a border security official by the cartel is typically a sophisticated and deliberate process. The cartels are patient and calculated in their approach because they have to be. Trying to recruit a border official to engage in corrupt behavior, but failing to successfully recruit him or her, could expose the organization and their trafficking operations to unwanted attention. So patience and proper planning are the alternative. The sophistication of the recruitment process by the cartel is at times reminiscent of the recruitment process of foreign intelligence officers.

There are a few primary recruitment methods used by those looking to corrupt a border official:

- **Exploitation of a weakness (sex, gambling, or other source of debt, etc.)**

Cartel members and/or cartel affiliates may track the activity of border officials in order to determine their exploitable weaknesses. Once identified, they use that information as leverage to entice corrupt cooperation. For example, if a border official has a gambling problem, a cartel member may find ways to make the debt liability worse (if necessary) and then follow it with the opportunity for relief (tighten and then loosen the noose, so to speak).

- **Compromised integrity**

Similar to law enforcement undercover operations, the cartel may send someone to befriend the border official or develop a romantic relationship with him/her and then use that relationship to get the official to break small rules on their way to breaking bigger rules. For example, a woman with whom an official is having a romantic relationship may ask for a favor, "My grandmother in Mexico needs medical attention that can only be obtained in the United States. Can you please wave her car through just this one time? She'll die without the treatment." So begins the trip down the slippery slope of corruption.



- **Family affiliation/connection**

Sometimes familial relationships are exploited by criminal elements. Traditional Latino families hold family in extremely high regard, which can make it difficult for a border official to say “no” to family members who may want the border official to turn a blind eye.

- **Recruited to become a border official with the promise of money**

Similar to the “active recruiting” method discussed in the Prison Corruption chapter, this method takes place prior to the border official becoming a border official. He/she is encouraged to join the government ranks in order to facilitate the drug trade with the promise of sharing in future profits.

*Example #1: In 2010, the FBI's Border Corruption Task Force (BCTF) initiated an investigation into CBP officer Thomas Silva based on allegations Silva was allowing individuals pass through his lane at the San Ysidro Port of Entry (SYPOE) in San Diego, California with imposter immigration documents. The investigation discovered Silva was engaging in various criminal acts, some of which were in his official capacity as a CBP officer. In 2012, Silva was arrested at the SYPOE by the BCTF after assisting a known federal fugitive (his brother-in-law), Julio Cesar Landaverde Valdez, sneak into the country from Mexico through Silva's POE lane with an undocumented alien hidden in a compartment of Valdez's dashboard.<sup>17</sup> Valdez was previously convicted (2006) for alien smuggling. Silva pled guilty to concealing a person from arrest and was forced to serve eight months in custody.<sup>18</sup>*

*Example #2: Between 2003 and 2007, CBP Officer Margarita Crispin worked at the southwest border in El Paso, Texas, adjacent to Ciudad Juarez, Mexico. She joined the ranks of CBP to aid in the trafficking efforts of the Juarez cartel which had recruited her prior to joining the agency. Crispin collected approximately \$5 million dollars from the cartel in exchange for letting loads of drugs pass through her POE. An early sign of Crispin's corruption was revealed when she declined the use of drug sniffing dogs in her lane for no other reason than the fact that she just did not want them around.<sup>19</sup> Crispin was arrested in 2007 after a multi-year investigation and was sentenced to 20 years in prison.<sup>20</sup>*

## **Human Smuggling/Human Trafficking**

Human smuggling and human trafficking are terms often mistakenly used interchangeably, but there are distinguishable and significant differences between the two. **Human smuggling** is the voluntary, non-confrontational movement of people illegally across international borders, typically for a fee. **Human trafficking** is the involuntary, confrontational exploitation of a person through the use of force, coercion, or deception. It can include the movement of individuals between cities and across borders, but does not require it. United States residents and foreign nationals, both children and adults, are most frequently trafficked to engage in commercial sex (prostitution), forced labor (hospitality, agriculture, landscaping, factories, house cleaning, drug smuggling, fairs and carnivals, etc.) or domestic servitude. It is not uncommon for individuals to pay to have themselves smuggled into the country and then involuntarily end up being trafficked or held for ransom upon arrival to the United States.

Human trafficking victims and those who choose to be smuggled internationally can be of any age, race, sex, or nationality, but the vast majority of trafficking victims are women. According to The State Department, 77% of trafficking victims are exploited within their own country of residence. It is further estimated that one in seven runaways in the United States end up being trafficked.<sup>21</sup>

Nearly every local, state, and federal law enforcement agency has investigative resources dedicated to countering the massive human trafficking problem. The FBI works the human

trafficking threat under their Crimes Against Children and Human Trafficking program which is heavily weighted on interagency partnerships and three targeted task forces:

- **FBI Child Exploitation and Human Trafficking Task Force**

Established in almost every FBI field office, this task force is charged with the primary goal of victim recovery and investigating traffickers.

- **The Anti-Trafficking Coordination Team Initiative**

Operating in 12 FBI field offices (Atlanta, Boston, Cleveland, El Paso, Kansas City, Los Angeles, Memphis, Miami, Minneapolis, Newark, Portland, and Sacramento) in partnership with the Department of Justice, the Department of Labor, and the DHS, this initiative focuses on a more coordinated federal effort. The partner agencies work together to develop and share subject matter experts, leads, intelligence, and strategic actions plans with an emphasis on initiating high impact investigations and prosecutions.

- **The Enhanced Collaborative Model Human Trafficking Program**

A multi-agency task force made up of local, state, and federal law enforcement, including prosecutors, these program elements collaborate to combat all forms of human trafficking at every level and proactively recover victims.<sup>22</sup>

**Coyotes** are human smugglers paid to cross people into the country on foot through the desert or in vehicles through POEs. Crossing the desert on foot will generally be the cheapest way to cross into the country, but it is also the most dangerous, particularly given the scarcity of food and water available along the route and the intensity of the heat, depending on the time of the year. The trip through the desert can take anywhere from several hours to several days to complete.<sup>23</sup>

Crossing via vehicle is typically more expensive, with the price going up commensurate with the sophistication of the method utilized. Coyotes can use extremely crude methods, like stuffing bodies into the trailers of 18-wheelers or piling body on top of body in an SUV; or more sophisticated methods, like hiding people in hidden compartments within the interior of a vehicle dashboard, floor board, inside the vehicle seats, or any number of other creative locations. Having a public official at the POE or checkpoint on the coyote's payroll increases the price as well as the probability of success.

## Drug Trafficking

Mexican drug cartels make between \$19 billion and \$29 billion a year from trafficking into the United States<sup>24</sup> due in large part to their sophisticated communication networks, extensive transportation routes, and well-established partnerships with gangs and other criminal organizations. The sheer volume of illegal drugs it takes to make that amount of money easily makes Mexican transnational criminal organizations the most prolific drug trafficking threat to the United States.

The techniques utilized by the cartels to smuggle drugs across the border are extensive and do not lack creativity. The cartels will:

- Walk a load across the desert
- Hide narcotics in commercial vehicles, 18-wheelers, rail cars, shipping containers, boats, or submarines

- Hide narcotics inside fake fruits, vegetables or other fake perishable items or other commercial goods
- Smuggle drugs in the hidden compartments of personally owned vehicles traveling through POEs
- Catapult bundles over the border wall to affiliates in the United States
- Transport narcotics through underground tunnels that cross under the border, or fly them over on airplanes, drones, or ultralight planes
- Utilize sophisticated truck ramps that allow vehicles to cross over the top of the border fence
- Smuggle drugs inside human cavities

While smuggling drugs has a high risk of seizure, the law enforcement seizure rate pales in comparison to the smuggling success rate. As is the case with human smugglers, having a public official at the POE or checkpoint on the cartel's payroll increases the probability of success significantly.

## **National Security at the Border**

Corruption at the border leaves the nation vulnerable to not just drug trafficking, human smuggling, and counterfeit goods or currencies threats, but more importantly, to a very real national security threat.

Corrupt border officials might believe they are waving through their POE or checkpoint a coyote with undocumented immigrants or a drug trafficker with a load of illegal drugs, but the truth is, they really do not know what they are protecting and who or what they are letting into the country.

Imagine a CBP officer is paid \$5,000 to wave a single vehicle containing what he believes to be 300,000 fentanyl pills into the country through his lane at the SYPOE in San Diego. In reality, however, the CBP officer does not know what is in the vehicle he is waving into the country. Perhaps it is a terrorist cell, or components for a bomb, or maybe it is a chemical or biological weapon, or some other Weapon of Mass Destruction (WMD). Access is what the criminal element is paying for, certainty about what is actually being smuggled is never part of the deal. Now, assuming a dirty bomb of some kind was smuggled into the SYPOE, the driver would be just a couple hours away from a major epicenter in Los Angeles. If that bomb went off, the casualties could be astronomical, potentially in the millions. The impact on the country if such an event ever occurred would be catastrophic, in terms of potential death toll, the economy, and overall confidence in the nation's security. All that could happen as the result of one CBP officer waving a single vehicle through the border for a fee.

Michael Maxwell, the former head of the U.S. Citizenship and Immigration Services (USCIS), Office of Security and Investigations (internal affairs) resigned in 2006 and sought whistleblower protection in order to advise Congress about "rampant corruption going unprobed" within the agency. According to USCIS, their mission is to administer "the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing homeland and honoring our values."<sup>25</sup>

Maxwell was quoted in his testimony to Congress as saying, "After the next attack, when they find out that an employee was bribed by a terrorist or bribed by a spy, it's going to be too late."<sup>26</sup>

National security begins at the border and corruption at the border drastically undermines that security.

## Border Corruption Task Force

The FBI established the Border Corruption Task Force (BCTF) in partnership with other law enforcement agencies in order to more aggressively address the border corruption threat and heighten the overall effectiveness of the nation's border security. So, while the various border security elements have the responsibility of addressing threats coming from outside the border, the BCTF has the responsibility of addressing threats coming from inside the border. The FBI coordinates investigative and intelligence collection efforts with DHS Office of Inspector General; CBP Internal Affairs; the Transportation Security Administration; the Drug Enforcement Administration; Alcohol, Tobacco, Firearms, and Explosives; and Immigration and Customs Enforcement – Office of Professional Responsibility.

The FBI and their agency partners have established 22 strategically located border corruption task forces across the country responsible for conducting border corruption investigations.<sup>27</sup> The program management team at FBIHQ within the Public Corruption Unit is responsible for providing support to the field by distributing money, training, and resources. They have also developed media outreach campaigns soliciting the assistance of locally impacted communities through public service announcements. The campaign hopes to stimulate awareness and cooperation between the BCTFs and their communities, which includes the reporting of alleged corrupt officials. The border corruption threat is complex and diverse, which is why countering it is so heavily reliant upon strong interagency and community partnerships.

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# Disaster Relief Corruption and Fraud

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Hurricanes, earthquakes, tornadoes, droughts, floods, viral outbreaks, and wildfires are just some of the natural disasters that wreak havoc on the lives of millions upon millions of people around the globe every year. Nearly 100,000 people are killed annually by natural disasters with approximately 150 million experiencing some degree of life-altering impact, including becoming injured, homeless, displaced, or forced to evacuate before or after the devastation.<sup>1</sup> Between 1998 and 2017, earthquakes, which are some of the most devastating of natural disasters in part due to their lack of advanced warning, accounted for more than half of the deaths globally caused by natural disasters. Over the same timeframe, over 125 million people were impacted by earthquakes.<sup>2</sup>

Surviving a natural disaster means more than just surviving the initial devastation. Death can occur after-the-fact (post event) from various causes, including, succumbing to traumatic injuries, stress induced cardiac arrest or stroke, infections or diseases, chemical or radiological contamination, cancer, interrupted medical treatment, delayed collapse of infrastructure, etc. All things being equal, the extent of the post event death rate is significantly tied to the government's ability to get people what they need as quickly as possible and for as long as necessary. Medical personnel and resources cut off or delayed due to blocked roads, the vast size of the devastation area, the sheer volume of injured, and/or a breakdown in communications can dramatically swing the death toll upward.

The long-term, sustainable emergency servicing of other essential human needs can be just as critical to the preservation of life as the immediate medical response. Fresh food, clean water, durable shelter, and child-parent separation issues become a major part of any critical response to a natural disaster. The logistics of which come with their own unique challenges. And time is frequently of the essence.

Public corruption thrives in times of tragedy, which includes during disaster recovery, particularly in locations with limited government transparency, stifled free press, low literacy rates, high poverty rates, high rates of pre-crisis corruption, and/or weak law enforcement with little-or-no anti-corruption measures in place. Addressing an emergency post-haste with the rapid distribution of government funds often supersedes the desire for oversight and compliance in how those funds are distributed, and corrupt public officials are well aware of that fact.

Fear, suffering, and a sense of urgency foment elevated levels of corruption after natural disasters because of the broader accessibility to money coupled with the inherent defensibility that comes with having to make big decisions fast, creating confusion that corrupt public officials use as a defense for poor record keeping and questionable contract decisions. Otherwise incomprehensible behavior can quickly become the new normal under the guise of an emergency response. The difficulty in deciphering between corruption, gross mismanagement,

and well-intentioned miscalculations make proving public corruption related violations in times of crisis more challenging.

Acts of corruption in times of recovery tend to be more offensive because the corruption diverts funds from those who have a heightened need. It can also, in instances of procurement corruption or fraud, result in a lower quality product being produced or delivered by government contractors.

The United States government is willing to pay a premium for contracts as a means of providing disaster relief, and they always pay on time. But disaster recovery, depending on the extent of the damage, can take years. Which means the infusion of federal government aid to the region and the number of state and local contracts backed by federal money will spread out over several years. The disaster relief corruption risk, therefore, lasts several years, with potential investigations lasting several years after that.

The most common forms of disaster relief corruption, include:

- **Embezzlement**

Theft of government funds by public officials with access to disaster relief funds, which may include awarding phantom contracts to shell companies under the control of a public official or fraudulently siphoning government money by claiming reimbursement for expenses not incurred.

- **Bribery and kickback schemes**

Procurement/Contract corruption, which includes bribing public officials in exchange for steering government contracts either through deceptive bid practices or no-bid contracts.

The most common forms of disaster relief fraud include:

- **Fraud against the government**

Procurement/Contract fraud (invoice and contract obligation fraud), which includes government contractors using deception to win a contract and/or over-billing the government; and government benefit fraud or the fraudulent acquisition of relief funds, which includes individuals or business entities using deception to apply for and receive disaster relief funds they otherwise would not be eligible to receive.

- **Fraud (not against the government)**

May include insurance fraud, identity theft, fraudulent charities and other fraudulent services, including fraudulent government services.

## **Procurement (Contract) Corruption and Fraud**

The government procurement (or purchasing) process is part of a defined system by which goods and/or services are purchased by the government from a private entity. The system begins with “procurement and proceeding in sequence to product design, advertising, invitation to bid, pre-qualification, bid evaluation (broken down further into technical and financial evaluation), post-qualification, contract award and contract implementation.”<sup>3</sup> The primary purpose for using a defined system is to maximize value and facilitate competition through the objective assessment of competing firms. Neither of which, however, can be achieved if the bid process is tainted by corruption or fraud. Where corruption in the procurement process exists, there is also likely the presence of some type of fraud, but the opposite is not necessarily true. Fraud can exist independent of a corrupt public official’s involvement.

*Fun Fact: A 2014 Organization of Economic Corruption and Development (OECD) foreign bribery report estimated approximately 57% of bribes paid around the world were related to the acquisition of public procurement contracts.<sup>4</sup>*

Procurement corruption and fraud schemes are most commonly categorized as one of the following:

- **Contract Steering** (corruption)

Illicitly awarding a contract to an entity by an authorized public official, often as part of a bribery or kickback scheme, through deceptive bid practices or no-bid contracts. No-bid contracts are helpful in the days immediately following a disaster as they eliminate steps in the procurement process that hinder the government's ability to quickly distribute much-needed resources. The trade off, however, is the increased vulnerability to corruption.

- **Over-billing** (corruption or fraud)

Includes falsifying information on bid proposals or pertinent deliverable data, billing for expenses not incurred, charging above the negotiated rate, substituting approved materials with unapproved or sub-par materials, billing for expenses of items not utilized for the contracted project, or billing multiple contracts for the same expense. It becomes an act of corruption when a public official with oversight responsibilities is bribed to overlook the over-billing or contract quality control requirements.

- **Bid Rigging** (fraud)

A conspiracy involving multiple competing entities with the expressed intent to eliminate competition or artificially inflate contract pricing. Bid rigging can be achieved through one of two primary methods: 1. **Rotating bids** – Companies bidding on a series of contracts agree to rotate who among them will submit the lowest price, essentially determining the outcome in advance. This method can also be used to drive up the price for the winning entity by collectively agreeing to submit artificially inflated bids. 2. **Suppressing the bid** – Paying companies with known interest in entering a bid to stay out of the process or enticing/coercing suppliers or subcontractors not to work with the entity. This method is most effective when all entities competing for a bid agree to work together to keep another entity out.

Procurement corruption and fraud significantly reduces the likelihood taxpayers are getting what they are being told they are paying for. Not only do fraud and corruption undermine competition by eliminating it, but they can also slow the return of essential services (like electricity) during disaster recovery and lead to inferior or potentially dangerous products, which is particularly notable for building and weapons defense contracts.

*Example #1: On September 20, 2017, Hurricane Maria's Category 5 winds ripped through the island of Puerto Rico leaving 2,975 people dead. Hurricane Maria was the deadliest natural disaster in the United States in 100 years. The calamitous storm overwhelmed an understaffed healthcare system and left some without power for an entire year. Overall, the hurricane ravaged the island for approximately \$90 billion worth of damage.<sup>5</sup>*

*By September 20, 2020, three years to the day of the storm making landfall, the FBI arrested a seventh person in Puerto Rico allegedly involved in a scheme involving the steering of \$15.5 million in federally funded government contracts. Arrests included Anibal Jover, the former President of Puerto Rico's Association of Certified Public Accountants; Julia Keleher, former Education Secretary for Puerto Rico; Ángela Ávila-Marrero, former head of Puerto Rico's Health Administration; Fernando Scherrer-Caillet*



and Alberto Velázquez-Piñol, businessmen; and sisters Glenda E. Ponce-Mendoza and Mayra Ponce-Mendoza, education contractors. Collectively, they were charged with nearly 100 counts of fraud, money laundering, and other related charges.

According to the investigation, Keleher bypassed regular bidding procedures to steer contracts toward her friends Glenda Ponce-Mendoza and Mayra Ponce-Mendoza, while Jover paid Velázquez-Piñol, a former government subcontractor, to secure contracts for him with the Puerto Rico Health Insurance Administration headed by Ávila-Marrero. Keleher was also alleged to have gifted school property to a company in exchange for a six-month lease for a cost of \$1 despite an agreement she was to pay \$1,500 per month.

According to Neil Sanchez, U.S. Department of Education's Office of Inspector General's Southern Region, "It was alleged that the defendants engaged in a public corruption campaign and profited at the expense of the Puerto Rican citizens and students. This type of corruption is particularly egregious because it not only victimizes tax payers, it victimizes those citizens and students that are in need of educational assistance."<sup>6</sup>

To-date, the Ponce-Mendoza sisters have pled guilty, while the cases against the others have not yet been fully adjudicated. All are believed to be innocent until/unless proven guilty.

Example #2: On March 11, 2020, former FEMA Emergency Management Specialist Jovanda Paterson pled guilty to a felony count of acts affecting a personal financial interest. Paterson was originally charged along with Aisha Nateef Tribble (Federal Emergency Management Agency (FEMA) Deputy Regional Administrator) and Donald Ellison (President of Cobra Acquisitions LLC).

According to the indictment, "Tribble and Ellison [allegedly] engaged in a bribery conspiracy, honest services fraud scheme, and major disaster fraud scheme in relation to the electric power grid restoration efforts in Puerto Rico following Hurricane Maria."<sup>7</sup> Tribble allegedly accepted bribes from Ellison in the form of helicopter rides, hotel rooms, and other things of value in exchange for steering contracts to Cobra Acquisitions LLC. According to the Puerto Rico Electric Power Authority, Cobra Acquisition and affiliates were paid \$1.1 billion of a contracted \$1.9 billion.<sup>8</sup>

According to Paterson's plea agreement, while negotiating employment with Cobra Acquisitions, she used her position and "willfully engaged in conduct and participated personally and substantially as a Government employee through recommendation and the rendering of advice in a proceeding in which she knew COBRA and its affiliates . . . had a financial interest." The case against Tribble and Ellison has not yet been fully adjudicated. All are considered innocent until/unless proven guilty.

One of the many challenges to developing a system well-suited to fend off fraud and corruption is ensuring a proper balance between transparency and flexibility exists. An overly rigid process can sometimes get in the way of professional discretion. Discretion borne out of years of experience from experts responsible for awarding contracts can be critical to maximizing value.

Overall, procurement process strategies during disaster recovery should start by being:

- **Committed to curbing corruption and fraud**
- **Informative and well defined**

Community education and awareness of the process and its requirements should be communicated and remain accessible.

- **Focused on economic efficiency**
- **Well communicated to procurement officials**

Consistent communication to staff can be achieved thorough regular training.

- **Timely**
- **Appropriately accountable**

It is critical that both sides of the contract be held accountable to their agreed upon parameters.

- **Transparent and simple**

Automated/electronic process that memorializes and makes accessible appropriate information about pending contracts and open and closed contracts facilitates transparency and the audit process.

- **Inclusive of audit and oversight functions with proper separation of powers**

According to the OECD, “The ultimate deterrent to bribery is a clear regulatory framework that is effectively enforced.”<sup>9</sup>

The following are some of the procurement corruption and fraud red flags to consider:

- A recognizable pattern of bid winners and losers develops
- Losing bidders become subcontractors to the winning bidder
- Different submitted bids have similar unique language or numbers
- Competing firms appear to have unusually close relationships
- Eligible contractors avoid submitting bids at unexplained times
- Unexplained increases in expenses occur
- Unusual high dollar add-on charges
- Deliverable specs do not meet the standard defined by the contract
- Complaints from competitors, subcontractors, and/or procurement officials
- Procurement official begins to live beyond known means – increased travel and luxury item purchases
- Procurement official attempts to interject himself/herself into the audit process

## Hurricane Katrina

Hurricane Katrina (followed by Hurricane Rita) made landfall as a Category 3 hurricane with nearly 127 mph winds on August 29, 2005, leaving in its wake an estimated \$161 billion in damage and 1,833 fatalities.<sup>10</sup> Fatalities from the storm were spread across Florida, Georgia, Alabama, Mississippi, and Louisiana, with the great majority (approximately 86%) coming from Louisiana. Multiple levees around the city of New Orleans failed leading to widespread flooding and catastrophic destruction. The local economy was eviscerated, and the lives of countless were forever changed as approximately one million people were displaced.

