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## The Federal Prosecution of Al Capone and Its Impact on the Evidentiary Evolution of Forensic Accounting

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THE FEDERAL PROSECUTION OF AL CAPONE AND ITS IMPACT ON THE  
EVIDENTIARY EVOLUTION OF FORENSIC ACCOUNTING

A Capstone Experience/Thesis Project Presented in Partial Fulfillment  
of the Requirements for the Degree Bachelor of Science  
with Mahurin Honors College Graduate Distinction  
at Western Kentucky University

By

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May 2021

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## ABSTRACT

In the prohibition-era, Alphonse ‘Al’ Capone’s notoriety in Chicago was at its height, and a conglomerate investigation composed of multiple Federal departments launched to take down the impenetrable mobster. Capone’s sound completion of crimes and the threat of retaliation towards key-witnesses inhibited the success of the investigation for the Federal government. Therefore, the Treasury Department’s special investigative unit took charge, seeking to unveil the vast income that Capone failed to report on tax filings. Their efforts led to the successful prosecution of the seemingly untouchable man. An examination of the legal structures in place that allowed for the utilization of tax evasion as a means of conviction are examined through the review of statutes and superseding tax evasion court rulings. In order to determine the role of forensic accounting in the Treasury Department’s approach, the efforts to acquire key evidence and the examination of those documents is reviewed. Furthermore, multiple landmark court cases are referenced in a legal chronology. Their citation of the Capone ruling as precedent is analyzed to determine their influence on the acceptance of tax evasion and forensic accounting as a legitimate practice in criminal investigations. This research investigation determined forensic accounting’s increased presence in criminal investigations and its influence on increasing the prevalence of tax evasion in union with the legal approach of pretextual prosecution.

I dedicate this thesis to my family. To my parents, thank you for your constant support and encouragement of the pursuit of my dreams. To my brothers, your support and friendship are the greatest blessing.

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I want to thank my family and friends for constantly encouraging me throughout this process. With their confidence and assurance of my capabilities, I feel like I can face any of life's challenges.

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## INTRODUCTION

At the pinnacle of his underworld power and in the throngs of the Prohibition era in 1931, Alphonse “Al” Capone, was a true celebrity criminal. The bulk of Capone’s activity involved the manufacture and sale of beer which was a federal offense under the 18<sup>th</sup> Amendment of the U.S. Constitution that banned the “manufacture, sale, or transportation of intoxicating liquors” within the territories of the United States (U.S. Const. amend XVIII. , 1919). Capone’s infamy derived from the brutal nature of his operation whose influence reached deeply into the Chicago police force, leaving law enforcement paralyzed due to widespread bribery and intimidation. Therefore, local investigative efforts were fruitless, allowing Capone’s operation to wreak havoc across Chicago with a hand in nearly all criminal activity of the city in the 1920s.

As a result of Capone’s increasingly violent operations, President Hoover launched a Federal conglomerate investigation to bring the mobsters reign to an end. The financial approach of the prosecution resulted in the most famous case of tax evasion in the nation’s history. It is important to examine the lasting impact of the prosecution on the relationship between tax evasion and criminal prosecutions. Therefore, understanding the legal framework in existence during the investigation of Capone is critical to gain insight into the Treasury Department’s strategy. Superseding cases referenced by the investigative team reveal the legal basis for the charges brought against Capone. For this reason, an analysis of the following legislative statutes will be completed: The 16<sup>th</sup> Amendment of the Constitution, the 18<sup>th</sup> Amendment of the Constitution, the Volstead Act, § 213(a) of the Revenue Act of 1921 and the Revenue Act of 1926. Determining the legal avenue available

at the time of the prosecution brings a clearer understanding of the task that lay before the Treasury Department when the investigation launched.

Forensic accounting's role in acquiring sufficient evidence to bring forth charges underneath these statutes is made visible by examining the practices of the investigation team. As the most notable tax evasion case in the nation's history, the relationship of forensic accounting and criminal investigations is deeply rooted in the events of this investigation. It is important to examine forensic accounting's role in guiding the prosecution to victory because it created an imitable strategy for prosecutors to come.

The success of the practices of this case has long been cited as the primary example of pretextual prosecution—a strategic approach that often relies on tax evasion as a means of achieving guilty verdicts for criminals who have committed extreme crimes that lack an evidentiary body. The viability of this approach, especially utilizing tax evasion, is explored through the discussion of multiple landmark cases which cite the *United States v. Capone* (1932) in some way. Exploring their perspectives on the verdict as well as their application of pretextual prosecution and tax evasion forms a chronology of the evolution of such practices within the legal history of the United States. Furthermore, discussions of the implications of tax evasion's strong prevalence in criminal prosecutions brings into contemplation the integrity of the precedential body of cases in the United States' juris history.

The examination of the federal prosecution of Capone brings a clearer understanding of the legacy of the events behind his prosecution. His notoriety exists today for many reasons, but its impact on society is not often discussed. However, it is important to understand the legal impacts because the fame of Capone amplified the results of the

prosecution, making its practices commonly imitated.

## BACKGROUND AND MOTIVATION

Capone's story began in one of America's most notorious gangs—The Five Points Gang, stationed out of New York City, and the launching pad of some of the most infamous criminals in the nation's history. In 1919, fellow New York raised mobster, Johnny Torio, needed assistance establishing a bootlegging operation in the city and he called on Capone. At the age of 20, Capone transplanted to the Cicero neighborhood of Chicago to join Torio (Linder, 2021). The move kickstarted Capone's swift ascent to prominence as a figurehead of racketeering. Through his service to Torio, Capone became well-versed in violent crime as he ruthlessly warded off competing operations in the fight to take hold of Chicago's bootlegging scene. In 1925, a brutal attempt on the life of Johnny Torio drove him to resignation, and cleared the way for Capone to officially take over the operation (National Museum of Organized Crime & Law Enforcement, 2016). His ascent to the throne of Chicago's underworld ushered in a new era of violent crime in Chicago, where disdain for the government fueled the public's blind sympathy for Capone and his operation.

Introduced in 1919, Prohibition began during Woodrow Wilson's presidency and persisted into the presidency of Herbert Hoover. The economic policies of Wilson were vastly different from Hoover, whose practice of *laissez-faire* was the antithesis of the constricting hold of prohibition legislation. In the practice of *laissez-faire*, Hoover took the approach that economic issues would self-correct and, therefore, government economic assistance was unnecessary (Amadeo, 2020). As a result, budding economic crises in America began to swell. Many struggling Americans felt abandoned in Hoover's adamant practice of *laissez-faire*. As their misfortunes grew so, too, did their disdain for their

government. This only amplified the pre-existing aversion for the 18<sup>th</sup> Amendment and the public's thirst for alcoholic beverage.

Capone quenched the desires of society through his supply of alcohol and social experiences such as speakeasies and gambling halls. Furthermore, he supplemented such offerings with charitable contributions such as local soup kitchens which he directly funded (Sandbrook, 2012). The public viewed Capone as a Robinhood figure that provided them with many of life's necessities. Simultaneously, the rapid growth of radio, newsprint, movies and newsreels birthed popular culture and the public's fascination with celebrities (Al Capone: Icon, 2014). Unlike other criminals of the time, Capone seized the spotlight and utilized it to propagate himself as an endearing figure. Chicago was the murder capital of the country, and Capone spoke brazenly of his involvement in such brutal crimes (Al Capone: Icon, 2014). Press articles chronicling the activities of the operation and newsreels capturing his personality fueled the public's fascination of Capone. He was compelling. While they did not condone his criminal activities, the entertainment the public received from Capone far outweighed their concern for the people whose lives he negatively impacted.

By 1926, Capone's operation was large enough that its headquarters moved into the Hotel Metropole, occupying 50 rooms. A maestro of political strings, Capone nestled William Hale Thompson, Mayor of Chicago and one of the most notoriously corrupt public figures in the history of Illinois politics, into his back pocket further, bolstering his criminal capabilities. With yearly, unreported income of nearly \$100 million, the mobster lavishly wined, dined and resided in multiple homes across the country; in fact, when he was not staying in famous Chicago hotels, he flocked to his luxurious winter home in Miami (Linder, 2021). Perhaps the extravagant nature of his lifestyle or the calculated relationships

he held with media and popular culture figures fueled the celebrity status of Capone. Regardless of the cause, Capone's notoriety reached exponential heights near the turn of the decade. Word of the organization's violent crimes spread with fervor throughout the nation, their details glorified as though they were a plotline of a Hollywood movie.