Even before Hurricane Katrina, New Orleans was suffering from a declining population, failing public education system, deteriorating economy, a shrinking port, high rates of violent crime, and widespread, localized corruption. All of which only became worse in the aftermath of Katrina. After landfall, the city was nearly completely destroyed. The New Orleans Police Department was eviscerated with their headquarters completely lost, all infrastructure and power grids were down, access routes in and out of the city were blocked or destroyed, and thousands of people were stranded. The logistical challenges were an enormous problem for medical and emergency personnel. Communications were limited, transportation routes in and out of the city were blocked, there was little-to-no lodging and food, fuel, and water were sparse. The greatest amount of damage from the storm did not come from the wind and rain, but the failure of the levees which led to mass flooding. Jefferson Parish, with a population at the time of approximately 400,000 people was 20% flooded; Orleans Parish, with a population at the time of approximately 450,000 people, was approximately 80% flooded; and St. Bernard Parish, with a population at the time of approximately 90,000 people was nearly entirely flooded.

The devastation of Hurricane Katrina was of epic proportion. Millions of lives were affected seemingly overnight, making corruption even bigger business in a state already known as a

corruption industry leader in the United States. Massive devastation meant a massive influx of government cash, and that meant even more money for crooked public officials to redirect away from where it needed to go. Politicians in southern Louisiana have at times been referred to as “thugs in suits,” which made the Gulf Coast during Hurricane Katrina recovery their “gangsta’s paradise.”

By 2014, the 17th New Orleans area politician had been arrested on federal corruption related charges since Hurricane Katrina, including a school board member, both a state senator and a state representative, a judge, multiple city council members, a parish president, a coroner, and multiple mayors, including Ray Nagin, Mayor of New Orleans during Hurricane Katrina and its recovery.<sup>11</sup> This number does not, however, account for the numerous unelected public officials and government contractors who were federally convicted on disaster relief related corruption charges.

The region was not just ravaged by corrupt public officials after Katrina. The Gulf Coast’s tragedy was a magnet for legitimate and illegitimate business. Good, honest, hardworking men and women from all over the country, especially roofers, plumbers, electricians, contractors, and laborers of all kinds flocked to the area, certainly to help in recovery, but also for a chance to win insurance-backed or government funded contracts. There were others, however, who flocked intending to defraud people out of whatever hard earned money, or insurance funds, or relief funds they had. Labor and equipment was initially very scarce in and around the Gulf Coast, and the urgency was like never before, so devastated families were willing to overlook the lack of references, credentials, and even paperwork if it meant getting their home rebuilt or repaired. This sometimes resulted in fraudsters posing as contractors disappearing after receiving large down payments, just further devastating people suffering from incalculable devastation.

The New Orleans FBI office suffered significant top-down water damage from the storm forcing their relocation to a dated and drab golf course clubhouse in Covington, Louisiana. The lackluster temporary office with its old leaking windows was actually prime office space for that time and place. The FBI was fortunate to have a facility at all given the devastation to the area. And it was out of that unimpressive office that began a most impressive multi-year anti-corruption and anti-fraud effort in defense of the people of New Orleans.

The New Orleans FBI employees lived and worked in and around New Orleans. There were a number of FBI agents and professional staff that, like others in their community, lost everything in Katrina. They were not spared from sharing in the personal loss so many others experienced. They suffered with the community they served because they were part of that community. That fact made protecting and rebuilding the city even more personal and more meaningful.

The FBI anticipated a substantial amount of the forthcoming government aid would be stolen, misused, or misdirected by corrupt public officials, criminal organizations, and opportunistic fraudsters. As a counter effort to the threat, the Hurricane Katrina Fraud Task Force was established with the expressed purpose of educating communities on how to protect themselves from fraud, promoting reporting of allegations of fraud and corruption through advertisements and a dedicated complaint line, preventing fraud and corruption where feasible, recovering as much of the stolen government funds as possible, and holding accountable those corrupt public officials and fraudsters who exploited the devastation for personal gain. Partner agencies on the Hurricane Katrina Fraud Task Force included the FBI, various Inspector Generals from different federal agencies, 94 U.S. Attorney’s Offices, the United States Secret Service, the United States Postal Inspection Service, the Federal Trade Commission, the Internal Revenue Service, the Department of Homeland Security, the Securities and Exchange Commission, the American Red Cross, and an array of state and local law enforcement.<sup>12</sup>

By June 2006, the Government Accountability Office estimated approximately \$1 billion was improperly distributed and potentially fraudulently obtained. By 2011, 1,439 people spanning 41 federal districts were federally charged with hurricane related fraud against the government. This is the result of massive exploitation in just one small region in the United States. Imagine the fraud against the government when the disaster recovery spans the entire country, or the world, as with COVID. To this day, it is unclear how much aid from Hurricane Katrina was lost to fraud and corruption. The extent of the abuse will likely never be fully known.

*Example #1: The elected Sheriff of Plaquemines Parish, Irvin “Jeff” Hingle, was arrested in 2011 on bribery and mail fraud charges for his role in the steering of contracts to Benetech LLC, a company owned by W. Aaron Bennett. Hingle was the Sheriff in Plaquemines Parish from approximately 1992 up until his resignation in 2011. In 2007, Hingle, through the sheriff’s office, entered into a contract with Benetech LLC who agreed to provide recovery services related to damages incurred by Katrina (and any damage from future hurricanes).*

*Benetech was overseeing construction of a jail that was destroyed during Hurricane Katrina. On two separate occasions in 2008, Hingle approved Benetech LLC invoices resulting in payment to Benetech LLC. Aaron Bennett paid Hingle \$10,000 in cash after each of the payments made to Benetech LLC as a kickback. Aaron Bennett, who also admitted to trying to bribe Mayor Ray Nagin with a trip on a private jet, eventually admitted to bribing Hingle with \$30,000 for \$800,000 worth in contracts. Bennett was sentenced to 15 months in prison, according to media reports, after helping with three other federal investigations, including the one against Ray Nagin that landed the former mayor in prison.<sup>13</sup>*

*Additionally, Hingle violated campaign finance laws by using over \$100,000 in campaign donations for personal use and then lying to the state about how the funds were used. Hingle was sentenced in July 2011 to 45 months in prison.<sup>14</sup>*

*Example #2: Within two weeks of Hurricane Katrina making landfall, St. Tammany Parish Councilman Joe Impastato had already brokered a kickback deal with a Lacombe, Louisiana business owner for debris removal and disposal. Impastato admitted in court documents to soliciting \$40,000 in kickbacks in exchange for steering contracts to Pontchartrain Chipping Yard. Joe Mistitch, former Public Works Director for the city of Mandeville pled guilty in federal court for his involvement and knowledge of the conspiracy. Mistitch was sentenced to five years’ probation. Impastato pled guilty to “one count of illegal solicitation in connection with a Hurricane Katrina debris removal” and was sentenced to 18 months in prison.<sup>15</sup>*

*Example #3: On November 29, 2012, former New Orleans City Councilman and Louisiana State Senator Jon Johnson was sentenced to six months in federal prison after pleading guilty to one count of Conspiracy to Commit Theft of Government Funds and to Submit False Documents to a Federal Agency.<sup>16</sup> Johnson admitted to redirecting FEMA grant money intended for the economically depressed area of the Ninth Ward to a non-profit controlled by Johnson and then funneling the money to his Senate campaign. Additionally, Johnson admitted he submitted false invoices to the Small Business Administration (SBA). Johnson received an advance from the SBA to make repairs on his home after it was damaged by Hurricane Katrina.<sup>17</sup>*

The road to recovery for the city of New Orleans has been long, but the greatness of the city’s many cultural contributions have persevered. Families and neighbors who suffered great loss built back their communities and reestablished themselves stronger than before. Their pride and commitment to revitalization was symbolically marked by the poetic 2009 Super Bowl win by the New Orleans Saints. Outside assistance by charitable organizations and non-profits, donors, and transplants to the area have also done much to help heal this beaten and once depressed city. Drew Brees, future Hall of Fame quarterback, moved to the city in 2006 and immediately adopted it as his own, contributing a great deal to the people and economy of New Orleans by dedicating his time, effort, and millions to their revitalization. Months after leading the Saints to their historic Super Bowl win, Drew Brees uttered in a 60 minutes

interview, “If you love New Orleans, it will love you back.”<sup>18</sup> The people of New Orleans love their city, but that love will only be sufficiently returned when those in leadership properly prostrate themselves to those they serve.

## COVID

COVID is an unprecedented medical crisis that has been applying pressure on all corners of the global economy and on individuals and families around the world for nearly two years. On again/off again stay-at-home orders created record high unemployment, jeopardized the sustainability of small and large businesses, and left many uneasy about their economic future and mortality.

Much like COVID, corruption does not discriminate based on economic status, social class, color, creed, or religion. But it does chase the money. Which would include the pharmaceutical, medical device, and healthcare industries during times of outbreak where medical equipment and resources are needed, but limited. Consider what it takes to obtain FDA approval for pharmaceutical test kits or vaccines. Now consider the value to the company obtaining the coveted “sole” approval, or emergency approval.

Anyone with an imagination will wonder about the behind-the-scenes deals that led to the awarding of lucrative contracts for beds, ventilators, pharmaceuticals, and masks in places like New York and Los Angeles, but no imagination is necessary to contemplate that process in infamously corrupt countries like Venezuela, Iran, and Nigeria.

Opportunities for bribery, extortion, and embezzlement are at a high right now. But for the first time, the prevalence of this massive threat is occurring simultaneously around the world at the local, state, and federal levels.

*Example #1: In May 2020, Sicily’s COVID tsar, Antonino Candela was arrested along with nine other people for corruption and procurement fraud related crimes tied to the health care industry. Candela was allegedly a central figure among “businessmen and corrupt officials” responsible for rigging public tenders for medical services and equipment worth over \$660 million. The alleged scheme dated back to 2016, well before the COVID pandemic.*<sup>19</sup>

*Example #2: In June 2020, Zimbabwe’s health minister, Obadiah Moho, was arrested for alleged procurement corruption related to \$60 million worth of medical equipment. The arrests came amid increasing anger among the citizens of Zimbabwe who have been frustrated by a crippling economic crisis, insufficient government services, COVID, and corruption.*<sup>20</sup>

*Example #3: Indonesia’s social affairs minister, Juliani Batubara, was arrested in December 2020 while in possession of approximately 14.5 billion rupiah (approximately \$1 million). The money was stuffed in suitcases, envelopes, and other containers and allegedly represented kickback proceeds from contractors supplying food aid to those in need during the COVID pandemic. Two contractors allegedly offered Batubara a kickback of 10,000 rupiah per food parcel.*

At a time where effective measures will be needed to ensure a more timely and complete recovery, corruption is a major threat to the world’s economic and medical rehabilitation. Foreign aid, stimulus and bail outs, charitable donations, medical devices, and other health related equipment – money and resources – have been flying around the world for humanitarian purposes, and while much of that was likely mismanaged, much of it will also be syphoned, stolen, and corruptly misdirected. Communities around the world are suffering from a pandemic. And a prescription of unabashed integrity by leadership and a vigilant posture against corruption and fraud by all is critical to saving livelihoods and saving lives.

In the United States, as of March 2021, nearly 500 defendants had already been federally charged by the Department of Justice with fraud or other COVID related schemes tied to more than \$569 million in government funds.<sup>21</sup> Recent estimates in California suggest fraudulent unemployment benefits paid by the state’s Employment Development Department

(EDD) to prison inmates, organized crime groups, and other fraudsters reached over \$30 billion and could exceed \$50 billion, or even more. The majority of the funds were doled out during COVID as part of the Federal Pandemic Unemployment Assistance Program.<sup>22</sup> As with Hurricanes Katrina and Maria, the extent of the damage caused by fraud and corruption will not be fully understood or calculated until several years after the medical and economic effects of COVID have subsided.

## Deterrence Through Effective Communication

Education and outreach, coupled with swift and well publicized investigative and prosecutorial successes, are critical to deterrence. Engaging the public and educating them on the different types of corruption and fraud schemes to which they could become a witness or victim, and providing the necessary steps to take when corruption or fraud is suspected, is a cornerstone in the fight against abuse in a post disaster environment.

Where are people vulnerable? What should they watch out for? How do they authenticate the legitimacy of a charity? Who do they call or where do they go if it appears corruption or fraud is being committed? What information is necessary or helpful when reporting an allegation?

The government must follow education with aggressive investigations and prosecutions, and they must make their successes publicly known. Well publicized law enforcement successes have two important benefits. First, it shows the community that the government is serious about following up on their complaints (which will inspire more people to report allegations of abuse) and, second, it acts as a deterrent to those who think the potential money from fraud or corruption is worth the risk of illicitly acquiring it.

Effective methods of communication include:

- Television and radio public service announcements
- Websites
- Social media
- Print advertisements and educational pamphlets

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# Election Crimes (Fraud and Corruption)

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The integrity of the voting system has come under heavy scrutiny and debate in recent years with the Left's allegations of foreign influence in the 2016 presidential election and the Right's allegations of widespread voter fraud in the 2020 presidential election. In truth, the practice of questioning the validity of elections is shared by both parties (when they lose) dating back several years. Complicating the discussion in both of these most recent instances is the politics driving each narrative, which inevitably results in massive misinformation and an excuse not to come to an intellectual-based consensus. This chapter will not examine the veracity of each of the claims, but rather objectively, from a law enforcement perspective not a political perspective, provide insight into what constitutes criminal election fraud and election-related corruption, as well as provide a high-level analysis of the vulnerabilities that exist within the system, stripped of the influence of partisan politics. Also, the text will consider the impact of election fraud and election-related corruption at every level (local, state, and federal) and position, not just federal or presidential elections.

Voting is the keystone of democracy – a fundamental right for qualified citizens of the United States. It is the civil solution to political conflict and the source of great power and influence. It is through honest elections that Americans voluntarily give power and influence to their elected officials, and how they subsequently hold those elected officials accountable for how they use that power and influence.

Unfortunately, even an honest election is vulnerable to human error (miscounting, losing ballots) and technological error or deficiency (power outages, inadequate/damaged information retention). Well-placed registration, polling, and vote tabulation redundancies and controls should reduce the probability of errors from at least going undetected, helping to preserve the integrity of the election. Election (voter/ballot) fraud and election related corruption, on the other hand, are intentionally designed to control the outcome of an election without detection, which unequivocally jeopardizes the integrity of the whole process.

Any diluting of votes by ineligible or illegally cast votes, whether through fraud or corruption, undermines the integrity of the election and robs all voters of their voice. As the Supreme Court stated in 1974, "Every voter . . . whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without it being distorted by fraudulently cast votes."<sup>1</sup> The most significant challenge, however, is in identifying which of the votes cast were actually the result of fraud or corruption. Which highlights the importance of properly predicated election related investigations and prosecutions. The importance of these investigations cannot be overstated, but so too can't the challenges those investigations face.

Election crimes perpetrated by candidates or incumbents are often an extension of other forms of corruption within the impacted government entity. The corrupt retention or



acquisition of an elected role is typically motivated by the desire to retain or acquire power for the purpose of corrupting (or continuing to corrupt) that power. According to DOJ's *Federal Prosecution of Election Offenses*, "Although corrupt government may exist without election crime, when election crime exists, public corruption of some form is also usually present."<sup>2</sup> The FBI's public corruption program and agents are responsible for investigating federal election crimes specifically because of the natural crossover between election crimes and other acts of public corruption (as will be evidenced in some of the following examples).

**Election crimes** include violations related to campaign finance, voter or ballot fraud, and/or civil rights matters related to voting. Typically, those who engage in election crimes do so for the purpose of controlling the outcome of an election or in exchange for something of value. Election crimes are not limited to one political party and they do not typically occur in great volume where one party dominates in popularity over the other. Election crimes, particularly voter and ballot fraud, occur most frequently when it matters. In other words, when a position with authority over a great deal of money is being voted on and/or when the election is expected to be close. Blowout elections and low paying/low power jobs do not tend to attract election crimes at the same level.

## **Campaign Finance**

There are different laws at the state and federal level designed to protect elections from fraud and corruption. For example, state and federal campaign donation limits, and even methods, for campaign contributions are not the same. They are not even the same state-to-state, in terms or effectiveness. Each state has its own laws and would need to be assessed individually to identify and weigh in on the subtle differences.

General, or common, methods of campaign finance related violations as a type of election crime, include:

- **Use of straw donors for campaign contributions**

Straw donors are people who illegally provide campaign contributions on behalf of someone else. Straw donors are used to mask the identity of the true source of the funds either because the funds are part of a corrupt transaction (bribery) and/or to illegally circumvent the campaign contribution limits imposed by the state or federal laws. Straw donors are typically either provided money in advance to make a contribution or are asked to make a contribution using their own funds with the promise of being reimbursed.

- **Exceeding campaign contribution limits**

State and federal campaign contributions are recorded and reported (amount and donor) for public consumption. Donations that exceed the legal limit are typically made with cash and/or through the use of straw donors to avoid detection and reporting.

- **Corporate donations to federal candidate**

Corporations are disqualified from giving corporate money directly to a federal candidate's campaign. Sometimes corporate money is funneled illegally through straw donors in an effort to circumvent this law.

- **Foreign campaign contributions**

Foreign nationals are disqualified from giving money to any candidate running for elected office at the local, state, or federal level. This law is intended to reduce the risk of

foreign influence on the election process. Foreign influence is not necessarily driven by a foreign government, but it could be. Foreign nationals looking to skirt the law, however, may do so by using straw donors or providing the candidate a donation in cash. The existence of foreign campaign contributions does not necessarily mean the candidate/beneficiary was aware the donation was made. Prosecuting the public official for violating foreign campaign contribution laws requires proving the public official was aware of the illegal contribution.

Bribes paid via campaign contributions and campaign money syphoned for personal use (embezzlement) are often categorized differently given the election is not the focal point of the illegal act. Bribes paid in the form of campaign contributions, for example, have more to do with hiding the bribe than they do about actually funding a campaign or impacting an election.

*Example #1: In January 2020, James Tong, a Bay Area, California real estate developer was sentenced to 15 months in federal prison after being convicted on multiple counts related to a straw donor scheme. According to the evidence, Tong provided envelopes of cash to two middlemen who were directed to find people to make donations to a specific candidate for the U.S. House of Representatives Tong was supporting. The straw donors were paid cash and instructed to write checks to the candidate's campaign. Tong further directed the middlemen to instruct the straw donors not to deposit the reimbursement cash into their respective bank accounts. Depositing the money into their bank accounts, especially in the same amount for which they wrote a check, would create a permanent record law enforcement could use as evidence in an investigation. Tong's instructions were intended to increase the probability his crimes would go undetected. Between 2012 and 2013, Tong was found to have provided \$38,000 in conduit contributions to initial and reelection campaigns.<sup>3</sup>*

*Example #2: William Argeros pleaded guilty in 2016 to "knowingly and willfully" funneling \$80,000 from a foreign source to a political campaign committee of the president in 2012.<sup>4</sup> He also acknowledged he lied to the grand jury about his role in the facilitating and concealment of the contributions. Argeros was sentenced to four months in prison.<sup>5</sup>*

## **Election (Voter/Ballot) Fraud**

Election fraud, according to DOJ's *Federal Prosecution of Election Offenses*, "involves a substantive irregularity to the voting act – such as bribery, intimidation, or forgery – which has the potential to taint the election itself." In other words, election fraud is a deliberate act designed to interfere with any of the following principles articulated by Congress and the federal courts:<sup>6</sup>

- All qualified citizens are eligible to vote.
- All qualified voters have the right to have their votes counted fairly and honestly.
- Invalid ballots dilute the worth of valid ballots, and therefore will not be counted.
- Every qualified voter has the right to make a personal and independent election decision.
- Qualified voters may opt not to participate in an election.
- Voting shall not be influenced by bribery or intimidation.

In essence, election fraud is behavior that illegally interferes with the process by which voters are registered, ballots are obtained, marked or counted, and/or election results are decisioned and certified. Impersonating someone at the polls, vote buying, misuse of absentee ballots, altering the vote count, and other election fraud techniques victimize all citizens, regardless of party affiliation.

Eligible votes are limited to qualified voters. Strict adherence to accepting only “eligible votes” from “qualified voters” is the first major step in reducing the likelihood of valid votes being diluted and increases the probability of the election being accurate and honest. All qualified citizens who vote deserve to have their vote truly count, so ensuring the legitimacy of the vote is an imperative to preserving the integrity of the election.

The constitutional right for eligible citizens to vote is implicitly accompanied by an expectation the government provide those same people reasonable access to the voting process, regardless of race, age financial status, or geographic location. This is a must. Reasonable access to the voting process, however, does not mean unmitigated access to the voting process. Policy makers and politicians should and will debate what the appropriate balance between security and accessibility looks like, but an honest debate requires an honest analysis of the facts. Ironically, many who deny the existence of voter fraud and the need for voter security, claim to do so to protect the very people voter fraud impacts the most – the poor, the aged, and minority voters. These are the people most commonly bribed for their vote or instructed on whom to vote for. These are the people whose voice and vote are being suppressed when election crimes occur.

If qualified citizens choose not to exercise their right to vote because, for example, they are unwilling to show or obtain government issued identification (which is commonly used as a security measure to identify a person’s true identity when traveling, entering government facilities, or obtaining healthcare), then that is their decision. That is their right and their choice. However, for those who desire, but are in need of assistance in obtaining government issued identification, community organizations and government services should facilitate. Assisting in the acquisition of government identification for those in need is a measurable, achievable, and reasonable social effort that adds layers of much-needed security to the election process. **Securing the vote and ensuring the integrity of the count is an obligation of the government, while voting is a right that each eligible individual can freely choose to exercise or ignore.**

Protecting the integrity of an election from fraud and corruption with reasonable measures consistently enforced across the whole of a population is not suppressing the vote. **Voter suppression**, according to the FBI, is “intentionally deceiving qualified voters to prevent them from voting . . . and it is a federal crime.”<sup>7</sup> Various tools are utilized to communicate misinformation, including email, social media, and text messages. These and other methods are used to communicate false information about polling locations, election dates, voting requirements or qualifications, and other fraudulent information designed to stifle qualified voter turnout.

The courts are constitutionally well-positioned to rule on the efficacy and legitimacy of state voting laws believed to potentially conflict with the rights of Americans. Unfortunately, social media influencers, politicians, and mainstream media are politically and/or fiscally incentivized to perpetuate chaos and confusion through claims of voter suppression when a judicial solution exists precisely to address such allegations. If politics has been so substantially inserted into the drafting of voting laws, as history has proven it can, to the extent that the output creates voter suppression, then the courts can and should intervene to protect the rights of all Americans.

The power politicians and political parties are able to garner from winning an election is what drives the infusion of politics into the discussion of voting policies and laws. *If inherent deception in politics deteriorates all things, not just politics, then the same is true for voter integrity, security, and accessibility.* Politics undermines those things as well.

The political stakes are high when it comes to voter accessibility and security, so the two sides wage a very public war against one another. They level verbal attack after verbal attack riddled with half-truths and outright lies alleging their opposition’s intent behind their policies are contrary to the great American ideals voters hold dear. *But arguing the intent of people who frequently have questionable intent is a distraction, which could very well be the goal.* A truly

objective analysis by the voter requires independent research and an honest critique to understand what is necessary and appropriate to maximize election security without putting an unreasonable obstacle between a qualified voter and that voter's right to cast a vote.

Two primary ways to vote:

**1. In person at a designated polling location.**

This is the most secure way to vote because the identity of the individual can be most likely confirmed at the polling location prior to casting his/her vote and the voter is able to cast the vote in privacy without immediate outside influence or threat.

**2. Absentee ballots in lieu of voting in person (could include mail-in or drop-off).**

According to DOJ, "Absentee ballots are particularly susceptible to fraud abuse because, by definition, they are marked and cast outside the presence of election officials and the structured environment of the polling place."<sup>8</sup> Voter intimidation and fraud are elevated vulnerabilities when the ballot is completed separate and apart from polling locations and elected officials. A *Wall Street Journal* article from 2000 noted, "Incidents such as these [nursing home abuse of absentee ballots] illustrate a little-publicized downside to the nationwide surge in absentee voting. In an attempt to increase voter participation, many states have liberalized vote-by-mail laws. But they also have loosened already tenuous safeguards against fraud. With old-style ballot-box stuffing impractical these days, election-law experts say, the growth of absentee voting has provided new opportunities to cheat."<sup>9</sup>

The two great voting imperatives:

- Accessibility
- Security

All who are legally eligible to vote should be able to easily access the voting process. It is an imperative. But ensuring the integrity of the vote by minimizing the threat of bribery, corruption, and fraud is also an imperative. Both can and should coexist within the voting framework, but political posturing typically results in each of the primary parties latching onto one or the other, rarely both.

Methods of election/voter/ballot fraud, include:

- **Impersonating someone at the polls**

Assuming someone else's identity in order to cast a vote as that person either via absentee ballot or in person at the polls.

- **Fraudulent registrations**

Fraudulently registering a person or multiple people to vote is often done with the intent to fraudulently cast their vote, most likely through absentee ballots.

- **Duplicate voting**

Voting more than once in the same election hoping for a duplicate count.

- **Commercializing or buying votes/paying people to register**

Illicit money in politics does not always flow to the candidates or public officials, it can also flow the opposite way to nudge the behavior of voters. Multiple states have a very long history of vote-buying from candidates and incumbents.

- **Ineligible voting (non-citizens/convicted felons)**

Only qualified persons are allowed to vote.

- **Altering the vote count**

Election officials manipulating the vote count by changing the numbers or stuffing ballots.

*Example #1: In November 2020, Hawthorne, California mayoral candidate Carlos Antonio De Bourbon-Montenegro and Marcos Raul Aravelo were charged with multiple election fraud violations. The two allegedly submitted voter registrations on behalf of 8,000 dead or fictitious individuals in the hopes of obtaining absentee mail-in ballots. The case has not yet been fully adjudicated.<sup>10</sup> All parties are considered innocent until/unless proven guilty.*

*Example #2: Eight individuals were convicted in 2010 on numerous federal violations for their roles in a scheme devised to control “the outcome of federal, local and state primary and general elections in Clay County [Kentucky] in 2002, 2004, and 2006.” All were convicted for racketeering and money laundering conspiracy, among other charges,<sup>11</sup> but the 6th Circuit Court of Appeals overturned the convictions in 2013 based on the premise that prosecutors presented evidence that should not have been presented. Ultimately, all eight pled guilty to racketeering or voter fraud charges. The defendants included a circuit judge, county clerk, democratic election commissioner, election official, school superintendent, a magistrate, and owners of a sanitation company. According to DOJ Press releases:*

- *The district judge used his position to appoint corrupt individuals to the election board and “caused election officers to commit acts of extortion, mail fraud, and bribery.”*
- *The county clerk, “provided money to election officers to be distributed by the officers to buy votes and instructed officers how to change the votes at the voting machine.”*
- *The democratic election commissioner, along with the election officer, “attempted to extort \$1,000 from a city council candidate to buy votes during the general election in 2004.”*
- *The election officer, “marked voters or issued tickets to voters [to be reimbursed for payment] who had sold their votes and changed votes at the voting machine.” The election officer and democratic election commissioner also claimed in recorded conversations they could select juries and determine the outcome of trial proceedings in the district judge’s court. Two civil cases were identified whereby corrupt jurors aided in the rendering of multi-million dollar payouts.<sup>12</sup>*
- *The owners of a sanitation transportation company in exchange for lucrative Clay County government contracts “distributed funds pooled by members of the scheme in order to buy votes.”*

*Example #3: Lincoln County (West Virginia) Commissioner Thomas Ramey, Lincoln County Sheriff Jerry Bowman, and Lincoln County Clerk Donald Whitten were all embroiled in an absentee ballot fraud scheme that resulted in criminal convictions in 2012. Ramey and Bowman altered absentee ballot applications for would-be voters providing false reasons to claim the voters were eligible to vote via absentee ballot. Whitten lied about his knowledge and participation in the absentee ballot fraud scheme. Specifically, denying that he ever “provided absentee ballots to a known associate so that the associate could subsequently hand-deliver those ballots to voters.” All three officials resigned and pled guilty. Ramey, Bowman, and Whitten were sentenced to 21 months,<sup>13</sup> a year and one day, and a year and six months in prison,<sup>14</sup> respectively.*

*Example #4: In December 2013, three women (acting as politiqueras) from one of the nation’s poorest counties were arrested by the FBI accused of giving residents cash, drugs, beer, and cigarettes in exchange for their votes in a school board election. “Two of the three women – Rebecca Gonzalez and Guadalupe Escamilla – [were] accused of paying some voters as little as \$3 for each of their votes. One voter was given a pack of cigarettes. Others were taken to buy drugs after they received cash for voting for a politiquera’s candidate.”<sup>15</sup> The investigation and prosecution occurred at the federal level, but the allegations were known and could have been worked at the local level. The county district attorney Rene Guerra,*

*an elected official, was asked by reporters why he did not act when vote-buying allegations emerged, and Guerra claimed his office “lacked the manpower.”<sup>16</sup>*

Contrary to the current political debate, there can be absentee fraud and other election fraud and vote buying issues requiring immediate attention without necessarily delegitimizing the last presidential election. Sufficient evidence and extensive experience confirm voting vulnerabilities can and do result in elections being stolen. These fraud schemes are more common at the local and state level because most elections occur at the local and state level. And despite the current polarized narrative of Right versus Left, the acknowledgment of vulnerabilities in the voting system have been highlighted by both sides at different times.

Typically, the need for voter security is acknowledged by the side that lost (or is hedging against the possibility of losing) and denied by the side that won. History has documented well the flip-flopping of pundits and politicians on this topic. For example, in the election fraud book *Five Dollars and a Pork Chop Sandwich – Vote Buying and the Corruption of Democracy* (2016) by Dr. Mary Frances Berry, former chairwoman of the U.S. Commission on Civil Rights and former deputy secretary of education under Jimmy Carter, Dr. Berry stated, “Chicago is an obvious example. In some Kentucky counties, vote buying has been going on since at least the early 1900s. . . . In Texas the widespread use of buying, hauling, and abuse of absentee ballots in rural areas among Latino politiqueras has become entrenched.”<sup>17</sup> Dr. Berry explored and highlighted the problems in multiple other states as well, including, Louisiana and Florida, among others. Her research aligned well with the experience of this author working cases and as the acting chief of the program at FBIHQ responsible for investigating election fraud and corruption. Dr. Berry’s treatise was well regarded by people and organizations who only an election cycle later denied the relevance of the topic. American Civil Liberties Union executive director Anthony Romero said of Dr. Berry’s book, “An urgent, timely, and nonpartisan book that is vital to our democracy.” This is not at all consistent with the current documented ACLU position on the topic.

In smaller towns or elections, a single vote might be enough to determine an election. A single vote can be relatively simple to acquire through any of these election fraud methods. Unfortunately, low volume corruption or fraud (single or handful of illegal votes) can go easily undetected, even if its impact is significant. So, while the impact is high, the risk of detection might simultaneously be extremely low.

Election fraud red flags include:

- Large differential in voter turnout between similarly populated areas.
- A vote count that exceeds registered voters.
- A lack of transparency in the vote counting process.
- Allowing voting to occur after the deadline.
- Stopping the vote count.
- Delaying the announcing of results.
- Unexplained spikes and/or swings in the vote count.
- Unexplained spikes and/or swings in voter turnout numbers, election-over-election.

## Civil Rights Matters

Methods of civil rights violations as a type of voter fraud, include:

- **Intimidating voters**

Any threat, intimidation, or coercion (physical or economic) intended to prevent or interfere with the independence of a person’s vote is unlawful.

- **Preventing or trying to prevent someone from getting to the polls in a federal election.**

*Fun Fact: According to federal statute 18 U.S.C. § 592, it is a federal felony for military or federal law enforcement to show up at a polling location to investigate anything not tied to imminent violence.*

*“Whoever being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps or has under his authority or control troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United, shall be fined under this title or imprisoned not more than five years, or both.”*

*Overtly armed law enforcement at a polling location can have a chilling effect on voters as it could give the impression the agency is being used to influence the outcome of an election.*

## Enforcement and Oversight

Each of 50 states has primary oversight and enforcement of elections and the election process within their respective borders. They are responsible for the registration of voters, selection of election officials and equipment, establishing absentee ballot standards, the policies and procedures for securing the vote, ensuring only qualified people register and vote, ensuring the candidate with the most valid votes is certified, and criminal enforcement of election crimes. Surprisingly, however, few states have dedicated elements investigating election crimes. This could, perhaps, limit the state’s ability to identify the full extent of the damage caused by those engaging in election fraud and corruption.

The FBI has limited election crime jurisdiction. Election crimes can become federal cases when:

- The ballot includes at least one federal candidate
- The alleged crime involves an election official abusing his or her position
- Fraudulent voter registration is alleged
- Non-US citizens vote

High crime areas and high threat crimes are often supported by a high number of investigations and convictions. That does not mean a low number of investigations and convictions automatically translates to a low threat. Sometimes it means the problem is actually much bigger than the alternative because it is not being reported, not being investigated, or difficult to prove beyond a reasonable doubt. Election fraud and corruption tend to fall into this category. The historically low number of convictions are often pointed to as evidence voter integrity is not a problem, particularly as it relates to mail-in ballots. But that is a misconception rooted in a complete misunderstanding of the extent of voter fraud methods utilized and the lack of dedicated law enforcement attention.

There are few violations that have as significant an impact on the democratic system as crimes related to election fraud and corruption. A Carnegie and Knight study reviewed and analyzed electoral fraud data between 2000 and 2012. The data was somewhat limited given not every state responded to the request for case information. But of the total cases memorialized in the study, 46% of them resulted in no charges being filed, charges being dropped, or outright acquittals. The most prevalent fraud, according to the study, was absentee ballot fraud at 24% of the total reported cases.<sup>18</sup>

Some of the most significant challenges to investigating and deterring election crimes include:

- Investigations typically are not initiated until after the election has concluded which can complicate the process for collecting evidence.

- The fear by DOJ and/or local or state governments that “too much” government action against election crime violators could suggest the system is broken and diminish voter confidence.
- Relatively light sentencing does little to deter future bad actors.
- The absence of dedicated enforcement resources at the state level to address election crimes.
- The benefits politicians gain from dishonesty and division prevents an honest analysis of the scope and extent of election crimes. (If the common belief is that the election crimes are a myth and do not exist, then witnesses will not report them, law enforcement will not prioritize and investigate them, and prosecutors will not prosecute them.)
- Elected officials (including judges, district attorneys, and state attorneys general) do not like to punish the people or the system they depend on to win their own elections. If something appears broken in the voting process, then questions could arise about the validity of their own election victory.
- The poor, uneducated, and elderly are typically the most likely exploited by various election fraud schemes, but most do not realize they were even victimized.
- The belief in certain communities, particularly disenfranchised minority communities, that election crimes are not really bad if they gain power and influence they did not previously have. There is less reporting of alleged fraud if witnesses/victims believe they personally benefit from the crime.

The challenges to investigating and deterring election fraud limit law enforcement’s ability to gain a clear picture of the extent of the problem. The massive influx of misinformation coming from the two political poles also plays a big role in preventing progress. From the Right: “Fraud is everywhere and absentee ballots should never be allowed.” From the Left: “Fraud is extremely rare and absentee ballots are virtually fraud-free so there is no need for new security measures.” The truth is somewhere in the middle and far from both of these two talking points. The system, for the most part, works, but requires constant vigilance and a watchful eye.

Some of the mistakes people make that prevent fruitful discussion on the topic of election security include:

- **The presumption that one party is more inclined than the other to cheat.**

Both parties are willing and able, and both should be interested in protecting the process from their own as much as from the opposition. Both parties can even cheat in the same election, simultaneously.

- **Focusing the debate on large elections or federal elections.**

This is a distraction. Proving a massive election was won or lost due to fraud or corruption is highly improbable, even if it was actually won by cheating. Local elections, which can be swung by a single digit number of votes, are where cheating is so much more consequential and likely to occur. Secure the voting process by focusing on elections where each vote can swing an election, then move up from there.

- **Suggesting election fraud and corruption must be a coordinated effort to be effective.**

A hundred people working together are more likely to get caught than a hundred people working on their own, which is more often the case. They are equally effective and far less likely to be discovered if they are not working as part of a coordinated effort.



- **The belief that fraud and corruption will always change the outcome of the election.**

Just because a party lost an election, does not mean the party did not have members cheating. Cheating does not guarantee a win.

Securing the vote and ensuring the integrity of an election requires first overcoming the fallacy that election crimes are inconsequential and rare. The truth is that the full extent of the problem is entirely unknown because it has not been adequately addressed, nor can it even be fully addressed, for the reasons highlighted here. According to Dr. Berry, “The research . . . shows that electoral fraud, consisting mainly of vote buying and abuse of absentee ballots, does indeed exist in state and local elections. Such fraud is routine in some locales.”<sup>19</sup> Honesty about the existence of voting issues is an intellectual requirement to balancing the securing of the vote with not disenfranchising voters. Despite this, however, too many believe election crimes either do not occur or are a non-issue.

Are Americans too patriotic to commit election crimes? No, of course not. The country has no shortage of murderers, rapists, corrupt government officials, fraudsters, thieves, child abusers and abductors, and election crimes do not carry near the same negative stigma as those crimes. Of course there are those who are willing to commit election crimes.

The constitutional right to vote provides the MEANS to commit election fraud.

Are the voting controls so good that although some may be willing to cheat, they just cannot beat the system? Any system can be defeated. There are vulnerabilities in the voting system and it is the government’s job to reduce those vulnerabilities, because every vote counts. Invalid votes that slip through the system carry the same weight as the valid votes cast and counted.

The vulnerabilities that exist within the voting system provide the OPPORTUNITY to commit election crimes.

Do people care so little about who wins an election that they would never think of cheating? Anecdotally, according to social media engagements over the last several years, not only do people care, but their outrage over the opposition suggests they care more than ever.

The extent voters care about the win over the integrity of the process drives their MOTIVATION to commit election crimes.

Sometimes bad people commit crimes. Sometimes good people commit crimes. Sometimes people commit crimes they feel morally justified to commit.

President John F. Kennedy once paraphrased Dante (though somewhat inaccurately) when he said, “The hottest places in hell are reserved for those who, in periods of moral crisis, maintain their neutrality.”<sup>20</sup> But what happens when you have two diametrically opposed sides seeing themselves in the middle of a moral crisis and both believing they are the moral authority responsible for taking action and saving the country? Presumably, both sides become willing to do anything to win.

## **Hitler Effect**

The philosophical and moral question, “Would you kill Adolf Hitler before he got into power knowing tens of millions would eventually die by his hand if you don’t” is commonly debated. Many would arguably say they would be morally justified trading one life for tens of millions. A Vox article from 2015 (updated in 2019) said precisely that, “That’s pretty easy. You don’t have to be a die-hard utilitarian to think one baby is an acceptable price to pay to save tens of millions of lives.”<sup>21</sup> And that is killing a baby. How many would have a problem with killing Hitler while he was in power after he had killed tens of millions? Few, if any.

Setting aside the moral merits of the debate and focusing on the significance of the conclusion, is evidence to support the concern about current voter motivation. Political debate over the last several years has trended toward the demonizing of the opposition, and demonizing the opposition undermines the civility of resolving conflict through voting. It also creates a situation of moral necessity. It does not just make breaking the rules to win acceptable, it makes winning a moral imperative and thus breaking the rules inconsequential to the conscience.

Consider the years spent comparing President Donald Trump to Hitler. Claims that he (and by extension those on the Right) was an evil fascist echoed across nearly every element on the Left. Aggressive allegations of widespread, systemic racism attributed to the Right quickly followed. And the Right takes the same extreme political approach to their demonizing of politicians on the Left.

Leveling these types of extreme allegations does not just justify cheating to beat the opposition, it justifies killing the opposition. Killing Hitler to save lives. Killing Donald Trump to save lives. Killing voters on the Right to save lives. Killing voters on the Left to save lives. So, what is cheating to the conscience if the selling points are sufficient to morally justify taking life? In fact, an argument could be made that the patriotism of a voter is in question if he/she believes the opposition to be Hitler or the devil or some other murderous fascist and a he/she did not cheat to help keep such a moral depravity out of power. Cheating in an election quickly becomes the absolute least someone can do to keep a murderous tyrant out of power.

Obviously, the point of this is not to condone killing politicians or condone election crimes. It is to show the impact politics can have on a voter's motivation to commit election crimes.

Law enforcement seeks to identify criminal suspects by looking at their motivation, means, and opportunity. When it comes to election crimes, politics, money, and control drive the MOTIVATION while the constitutional right to vote creates the MEANS. So the government must protect the system by reducing the OPPORTUNITY through the implementation of proper security measures.

## Benchmark Investigation

Philadelphia is the birthplace of Rocky Balboa, the cheesesteak, and the United States of America. Independence Hall in Philadelphia is where the Declaration of Independence and the United States Constitution were both “debated and signed.”<sup>22</sup> Unfortunately, a proud city with a pivotal history did not make Philadelphia less susceptible to corruption.

In 1980, a high level FBI investigation into public corruption and organized crime was made public. Undercover FBI agents working the infamous investigation known as ABSCAM infiltrated and ultimately dismantled criminal operations in multiple states. Numerous criminals and corrupt public officials were involved in the trade of fraudulent securities and quid-pro-quo's surrounding the acquisition of gambling licenses and the passing of preferential legislation. In the end, “one senator, six congressman, and more than a dozen other criminals and corrupt [public] officials were arrested and found guilty.”<sup>23</sup>

Among those convicted in the aftermath of the ABSCAM investigation was former United States Congressman from Pennsylvania, Michael Myers. Myers was expelled from Congress in 1980 after being convicted of bribery “in return for promising to use official influence on immigration bills.”<sup>24</sup>

Decades later, Myers again became embroiled in an FBI bribery investigation. To-date, he has been charged but not convicted, though proceedings appear ongoing. DOJ alleges Myers conspired to violate voting rights by bribing a former Judge of Elections Dominick Demuro in Philadelphia to stuff ballot boxes for specific candidates in the 2014, 2015, and 2016 primary elections. Myers was also charged with obstruction of justice, falsification of records, and voting more than once in a federal election.<sup>25</sup>

In May 2020, Demuro pled guilty to accepting bribes in exchange for casting fraudulent ballots and certifying false results in Philadelphia primaries in 2014, 2015, and 2016.

“During his guilty plea hearing, Demuro admitted that while serving as an elected municipal Judge of Elections, he accepted bribes in the form of money and other things of value in exchange for adding ballots to increase the vote totals for certain candidates on the voting machines in his jurisdiction and for certifying tallies of all the ballots, including the fraudulent ballots. Demuro further admitted that a local political consultant gave him directions and paid him money to add votes for candidates supported by the consultant, including candidates for judicial office whose campaigns actually hired the consultant, and other candidates for various federal, state and local elective offices preferred by the consultant for a variety of reasons. Demuro also admitted that the votes he added in exchange for payments by the political consultant increased the number of votes fraudulently recorded and tallied for the consultant’s clients and preferred candidates, thereby diluting the ballots cast by actual voters.”<sup>26</sup>

While Demuro has pleaded guilty, Myers has not been convicted. Myers remains innocent of these most recent charges until/unless proven guilty.