The extravagant lifestyle demanded expensive upkeep, and Capone placed more pressure on his operation to seize monopolistic control on the bootlegging industry. If violence meant eliminating the competition, then it was a necessity to him. Gang violence was exploding throughout Chicago and soon, the nature of crimes would become so grotesque that Capone's veil of benevolence and glamour would be shed (Folsom, 2010). The driving force of exposure was the infamous Saint Valentine's Day Massacre which took place on February 14<sup>th</sup>, 1929 (Linder, 2021). Seven of rival gang leader George 'Bugs' Moran's men waited patiently in a Chicago warehouse for a new truckload of whiskey to arrive. A routine transaction, they waited like sitting ducks for the shipment, unaware that a group of six of Capone's soldiers were en route, touting machine guns as if they were marching into battle. As their caravan pulled into the warehouse, Capone's men launched out of the vehicles, blindsiding the unsuspecting group. A shower of bullets rained down upon them, massacring the men. Infamous pictures show young men with their backs to the assailants, their bodies mercilessly riddled with bullet holes. The nation was shocked, and only one man was deemed capable of such brutality, his infamy making his skillset known far and wide. Capone was the man behind the job.

The violence of St. Valentine's Day began the crumble of Capone's license to operate with impunity. President Hoover was determined to quash the havoc which Capone wreaked on the city of Chicago, and he began assembling a conglomerate of federal

agencies to take down the public enemy #1. The Department of the Treasury and the Justice Department led the charge against Capone. Secretary Mellon of the Department of the Treasury assembled an investigative squad, and he called on Elmer Ilrey, the head of Treasury's Special Intelligence Unit, to recruit talented agents to join the cause (Linder, 2021).

Although jointly tasked with dismantling Capone, the Treasury and Justice Departments were not a unified team. Often the Treasury Department acquired cases from the Justice Department when they failed to compile sufficient evidence. These circumstances created contempt between the departments (Folsom, 2010). Elliot Ness is perhaps the most notable figure in the famed prosecution of Capone, although he was a part of the Department of Justice's team. Ness and his investigative team were pivotal in bringing down Capone's bootlegging operations, "destroying enough stills and speakeasies to slow Capone's cash flow, weakening him considerably" (Troy, 2017). However, his team was better equipped to halt the activities of Capone's operation rather than acquire defensible evidence.

Many factors worked against Ness's ability to acquire needed evidence—murder, bribery and a vast web of political connections created an aura of fear around the operation. Civilians and former associates were paralyzed in fear, unwilling to provide any testimonials or leads in the hunt for evidence. Thus, the investigative conglomerate determined that pursuing financial leads was the most viable option. There was clear evidence of sizable wealth, as shown in the multiple homes, custom suits and cars that Capone regularly flaunted to the public. The concept for the investigative approach was in place, but the path ahead was primarily uncharted.

## LEGAL FRAMEWORK OF THE PROSECUTION

Al Capone's criminal record involved a multitude of offenses. Racketeering, distributing alcohol, money laundering and murder comprise a shortlist of his many transgressions. However, as previously discussed, pursuing Capone for these crimes would require the compilation of exhaustive evidence and reliable witnesses. This task was nearly impossible given the threat of retaliation that Capone posed. The misfortune that would be directed at individuals who could serve as witnesses and provide leads in the investigation was not a risk worth taking. These hurdles greatly impacted the ability of the Justice Department to compile a sound criminal case against Capone. Overall, the risk assessment of bringing forth a criminal case determined that the possibility for tampering with evidence and key witnesses by Capone's operation was far too likely. President Hoover and his federal conglomerate did not want Capone walking free.

Determining an alternative course did not require extensive contemplation. Capone's operation was making around \$100 million per year with his personal worth estimated at around \$30 million (Linder, 2021). Capone's amassed wealth was on full display to the public with his hotel stays, multiple homes and custom-made suits flaunted regularly. However, as of 1929, there was not an income tax return on file for Capone.

The Federal government's power to impose income tax originates with the 16<sup>th</sup> Amendment of the U. S. Constitution which states "Congress shall have power to lay and collect taxes on incomes, from whatever source derived" (Kačaljčak, 2015). In 1913 the United States Revenue Act formally introduced federal income tax which stated that tax would be placed on individuals' net income (Kačaljčak, 2015). There was not an official

Internal Revenue Code until 1939, when the statutes involving taxation were re-codified into one body (Cornell Law School, 1992). Since its establishment in 1939, the Internal Revenue Code has gone through routine edits. Notwithstanding the absence of an Internal Revenue Code at the time of Capone's indictment, statutes elaborating the powers expressed in the 16<sup>th</sup> Amendment existed and defined the federal government's process of taxation. By examining this body of legislation, the Treasury Department's Special Investigative Unit determined that pursuing a case based on Capone's evasion of taxation was the most promising path to prosecution (National Museum of Organized Crime & Law Enforcement, 2016). Before a full pursuit of this line of prosecution could begin, the legal framework in place for success needed to be assessed. Luckily, a previous court decision involving the taxation of income derived from bootlegging had been issued, providing a blueprint for the construction of evidence and arguments to be made against Capone. This investigation examines the legal avenues available at the time of the Treasury Department's investigation to understand the employment of tax evasion as a means of conviction. Doing so provides insight into tax evasion—an offense detectable through the practice of forensic accounting—and its role as sufficient evidence towards the grounds for conviction.

Two years prior to Capone's indictment, the Supreme Court ruled in a landmark case, *The United States vs. Sullivan* (1927). The defendant, Manley Sullivan, was a bootlegger who earned his pay distributing alcoholic beverages—a felony offense under the 18<sup>th</sup> Amendment and enforceable through the Volstead Act. The original ruling convicted Sullivan of “willfully refusing to make return of his net income as required by the Revenue Act of 1921” (*Sullivan*, 1927). Court records listed his income as “deriv[ing] from the illicit traffic in liquor in violation of the National Prohibition Act,” a detail of importance in the

appellate cases brought forth by the defense (*Sullivan*, 1927). In fact, the Fourth Circuit reversed the original conviction under the logic that the criminal nature of the activity from which the income derived granted Sullivan protection under the Fifth Amendment of the U.S. Constitution and, therefore, exempted the defendant from the requirement of filing a tax return (*Sullivan*, 1927). The defense argued that submitting a tax return with illegal income could be viewed as an omission of guilt which violated the Constitutional right of the defendant to refrain from self-incrimination. The Supreme Court granted certiorari and reversed the decision, determining that the statute required all income, including illegally sourced income, be subject to taxation (*Sullivan*, 1927).

The Supreme Court's interpretation of the Fifth Amendment was the determining factor in the ruling of this case. It stated that exempting criminals from taxation under the authorization of the Fifth Amendment was "an extreme application" of the protection provided by the legislation (*Sullivan*, 1927). Sullivan was therefore in violation of the Revenue Act of 1921, §213(a) which states that "gross income includes gains, profits, and income derived from the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever" (*Sullivan*, 1927). The use of the term "whatever" interpreted that the nature of the income-generating activity need not be strictly defined by the law. Further evidence on Congressional intent to impose taxes from income derived both legally and illegally is found in the 1916 Amendment of the United States Revenue Act which eliminated the word "lawful" from the phrase "also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever" (Kačaljak, 2015). The Sullivan ruling cited the revised version of the Code as the definition of sources of income.

Therefore, the unlawful nature of a business does not exempt it from paying taxes, but protection of the Fifth Amendment will still be available to the individual filing the return (*Sullivan*, 1927). Should the tax return questions ask for information that “compel the disclosure of any fact which may incriminate” the individual is able to “raise an objection in the return” by refusing to answer the specific questions; however, an individual cannot fail to file a return at all (*Sullivan*, 1927).

At the time of the *Sullivan* ruling tax laws were relatively new and, prior to the ruling, there was not substantial precedent for the prosecution of tax evasion (Troy, 2017). The definition of parties who were subject to the requirements of the Revenue Act of 1921 was not clear. The original intent of the “broad language of [the respective provision] indicates the purpose of Congress to use the full measure of its taxing power within the definable categories specified therein.” (Kačaljak, 2015). However, *Sullivan*’s attempt to plead the Fifth illustrates the obscurities produced by the broad language of the legislation, and the negative manipulations of this obscurity (Kačaljak, 2015).

Clarifying that individuals who source their revenue in illegal activities are obligated to pay taxes on those earnings made the pursuance of conviction based on tax evasion a viable legal strategy. The *Sullivan* (1927) ruling was groundbreaking for the federal investigators desperately seeking to subdue the activities of Al Capone and other bootleggers wreaking havoc on the country. Pursuing a conviction on tax evasion was now a viable option for investigators seeking to lock up Capone. In fact, after *Sullivan* (1927), the Special Investigative Unit “catapult[ed]...into the wider picture of financial criminal inquiry,” tracing the money trails of many criminals throughout their careers (Benzkofer, 2012). The impact of the ruling extended far past the Capone case; it was a pivotal point in

time for the evidentiary evolution of tax evasion in its entirety.