## **Common Statutes**

### Campaign Finance:

- Limitations on Contributions and Expenditures 2 U.S.C. § 441a
- Contributions from Corporations and Unions 2 U.S.C. § 441b
- Contributions by Government Contractors 2 U.S.C. § 441c
- Contributions by Foreign Nationals 2 U.S.C. § 441e
- Conduit or Disguised Contributions 2 U.S.C. § 441f
- Promise of Federal Employment for Political Activity 18 U.S.C. § 600
- Deprivation of Federal Employment for Political Activity 18 U.S.C. § 601
- Intimidation to Secure Contributions 18 U.S.C. § 606
- Coercion of Political Activity of Federal Employees 18 U.S.C. § 610
- Foreign campaign contribution 52 U.S.C. § 30121

### Voter/Ballot Fraud:

- Coerced political activity by federal employee 18 U.S.C. § 610
- Vote buying 18 U.S.C. § 608 (b)
- False assertion of citizenship 18 U.S.C. § 911
- Registration fraud 42 U.S.C. § 1973 i(c)
- Multiple voting 42 U.S.C. § 1973 i(e)
- Voter intimidation 42 U.S.C. § 1973 gg-10(1)

### Civil Rights:

- Deprivation of Civil Rights Under Color of Law 18 U.S.C. § 242
- Threats 18 U.S.C. § 245 (b)
- 18 U.S.C. § 592
- Intimidation of Voters 18 U.S.C. § 594

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# Organized Crime and Corruption

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Organized crime (criminal organizations) and public corruption figures have a long history of collaboration. The symbiotic nature of which is grounded in the mutually beneficial exchange of benefits. Corrupt officials leverage their authority/position/power to reduce costs for the criminal organization's illegal business thereby fueling their growth and generating additional corrupt opportunities. The more successful the public official is at protecting the interests of the criminal organization, the more willing the criminal organization is to utilize the corrupt offerings of the public official. Law enforcement and border officials are particularly susceptible to bribes offered by criminal organizations because of the role they play as the first line of defense against the criminal organizations' illegal business activities.

The extensive international anti-terrorism achievements over the last two decades have forced terrorist networks to develop new ways of financing their operations. The growth of the internet and advancements in technology over that same period have provided the means for terrorist networks to broaden their approach. In general, a single terrorist event can be achieved at relatively low cost, but the sustainability of the larger organization requires larger, more long-term funding. It is because of this that many terrorist networks have turned to criminal activity to raise their operational funds. This, along with the shared potential impact criminal organizations and terrorist networks have on society and national security, has led some experts in the international law enforcement community to move away from the idea that criminal organizations and terrorist networks are different and distinct threats.

Criminal/terrorist organizations/networks and the corrupt public officials, or other facilitators on their payroll, need to be able to move illicit funds through the financial system without drawing unnecessary attention from law enforcement or the institutions themselves. This shared goal naturally ties the discussion about criminal/terrorist organizations, facilitators, and money laundering together.

## Organized Crime

Organized crime is crime that is organized. It is criminal activity involving a group of individuals working in concert toward the common goal of obtaining as much money and power as possible. It is less random and haphazard and more planned out and strategic. Organized crime groups (or criminal enterprises) can resemble and even participate in legitimate business and have sound operating models and strategic partners. According to INTERPOL, "members of organized crime often share a common link, for example geographical, ethnic or even blood ties" as that deeper connection among members promotes loyalty.<sup>1</sup> They operate domestically, either within a specific region or across multiple states, or they can operate between multiple or several different countries. They tend to insulate themselves and utilize various methods

to protect their interests and avoid detection, including compartmentalizing organizational information, use of sophisticated communication and money laundering techniques, bribing public officials, and intimidation and violence. Their notorious use of intimidation and violence is used in non-discriminatory fashion against competitors in an attempt to control a criminal marketplace, innocent bystanders and witnesses to ensure silence and compliance, and organizational members and partners to deter disloyalty.

Globalization, technological advancements, and the internet have shrunk the world and made once exclusively regional criminal organizations increasingly more international in their membership, markets, crimes, and trafficking routes.

**Transnational organized crime (TOC)** is organized crime that crosses borders. TOC groups, according to the FBI, “are self-perpetuating associations of individuals who operate, wholly or in part, by illegal means and irrespective of geography. They constantly seek to obtain power, influence, and monetary gains.”<sup>2</sup> These organizations pose a national and international security threat due to their destabilizing effect on public safety, democratic institutions, financial systems, and the economy.

Organized crime groups, generally, seek financial gain through a combination of different criminal schemes including:

- Drug trafficking
- Trafficking in persons
- Human smuggling
- Weapons and human organ trafficking
- Prostitution and gambling
- Extortion for protection
- Labor racketeering
- Art theft and artifact trafficking
- Production and sale of counterfeit goods
- Fraud, identity theft, and cyber related crimes (phishing, advanced fee fraud schemes, etc.)
- Money laundering and bulk cash smuggling
- Environmental crimes
- Wildlife trafficking (protected species trafficking)

An inverse relationship exists between the effectiveness of the government and the prevalence of organized crime. Organized crime and TOC groups grow in strength as the state fails to provide economic stability, access to the financial markets, and dependable and predictable law and order. The failures of the state, whether due to corruption or incompetence, create a void TOC groups are more than happy to fill. For example, if a small business owner cannot gain approval for a loan due to unjust big business practices not thwarted by the state, that small business owner might feel compelled to seek assistance through unofficial black market channels serviced by TOC groups (loan sharks). The same is true for those who suffer from addictions or vices. When a dysfunctional government allows robust drug and human trafficking, the communities under that government become inundated with all the problems that come along with robust drug and human trafficking. Failure creates opportunity, and corruption is the most corrosive and damaging type of failure. It manifests from inside the government and includes the deliberate dismantling of the system, which has a longer lasting adverse effect than mere incompetence.

*Example: Former DEA Agent Fernando Gomez, while working as a detective for the City of Evanston Police Department in Illinois, transported firearms to Puerto Rico and sold them to a member of La Organizacion de Narcotraficantes Unidos (La ONU), a criminal organization. Gomez continued*

to assist La ONU after joining the DEA by helping members, including Jose Martinez-Diaz AKA Tony Zinc, avoid detection from law enforcement. Gomez transported money on behalf of La ONU and accessed sensitive law enforcement information in search of source information about La ONU.

La ONU was responsible for a high volume of cocaine trafficking from Puerto Rico to New York. The cocaine was distributed in part out of a daycare center in the Bronx. Martinez-Diaz supplied La ONU with cocaine from the Dominican Republic and was involved in the distribution of over 5,000 kilos of cocaine. La ONU was a violent organization who even manufactured a fake Puerto Rico police car in order to intimidate their competitors and gain a tactical advantage in shootings.<sup>3</sup>

In August 2019, Gomez pled guilty in federal court to conspiracy involving the distribution of cocaine and was subsequently sentenced to four years in federal prison.

In July 2019, Martinez-Diaz pled guilty to a racketeering conspiracy involving the criminal enterprise La ONU. As part of his plea, Martinez-Diaz also admitted to two attempted murders.<sup>4</sup>

Organized crime groups seek to recruit public officials within various agencies and branches of the government in order to obtain different benefits, such as information, protection, and profit. All of which add great value to a criminal organization. Within each of the agencies or branches of government they seek to capture different levels. The level of infiltration reflects the intensity of the grip the organization has on the agency and the state. The higher the level, the tighter the grip; the tighter the grip, the more freely organized crime groups can operate without fear of reprisal or consequence.

Levels of organized crime infiltration into the government, include:

- **Low**

Sporadic acts of bribery involving low level public officials. For example, paying a police officer to “lose” evidence after an arrest.

- **Moderate**

Regular acts of bribery involving low level public officials who are on payroll or retainer with the criminal enterprise. For example, paying a law enforcement officer a monthly bribe for access to sensitive law enforcement information and/or protection as needed.

*Example: In April 2020, Babak Broumand, a retired FBI agent, was charged in a federal complaint for allegedly accepting over \$200,000 worth of bribe payments between approximately 2015 and 2017 from an attorney working on behalf of an Armenian organized crime figure, Levon Termendzhyan (AKA Lev Asian Dermen). Termendzhyan was federally convicted in March 2020 in Salt Lake City “on charges related to a \$1 billion renewable fuel tax credit fraud scheme.” Broumand met the attorney in a cigar bar in Beverly Hills, California. The attorney noticed Broumand’s “expensive tastes . . . and his affinity for luxury goods and services” and saw that as a weakness that could be exploited. The attorney used that information to groom Broumand into becoming an asset for the criminal organization.*

*Broumand was allegedly paid a retainer fee of \$10,000/month as well as bribed with additional gifts, hotel stays, and escort and transportation services in exchange for providing sensitive law enforcement information. At one point he was provided a Ducati motorcycle and \$36,000 as a bonus for services rendered. Broumand was accused of searching law enforcement databases for information on between 10 and 20 names in exchange for the bribe payments. He was also accused of structuring his cash bribe deposits to avoid detection, neglecting to report his additional income from the bribe payments, and making false statements to the FBI.<sup>5</sup> The case has not yet been fully adjudicated. Broumand is considered innocent until/unless proven guilty.*

*In a related investigation, Felix Cisneros, a former agent with ICE was sentenced in 2018 to 12 months in federal prison after a jury found him guilty of “conspiracy to aid and assist the entry of an*



alien convicted of an aggravated felony in the United States, acting as an agent of another person in a matter affecting the government, falsification of records in a federal investigation, and making false statements.” Cisneros attempted to assist in the entry of a business associate of Termendzhyan who was barred from being legally admitted due to prior criminal convictions and an outstanding warrant.<sup>6</sup> In March 2021, Cisneros was arrested for allegedly participating in a bribery scheme whereby he received at least \$122,000 in exchange for assisting a person linked to organized crime with helping two foreign nationals gain entry into the United States.<sup>7</sup> While he was convicted on the original charges, the 2021 charges have not been fully adjudicated. On those charges, Cisneros is considered innocent until/unless proven guilty.<sup>8</sup>

- **High**

Infiltration into mid-level government positions that can lead to favorable judicial outcomes or financial benefit. For example, paying off a judge to rule in favor of an organized crime member during trial or bribing a city official in exchange for a lucrative city contract.

*Example: As referenced in Chapter 3, in 1989, then federal judge Alcee Hastings was impeached and removed from the bench by the United States Senate after a special committee of the 11th Circuit Court of Appeals determined he committed perjury, tampered with evidence, and conspired to gain financially by accepting bribes. The determination was based on evidence connected to an allegation Hastings solicited a \$150,000 bribe in return for reducing the sentences of two organized crime-connected convicts. Hastings recovered from impeachment and returned four years later to government service as a Member of the United States House of Representatives, a position he has held since.*

- **Highest**

Infiltration that captures heads of critical agencies, such as law enforcement, and the highest levels of government, like legislators, secretaries, the president or others responsible for establishing laws, policies or critical initiatives. For example, paying the head of a law enforcement agency to adjust the agency’s specific operations or overall priorities in a way that would be favorable to the organized crime group.

*Fun Fact: Public corruption does not persist because organized crime exists, organized crime persists because public corruption exists.*

Law enforcement officials and border officials tend to be some of the most sought after for organized crime groups to capture. Law enforcement officials have access to sensitive information about investigations, individuals, and operations that can be invaluable to criminal elements. They are also well positioned to steer investigations away from protected organizations and tip their members off about upcoming law enforcement action, like search warrants and arrests. Border officials, which includes customs officers, are critical facilitators for trafficking operations given their responsibility to secure the borders from trafficking and smuggling of drugs, people, money, and counterfeit goods. The ability to capture public officials at the border or one of the ports of entry can be extremely lucrative to organized crime groups, specifically TOC groups.

The primary law enforcement objectives when combating organized crime and TOCs are to learn the identities of the individuals who make up the hierarchy of the organization and understand their business operations in order to disrupt and eventually dismantle the group through drug and money seizures, asset forfeiture, and arrests. Understanding and addressing the threat requires casting a broad intelligence collection net, followed by a critical analysis of the intelligence and openly sharing that information and analysis among

the different agencies responsible for combatting the threat. Fusion centers, and variations thereof, are useful mechanisms for ensuring important information gets where it needs to go within the government, particularly when combating the international threat posed by TOCs.

The following are a few of the information sharing platforms used by law enforcement in the fight against cross border organized crime activity and TOCs:

- **The El Paso Intelligence Center (EPIC)**

A DEA led intelligence center built to support the investigative and interdiction needs of local, state, and federal agencies working drug and human smuggling investigations along the southwest border. EPIC also houses the Border Intelligence Fusion Center, a collaborative effort between DHS, DOJ, and Department of Defense elements, responsible for collecting, analyzing, and disseminating intelligence and information related to criminal activity around the border.

- **The Organized Crime Drug Enforcement Task Force (OCDETF) Fusion Center**

The OCDETF Fusion Center is a drug and financial intelligence warehouse staffed by agents and analysts from 14 participating agencies. The fusion center is designed to facilitate multi-agency operations and investigations by collecting and analyzing the data derived from investigations conducted across the country with the purpose of communicating a consistent threat picture of targeted organizations, including Consolidated Priority Organization Targets (CPOTS, the most wanted international drug and money laundering subjects).

- **The Bulk Cash Smuggling Center (BCSC)**

In 2009, ICE established the BCSC to specifically address the smuggling of bulk cash. The BCSC works closely with EPIC to identify, disrupt, and dismantle the financial framework supporting drug trafficking organizations. The BCSC provides operational and intelligence support to local, state, and federal agencies engaging in bulk cash smuggling interdiction operations.

- **The International Organized Crime Intelligence Operations Center (IOC)**

The IOC ties information and resources together from nine different federal law enforcement agencies and prosecutors (FBI, DEA, ATF, IRS, U.S. Postal Inspector Service, Diplomatic Security, U.S. Secret Service, ATF, Department of Labor OIG, and DOJ) in the fight against international criminal organizations. The IOC is a case and operational deconfliction and coordination mechanism that prevents multiple cases from multiple agencies from running into each other without each other's knowledge. The IOC is also responsible for analyzing source and case information and disseminating it among the members' agencies.

Combatting organized crime and corruption begins with agents and prosecutors who are well versed experts in the two disciplines. Corruption, organized crime, and money laundering are intertwined in such a way that they feed off each other. That connectivity requires simultaneous attention by law enforcement. And although not every public corruption investigation will lead to organized crime, every organized crime investigation undoubtedly contains some element of public corruption, which is due to the reliance organized crime has on corrupt public officials.

*Example: The notorious Boston mobster James ‘Whitey’ Bulger, was an FBI source who provided information to law enforcement about the activity of his criminal competition. Bulger’s handler from the FBI was his childhood friend, Special Agent John Connolly. Bulger abruptly left Boston and went on the run from law enforcement after Connolly allegedly tipped him off on his imminent arrest. Bulger was arrested 16 years later while living with his girlfriend under an assumed identity in Santa Monica, California.*

*Connolly was federally convicted of racketeering in 2002 for protecting Bulger and members of his Winter Hill Gang from prosecution as well as for providing him with information about members of his organization who were working with law enforcement as criminal informants. Connolly was also convicted of second-degree murder for providing information to the Winter Hill Gang that led to the murder of a Florida gambling executive.<sup>9</sup> Bulger publicly, and quite predictably, denied being an FBI informant, but claimed he had a number of law enforcement personnel on his payroll acting as his own informants. Bulger was once quoted as saying, “Christmas is for cops and kids.”<sup>10</sup> The comment was suggestive of the number of law enforcement on Bulger’s payroll.*

*FBI Supervisory Special Agent John Morris, Connolly’s supervisor, admitted during Bulger’s trial that he too received money and other items of value from Whitey Bulger in exchange for information about FBI investigations.<sup>11</sup>*

## Convergence

United States Code of Federal Regulations defines **terrorism** as “an activity that involves a violent act or an act dangerous to human life, property, or infrastructure; and appears to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.”<sup>12</sup>

**International terrorism** is “violent, criminal acts committed by individuals and/or groups who are inspired by, or associated with, designated foreign terrorist organizations or nations (state sponsored).”

**Domestic terrorism** is “violent, criminal acts committed by individuals and/or groups to further ideological goals stemming from domestic influences, such as those of a political, religious, social, racial, or environmental nature.”<sup>13</sup>

Acts of terrorism, which can be funded and/or inspired by foreign or domestic individuals or entities, can be perpetrated by a lone wolf (someone who operates alone) or by a terrorist organization/network (multiple individuals who share ideology and purpose). Preventing acts of terrorism from the lone wolf can be extremely difficult given their operational isolation, ability to mobilize quickly, and nimble nature. The lone wolf threat appears to be growing in large part due to the internet’s ability to reach and radicalize quickly. Terrorist networks, on the other hand, require more money, people, and resources to be sustainable over time. That need generates more interaction between members of the organization and with individuals outside the organization. In turn, creating more opportunities for law enforcement and intelligence elements to identify, infiltrate, and dismantle the organization.

Evolution of the global threat since September 11, 2001 has faded the once-distinct lines between criminal organizations and terrorist networks. This new landscape, which continues to be refined, is most aptly characterized as convergence. **Convergence** is the intertwining or merging of bad actors and organizations, or their methods. The convergence could be as extreme as direct interaction, training, and sharing of resources, or as simple as a like-behavior or just overlapping at a single convergence point, which could be people, places, or businesses used in kind for specific criminal activity. For example, a criminal network and a terrorist network laundering money through the same casino or bank because they are known to be “friendly” to their element.

Over the past 20 years, the United States and its international partners have fought vigorously against state sponsored terrorism. Their success in that fight has forced terrorists to turn to criminal organizations (or more traditional criminal behavior) for their financing and facilitation needs. The pipeline that connects criminal and terrorist networks (crime-terror pipeline) is what links terrorists to drug traffickers and other illicit criminal organizations and their facilitators who aid in various aspects of the “business,” including transportation, acquisition of official documents (passports, driver’s licenses, etc.) or other contraband, establishing shell companies, opening bank accounts, laundering money, providing logistical support, etc. While some terrorist groups are beginning to engage more frequently in drug trafficking and other illicit criminal activity, some criminal organizations are using the pipeline to broaden their methods of violence into more terrorist-like tactics. The crime-terror pipeline thus has the ability to cross borders, devastate fragile governments, destabilize financial markets, and undermine safety and security.

Criminal organizations are generally motivated by the desire to make as much money as possible. Terrorist organizations are generally motivated by ideology. While their ultimate objectives differ, ideology is not an impediment to working together. The two groups are often willing to overlook their ideological differences if it means each will achieve their desired outcomes. This is particularly true given that criminal and terrorist groups both depend heavily on **resources, discretion, and money**, and they both require **access** to their desired market or target, safe and dependable **mobility**, and the ability to **legitimize funds**. They have enough similar needs in common on the road to their different objectives, to justify, at the minimum, the appropriation of each other’s operational “best practices.” This mimicking of operational behavior through the application of best practices could reflect, at times, more of a shared approach than direct collaboration or contact.

Recent years have revealed a number of examples where the fusion of networks through convergence has created hybrid organizations:

- In 2013, it was estimated that Al-Qaida in the Islamic Maghreb (AQIM) (State Department designated terrorist group) had a hand in the trafficking of approximately \$1.25 billion worth of cocaine across West Africa and Europe.
- In 2016, Al-Shabaab (State Department designated terrorist group) was linked by the European Union to heroin and cocaine trafficking. It was also noted that AQIM was in fact not just trafficking drugs, but was also taxing organized crime groups trafficking across territory in AQIM’s control.
- In 2017, Boko Haram (State Department designated terrorist group) was reportedly aiding in the trafficking of cocaine and heroin across West Africa.

*Example: From approximately 2007 to 2011, Hizballah, a State Department designated terrorist group, laundered a minimum of \$329 million in drug trafficking and other criminal proceeds through West Africa and the United States and then back to Lebanon. The money was wired from the Lebanese Canadian Bank and two other Lebanese money exchanges to the United States for the purchase of used cars that were shipped back to West Africa where they were sold. Proceeds from the sale of the cars were then funneled back to Lebanon through various money laundering channels. On June 25, 2013, the Department of Justice announced a settlement with the LCB that required they forfeit \$102 million to the United States.<sup>14</sup>*

An estimated 86% of the world’s opium is sourced from Afghanistan poppy fields predominantly controlled by the Taliban.<sup>15</sup> The Taliban, which has few other significant revenue streams, has used the cultivation of poppy to support their army. In August 2021, within days of the United States’ military withdrawal, the Taliban captured the Afghanistan government along with billions of dollars worth of military weapons, vehicles, aircraft, and other

equipment the United States left in country. It is unclear how many of the resources left behind were disabled when the United States left Afghanistan. Regardless, in a matter of days, the Taliban's capabilities dramatically leveled-up, making any poppy fields in Afghanistan not already in their control, destined to be theirs. Despite the clearly terrorist behavior of the Taliban, the State Department has not designated them a terrorist organization, arguably so as not to limit the United States' options when "dealing" with them. Designating the Taliban a terrorist organization would eliminate the government's ability to negotiate.

What is particularly unique about the Taliban's takeover in Afghanistan is the fact that the same group in power will also be in control of the nation's drug trade. In Latin America and elsewhere, the cartels that control the drug trade need to infiltrate the government with bribes and violence, but in Afghanistan the drug organization is also in charge of the government.

Drug trafficking organizations in Latin America have engaged in terrorist-like behavior for quite some time. They are infamous for their brutal violence and intimidation including kidnappings and mass murders, hanging people from vehicle overpasses, and their ferocious beheadings. The cartels rule by terror. They control their territories by instilling fear, and control their governments by lining politicians' pockets. In 2010, some cities south of the border in Mexico, including Ciudad Juarez, were becoming increasingly victimized by cartel violence through the use of car bombs, which is a common terrorist tactic.<sup>16</sup>

Combating crime-terror pipelines requires a multi-prong approach:

- **Follow the money.**

How do they raise it? How do they move it? Where does it begin and where does it end? Money is the common denominator. Everything that both organizations need and do comes down to money. Their leverage over politicians and other public officials . . . requires money. Their resources, transportation and security . . . requires money. Their power and influence . . . requires money.

- **Protect the financial system through public sector governance.**

Anti-money laundering laws and regulations motivate financial institutions to create their own redundancies and incentivizes them to protect the financial system. Banks and other financial institutions, thus, become force multipliers in the proactive fight against crime-terror pipelines.

- **Build relationships and share information and intelligence.**

Domestically, this is achieved through task forces and working groups between local state and federal law enforcement agencies and their respective prosecutors, and working groups with law enforcement and members within key areas of the private sector, like financial institutions. Internationally, this is achieved through the sharing of intelligence and law enforcement resources between partner nations. The FBI, DEA, and other federal agencies are particularly effective in this area given their vast international presence around the globe.

- **Expose safe havens.**

The global community has been fairly effective over the last 20 years putting pressure on financial institutions and countries who support and/or turn a blind eye to TCO and/or terrorist organizations by publicly exposing them and restricting their participation in the global marketplace. This should continue with great vigor.