## FORENSIC ACCOUNTING IN THE INVESTIGATIVE EFFORTS

The *Sullivan* (1927) ruling served as a blueprint for the prosecution and, with the determination that income generated from illegal activities was taxable, Capone could be indicted on his failure to file an income tax return. In 1931, the federal prosecution convicted Capone of three felony charges of “willfully attempting to evade and defeat income for the respective years of 1925, 1926 and 1927” under §1114(b) of the Revenue Act of 1926 and two misdemeanor charges for “failing to file returns for the respective years of 1928 and 1929, in violation of §146(a) of the Revenue Act of 1929 (*Capone*, 1932). In total, the record stated that Capone failed to file an income tax return in the years of 1925, 1926, 1927, 1928 and 1929. The citation of the Revenue Code throughout the ruling certifies the legitimacy of tax evasion as evidence in prosecution.

The success of the Capone case and its impact on legitimizing tax evasion as a means of conviction did not happen by chance, but through the extensive efforts of a talented group of forensic accountants working under the direction of Frank Wilson. Wilson was a special investigator for the Treasury Department. Aforementioned, Capone’s immense wealth was public knowledge. Agents determined that Capone’s unrecorded income from the six-year period of 1924 through 1929 must be proven in order to hold him accountable for the evasion of taxation (Folsom, 2010). Specifically, they aimed to “find \$5,000 in gross income, the standard exemption at the time,” although the more wealth proven to exist, the more severe the punishment he would face (Wilson & Whitman, 1947). The pursuit of evidence did not focus on building a body of criminal evidence that proved Capone’s involvement in murder, laundering, alcohol

distribution and prostitution, etc., but instead centered “on tracking Capone’s money trail” to determine his yearly net income and evaded income tax (Folsom, 2010).

This task proved to be extremely difficult for the investigative team. As with all of his criminal activity, Capone completed his work swiftly and discretely, making an effort to eliminate any direct link between himself and the completion of such crimes. In fact, Capone never maintained a bank account nor physically signed checks or receipts in an effort to eliminate a traceable paper trail (Linder, 2021). Even his multiple properties were listed under his wife’s name, a fact which he admitted in an interview with Frank Wilson after his indictment (Folsom, 2010). Capone’s cunning efforts to cover his tracks stumped The Treasury’s Special Investigative Unit, and their work continued on for the length of a year without any meaningful results. In that time, Capone had even been arrested, tried, and sentenced to a year in prison for carrying concealed deadly weapons while traveling in Philadelphia (Folsom, 2010).

Throughout 1929, during Capone’s imprisonment, Wilson and his team worked steadily to compile a long list of goods and services traceable to Capone. The list included some of the following items:

- \$26,000 in furnishings for his homes in Miami and Chicago and his Hotel Lexington Headquarters,
- weekly hotel bills of \$1,500,
- and custom clothing purchases

(Folsom, 2010).

Although useful, the list did not begin to scrape the surface of Capone’s yearly transactions. Based upon the available information, the investigation determined that

Capone amassed \$165,000 of taxable income, or roughly \$2.5 million adjusted for inflation, from 1925 to 1929 (Folsom, 2010). Despite the clear evidence of wealth compiled by Wilson's team, there remained a vast amount of unreported income and expenditures. The forensic accountants would need to unearth more compelling evidence in order to build a thorough and presentable case.

The first break for the investigation team arose in 1930, when Wilson discovered three ledgers recovered in a 1926 raid of one of Capone's gambling establishments called Hawthorne Smoke Shop (Linder, 2021). Labels of the activity that generated the income divided the ledger into columns. For example, the ledger displayed in Exhibit A has a column labeled "Races" that likely recorded the amount of the wagers patrons placed within the establishment. Every few pages in the ledger were totaled and then divided into subtotals by names such as "Town," "Ralph" and "Pete." These names are clearly displayed in the ledger shown below. Furthermore, the ledger referenced "Al" and the assumption that the ledger belonged to Capone and his operations was not a far reach (Linder, 2021). Complete examination of the ledgers revealed daily cash exchanges of "\$20,000 to \$30,000 per day" and net profits throughout the eighteen months recorded in the ledgers (1925-1926) totaling "upwards of half a million" dollars (Wilson & Whitman, 1947). Adjusted for inflation, this amount totals over \$8.1 million.