- **Conduct investigations and prosecutions using experts.**

Not all investigators, intelligence professionals, and prosecutors are created equal. Crime-terror pipelines are a specialized domain, so the effort to counter them requires equally specialized people who are experts in the discipline.

- **Aggressively target the facilitators.**

## Facilitators

The illicit trade of drugs, weapons, humans, and/or information is, end-to-end, a complex endeavor involving many different essential elements, from accumulating the product or deliverable, to protecting, moving, and selling it, to managing the revenue, all while avoiding detection. One criminal and/or terrorist organization would likely not have the bandwidth or expertise to navigate the myriad complexities alone, so they commission the work out to individuals known as facilitators. Facilitators provide criminal organizations credibility and expertise. Criminal organizations draw on the public reputation of licit professionals and use that perception to establish a façade of legitimacy for their own operations. On the other hand, facilitators have specialized expertise and/or unique contacts that are key to the development of a sound criminal infrastructure. **Facilitators** are industry experts who, wittingly or unwittingly, facilitate criminal transactions and create the necessary framework to further criminal schemes, such as creating front or shell companies, opening offshore bank accounts in the names of shell companies, gaining access to private information or fraudulent documentation (passports, vehicle registrations, driver's licenses), and laundering money.

*Example: An investigation was initiated based upon information that an employee of the TSA at the Buffalo Niagara International Airport was allegedly assisting drug smugglers bypass security at the airport. Minetta Walker, a TSA behavioral detection officer, was confirmed through telephone records to be associated with known drug traffickers. The investigation revealed she was facilitating the smuggling activity, primarily, of Derek Frank, a local marijuana kingpin who was traveling regularly to Tucson, Arizona. Walker would sometimes escort Frank to his gate to ensure he was not pulled by TSA employees for random security checks. Frank smuggled cash to Tucson to pay for marijuana and then either mailed the marijuana back to Buffalo or had a member of his organization drive it back to Buffalo in a vehicle with hidden compartments. Walker admitted to her role in facilitating Frank and at least one other drug trafficker bypass security. She also admitted to notifying members of Frank's organization they were being followed by federal law enforcement. Minetta Walker pled guilty to conspiracy to defraud the United States government and was sentenced to 24 months in federal prison.<sup>17</sup>*

*The investigation further revealed that Regina McCullen, former employee for the City of Buffalo Clerk's Office, knowingly facilitated Frank's trafficking operations by creating an authentic, but fraudulent birth certificate card that contained Frank's picture and finger print, but contained someone else's name. Frank used the birth certificate card to fly under an assumed identity. Tinisha Tucker Anthony, a former U.S. Airways employee, assisted Frank's travel under the assumed identity by knowingly providing her stepson's name for his birth certificate card. Regina McCullen pled guilty to federal conspiracy to commit fraud involving identification documents and was sentenced to two years of probation.<sup>18</sup> Tinisha Tucker Anthony pled guilty to federal conspiracy to commit fraud and sentenced to two years' probation.<sup>19</sup>*

*Derek Frank was charged with running a continuing criminal enterprise. On July 9, 2012, Frank was sentenced to 135 months in federal prison after pleading guilty to money laundering conspiracy and conspiracy to distribute marijuana.*

Facilitators are especially important for investigators and intelligence professionals to target for two important reasons:

1. Facilitators can be a multi-organizational chokepoint that can lead investigators to not just identifying one criminal or terrorist organization, but possibly multiple. One attorney,

for example, might facilitate the creation of shell companies for numerous criminal organizations.

2. Without the expertise of facilitators to aid in the illicit operations, criminal and terrorist organizations have a much more difficult time avoiding detection.

Facilitators include a broad range of service providers as there are a broad range of services required for organizations to remain sustainable and operationally successful. Common examples of facilitators include:

- Public officials (law enforcement, border officials, TSA employees, judges, legislators, procurement officers, motor vehicle employees, embassy personnel, etc.) facilitate access to varied services that satisfy an organization's need for access, mobility, protection, and revenue.
- Attorneys facilitate the formation of shell companies with obscure ownership, civil and criminal consultation and defense, and could help establish charities to hide illicit funds.
- Accountants facilitate licit and illicit business activity and record-keeping, "cooking the books."
- Real estate and trust professionals (attorneys, agents, notaries, title insurance employees, etc.) facilitate the laundering of funds through the purchase/sale of property and/or management of trusts receiving illicit funds.
- Coyotes and transportation experts facilitate the smuggling of money, weapons, and contraband.
- Bank employees facilitate the opening of bank accounts and the movement of illicit funds.

*Example: In 2019, Luis Fernando Figueroa, a Wells Fargo personal banker pled guilty in federal court to money laundering conspiracy for his role on behalf of an international money laundering organization. The organization laundered approximately \$19.6 million dollars in drug proceeds "on behalf of drug trafficking organizations to include the Sinaloa cartel." Couriers for the money laundering organization traveled around the country (Los Angeles, Chicago, Boston, New York, New Jersey, and Charlotte) to collect bulk cash drug proceeds and then funneled the money through U.S. bank accounts to Mexico. Figueroa admitted to knowingly opening personal bank accounts he knew were going to be used solely for the purpose of funneling drug proceeds to Mexico.<sup>20</sup> Figueroa was sentenced to time served.*

Facilitators are often treated by investigators and prosecutors as mere enablers and not the critical co-conspirators they are. This diluted view of their contribution usually translates to a diluted level of accountability, resulting in facilitators receiving lighter criminal sentences. These lighter sentences diminish the deterrence effect, especially when viewed against the amount of money that can be made as a facilitator and because of a facilitator.

Corrupt public officials are among the most righteous and critical of the facilitator targets given the broader impact their corruption and arrest has on society. According to former Afghan parliamentarian Hussein Balkhi, "Corruption is the tree. Terrorism, destabilization, smuggling and poppy are its branches. If you cut down corruption, the rest will die."<sup>21</sup>

*Example: In 2004, 25 Motor Vehicle Division (MVD) employees and eight brokers in six different southern Arizona cities (Tucson, Tempe, Phoenix, Sierra Vista, Douglas, and Nogales) were charged with accepting bribes ranging from \$600 to \$3,500 in exchange for issuing fraudulent driver's licenses. According to Paul Charlton, the U.S. Attorney for Arizona at the time, the driver's licenses were sold to criminals seeking to conceal their true identities, including drug traffickers and coyotes responsible for smuggling immigrants across the border. The driver's licenses would have allowed the carriers to whom they were issued to travel between borders, on airplanes, and open bank accounts without disclosing their*

true identities. Authorities were unable to say with any degree of certainty how many of the licenses were actually sold.<sup>22</sup>

*Example #2: An investigation into the California Department of Motor Vehicle (DMV) was initiated with the United States Coast Guard Investigative Service looking into truckers obtaining fraudulent documents used to access restricted areas of the Los Angeles and Long Beach ports. Sixteen people were convicted and multiple corrupt DMV employees were identified as having issued fraudulent California driver's licenses.*

*To date, the spinoff investigation into the DMV resulted in seven individuals (two of whom served as brokers) being charged with federal violations for taking money in exchange for the distribution of over 100 driver's licenses issued to people who did not take and/or pass their mandatory driver's exams. A few of the DMV employees have already pled guilty and are awaiting sentencing.<sup>23</sup> Individuals involved in cases that have not yet been fully adjudicated are presumed innocent until/unless proven guilty.*

*Example #3: In March 2021, Marion Payne, a former Maryland Motor Vehicle employee was indicted on "federal charges of conspiracy to produce and transfer identification documents made without lawful authority as well as charges for aggravated identity theft and bribery of federal funds." According to the indictment, Payne was accused of conspiring with Antonio Portillo, who served as the broker, to produce authentic, but fraudulent driver's licenses in exchange for "thousands of dollars" for each license. Payne was alleged to have created more than 260 fraudulent driver's licenses with the names and address of people who were not the actual applicants. Payne used fraudulent documents to support the creation of the driver's licenses, like proof of Maryland residence and proof of tax payment.<sup>24</sup> Marion Payne has already pled guilty, but is awaiting sentencing.*

## Money Laundering

Crime pays – and for those who are good at it, like organized crime members and public officials, it pays extremely well. That is, of course, until the criminal activity that generates those funds is discovered by law enforcement and those involved are arrested. One of the most effective ways to figure out what illicit activity a criminal organization is involved in is by following the money. Determining the source, path, and destination of funds is critical to understanding the true owner of the funds and whether the activity that generated those funds was legal or illegal. Criminals seek to protect their money and illegal activity by making it as difficult as possible for outside parties, especially law enforcement, to determine source and destination of funds, but with special interest and emphasis on disguising the source.

There are three primary methods utilized by criminal and terrorist organizations to move money:<sup>25</sup>

1. The financial system
2. Physically, with cash couriers
3. Buying and selling of goods

**Money laundering** is the process by which dirty criminal proceeds are made to appear clean and legitimate. It involves masking the source of the funds in anticipation of using those funds for legal and/or illegal purposes at a later date. The United Nations 2000 Convention Against Transnational Organized Crime, also referred to as the Palermo Convention, defines money laundering in part as, "The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offense to evade the legal consequence of his or her action."<sup>26</sup> The appearance of clean money is key to creating a sustainable illicit business.



The following are the three phases to the money laundering process:

- **Phase 1: Placement**

This is the initial phase and it entails introducing the illicit funds into circulation through domestic or international financial institutions, businesses, casinos, or shops. Placement can be accomplished by breaking up a large sum of illicit funds into smaller increments and either depositing them into a bank or other financial institution, purchasing casino chips, or purchasing items like collectibles, furniture, antiques or artwork.

- **Phase 2: Layering**

Layering further separates the illicit funds from the source of the funds through a series of complex transactions that obscure the audit trail. Layering can involve transactions such as electronically transferring funds between two or more accounts within the same bank or between different banks and/or geographic locations (countries); purchasing stocks, bonds, or other investments; reselling collectibles, furniture, antiques or artwork; or converting deposited funds into cashier's checks, money orders, or other instruments.

- **Phase 3: Integration**

Re-entry of the illicit funds back into the economy by way of legitimate business or personal transactions. By this phase it can be very difficult to identify the funds as illicit proceeds unless a financial analysis of the business or individual reveals a disparity between anticipated and actual wealth.

*Example: Assume a city councilman is paid a \$20,000 cash bribe by a member of an organized crime group in exchange for proposing, and ushering support among his colleagues for, an ordinance that benefits a sanitation company owned by the organized crime group. The city councilman has a fixed and publicly documented salary, so he cannot deposit the \$20,000 directly into his bank account without raising suspicion. Instead, he deposits \$4,000 cash into bank accounts he controls, but are in the names of his five children (**Placement**). Then, over the span of several months, he transfers portions of the money to his personal account noting various reasons such as loan reimbursement, rent, education, or something of the sort (**Layering**). Finally, the city councilman purchases a time share with the funds transferred to his personal account (**Integration**).*

Money laundering techniques are in a constant state of evolution. There are a number of ways in which money can be laundered. It can be moved through financial institutions like banks, credit cards, virtual currency markets, or money remitters; or non-financial institution businesses like casinos, car dealerships, real estate, precious metal or other high end product dealers, or import/export companies.

**Trade based money laundering (TBML)** is a money laundering method designed to exploit the international trade system in an effort to obscure the origins of funds and transfer value across borders. There are a number of different techniques for effective TBML, but a simple technique would be the purchase of goods in one country, followed by the sale of those goods in another country. For example, if a cartel used drug proceeds to purchase socks from a company in Los Angeles (possibly at a discount from a co-conspirator) and then had the socks transported and subsequently sold in Mexico.

**Terrorist financing** and money laundering differ in that the source of terrorist financing funds is not necessarily illegal activity, unlike money laundering, which is sourced from illegal activity. Additional differences exist with respect to the motivation behind each method, the

size of the transactions, and money flow. Money laundering tends to align with the criminal motivation of profit, whereas terrorist financing is motivated by ideology. Money laundering transactions tend to be structured and larger, while terrorist financing transactions tend to be smaller dollar transactions. Also, the flow of funds in a money laundering operation is generally circular whereby the money ends up in the control of the person or entity that initiated the laundering process. In terrorist financing operations, the flow of funds is linear. The money is raised and sent to cells and/or individuals in need of financial or operational support.

**Financial Crimes Enforcement Network (FINCEN)**, which is a bureau within the United States Treasury, is responsible for safeguarding “the financial system from illicit use, combat money laundering and its related crimes including terrorism, and promote national security through the strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence.”<sup>27</sup>

As of June 30, 2021, FINCEN’s national priorities in the fight against money laundering and terrorist financing were identified as, in no particular order:

- Corruption
- Cybercrime (including cybersecurity and virtual currency considerations)
- Foreign and domestic terrorist financing
- Fraud
- Transnational criminal organization activity
- Drug trafficking organization activity
- Human trafficking and human smuggling
- Proliferation financing

The topic of money laundering can fill volumes upon volumes of books. This brief review is for superficial awareness only and is not all-encompassing of this complex and sophisticated criminal behavior.

## Benchmark Investigation

Kwok Cheung Chow, AKA Raymond “Shrimp Boy” Chow, AKA Ha Jai, was in and out of prison ever since his arrival to San Francisco from Hong Kong at the age of 16. In the 1990s, Shrimp Boy was convicted on gun charges and sentenced to 25 years to life. He was able to cut a deal with the government that resulted in his being let out of prison early. Subsequent to his release, he did promise not to re-engage in criminal behavior. True to his promise, around 2008, Shrimp Boy began doing work with troubled youth and was praised by politicians who publicly celebrated his turnaround from a life of crime.

“Chow [Shrimp Boy] was lauded by [former] U.S. Senator Dianne Feinstein of California for his work as a former offender who had become a community role model and praised by [then] San Francisco Mayor Ed Lee for his ‘willingness to give back to the community.’ Shrimp Boy also posted pictures of himself on Facebook with [then] Lt. Governor Gavin Newsom.”<sup>28</sup>

Shrimp Boy became so popular with the political elites in California that former California State Senator Leland Yee even sought an official state Senate proclamation praising the Chinese-American Chee Kung Tong organization which is headquartered in San Francisco’s Chinatown and led by Shrimp Boy, who held a position known as Dragonhead. Yee was an esteemed politician in California having built a reputation among his various constituents during a long 26-year political career where he served as a member of the San Francisco

school board, California Assembly, and then the Senate. Unfortunately, while Yee was celebrating the work of Shrimp Boy, Chee Kung Tong was acting as a front for a multi-million dollar laundering operation. In reality, Shrimp Boy was a triad boss who was running one of the most powerful Chinese organized crime groups in the country out of Chinatown in San Francisco and Leland Yee was on his payroll. Yee was allegedly reeled in by Shrimp Boy with campaign contributions. In exchange for the campaign contributions, Yee, among other things, provided cover for Shrimp Boy by publicly legitimizing him and his organization.

A multi-year undercover investigation led by the FBI culminated in the March 2014 arrests of over 25 people, including Shrimp Boy and Leland Yee. Yee was in the middle of running for California Secretary of State when he was arrested. According to the information released about the investigation, Yee did not only accept bribes from Shrimp Boy, but he also sought and received bribes from others, including an FBI undercover agent. Yee, who was publicly anti-gun and anti-violent video games, also agreed during the course of the investigation to facilitate the smuggling of machine guns into the United States from the Philippines on behalf of individuals he believed were part of an organized crime group from the east coast.

In 2015, Leland Yee was “convicted on one count of conducting the affairs of a racketeering enterprise through a pattern of racketeering activity.” He was subsequently sentenced to five years in federal prison.<sup>29</sup> Shrimp Boy “was charged with 162 counts including 125 counts of money laundering, aiding and abetting the laundering of proceeds of narcotic sales, conspiring to deal in illegal sales of goods (including 50 cases of Hennessy XO and 27 cases of Johnnie Walker Blue Label Scotch Whiskey), and engaging the illegal sale of cigarettes (over 10,000).” He was alleged to be running the criminal organization for the purpose of trafficking in illegal drugs, extortion, and collection of illegal debts. A superseding indictment included murder and murder conspiracy. The jury found Shrimp Boy guilty on all 162 charges and was subsequently sentenced to life in prison.<sup>30</sup>

In a related investigation, Wing Mo “Fat Mark” Ma was sentenced to life in prison for the murders of Cindy Bao Feng Chen and Jim Tat Kong, known rivals of Shrimp Boy. Fat Mark’s plan was to murder the couple in a remote area and then use Alameda County District Attorney inspector Harry Hu (a retired Oakland Police lieutenant) to help evade law enforcement. Hu was alleged to be on Fat Mark’s payroll since around 2008 having been bribed with trips to Las Vegas (which included accommodations, meals, and entertainment), use of a Mercedes Benz, concert tickets, and expenses for a remodel at Hu’s residence.<sup>31</sup> Hu was sentenced to 30 days in federal prison for accepting bribes from Fat Mark, a known criminal. Hu accepted bribes from Fat Mark even after he suspected him of being involved in a double murder.<sup>32</sup>

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Part II

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# Combating Corruption

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# Impact of Corruption

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In order to become properly equipped for the fight against corruption one must first understand why the fight matters. It is only after gaining a healthy appreciation for the stakes that the combatants can fully appreciate the vigor and sacrifice it will take to endure.

The impact of corruption is derived from actual public corruption and perceived public corruption. **Actual public corruption** is corruption that is proven in a court of law. **Perceived public corruption** is the belief that corruption is occurring without it having been proven in a court of law.

The perception of public corruption is often, though not exclusively, a perception inadvertently manufactured by the government. The government and its agencies can create this perception by operating with a lack of transparency or limited oversight, politicizing an agency or an individual within an agency, not taking ownership or holding individuals accountable for known errors or policy violations, and not prosecuting public officials for alleged crimes made public (which could in reality be a lack of understanding by the public of the elements of the crime, the evidence obtained/needed, or the facts). All of these, separate and in their totality, plant seeds of doubt that can grow into the perception of corruption.

Just because many of the causes of poor perception are self-inflicted by the government does not mean they can be avoided, at least not entirely. The government and its agencies need to be cognizant of how their actions are perceived, but all agencies are not the same and therefore cannot respond the same. The FBI and other law enforcement agencies, for example, should not run totally open and publicly transparent investigations just to avoid negative press and poor public perception. Nor should they only take law enforcement action against people who will not create controversy. That is not possible or prudent, nor is it in the best interests of the American people. FBI agents are taught in the academy to consider how his or her actions would be perceived by the American people if they landed on the front page of the newspaper the next day (back when newspapers were a thing). Negative press and negative perception is something that is important to anticipate and consider, and it may motivate an agent to modify timing or approach, but it does not mean it is enough to prevent righteous law enforcement action from taking place.

Elected officials own a good amount of the blame for the perception of public corruption in government due in large part to what they say, as well as what they do not say. Generally, the public would expect, or at least should expect, the public officials who have oversight and funding responsibilities over various government entities to lead in a way reminiscent of any corporate board or CEO. Politics is politics, but people want to believe politics can be set aside when it is time to do the job the elected official was voted in office to do.

A culture of integrity starts at the top and it starts by those at the top talking about the importance of it, just like in a corporation. However, elected officials, particularly at the



federal level, do not often speak of integrity and honesty unless it is to allege the absence of it from their political opposition. It is not popular as a legitimate talking point or call to action for members of their own team because honesty and integrity frequently conflict with the gameplay of politics, and hypocrisy is a big part of that game. This is contrary to good leadership and the voters see it.

*Example: On October 19, 2021, United States Representative Jeff Fortenberry was indicted by a federal grand jury for allegedly lying to the FBI and concealing information related to foreign campaign contributions funneled to Fortenberry's campaign by Nigerian billionaire Gilbert Chagoury. Chagoury received a deferred prosecution agreement and was fined \$1.8 million for his role in the illegal campaign contribution scheme.<sup>1</sup> The investigation into Fortenberry has not yet been fully adjudicated and he is considered innocent until/unless proven guilty.*

*Most notable about the response to Fortenberry's indictment was the actual lack of a response from his political peers. One might expect someone from the opposition party, at least, to politically exploit the indictment, "See, we told you their side was corrupt," or something of the sort. Elected officials, anecdotally, are quick to call their opposition "corrupt," so it becomes glaringly obvious when law enforcement action alleges actual corrupt or criminal behavior and few, if any, say anything. Instead of politicians piling on and pointing fingers, the opposite happens and everyone appears to get really quiet. This is not an uncommon response (or lack of a response) from politicians when "their own" are indicted. But just because it is common, does not make it logical considering how freely politicians fire off allegations of corruption. The absence of a response highlights the faux outrage that comes from elected officials over alleged corruption and might suggest many are concerned they themselves are all one FBI interview away from their own trouble.*

Metaphorically, politicians are like actors in a play. They will be whoever they have to be to sellout the theater. It is the reason so many of them are known for flip-flopping on important platforms over their political career; they are chasing their audience. It is also why politicians tell their constituents and political party what they want to hear and not what they need to hear.

Politicians sometimes try to differentiate themselves from their competition by highlighting a "problem" within the government that might not even exist and then point to themselves as the solution. That means elected officials are willing to say things that undermine government organizations because it is politically beneficial to do so, regardless of whether or not it is true. The party talking points dictate the narrative the elected officials are expected to follow and sometimes that means throwing another government agency "under the bus" if the party requires it. These politically motivated attacks feed the perception of corruption in two ways. First, if elected officials say an agency is corrupt then many people, at least in their own party, will believe that government agency is corrupt. Second, if elected officials say an agency is corrupt then those who know better or are on the political opposition will know the elected official is playing politics with important issues and believe the elected officials to be corrupt. Politics is the ultimate manufacturer of perceived corruption.

What politicians say matters because people are listening.

Regardless of whether the consequences of corruption are derived from actual or perceived corruption, the cascading effect on society is far reaching and can attack the nation's foundation from many different angles. Some of the most common critical areas impacted by corruption, include:

- Economy
- National security
- Justice
- Confidence in processes and institutions
- Quality of government services

## Economy

Public corruption can be devastating for economies. South and Central America are superb examples of how rampant corruption eats away at the financial foundation of a country and destroys lives. The poor suffer the most in regions gripped by systemic corruption. When basic government services require bribes, the poor lose out on those services because they cannot pay the bribes. Survival becomes the priority and the challenge.