*Bank 31443 December 1924*

1	<i>9055</i>					
2		<i>2799</i>				
3			<i>Bank Paid 17 No. final</i>			
4						
5						
6			<i>31443</i>			
7			<i>17500</i>			
8	<i>9055</i>		<i>48943</i>			
9	<i>2799</i>		<i>6256</i>			
10	<i>6256</i>		<i>42687</i>			
11			<i>Bank 10000</i>			
12			<i>32687</i>			
13						
14						
15						
16						
17						
18						

*Bank Paid 613048  
163445  
162487  
572022  
572022  
572022  
572022  
3268700*

**Exhibit A** – The ledger seized during the 1926 raid of the Hawthorne Smoke Shop gambling hall in Cicero that Capone owned and operated.

In order to verify that the information in the booklet belonged to Capone’s operation, the forensic accountants performed a “thorough analysis of the entries in the book...[and] comparison of the entries in it with the specimen of the writing of various members and employees of the Capone organization” (Agents, 1933). After thorough examination, the detectives determined that the handwriting belonged to Mr. Leslie A. Shumway, and that a small part of the entries were made by Peter Penovich, Jr., and Ben Pope (Agents, 1933). Further investigation determined that the three parties were cashiers at Hawthorne Smoke Shop, the gambling hall in Cicero owned by Capone and the subject of the raid in 1926 (Agents, 1933). The identification of the cashiers produced multiple key witnesses whose testimonies greatly contributed to the prosecution. Investigative agents located Shumway in Florida and, under the threat of a subpoena that would make his participation in the investigation public knowledge to Capone, he agreed to participate as a means of self-protection (Linder, 2021). According to the Bureau’s investigation

report, Shumway's testimony "taken on that day was the first evidence secured in the investigation directly establishing taxable income to Alphonse Capone and proving the evasion of taxes by him" (Agents, 1933). Clearly, this was a major turning point in the investigation.

Shumway later moved into witness protection with his wife to avoid the retaliation of Capone's operation. His confirmation of the legitimacy of the ledgers brought the Hawthorne Smoke Shop back into the investigation, leading to key-witnesses from the raid of 1926. In particular, Reverend Henry C. Hoover, known as the "Raiding Pastor," served in a vigilante group that led the raid of Hawthorne Smoke Shop in 1926. He testified on the stand in Capone's 1931 trial, stating that on the day of the raid, Capone arrived at the smoke shop to assess the situation. Capone offered to bribe Hoover and his men to cease the raid (The 'Raiding Pastor' Takes on Capone, 2008).

Finally equipped with reliable evidence, the investigative team began to build a compelling case against Capone. However, much work remained in order to compile more extensive financial evidence. The Treasury Department pursued the prosecution of key figures within Capone's organization with the aim to dismantle the omnipotent aura surrounding the operation and further weaken Capone. They hoped that, as key figures were brought to justice, individuals in possession of key information would, in their newfound freedom from fear of retaliation, be prompted to come forward.

Al's brother Ralph, who was five years his senior, received a tax evasion conviction in April of 1930 and served three years in prison beginning in November of 1931. This was arguably the greatest blow to the Capone operation during the course of the investigation against Al (Folsom, 2010). Succeeding convictions included Frank Nitti,

Capone's famous enforcer, convicted of "tax evasion and sentenced to eighteen months" in prison (Agents, 1933). Capone's operation began to crumble all around him, and he was weary of the wrath he would soon face (Agents, 1933).

Capone hired Lawrence P. Mattingly, a powerful tax lawyer from Washington D.C., to handle his case. With investigators closing in, Mattingly met regularly with them between May 19, 1930 and September 20, 1930 to discuss details about Capone's income (Agents, 1933). In the course of the meetings, Mattingly emphasized the need for the Capone income tax case to be handled promptly, even offering to provide figures on the taxable income of his client (Agents, 1933). As a well-trained and practiced lawyer, Mattingly knew that any information submitted to the investigators would be used in the criminal prosecution of the taxpayer. However, he proceeded onward with his plans, and on September 20, 1930 submitted the famous "Mattingly Letter" to investigators (Linder, 2021).

In bizarre behavior for a defense attorney, Mattingly disclosed the following information within the letter:

- The taxpayer was a member of an organization or syndicate from 1925 to 1929;
- he (Al Capone) was acting principal in this organization with three associates and that the profits were divided as follows:
  - One third to a group of regular employees
  - One sixth to the taxpayer and three other associates;
- and taxpayer had fixed income of \$2,000 per month for the year 1929

(Agents, 1933).

In total, Mattingly estimated Capone's taxable income for the six years in question to range from \$26,000 in 1924 to \$100,000 in 1928 and 1929. The letter served as "the most definite evidence of the taxpayer's income," greatly benefitting the mounting case against Capone (Agents, 1933). Later, during the course of the trial, the defense objected to the admission of the letter as evidence because its contents were so incriminating. However, presiding Judge Wilkerson ruled that the letter could be presented as evidence of statement by the defendant, but its contents could not be considered (Linder, 2021). The letter therefore served as evidence of the defendant's knowledge of unreported income, but did not verify the amounts.

Bolstered by the possession of the letter, Wilson and the investigative team carried forward, accumulating more documentation of Capone's finances and key witnesses to his activities. One of the final and most impactful testimonies came from Fred Reis whose name appeared on numerous cashier checks (Linder, 2021). In his testimony, Reis confirmed the amounts listed on 44 checks that totaled \$202,000 (\$3.2 million adjusted for inflation) (Agents, 1933). Reis further shared that the checks represented the net profits of the Cicero gambling hall that Capone's operation owned and operated. Reis's statement proved the financial figures of the Mattingly letter to be false. Despite presence of clear misstatements of financial information within the letter, it served as admission of the presence of net income above the \$5,000 standard deduction. With Reis's testimony and the letter in their possession, the prosecution decided there was enough evidence present to go before a grand jury. On March 13<sup>th</sup>, 1931, the Federal Government indicted Alphonse 'Al' Capone for the evasion of federal income tax.

In total, the Treasury Department's Special Investigative Unit submitted over 168 exhibits of financial evidence against Capone. The compilation of this volume of evidence is a great feat given the extreme confines with which the investigation operated. Exhibit B & C show two examples of key pieces of evidence shared throughout the course of the trial.

The investigation team examined financial evidence to determine what percentage of the income generated from Capone's operation that recorded. Adjustments were made, and the following estimates stated for the income generated per year through the years 1924-1929 (see Exhibit B). Investigators estimated a total net income amount for the six years to be \$1,038,655.84, over \$16.9 million adjusted for inflation (see Exhibit B) (Agents, 1933).

For the year 1924 -	\$ 123,102.89
For the year 1925 -	257,285.98
For the year 1926 -	195,676.00
For the year 1927 -	218,056.04
For the year 1928 -	140,535.93
For the year 1929 -	103,999.00
Total net income for the six years	\$1,038,655.84

**Exhibit B** – Forensic accountants estimated the following amounts as the net income Capone failed to report. They included these totals in their report of the investigation.

The Special Investigative Unit calculated the tax owed as well as the penalties due per year. The investigative report states that Capone owed \$219,260.12 in taxes and \$164,455.09 in penalties, over \$2.6 million adjusted for inflation (see Exhibit C) (Agents, 1933).

Year	Income	Tax	Penalties	Tax and Penalties
1924	\$123,101.89	\$32,488.81	25% \$8,122.20	\$
			50% 16,244.40	56,855.41
1925	257,339.55	55,378.64	25% 13,844.66	
			50% 27,689.32	96,912.62
1926	195,676.00	39,962.75	25% 9,990.69	
			50% 19,981.38	69,934.82
1927	218,056.04	45,557.76	25% 11,389.44	
			50% 22,778.88	79,726.08
1928	157,202.59	30,054.40	25% 7,513.60	
			50% 15,027.20	52,595.20
1929	103,999.00	15,817.76	25% 3,954.44	
			50% 7,908.88	27,681.06
	<u>\$1,055,375.07</u>	<u>\$219,260.12</u>	<u>\$164,445.09</u>	<u>\$383,705.21</u>

**Exhibit C** – Based on the estimated net income amounts, investigators calculated the taxes owed by the defendant and the penalties due for failure to pay such amounts.

Although a small fraction of the quantity of financial evidence submitted by the prosecution, these two examples testify to the unprecedented and inventive work produced by the forensic accountants of the Special Investigative Unit of the Treasury Department. In totality, “the evidence of the government...c[ame] principally from the mouths of those who deal[t] either with the organization or the defendant” per the Bureau of Internal Revenue’s report on the Al Capone investigation (Agents, 1933). The report goes on to state that “the entire situation [was] made clear only by piecing together many separate facts and circumstances, among which...admissions of income made by the defendant himself” are included (Agents, 1933). In essence, the Bureau’s report described the nature of forensic accounting—the combination of investigative and auditing skills to provide insight into the misstatement of financial information.