Aside from the short-term impact, public corruption has a well-documented history of negatively impacting long-term economic efficiency and growth by creating obstacles to the market, increasing corporate costs including the costs of goods sold, stifling innovation, encouraging capital flight, and deterring foreign and domestic investment.

The corrosive nature of public corruption eats away at the free market by eliminating the level playing field and closing off the market to competition. New and existing companies who are either unwilling or unable to pay-to-play, as a consequence are unable to participate in the marketplace. When the market is cutoff to competition, quality, pricing, and innovation become less essential to success. The absence of competition, therefore, becomes detrimental to a nation's economic development. According to former Deputy Assistant Attorney General William Kolasky, "Competition has a positive impact, not only on the well-being of consumers, but also on a country's economy as a whole. Competition bolsters the productivity and international competitiveness of the business sector and promotes dynamic markets and economic growth."<sup>2</sup>

The government passes a portion of the corruption risk onto companies through ever-increasing regulatory requirements, which, in turn, results in vast legal liability costs, potential reputational damages, and the development of financially burdensome ethics and compliance departments. This is a particularly heavy expense for financial institutions who work to combat money laundering and terrorist financing, which includes the laundering of proceeds derived from corruption. According to one report from LexisNexis Risk Solutions, the total financial crimes compliance cost for financial institutions around the world, which includes banks, insurance companies and asset managers, is projected to reach \$213.9 billion in 2021. That is an approximate \$33 billion increase from 2020. Europe and the United States represent approximately 82% of that total.<sup>3</sup>

Additionally, domestic and foreign investors looking to put their money to work in predictable markets are deterred from investing in unstable or discriminatory markets created by corruption. Foreign direct investment plays a key role in the economy because it serves as a critical source of innovation, jobs, exports,<sup>4</sup> and even corporate tax revenue for the host country.

Public corruption deters foreign and domestic investment, undermines competition, increases corporate costs, reduces tax revenue, and destroys the lives of the most desperate.

## National Security

Foreign governments, international and domestic terrorist organizations, and transnational and domestic criminal organization all pose a threat to the nation's security and way of life.

Foreign governments utilize their intelligence apparatus to illegally acquire proprietary and intellectual property and protected military and other government resources and intelligence. They also use intelligence resources to influence elections at various levels in furtherance of their political or economic agenda. Public officials in the military and law enforcement communities are often targeted for recruitment by foreign intelligence operatives, but elected officials at all levels of government are also targeted. They will typically use foreign campaign money, with or without the knowledge of the elected official, to establish a favorable relationship with the candidate or incumbent.

Foreign governments are extremely patient and savvy and do not necessarily wait until an elected official reaches the federal stage before targeting them for recruitment. Lower level state and local officials believed to be well-positioned for a future in the federal government are extremely appealing because recruiting at the state and local level can be done with typically less scrutiny and the long “professional runway” provides opportunity for a longer term relationship.

*Example: This author was case agent on a public corruption investigation into a local public official who was recruited to work directly on behalf of a foreign tyrant in order to improve perception of that tyrant in the United States. This was something discovered during the course of the investigation and not the reason for the investigation.*

Terrorist and criminal organizations differ in their overall mission, but both inexplicably damage the safety and economy of the American people, whether directly with an explosive device or indirectly through narcotics or human trafficking or something similar. The probability of their mission success and sustainability over the long term is facilitated significantly by the corrupt acts of public officials.

Public corruption makes the country less safe because it provides protection for criminal organizations and leaves the country vulnerable to foreign intelligence and terrorist attacks.

## **Justice**

Public corruption undermines the rule of law. The ability to illicitly pay a public official for preferential treatment or an undue advantage is contrary to the honest services the community expects or deserves from the public official, and it implies the “rules of the game” are not the same for everyone. The problem is exacerbated when the corruption involves a public official who has a role in execution of the rule of law. There is nothing more offensive to the rule of law than when those responsible for writing the law, enforcing the law, prosecuting the law, or presiding over the court of law, use their position to violate the law.

## **Confidence in Processes and Institutions**

Confidence is a key ingredient to the success of a nation’s political processes and government institutions, but public corruption undermines that confidence. If the people do not trust the legitimacy of the political process, they will not vote. If they do not trust the legitimacy of the government institutions, they will find illicit alternatives. Research suggests there is an inverse relationship between confidence in the government and corruption levels. As public corruption increases, confidence tends to decrease; as public corruption decreases, confidence tends to increase. A decline in confidence can therefore be both the consequence of public corruption and the reason behind it.

## **Quality of Government Services**

The quality of government services deteriorates as public corruption becomes more prevalent. Corrupt government contracts negate the need for high quality deliverables (auditing services, bridge construction, consulting, etc.) at a competitive price. This inevitably devolves into a below standard deliverable at a high price to the tax payer. It is bad enough when the taxpayer is not receiving the product or service they are paying for, but it becomes much worse when the safety of the taxpayer becomes compromised as the result of a “dirty” deal. Like, for example, when the military buys substandard ammunition during war time or low grade steal for a highly traveled bridge.

Additionally, public officials sometimes put up service barriers to the distribution of services or resources in a way that provides greater opportunity for the public official to embezzle or extort bribes, as opposed to allocating resources for the benefit of public welfare. In other words, the public official tightens his grip on the restrictions in order to make it harder to obtain the resources, creating a marketplace where only those willing to pay a bribe will be able to loosen that grip and gain access to the resource or service.

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# Four Pillars of an Anti-Corruption Posture

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There are a number of different steps each government division or department can take to counter the corruption threat. Some of the methods deployed by one government entity can be mimicked by all other government entities, like anti-corruption policies and training, while other methods will be unique to the entity based on their organizational structure, makeup, and purpose. A police department, for example, will address corruption concerns they have differently than the mayor's office, the city council, or the local liquor board.

In a macro sense, a strong anti-corruption posture requires a more exhaustive and collaborative approach than one left entirely to the government to manage. The responsibility to hold public officials accountable and disrupt acts of corruption falls on the shoulders of those potentially vulnerable to corruption and to those potentially impacted by corruption. Which means everyone. The corrosive nature of corruption is too widespread and plays far too critical a role in the downfall of a country for its people, in all facets and at all levels, to not actively participate in the fight against it. So, while the government should be resilient as it self-polices, the burden is not theirs alone.

The most comprehensive anti-corruption posture engages the following four key contributors, or pillars:

- Government
- Media
- Industry
- The people

The four pillars each serve a uniquely different function in the fight against corruption, but like the legs of a table, their overall effectiveness is measured by their ability to stand alone as well as their ability to support the other pillars in providing a balanced and stable foundation. In reality, their purpose is as much about providing an overlapping coverage of corruption as it is ensuring the other pillars are doing what they are supposed to be doing. When one pillar fails to provide suitable coverage in the fight against corruption, the other pillars must pick up the slack for the lagging pillar and put pressure on it to deliver on its obligations. For example, if the government fails to live up to proper anti-corruption standards, the other pillars need to "step up" their anti-corruption effort, but also the media must report the deficiency, and businesses and the people must voice decent and demand the government refocus and reprioritize.

### **Government**

The government's role in the fight against corruption is the most broad and most critical of the four pillars. It is the most broad because it involves every facet of the government. Every

individual working for every government entity has the ability, in one way or another, to use their position for personal gain at the expense of the taxpayer. The government is the most critical pillar because they own the risk. While others have a stake in the fight, it is their house, so to speak, that needs to be kept clean and nobody has better insight into the dirt that can fester than those who live in the house. The average person does not have insight into the inner workings of government, like government employees. The trust has been granted to them, so the obligation is theirs to continuously earn and protect that trust. They do this by taking seriously the threat of public corruption and vigilantly ferreting it out wherever it may fester.

The government serves three primary functions in the fight against corruption:

- Oversight
- Enforce
- Educate

Each government entity must establish and enforce ethical requirements and operational mandates and policies; legislators must pass strong anti-corruption laws; law enforcement must aggressively investigate allegations of corruption; prosecutors must rigorously pursue criminal convictions; judges must run objective and balanced courtrooms; public officials must choose integrity over self-dealing; and politicians must condemn public corruption and support the investigative and prosecutorial actions of those charged with holding accountable the corrupt. Additionally, agencies within the government should educate the communities they serve on what to look out for and how to report allegations of corruption.

*Intolerance is the key ingredient in the fight against corruption, but community education and awareness must precede intolerance and an equal distribution of accountability must follow, otherwise, claims of intolerance are meaningless.*

## Media

The media is a great tool for communicating local, regional, or global news to massive amounts of disparately located people simultaneously. Thanks to the Internet, the reach of the media is virtually endless. Some of the news reported by the media is innocuous and mundane, but useful, and some of it is hard hitting and even scandalous. They report on weather, traffic, government, politics, military, education, criminal activity, and prosecutorial activity, among other timely and relevant topics. Prosecutorial activity would include criminal investigations, charges, and trial. It is important to report public corruption prosecutorial successes, like convictions, because it communicates to the community that the government is doing what it should be doing and will spend time and money to hold accountable those willing to engage in corrupt activity. The fear of punishment can be a strong deterrent and the media helps convey what accountability ends up looking like.

In general, the media serves three primary functions in the fight against corruption:

- Investigate
- Educate
- Memorialize

The objective execution of which can be extremely useful in the discovery and deterrence of public corruption.

Part of what makes their role so useful is the fact that they are not law enforcement; they are not the government. Media outlets in the United States have an autonomy separate and apart from the government that is essential to objective reporting. That independence gives

them an inherent credibility among those to whom they report that must be safeguarded at all times with the highest ethical standards. Government controlled media are commonplace in tyrannical or communist countries because those governments know how valuable information is to controlling behavior. People can be controlled by what they know (or think they know) and what they do not know. Propaganda is a useful tool of manipulation and politics is the ultimate manipulation. The power of the media in the hands of the political majority (whichever party) is a dangerous scenario that could only end with the destruction of the country's foundation. The media is, and should remain, an extremely powerful and extremely important tool for all people.

Another important distinction between the government and the media is the media's ability to, for the most part, say what they want to say. Law enforcement will not (should not) comment on the existence or status of an investigation. They understand doing so publicly could undermine the investigation and be catastrophic for reputations and lives. Publicly and prematurely alleging criminal activity could cost someone their job, family, friends, well-being, and worse. Allegations are sometimes easy to come by, but proving them is something else. Law enforcement needs to protect that information from the public as long as possible in the event the allegation is not accurate, not provable, or sourced from someone being deceptive. However, for journalists, mere corroboration might be all that is necessary to run with a story, and that low standard is sometimes viewed as good and sometimes can be very bad.

Investigative journalism in particular can play a key role in identifying the corrupt activity of public officials. Numerous criminal investigations over the years have originated from information reported by crack investigative journalists who conduct exhaustive research and extensive interviews. Some witnesses of alleged crimes want to share information they have or heard with an authority, but may be hesitant to go to the FBI or the police, either out of concern for being labeled a "snitch" or because they know if the information goes unproven it will be protected by law enforcement and might never be made public. In lieu of that, people will sometimes prefer to talk to media outlets or journalists.

Unfortunately, not all who report information to the media are altruistic in their intent or even honest. Some people say what they say to the media because they want the information to become public, whether true or not. They might do this as an act of vengeance; or for political reasons; or because they think it will make them famous; or any number of other potential reasons. Lying to law enforcement can be a crime, but lying to the media, or the media lying to its audience for that matter, is not.

The vast catalogue of media reports about public corruption or allegations of corruption creates a log of historical events that can be both educational to communities and useful for future investigations.

## **Industry**

Generally, private and public companies have the potential to pose a public corruption threat as a bribe payer/co-conspirator (internal threat) and/or unwitting money laundering facilitator (external threat). The bribe payer threat is internal because that is where the bad actor is located, inside the company. The unwitting money laundering facilitator is an external threat because that is where the bad actor is located, outside the company. Companies need to wage a two-front battle against public corruption, internally and externally.

A successful business (small or large, domestic or global) is one that can secure and exploit a competitive advantage. Competitive advantages can fall into any number of different broad categories, including, but not limited to, product, process, price, or customer engagement. The sustainability of that competitive advantage is what determines the extent and duration

of the company's success. This is not the secret sauce to success, this is the very public sauce to success. Everyone in business knows this is what it takes to be successful. So, any company with a competitive advantage today has to work hard to hold onto it tomorrow, while other companies seek to obtain their own more meaningful, more sustainable competitive advantage. Fending off one or more hard charging competitors is an exhausting effort that can result in deadlock or outright failure. Having a public official "in your pocket," however, is one competitive advantage that is hard to match, let alone beat.

Paying a bribe to a public official to expedite a re-zoning, or to win a lucrative government contract, or obtain favorable legislation, or anything of the sort, can be its own massive advantage against the competition. The simple ethical solution is to just tell companies to operate with the highest levels of integrity and not pay bribes to public officials. That can be easier said than done for a struggling business owner fighting for his and his employees' livelihood, or for bigger companies who tie promotions, bonuses, and raises to an employee's productivity.

Some organizations utilize ethics and integrity programs and/or compliance programs to outline the rules and regulations, values and operational expectations for their employees. Ethics programs tend to be focused on corporate values and doing the right thing, while compliance programs tend to be focused on corporate rules. Hybrid programs also exist that incorporate both approaches into a single program, believing the two work well together. Whatever approach is taken, every company has an obligation to operate within the confines of the law, at a minimum. As any business owner would attest, absolute oversight of every employee is impossible, so the programs are established within the organization to guide the day-to-day decision making process of its employees. Obviously, more goes into establishing a strong corporate culture, but compliance and ethics programs and a top-down approach to high ethical standards are a good start. *Talking about the importance of integrity is a significant step in establishing a culture focused on integrity.*

In an ideal world, corporate compliance programs, which include policies and procedures, should be established before something goes wrong, but that is not always the case. Sometimes it takes something bad to happen for a company to take more aggressive steps. Waiting too long can result in civil or criminal penalties and fines and damage the company's reputation.

*Example: On November 23, 2020, Thomas Moyer, chief security officer for Apple, was indicted by a grand jury in Santa Clara, California for allegedly offering a bribe (200 ipads worth approximately \$70,000) to the Santa Clara Sheriff's Office in an effort to secure concealed carry permits for his executive protection team at Apple.<sup>1</sup> On June 1, 2021, a court in Santa Clara dismissed the charges suggesting a lack of evidence and stating the quid pro quo was "pure speculation."<sup>2</sup>*

*In February of 2021, Apple debuted a "new ethics and compliance site containing links to policy documents on a wide range of compliance topics," including their anti-corruption policy.<sup>3</sup> The rollout of the new site may or may not have already been scheduled prior to the indictment, but it is reasonable to assume that after the indictment Apple felt a heightened sense of urgency to improve access to the corporate policies and engage with their employees on more meaningful discussions about integrity and protecting the brand of the organization.*

Potential benefits of a compliance program include the ability to:

- Communicate to employees, customers, vendors, and the community the organization's high standards
- Reduce civil and criminal liability including fines and penalties
- Identify and deter criminal and unethical conduct and implement corrective action
- Centralize critical procedural and behavioral expectations
- Encourage employees to report questionable conduct without fear of retaliation



Companies deemed financial institutions (generally, for example: banks, credit unions, money services business, broker-dealers, and insurance companies, among others) are required by law to comply with the Bank Secrecy Act (BSA)/Anti-Money Laundering (AML) regulations in order to detect and deter money laundering and terrorist financing activity. The regulatory requirements imposed by the government on these entities is extensive and expensive, but their participation is vital to the fight against domestic and international criminal activity, including corruption. These regulations are designed to require companies engaging in financial transactions to take a certain degree of ownership in knowing who their customers are, where the money they are receiving or processing is coming from and where it is going. Although mandated by law, this makes these companies partners in the fight against the movement of illicit funds. The information these entities are able to provide to law enforcement through the identification of suspicious customer activity is critical to the investigative process.

There are a myriad requirements that go into satisfying the requirements, but an AML program should at a minimum contain, in writing:<sup>4</sup>

- Policies, procedures, and controls in compliance with the BSA that can also facilitate detection and cause reporting of eligible transactions
- The designation of an AML officer
- Ongoing AML training for employees
- Plan for independent testing of the AML program (typically annually)
- Risk based procedures for the execution of ongoing due diligence of customers. (Verify customer identity, beneficial ownership information for business entities, nature of the customer relationship, and the ability to monitor transactional activity.)

Identifying the true owner or controlling party of a company or account is not always as simple as just asking the customer. Sophisticated criminals rarely drive vehicles registered in their own name and their businesses are not any different. Family, friends, and associates are often used as cover to protect the identity of the person who has true ownership and control.

## The People

The cascading effect of corruption impacts all people in society. They pay taxes to the government in exchange for an expectation of honest services, but they do not always get what they pay for. According to a phrase made famous by President Abraham Lincoln, this is a “government of the people, by the people, for the people.”<sup>5</sup> If true, then the people must play a role in ensuring the government and those who serve in government roles live up to their end of the bargain.

As has been previously discussed, reporting allegations of corruption to law enforcement is critical to law enforcement’s success in combatting corruption. The anti-corruption mission is impossible without the help of the people.

Public corruption can be a difficult topic to understand and even harder to identify in the government without a basic understanding of how it works, why it is done, and who the people are that benefit. So it is incumbent upon the people to learn about the topic sufficiently to address it when confronted by it. The first and most important obligation of any society is to not become complacent or even content with the existence of public corruption, but they must become completely intolerant of it.

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# Proactive Intolerance

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The single greatest weapon in the fight against corruption is intolerance. Intolerance fuels expectations, inspires action, and adds decibels to the voice of democracy. From intolerance should flow every active response necessary to address corruption. *But you do not slow corruption by chasing it down, you have to find a way to get ahead of it.* The response to corruption, therefore, cannot be solely reactionary or knee-jerk. It cannot just be about accountability after the fact. It has to be focused on stopping it before it starts by proactively finding vulnerabilities that make corruption possible, by finding ways to disincentivize the corruption, by increasing the probability the corrupt will be caught, by ensuring accountability is equitable among all people, and by demanding the government become better stewards of taxpayer money and better, more ethical, leaders.

Whose job is it to be intolerant? The short, rather obvious, answer is everyone. Less obvious is with whom we should be most intolerant, and that is ourselves. If corrupt public officials demanded more from themselves then it would not matter what others attempted to do to corrupt them. There is no public corruption without the active participation of a corrupt public official.

There are two errors in thought from well-intentioned people that almost inevitably lead to a fall into some form of corruption:

1. Believing they cannot fall; which results in not properly guarding against it.
2. Believing the fall happens to everyone and is an inevitability; which is essentially granting themselves permission to fall.

The fight against the fall requires eternal vigilance and it begins from within, though it does not end there. The intolerance must also be directed at the government, the system, and the individuals who serve within the system, which includes elected and non-elected public officials. The intolerance must be vocal and it must be constant.

*Most who enter politics and other forms of public service are well intentioned. Most who leave politics and other forms of public service in handcuffs were at one time well intentioned.*

It has been said, “power tends to corrupt and absolute power corrupts absolutely.”<sup>1</sup> A competing viewpoint suggests this is not entirely accurate. Power, in this quote, gets the blame that rests on the shoulders of the man or woman who abuses it. Power and authority are actually quite necessary and good. As a parent, teacher, boss, or public official for example, a certain amount of power and authority has been entrusted for the good of the people they are charged with leading. It is the weak will of the person who wields the power that leads to corruption. Power just provides opportunity for the weakness to manifest more clearly. The amount of power does not determine the probability corruption will occur, it determines the

severity and potential reach of the corruption if it occurs. As Edmond Burke pointed out, “The greater the power, the more dangerous the abuse.”<sup>2</sup>

## Pay Attention/Plan Ahead

The first step in getting ahead of corruption is understanding where it occurs and the incentives or benefits someone might seek through bribery, extortion, or embezzlement. The scarcity of benefits and the autonomy of the public official to distribute those benefits is at the heart of nearly every corrupt arrangement, regardless of the type. Government entities must plan ahead with policies, procedures, and training, but “lay people” too need to educate themselves and pay attention to what is going on within their own government in order to best see when something is, or could go, awry.

Authority, autonomy, discretion, and a lack of oversight are factors that pose a heightened risk of corruption when simultaneously present. Identifying those instances and establishing methods to reduce the presence of all four factors will improve the anti-corruption posture. Which is why a heightened risk of corruption occurs during times of war and disaster. The urgency of the situation creates circumstances where authority, autonomy, discretion, and a lack of oversight are often necessary to ensure those in greatest need receive the services they require as expeditiously as possible.

One consideration to keep in mind is that public officials can manufacture a crises as a smoke screen for corrupt deals.

*Example: Theoretically, a public official could work to nefariously eliminate humane social programs or policies that, in doing so, puts more homeless on the street with the knowledge that specific companies would eventually financially benefit from an influx in the homeless population. The more people in a community that witness homeless people camping next to the freeway, defecating in the street, and shooting up narcotics in the bushes, the bigger the problem becomes. The bigger the problem becomes, the more frustrated and angry people become. The more frustrated and angry people become, the less they concern themselves with how much it costs to fix the problem. So, when government contracts are awarded as “necessary solutions,” the massive expenditures and excessive price tags are less scrutinized. Big problems are infused with big government money. And if the solution is an “emergency response” then much more latitude is given and less oversight is provided.*

A well functioning public service system is one key to minimizing corruption. Proactive intolerance requires understanding how the government works and paying attention to “problem areas” that can devolve into emergencies due to the appearance of inefficiencies, poor planning, or incompetence.

## Government Leadership Against Domestic and Foreign Corruption

Many government entities do a very good job of establishing anti-corruption cultures within their respective agencies. They have well established policies and procedures and speak openly and consistently about the need to maintain high ethical standards. Law enforcement too, especially the FBI and the Department of Justice, but also all the other agencies that work some form of public corruption, take very seriously their responsibility of investigating and prosecuting corruption.

Elected officials, particularly at the federal level, are at times vocal about calling out the corruption that occurs in other countries, but tend to be less deliberate with their language when speaking about domestic public corruption, unless it is an attack on their political opposition. Aiding in the fight against corruption abroad is an important foreign policy initiative. Preventing free reign of kleptocrats and tyrants abroad will save money on future military

action, reduce the need for people to seek refuge in the United States (taking pressure off the border), help stifle international crime, and assist in the protection of the financial system from an infusion of illicit funds.

The Biden administration has spoken aggressively about the escalation of corruption in Central America, for example. They have outlined plans to redirect aid to nongovernmental agencies and other private entities,<sup>3</sup> released names of politicians and revoked visas of those deemed corrupt,<sup>4</sup> and worked toward establishing an international task force made up of investigative and prosecutorial experts<sup>5</sup> in an effort to show how serious the administration is about the problem of foreign corruption in Central America, particularly in the Northern Triangle region (El Salvador, Guatemala, and Honduras).

Calls against corruption in the United States by elected officials at times appears to be more about political maneuvering, than an actual anti-corruption effort. Unfortunately, recent history may suggest the same could be true about the United States' approach to foreign corruption. Law enforcement knows corruption is the foundational scourge that threatens the nation's security and economic well-being, yet it appears under certain circumstances the United States is willing to ignore, condone, or engage in public corruption overseas.

The United States' role as corruption facilitators in Afghanistan is not a secret. Much of it is well documented in the Special Inspector General for Afghanistan Reconstruction (SIGAR) report that was released in 2016. The specifics around the United States' involvement in corruption in Afghanistan which are detailed in the 164 page SIGAR report, among other reports, is shocking. An excerpt from the report proved recently prophetic when it stated:

*Our analysis reveals that corruption substantially undermined the U.S. mission in Afghanistan from the very beginning of Operation Enduring Freedom. We found that corruption cut across all aspects of the reconstruction effort, jeopardizing progress made in security, rule of law, governance, and economic growth. We conclude that failure to effectively address the problem means U.S. reconstruction programs, at best, will continue to be subverted by systemic corruption and, at worst, will fail.*

The SIGAR report identified five primary findings:<sup>6</sup>

1. Corruption undermined the U.S. mission in Afghanistan by fueling grievances against the Afghan government and channeling material support to the insurgency.
2. The United States contributed to the growth of corruption by injecting tens of billions of dollars into the Afghan economy, using flawed oversight and contracting practices, and partnering with malign power-brokers.
3. The U.S. government was slow to recognize the magnitude of the problem, the role of corrupt patronage networks, the ways in which corruption threatened core U.S. goals, and that certain U.S. policies and practices exacerbated the problem.
4. Even when the United States acknowledged corruption as a strategic threat, security and political goals consistently trumped strong anti-corruption actions.
5. Where the United States sought to combat corruption, its efforts saw only limited success in the absence of sustained Afghan and U.S. political commitment.

The United States fought everything in Afghanistan except corruption and then bribed its way across the country and called it progress. As is all too often the case, those in charge either did not fully understand corruption and the destructive role it plays, or were more interested in achieving their desired outcome by any means necessary. The answer is tragically probably a combination of both. The United States' failure to address corruption, as well as their willingness to engage in corruption, crossed multiple administrations, so putting the blame on any

one would be unreasonable. But it does make the United States' anti-corruption maneuvering over previous decades suspect.

Talking about corruption in other countries is great cover for politicians in the United States. They get to portray themselves as intolerant of corruption without ever really addressing it at home, except for political gain. This is not a just and equitable handling of corruption by those charged with the responsibility of leading. Integrity is not a virtue reserved for everyone else. Be suspect of those who think it is.

“People’s indifference is the best breeding ground for corruption to grow.”

Delia Ferreira<sup>7</sup>

## Two Tier Justice System

Proactive intolerance requires being intolerant of practices that further corrupt behavior and undermine justice, even if corrupt behavior is an unintended consequence of the practice.

A two tier justice system is one that has different standards of accountability for two different categories of people. Some believe a two tier justice system exists for different races and/or different political parties, and/or numerous other categories or groups. Anecdotally, the category probably most commonly argued to benefit from a two-tier system is the rich and powerful, which includes politicians. For the purposes of this book, we will explore the two tier system in the context of a general special treatment of politicians by those responsible for holding public officials accountable, specifically prosecutors.

An example of a prosecutor utilizing a two tier justice system might be evidenced in his or her willingness to charge lesser known people with crimes they would not be willing to charge well known politicians with, all else being equal. It can manifest in other ways, of course, including prosecutors having different evidentiary standards (in terms of quality and quantity) for different categories of people.

The two tier justice system, when it happens, is not entirely without merit and is not always as malicious as it seems. In fact, at times, a prosecutorial decision might actually appear to be the result of a two tier justice system, but in reality is prosecutorial discretion exercised for prudent and justifiable reasons. Prosecutorial discretion is important to the prosecutorial process and is not evidence of a two tier justice system.

Reasons prosecutors might use a different prosecutorial standard for well-known public officials versus less-known public officials or others not employed by the government, include:

- Reputation

Prosecutors and FBI agents do not like to lose. If they bring corruption related charges against a public official, then they believe they have sufficient evidence to prove the subject of the investigation met the elements of the crime for which they were charged.

Defense attorneys specialize in areas of defense, just as prosecutors specialize in areas of prosecution. So, it is not uncommon for prosecutors who work public corruption in a given district to repeatedly see the same defense attorneys across the table in pre-trial negotiations. The stronger the reputation of the prosecutor, the better chance he or she has of convincing the defense attorney of the strength of the government’s case and the need for the defendant to plead guilty, which is very important when prosecuting from an office with limited resources (and they all have limited resources). If the prosecutor has a reputation for bringing “weak” cases, the likelihood of trial

will increase, which is a huge burden on money and time. The longer cases take to resolve, the fewer the number of case are ultimately charged. Essentially, a reputation for winning begets more wins with fewer resources expended, which means more people being held accountable.

Additionally, as a general rule, FBI agents joined the FBI to become FBI agents. It is their vocation; their ultimate end. But federal prosecutors, more so than FBI agents anyway, joined the Department of Justice to one day become former federal prosecutors. Their prosecutorial record affects their ability to transition from the government to a lucrative private sector role or a higher government position. Public corruption investigations tend to be higher profile and more highly scrutinized investigations. So, their prosecutorial discretion weighs heavier on potential personal impact than it does for an FBI agent, and reasonably so considering the prosecutor's name is publicized while FBI agents, for the most part, remain anonymous. If an FBI agent loses at trial (and anytime charges are filed, trial must be assumed), it hurts, but it has little impact on the future of their career, while the same cannot be said for prosecutors.

- Juries are fickle

Public corruption cases can be extremely difficult to explain to a jury, let alone for a jury to understand, and that is operating under the assumption that a jury will in fact remain objective. Just as the prosecutor and investigating agents are human, so too are the jurors. Juries are made up of men and women with opinions and biases that can change the outcome of the judicial process. The more well-known a public official is, the more likely the jurors are to have an opinion about the public official, especially if it is an elected official. This alone might push prosecutors into elevating the evidentiary standard. The higher up the chain the prosecution goes, the better the evidence has to be to convince a jury of his or her guilt.

Party politics is an emotional and very personal trigger for people, and it only takes one person on a jury to derail a conviction. Jurors do not need to justify their decisions and it is unreasonable to assume party politics could not swing a single juror's vote, regardless of evidence or even their desire to remain objective. This is not a criticism, it is a real calculation that is factored into the decision to proceed against high profile public officials.

- Appearances

Ironically, sometimes trying not to give the appearance of being political or operating a two tier justice system actually does precisely that. Recent years have proven the legal system and the faith people put into that legal system are fragile. As has already been addressed in this book, there is no sex, nationality, or political party that is more prone than another to engage in public corruption, but politics and different advocacy groups do not always believe law enforcement sees it that way. So, if public corruption investigations result in a district repeatedly filing charges against a specific demographic or political party, some will perceive political or racial bias. It is less of an issue if the government consistently wins, but if they lose a high profile case, the prosecutors will be more hesitant to bring another investigation too quickly against that same group. Doing so could add fuel to a belief that a party or demographic is being selectively targeted. An argument could, thus, be made that sometimes prosecutors talk themselves out of filing charges based on the belief that the only thing worse than not charging a high profile politician is charging them and losing, at least in terms of appearances.

There is a lot for prosecutors to consider, particularly when viewed against the content in the other chapters of this book, but public officials need to know they are not too important to prosecute (TITP). If justice is the equitable distribution of debt, then the two tier justice system is actually in conflict with justice because the distribution of accountability is lopsided in favor of the most powerful. The most powerful need to know they are not above the law, a fact that could help positively influence their behavior.

## Demand More

The government is not alone in their practice of a two tier system. Voters also justify the exercise in their own approach toward politicians with whom they agree politically. Voters do not tend to hold politicians to the same standards as they might hold themselves or others. For example, many who teach their own children not to lie and stress the importance of being honorable and just do not expect the same from their politicians. The ends seem to justify the means because the culture in politics is more about the team winning than the character of the men and women leading the team. Which is ironic because in the private sector we attribute the characteristics of a CEO to the company itself. If a CEO is known to be untrustworthy then his company is viewed as untrustworthy. So why is the same not applied to both political parties? If integrity does not matter at the top of the party, then it does not matter to the party. The country would undoubtedly benefit from a move away from this extremely low standard of governance and leadership. If trading in one's integrity is a prerequisite for success in politics, then there is something wrong with the way politics is being done.

*Politicians are permitted to play fast and loose with the truth in ways unacceptable to decent folks.* Being proactively intolerant demands voters become more cautious about how “okay” they become with politicians lying because cheating and stealing tend to follow close behind. If you treat people (politicians) like they can do no wrong, they will begin to act like they can do no wrong, and that makes unwitting co-conspirators of us all.

This low standard is not just commonly acceptable for politicians, but pundits and media personalities as well. Many political activists and “talking heads” claim to be advocates for justice and honesty, but often their outrage is limited to their opposition. *It is not courageous to call out the dishonesty of politicians on the other team while sitting silent to the deception from politician's on one's own team.* Demand more or be stuck with the same.

Politics is not what most people think it is and will never be what most people want it to be, but maybe having a more realistic view of the “players” will help better protect the country from the corruption that festers within it.

*Example: In the early 1960s Walt Disney, as the story goes, was buying land for his second amusement park in anticipation of opening it on the North Shore of New Orleans, near Slidell. His mind was ultimately changed by the greedy politicians and their regular shakedowns. Instead, Walt Disney changed locations and opened Walt Disney World in the sleepy swamp town of Orlando, Florida. Orlando is now one of the biggest cities in Florida with an estimated 40 million tourists visiting per year.<sup>8</sup> Walt Disney demanded more in this instance, he demanded better, and that is what he found.*

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# Ethics in Law Enforcement

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The law enforcement badge represents an authority granted to the person privileged enough to wear it. This authority is understood by communities and is essential to gaining their compliance during arrests and other law enforcement action, like search warrants and traffic stops. This puts the burden of protecting the actual and perceived integrity of the badge squarely on the shoulders of those who wear it. Law enforcement officials, therefore, must treat the badge as if anything and everything they do while wearing or displaying it is done with the knowledge and support of the agency who issued it. This should not only guide the actions of the officer or agent while on duty, but should influence his/her behavior off duty as well, especially while around those who know the individual to be a member of law enforcement.

**Ethics**, according to *Police ethics: Organizational implications*, is “The standard of individual or group conduct that define what is morally right and wrong.”<sup>1</sup> Those who work in law enforcement are no more unethical or deviant than any other group, but the unique demands of the job require a more strict adherence to ethical behavior than most. Few professions directly impact the rights and freedoms of others like law enforcement.

Law enforcement professionals have the awesome multi-faceted responsibility of enforcing the law of the land. With that comes the ability to write citations; take someone’s freedom away with an arrest; seize or collect illicit money, drugs, or other contraband, or assets purchased with proceeds of a crime; and use force, even deadly force when necessary, to preserve and protect life. Law enforcement professionals must maintain the highest ethical standards if they are going to be effective and righteous in the execution of their police powers. These high ethical standards are not just a moral entitlement for the communities they serve, but also for the professionals they serve alongside. Ethical failures of a single law enforcement professional affect the way all who wear the badge are viewed. “Dirty” cops make the job harder for the good ones when they undermine the trust of the community. Nobody is more irate by the actions of a corrupt or unethical member of law enforcement, than all the law enforcement professionals working diligently to live out their sworn obligations.

Corruption by public officials, including law enforcement, is generally argued to be the result of either the slippery-slope or the steep-cliff. The **slippery-slope** is a metaphor that explains the gradual decline of behavior by a person or organization into increasingly more deviant behavior as smaller immoral acts pile up.<sup>2</sup> The **steep-cliff**, on the other hand, is a dramatic shift in behavior leading to a big leap into corruption arguably brought about by a scenario either believed to be “too good to pass up” or one where a significant event has created a sense of desperation. Desperation as a motivation behind a decision to become corrupt can sometimes impact how others view the severity or egregiousness of the corruption.

*Example: A police officer takes advantage of a security deficiency in the evidence room and steals \$500,000 in seized drug money that he believes was not inventoried and would not be missed. He*

*steals the money to buy a vacation home in the mountains. His eventual capture and incarceration would not result in much empathy from those who learn of his deviant behavior. However, consider another police officer who does the same, but he is a recent widower and father of seven children. His six-year-old daughter is dying of a rare disorder and the \$500,000 was going to be used for an experimental treatment overseas that is believed to be her best chance at survival. The two scenarios would not necessarily be viewed the same even though the two crimes were unequivocally acts of public corruption.*

Anecdotally, corrupt public officials can fall victim to the steep-cliff, but it is a path less common than the slippery-slope. The gradual devolving of sound decision-making into corrupt behavior often begins with a pattern of questionable or outright unethical decisions. Some ethical decisions are easy to make and easy to focus on because the stakes are so high, but it is when the stakes are low that law enforcement officers have to pay particular attention. *When law enforcement professionals compromise their integrity on low stakes ethical decisions they weaken their resolve for the bigger stakes ethical decisions.* It is for this reason that curbing missteps as they occur is so critical to establishing and maintaining an agency's ethical culture. Human error, incompetence, poor ethical behavior, and corruption should be met swiftly by consequences commensurate with the severity of the action.

Ethical decisions are not made in a vacuum. The social, familial, and cultural influences in life, which include religious beliefs, nationality, education, occupation, upbringing, laws, agency policies, and experiences, help form the moral criteria, or point of reference, by which ethical dilemmas are decided.<sup>3</sup>

An ethical dilemma for law enforcement professionals, according to *Justice, Crime and Ethics*, is:<sup>4</sup>

- A situation in which the law enforcement officer did not know what the right course of action was, or
- A situation in which the course of action the law enforcement officer considered right was difficult to do, or
- A situation in which the wrong course of action was very tempting.

The right answer to an ethical dilemma is not always easy to see. Sometimes the best option is obvious, and sometimes it is vague and unclear, while other times there can appear to be multiple good options or even no good options at all. The potential impact of an ethical dilemma can vary from dilemma-to-dilemma, the complexity and stakes of which can influence the amount of time and/or attention an individual is willing to dedicate to ensuring the appropriate path is selected.

Ethical frameworks are varied perspectives that help people determine the best or most ethical course of action when faced with an ethical dilemma. Five common ethical frameworks or standards, include:<sup>5</sup>

- **Virtue Ethics**

This approach to ethics and the handling of ethical dilemmas draws on virtuous habits to help dictate the direction or response. It seeks to align itself with the virtues held important to the person. Examples of virtues include, but are not limited to: courage, love, integrity, prudence, self-control, and honesty. This approach attempts to answer the questions: What is the most moral decision based on my values? What kind of person am I if I do this or that?

- **Utilitarianism**

This approach to ethical decision making seeks to maximize the good while minimizing the bad. It is a consequence based approach that justifies the action based on the

benefits and drawbacks to all affected by the decision. This approach attempts to answer the question: What ethical decision will benefit the most people?

- **Rights (or Duties) Approach**

This approach focuses on the human dignity of the person as its foundation for making ethical decisions. People who utilize this framework do not look at humans as a means to an end, but believe they have the right to be viewed as the end itself. They assume the rights of the person, which debatably includes the right to live as one wishes and the right to not be injured by someone else, are central to the calculation of ethical dilemmas. Some even extend this approach to animals and the duty living creatures have to respect the rights of other living things. This approach attempts to answer the question: Which decision aligns with the rights of the human person?

- **Common Good Approach**

The well-being of the community or society and the health of their relationships are central to this approach. It suggests the interwoven relationships connecting people in society are the foundation for ethical decisions and that compassion for others, especially the vulnerable, are critical considerations. They emphasize the importance of interdependence and the welfare of all, which can include focusing attention on public education, police and fire, and the healthcare system. This approach attempts to answer the question: What decision promotes the health and well-being of all within the interdependent community?

- **Justice-Based Ethics**

The equitable treatment of all is the motivation behind this approach to ethical decision-making. In instances where there is an imbalance, there must also be a justification to support the inequality. Salaries, for example, differ between people but specialized elements of one job over another may support the salary disparity. This approach attempts to answer the question: What decision promotes and furthers the equal treatment of all?

The various ethical frameworks can be helpful in understanding the methods or approaches used for solving ethical dilemmas, or for determining acceptable ethical standards, but even these can be viewed differently by different people. There are varied ways in which people define what is good and beneficial versus what is bad and harmful, or even what human rights people are entitled to. Some people might debate what constitutes a community, either the size or the makeup, or even how to define a common good. Different well-intentioned people operating within the same framework could end up making two very different decisions. Nonetheless, in most cases, the different methods will likely result in similar answers.<sup>6</sup>

Ethical failures in law enforcement, generally, fall within one of three categories:

- **Policy/Procedural misconduct**

Non-criminal violations of agency directives typically result in penalties that could include a disciplinary letter to the employee's personnel file, suspension with pay, suspension without pay, and termination.

- **Criminal misconduct**

Criminal violations related to, but not limited to, excessive force, planting evidence, stealing evidence, sexual misconduct, deliberate indifference to medical needs, failure to intervene when a fellow official is engaging in criminal misconduct, and planting evidence, most often result in a fine, incarceration, or both.

- **Public corruption**

Criminal violations specific to the use of the law enforcement position for personal gain (bribery, extortion, embezzlement) most often result in a fine, incarceration, or both. Ethical dilemmas in law enforcement, generally, fall within one of the following categories:

- **Honesty and integrity**

Law enforcement professionals are expected to maintain their commitment to their oath by behaving in all matters with honesty and integrity. This is not intended to discount or eliminate their humanity, but should serve as a guide for their focus. In the FBI there are two sure ways to get fired, mishandle money or display a lack of candor (lie). Getting caught in a lie hinders the officer or agent's ability to testify at trial. If he or she cannot testify, then they serve little benefit investigating those who violate the law.

*Example #1: Two officers respond to a drive-by shooting at the residence of a suspected drug dealer. Upon arrival, they find the drug dealer lying dead on the front porch. One officer notices a brown paper bag in the bushes, within arm's reach of the drug dealer. He opens the bag and finds \$10,000 in cash. The officer tells his partner that they both work hard and deserve to keep the money. He further rationalizes the decision by claiming nobody would be hurt and they are still taking drug money off the street. They decide to keep and split the money. Is this okay? What if it was \$100,000? What if it was \$10? Does the amount matter?*

*Example #2: An FBI agent was transferred from the Miami office to the field office in Los Angeles. On his third day in the office, his bucar (Bureau vehicle) clipped the quarter panel of another vehicle while parallel parking. The agent looked around and did not see any witnesses. He pulled next to the parked car and noticed a small dent, but was not sure if he was the cause of the dent. Not wanting to draw any unnecessary attention to himself as the new guy in the office, the agent decided to drive away without leaving a note. Unbeknownst to the agent, a witness saw the accident and made note of his license plate. The local police were called. When questioned about the incident, he denied being in the area. A further investigation revealed CCTV footage of the incident clearly showing the details as they occurred. An otherwise minor event blown into a major event due to a lack of integrity followed by a lack of candor.*

- **Loyalty**

Police officers do not just witness wrongdoings committed by criminals out on the street, but might also witness wrongdoings committed by fellow officers. Whether it is a minor policy violation like inappropriately using a government issued vehicle or something more sinister like excessive force or planting evidence, officers could very well be confronted with a situation that challenges their notion of loyalty. **Loyalty is often a vice masquerading as a virtue.** Unfortunately, some translate loyalty to mean "blindly standing by a person or a group no matter what they do wrong." They convince themselves that standing by and even safeguarding the person in error is honorable and righteous.

Two additional factors that can arise when considering loyalty include the distinction between reporting a fellow officer suspected of wrongdoing, versus knowing a fellow officer engaged in wrongdoing; and the distinction between reporting a fellow officer because it is the right thing to do, versus reporting a fellow officer because not doing so could result in separate disciplinary action for the officer who did not report him or her (think versus know; right thing to do versus disciplinary avoidance).

*Example #1: A police officer pulls over a swerving vehicle at 1 a.m. on an abandoned road. It turns out a fellow police officer is behind the wheel and is drunk and traveling alone. The police officer let the drunk police officer go, but insisted he drive straight home, which was only a short distance away. Is this an ethically sound decision? Is it within policy? Is it within the law?*

*What if the next day the police officer learned the drunk officer drove head first into an oncoming car and killed a young pregnant woman? Does that possibility change the decision-making process?*

*Example #2: A group of prison guards attempt to restrain an inmate in order to transport him from general population to solitary confinement. After successfully wrestling the restraints onto the inmate and gaining compliance, one prison guard strikes the inmate multiple times in the ribs. The inmate is sent to medical where it is discovered he has two broken ribs. What responsibility, if any, rests with the other guards?*

*What if the inmate was never non-compliant and cooperated from the onset and a prison guard still struck the inmate in the ribs breaking two of them? Does that change the ethical responsibility of the other prison guards who witnessed the strikes?*

*Example #3: DEA agents execute a search warrant at the residence of a suspected drug dealer. During the search, Agent #1 collects a Rolex watch from the scene as possible proceeds of the crime. Before sealing the evidence bag, Agent #2 offers to bag and log the evidence because Agent #1 was being requested by management in another room. A month later, Agent #1 sees Agent #2 is wearing a Rolex, but cannot remember if it looks like the watch from the search. Agent #1 checks the evidence log and cannot find any indication a Rolex watch was collected during the search. What does he do? What if Agent #1 hears Agent #2 telling fellow agents the watch was an inheritance from his father's recent passing? Does that change anything?*

- **Gratuities and gifts**

It can be difficult to distinguish between a gratuity and a gift. A simple distinction is that gratuities are given as a matter of practice for all within a specific group (all first responders) with no expectation of preferential treatment; while gifts are given with an expectation, or in response to, a specific action.

Common gratuities for law enforcement include coffee/beverages, meals, and event tickets. They can become more ethically questionable when they are viewed as a perk of the job or an entitlement; they lead to an expectation of preferential treatment; or if accepting a gratuity negatively impacts perception. However, an argument can be made under the right circumstances that accepting a gratuity can be a useful law enforcement tool when doing so helps maintain good relations with members of the community (rude not to accept), or when it serves to foster useful relationships for the collection of intelligence.

*Example: A police officer's friend owns a coffee shop. He stops by at the start of his shift and his friend offers the police officer a free cup of coffee. They are friends and the coffee shop owner is grateful to have an uniformed police officer at the shop. No problem, right?*

*When the police officer leaves the coffee shop, his other friend, the owner of the sandwich shop next door, waves the police officer over. The sandwich shop owner gives the police officer a free sandwich. They are friends and the sandwich shop owner is grateful to have an uniformed police officer at his shop. No problem, right?*

*Near the end of his shift, the police officer responds to a call next door to his friend's steakhouse. After the call, the police officer stops into the steakhouse to say hello to his friend. The owner of the steakhouse offers the police officer a free steak dinner. They are friends and the steakhouse owner is grateful to have an uniformed officer at the steakhouse. No problem, right?*

While eating dinner at the steakhouse, the owner of the steakhouse introduces the police officer to a friend who owns a car dealership. The owner of the car dealership, having heard the police officer was looking for a new car, tells the police officer he should stop by the car dealership. The next day, the police officer stops by the dealership while on duty. The car dealership owner tells the police officer to pick a loaner car off the lot, free of charge. He is a friend of a friend and is grateful to have an uniformed police officer at the dealership.

Is that okay? If the other gratuities were okay, then why not this? What is the dollar limit of acceptability? How much is too much? Were the other gratuities really okay? How much do manners, gratitude, and maintaining positive community relations play into the decisions to accept or reject a gratuity? Does the perception of receiving gratuities reflect positively or negatively on law enforcement?

- **Discretionary authority**

There are many situations in which multiple acceptable options may exist. Just as prosecutors have the discretionary authority to decide whether or not to prosecute (prosecutorial discretion), law enforcement officials use their experience to exercise their discretion in situations like writing tickets or even making arrests, among others. Experience, prudence, the environment, safety considerations, mental capacity of the subject or other existing medical conditions, among other factors, will likely form the basis for the conclusion.

*Example: A police officer responds to a call at a grocery store where an elderly man was caught stealing deli meat. Upon arrival, the officer recognizes the man as a local panhandler. The store manager demands the man be arrested. Multiple options exist. But while the letter of the law might allow her to arrest the homeless man, maybe the officer knows that processing the man and then kicking him back out on the street is not the best way to solve the problem. Another option might be to take the deli meat and send the man on his way with a warning; or maybe the officer could buy the deli meat for the homeless man and help him get to a facility that provides social services for homeless people in the area. It is an ethical dilemma with multiple ethical possibilities. The solution, however, might depend on how the officer sees her duty. Is it to the letter of the law, the homeless person in need, the store manager who was being robbed, or is it to finding the most equitable way to address all of the above? The answer will not necessarily be the same for each person.*

Combatting ethical lapses in law enforcement begins with the agency prioritizing ethical behavior as a function of the job. The standards, practices, and culture must reflect, reinforce, and promote ethics as a critical component of the mission. Techniques for promoting ethical behavior should include stringent hiring practices, concise and clear policies and procedures, regular ethics training, frequent open dialogue about ethics, monitoring of behavior by management, consistent and transparent accountability at every level of the agency, and promoting and rewarding sound ethical decisions.

Ultimately, ethical behavior is the responsibility of each and every individual in law enforcement to harness on his or her own. Self-governance, self-reflection, and a strong will can make up for cultural, oversight, peer, and educational deficiencies within the agency. The will is the greatest weapon against ethical lapses and can serve as the foundation for long-term success in all aspects of life and work. As the Venerable Fulton J. Sheen once stated, “The real seat of character is in the will and we must not surrender that responsibility either to the masses as Marx would have it, or to any kind of biological determinism.”<sup>7</sup>

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# Congressional Reform

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*The author traveled to a major metropolitan city west of the Mississippi for personal business. One morning, he went to the hotel restaurant for a late breakfast. The hotel was slow and the restaurant was empty, with the exception of a single table occupied by a person the author immediately recognized as a career Member of the United States House of Representatives. As luck would have it, the hostess sat the author at a table next to the Member's table. Two of the other three individuals at the Member's table were older staffers who appeared close in age to the Member. Based on their behavior and interaction with each other, they appeared to have a familial connection to the Member. One of the staffers was a female whose facial expressions and cell phone handling suggested she was playing video games between bites and consistently after finishing her meal. The other staff member was a male who after finishing his meal, leaned back in his chair, crossed his arms, hung his head, closed his eyes, and slept the remainder of the breakfast meeting. The fourth and final person at the table interacted with the Member as if he was a lobbyist of some kind.*

*When the waiter dropped off the check, the lobbyist picked it up and said to the Member, "I'll take care of this" as he pulled out his credit card. The Member did not look at the lobbyist or acknowledge the comment, but also did not reach for any money. The female staffer interjected without ever looking up from her phone, saying, "We can't do that." The Member chuckled and rolled her eyes and said, "Yeah, pretty sure them people are watching me." (The phrase "them people" is sometimes used by gang members or other criminals as a reference to police or the FBI. This particular comment harkened back to a conversation where a "party" planner for the wealthy once referred to politicians as "nothing but thugs in suits.")*

*The Member placed a single dollar bill on top of the lobbyist's credit card inside the check fold. The two shared a knowing look and a smirk when the Member handed the fold to the waiter. The single dollar bill would not be sufficient to cover the full breakfast for the Member and the Member's two staffers, but she likely knew paying a single dollar would be sufficient to overcome any ethics issues. Her defense would rest squarely on the fact that the Member provided cash. Any questions about the amount paid or any issues that came to light from the restaurant bill would be defended with the response, "I gave cash . . . I do not recall how much I gave . . . any suggestion I did not pay my ethical share would be the result of an error made by the restaurant or the waiter." And it would absolutely work. The contrived way it played out made it appear as if this was a well-rehearsed and common practice between the Member and the Member's staffer.*

*After the bill was settled, the female staffer woke the sleeping male staffer and they all amicably departed the restaurant.*

Trust in government is at or near an all-time low<sup>1</sup> because most Americans believe corruption in government to be rampant and accountability to be scarce. They have become frustrated by career politicians seemingly subject to a completely different set of rules than other public officials, let alone other citizens of the United States. It does not breed confidence knowing the wealth of elected officials can increase exponentially while in office with

lucrative book deals and individual investments, followed by massively high dollar speaking engagements after they leave office. They also do not think the policies coming out of Washington D.C. reflect the views of the average person, but are instead the result of heavy-handed influence from special interest groups and wealthy donors.

The wealthy do not help elect politicians so they can become less wealthy. They do it because it pays to do so. Congressional policies and priorities align well with the policies and priorities lobbied for by the special interests who donate massive amounts of money to get the Members elected. Despite the fact that it is the Members who sell their time, attention, and priorities, it is the donors and special interests who seem to get the most public blame. The truth is you cannot buy something that is not for sale. Big money in politics is a problem that needs to be reeled in significantly, but the lack of innate ethics from elected officials who refuse to say “no,” should be what receives the greatest criticism.

Very few things involving politics can avoid becoming political, and discussions about reform are no exception. Differentiating between sincere ideas and agenda-driven ideas can be dubious. Adding to the complexity is the suggestion that elected officials should be expected to forfeit some of their rights as a consequence of their position. Proposals of this nature are likely a distraction. Ironically, corrupt public officials presumably appreciate people fighting over things they cannot change, because it keeps them from fighting over things they actually can change.

There are certain activities that should at least be on the radar of those interested in identifying vulnerabilities in Washington, D.C., specifically in Congress. Some areas are naturally more ripe for corruption than others because of the potential opportunity they create to conceal illicit payments.

## Book Deals

Elected officials write books (policy, history, or fiction) for different reasons, but the potential for a huge payday is no doubt one of those reasons. Book deals can be incredibly lucrative, whether in terms of upfront money or residual income from book sales, or both. Politicians can, and do, use their “celebrity” status to make millions of dollars writing books. According to *The Hill*, six candidates in the most recent presidential election collectively made \$7.1 million writing books.<sup>2</sup> The list of six and seven figure book deals for elected officials on both sides of the aisle is extensive. For example, former Governor Sarah Palin was allegedly paid an \$11 million advance for her 2009 memoir *Going Rogue*. While President Obama netted approximately \$6.5 million between 2007 and 2008 for two of his best-selling books, which did not account for the future book deals signed by the then sitting senator who later became president.<sup>3</sup>

Aside from the money, book deals are also a great way for politicians to package their policies and the personal stories that formed those policies in a digestible way for potential voters. Behind the scenes glimpses into the lives of celebrity politicians can be illuminating to voters. It can humanize them in ways that television and other media cannot. Elected officials use books to articulate their political platform and then they add context to that platform by sharing insight into other aspects of their life and experiences. This can be particularly useful to less known politicians trying to make a national name for themselves. Though lesser known politicians will have to work harder to get a book deal from a publisher.

In Congress, the list of current or recent Members who have published books is extensive. Out of 100 sitting United States Senators, 42 have written a total of 91 books ranging from fiction to public policy to history.<sup>4</sup> In the United States House of Representatives, according to the Library of Congress, 45 Members from just the two-year window of the 116th Congress wrote a total of 64 books.<sup>5</sup>

Book deals can be dangerous business in politics for several reasons, including:

- *There are very few ways by which an elected official can receive large sums of money without much scrutiny, but book deals (through advance payments and residuals) constitute one of those ways.*

Advances are paid based in part on the anticipated sales of a book, but are not necessarily a guarantee the book will actually sell. So an inflated advance payment with little back-end book sales would not by itself be indicative of criminal activity. It actually happens with some frequency, which is why it would be an effective way to subtly and unduly influence an elected official. Bulk purchases of books, which inflate residual payments, could also be used as a less scrutinized way of steering money to an elected official.

Former Governor Andrew Cuomo, for example, received a \$783,000 advance for a memoir he wrote that sold approximately 3,200 copies. In order for the publisher to recoup the advance, the publisher would have needed to sell the 3,200 copies at a price well over \$200/book.<sup>6</sup> The original list price for the book, however, was \$29.99, which declined over time.<sup>7</sup> It is not uncommon for publishers to lose money on book deals, so a loss of this nature is not by itself indicative of nefarious activity, but it does lead to questions as to why a publisher would pay a politician who previously seemed to have failed as a writer a much larger advance for another book deal. In October 2020, Governor Cuomo's book *American Crisis: Leadership from the COVID-19 Pandemic* was published. According to the contract, Governor Cuomo was contractually obligated to receive \$5 million over a three-year period for the book.<sup>8</sup> Governor Cuomo was eventually heavily criticized for decisions he made while at the helm in New York that many claim resulted in a large number of nursing home deaths.<sup>9</sup> In August 2021, Governor Cuomo resigned his office following a state probe into "a barrage of sexual harassment allegations."<sup>10</sup>

- *Funds can be redirected from a campaign to purchase the politician's own book.*

An elected official who wrote a book about a policy or related political topic can use donated campaign funds to purchase copies of the book for distribution to constituents, donors, and potential voters provided the royalties from those purchases are donated to charity.<sup>11</sup> However, the publisher is still entitled to their portion of the profit. So, publishers who know public officials can use campaign funds to purchase their own books, theoretically, could increase the book advance to offset the money the public official would not ethically be entitled to when they purchase the book using their own donated campaign funds. Additionally, the use of campaign funds can artificially increase the book sales, thereby increasing media coverage of the book and stimulating subsequent sales. Anecdotally, readers are inclined to read more successful books than less successful books. Use of campaign funds to purchase books could provide an unfair advantage over writers who are not public officials.

- *The time spent writing a book, even if using a ghost writer, and the subsequent selling of the book, can be a distraction from the day-to-day obligations of the elected official and divert various government resources, including security and staff, otherwise not intended for such activity.*

Writing the book and participating in a book tour, conducting interviews, and other related events takes up a considerable amount of time and would engage various elements of the elected official's office that exceed tax payer expectations.

- *Provides a platform for history to be manipulated to the benefit of the elected official.* Elected officials have an implicit credibility that legitimizes the information contained within the pages of the book, but the process has few guardrails in place to ensure the accuracy of the content.

## Lobbying

Lobbyists play an important role in the political process, but without the proper safeguards and oversight, ill-intentioned lobbyists can become heavy handed and undermine the democratic system. Lobbyists represent, and speak on behalf of, a petitioning entity (person, business, or industry) who seeks something from Congress. But getting a Member of Congress' attention is not always an easy task. In fact, according to former Representative Mick Mulvaney, "If you were a lobbyist who never gave us money, I didn't talk to you. If you're a lobbyist who gave us money, I might talk to you." Access to a Member of Congress should never come with a price tag. When access is for sale, everything else runs the risk of becoming negotiable. It is the mutual financial dependence between Members and lobbyists that makes their relationship so delicate.

Former Members are also attractive future employees to special interest groups and lobbying firms who have continued business in front of Congress. The access former Members have to current Members is worth a great deal. But beyond their access to current Members is the risk that a future lucrative job could be negotiated as payment (bribe) for a favorable action from the Member while he or she is still in office.

## Individual Stock Ownership

Some legislation exists to counter the risk of insider trading in Congress, but significant gaps and a lax approach to stock ownership still exists. Members of Congress have a potential conflict when they own individual stocks. Not only do they have early access to certain insider information that can, when made public, move stock prices, but they also have the power to intercede on behalf of, or against, companies with business in front of Congress or one of its committees.

*Example #1: On January 17, 2020, former United States Congressman Christopher Collins was sentenced to 26 months in federal prison for insider trading and lying to the FBI. In 2017, Collins learned a pharmaceutical drug owned by a company Collins was heavily invested in, did not perform as hoped in clinical trials. Collins communicated the negative, not yet public, information he learned to his son with the expectation he would trade on the information and share it with others in order to protect against massive losses. The stock eventually plummeted 92% on the adverse news. Trades based on the inside information protected Collins, his son (Cameron), and his son's future father-in-law (Stephen Zarsky) from losses in excess of \$765,000.<sup>12</sup> Cameron and Zarsky were also federally convicted and were subsequently sentenced to probation.*

*Example #2: It was reported in May 2020 that the FBI had closed insider trading investigations into United States Senators Kelly Loeffler, James Inhofe, and Diane Feinstein. They, along with Senator Richard Burr, were under investigation for stock trades they made prior to a sharp drop in the market that occurred due to the coronavirus pandemic. The trades under suspicion were made in the January/February time period while Congress was being briefed on the coronavirus.<sup>13</sup> Months later, the investigation against Senator Richard Burr was also dropped by the Department of Justice.<sup>14</sup> The conclusion of the investigations suggest insufficient evidence existed to pursue criminal charges.*

## Foreign Governments

Members of Congress are currently subject to a one-year cooling off period before being permitted to represent foreign governments. Similar to the concerns around lobbying, former Members go from being the person potentially being bribed to a middleman when they leave office. Foreign entities see a great deal of value in having the attention of a public official or senior staffer, let alone being able to get him or her "in their pocket." And foreign governments are willing to go to great lengths to exploit any licit or illicit relationship they can

establish. Former Members provide access to current Members in ways others are incapable of. This access is valuable and should be considered a potential vulnerability, particularly given the often conflicting interests that exist between the United States and foreign governments.

## Corruption Legislation

The United States Supreme Court has made rulings in recent years that narrow the application of certain behavior, like bribery and extortion. The advantage should always be on the side of the person being investigated; and the government should absolutely have the burden to prove the elements of the crime. That said, in the world of public corruption investigations, high court rulings are making it harder to investigate and convict. Congress could take on the responsibility of making stronger laws addressing issues presented by the high court related to bribery and honest services fraud as a good-faith effort to hold themselves accountable.

The Supreme Court's unanimous overturning of the federal conviction of Virginia Governor Bob McDonnell had huge implications on the FBI and the Department of Justice. The unanimous decision made it more difficult for prosecutors to, according to Politico, "prove corruption cases against politicians in cases where there is no proof of an explicit agreement linking a campaign donation or gift to a contract, grant or vote."<sup>15</sup> And there is rarely an explicit agreement, as evidenced by the how-to guide from former governor of Louisiana Earl Long who stated, "Don't write anything you can phone. Don't phone anything you can talk face to face. Don't talk anything you can smile. Don't smile anything you can wink. And don't wink anything you can nod."<sup>16</sup>

## Ethical Oversight

The United States House of Representatives and United States Senate have two separate bodies responsible for ethical oversight. In the House, the Office of Congressional Ethics (OCE) was formed as "an independent, non-partisan entity charged with reviewing allegations of misconduct against Members, officers, and staff of the U.S. House of Representatives and, when appropriate, referring matters to the House Committee on Ethics."<sup>17</sup> The OCE could benefit from greater independence, greater investigative authority, and stronger teeth. Their inability to completely vet ethical complaints limits their ability to determine who, and to what extent, violated ethical requirements. Stonewalling the OCE is an effective and commonly utilized strategy by Members of the House. The OCE has no subpoena power and little authority beyond what the Members allow them to have, which is limited. So the common practice among Members is to just not cooperate with the ethical inquiries, which hinders the OCE's ability to hold Members accountable.<sup>18</sup>

The Senate ostensibly operates with no independent ethical oversight, with the exception of the U.S. Senate Select Committee on Ethics (SCE) which is the only formal body responsible for holding the Senate accountable, and is not at all independent. The SCE is a bipartisan six Member committee responsible for "First . . . providing ethics advice and education to Members, officers, and employees. Second, the Committee administers the Senate's financial disclosure program. Finally, the Committee investigates allegations of misconduct by Members, officers, or employees."<sup>19</sup> The SCE is not independent if it is run by the peers of those against whom the complaints were filed. Ethics oversight in the Senate might be bolstered if taken away from the Senate and handled independently. Ethics oversight in the Senate might reasonably benefit from the creation of a similar ethics review and oversight body as the House.

A comparative study on the two oversight bodies in the House and Senate revealed that over the last approximately ten years, the SCE "dismissed investigative complaints at a rate

of 52%, and only 3% of those investigated complaints resulted in the finding of a violation.” By contrast, the OCE “dismisses complaints at a rate of 56% but finds violations in 41% of cases.”<sup>20</sup> That is a significant difference between the two bodies. The fact that the more independent body has a much higher actionable rate is at least notable.

The ethical guardrails are important to helping Members stay on the right path and not veer off into criminal corruption. Accountability in ethical violations is important to keeping Members’ focus where it should be, following the rules and serving the people. It is an injustice to the American people and to the honest Members of Congress to withhold watchdog resources from the House and Senate. And if recent history is any indication, Congress is in desperate need of oversight.

## Term Limits

There are strong arguments for and against term limits. Regardless, what is less debatable is that a change resulting in term limits would be impactful, even if the extent of the impact is not fully known.

Currently (117th Congress), the Senate, which is made up of 100 Members, has 37 Senators serving with a tenure of experience that exceeds two terms (12 years); 19 with a tenure of experience that exceeds three terms (18 years); 11 with a tenure of experience that exceeds four terms (24 years); and four with a tenure of experience that exceeds five terms (30 years).<sup>21</sup>

The House, which is made up of 435 Members, as of the end of the 116th Congress (beginning of 2021), had 283 Representatives serving with a tenure of experience that meets or exceeds three terms (six years); 174 with a tenure of experience that meets or exceeds six terms (12 years); 55 with a tenure of experience that meets or exceeds 12 terms (24 years); and 5 with a tenure of experience that meets or exceeds 20 terms (40 years).<sup>22</sup>

What are some of the arguments in support of term limits?

- **Guarantees congressional turnover**

If death and taxes are the only guarantee in life, then getting re-elected to congress is at least an honorable mention. Since 1980 (until 2018), the re-election rates for incumbents in the House of Representatives and the Senate were 93.83% and 85.39%, respectively.<sup>23</sup>

Members have advantages over their challengers in every important campaign category, including, staff, salary, donors, and name recognition. Congressional staff are incentivized to donate their time to helping ensure the incumbent is re-elected because the staffs’ jobs are tied to the incumbent’s job. If the incumbent wins his/her election, the staffer wins their job back, and vice versa. Challengers are not so fortunate. They have to recruit people willing to donate their time and effort to the cause without any direct financial benefit.

Members continue to receive their six figure incomes and other government funds to pay staff salaries and travel and office expenses while campaigning. They also attract significantly more donor and special interest money because they are the “better investment” given the high probability of being re-elected. Challengers, on the other hand, must pay out-of-pocket or drum up enough enthusiasm to raise the funds necessary to support the expense of a campaign.

- **Reduces the entrenchment of power**

Turnover disrupts the high concentration of power that develops over time between career politicians and special interest groups. The interest special interest groups have

in seeking to gain control of a politician diminishes if the politician has a limited shelf life. Today, the cost/benefit of courting a Member is worth the expense because of the potential for the relationship to be exploited over the long term.

- **Brings in fresh ideas**

New faces come with new ideas. A higher concentration of new faces, comes with a higher concentration of new ideas.

- **Changes the culture in Congress**

Term limits could change much about the way Members think and act. The guarantee Members will eventually return to a life outside of Congress will help put the Members in the shoes of the people they serve when legislating. It is easy to forget about the actual impact of a law when you are not accustomed to having to follow that law. That changes when those writing the laws will be expected to soon follow them. The mental pivot toward truly representing the people will also change the way business is done. Backroom deals and pork-barrel negotiations are part of what makes Congress untrustworthy. Shorter, defined tenures could help quash the need for perpetual political game play.

- **Improves voter confidence and trust**

A better culture will improve trust and confidence. Eliminating careerism in Congress could increase the probability Members will be more representative of their districts and less inclined to decide everything with an eye toward party support and re-election.

- **Members of Congress tend to oppose the idea**

Their opposition speaks for itself. Members of Congress are some of the most powerful people in the country, and by extension, the world. They are not treated like normal citizens or appear to be subject to the same rules. The benefits they receive and the power they exert can become too intoxicating for them to be willing to give them up.

*The single greatest challenge to congressional reform is the fact that the people in need of reform are the only people capable of implementing the reform, but there is little personal benefit to their pursuit of reform.*

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