The success of this investigation is unique in comparison to the standard practices of other forensic accounting cases. The *Capone* (1932) ruling is the most famous tax evasion case in legal history. Its forensics team set a standard for resilience in the pursuit

of financial evidence. Their work uncovering unreported net income created a method of forensic accounting known as the “net worth method” that forensic accountants still utilize today (Kačaljak, 2015). While their processes for examining financial data can be mimicked, their actions cannot be directly recreated. Every case in forensic accounting is unique. Due to the extremely idiomatic circumstances involving Capone, (i.e. the absence of tangible financial records and his notoriety that deterred knowledgeable parties from engaging in the investigation), investigators employed a limited selection of evidence to incriminate Capone. Typically, more financial evidence would be readily available to the investigative team. Therefore, the Capone investigation cannot be referenced to determine a quota of the evidence required for trial.

Upon reviewing the forensic practices employed by the Special Investigative Unit throughout this case, there is a clear display of thorough accountancy skills such as high attention to detail, analytical perspective and resilience. Frank Wilson wrote of his investigative unit, “the successful termination of the income taxes and prosecutions...was due to a great extent to the persistence of these agents, to their exceptional ability and willingness to assume their share and more than their share of the hard work which was facing all agents assigned to these cases” (Agents, 1933). In summation, when examining the forensic accounting investigation of Al Capone, one can confidently state that the investigative team set a standard for providing a thorough summary of the financial information that is needed to support the aim of the investigators. Their work would go on to greatly impact the trajectory of forensic accounting and tax evasion prosecution, even to this day.

## THE GUILTY VERDICT AND ITS LEGAL IMPACT

The Supreme Court confirmed the conviction of Alphonse ‘Al’ Capone of “willfully attempting to evade and defeat income tax for 1925, 1926, and 1927, and of failing to file returns for 1928 and 1929” (*Capone*, 1932). To this day, the Capone prosecution is considered one of the most successful and famous federal investigations in the history of the nation. From that successful investigation, Frank Wilson, the standout forensic accountant in the unit, went on to have a storied career in the Federal Government, leading the investigation of the Lindbergh kidnapping and serving as the Chief of the Secret Service. Of more importance than the personal successes seen by members of the investigative unit is the impact of their findings on the legal history of the United States. In understanding the legacy of this ruling on forensic accounting and the prosecution of tax evasion, the appellate case brought forth by Capone must be thoroughly examined. This section reviews the impact of the *Capone* (1932) ruling on future cases.

The interpretations of the ruling set precedent on the application of the Fifth Amendment and, most relevantly, the criminal status of “willfully failing to file a tax return and, in broader term, tax evasion” (Kačaljčak, 2015). Confirmation of Capone’s obligation to pay the amount of taxation owed on his tax return positively cited the interpretation of the Fifth Amendment stated in the *Sullivan v. United States* (1927) ruling. Essentially, the defense could not take the stance that Capone failed to file a tax return to protect himself from incrimination (*Capone*, 1932). Furthermore, the Court ruled that the net income amounts presented as evidence proved the taxpayer had income

he never reported to the government. The ruling goes on to state that the taxpayer “alleges that he did not make a return, stating specifically the items of his gross income and the deductions and credits allowed, would exempt him from paying taxes” (*Capone*, 1932). However, even if losses eliminate the possibility of taxation, the taxpayer is still obligated to file a return and report those income and loss amounts. The language quoted certifies a taxpayer’s obligation to report gross income and deductible expenditures. Because Capone did not file a return he was deemed as willfully evading taxation (*Capone*, 1932).

Secondly, the Capone case standardized use of the “net-worth method” in tax evasion cases. Proceeding cases such as *Spies v. United States* (1943), *Holland v. United States* (1954), and *United States v. Johnson* (1942) utilized this same method. Understanding the mechanics of the net-worth method is important because it became an established practice of forensic accountants in criminal tax evasion cases. In *Holland v. United States* (1954), the Supreme Court detailed the net worth method as follows: Upon the determination of the “inadequacy of the taxpayer’s records to make an accurate calculation of the tax liability of the taxpayer,” investigators must attempt to establish an “opening net worth” or total net value of the taxpayer’s assets at the beginning of a given year (*Holland*, 1954). Investigators then document growth in the taxpayer’s net worth for the succeeding years throughout the investigated period. They calculate the difference between the adjusted net values of the assets at the beginning and end of each year. The “nondeductible expenditures” of the taxpayer are estimated and “added to the increases” to determine if the yearly total is greater than the “taxable income reported by the taxpayer for that year, or if the amounts are misstated” (*Holland*, 1954).

In the case of *Capone* (1932), investigators proved expenses such as hotel and housing costs through financial documentation they acquired. Through the net worth method, the steady increases in the amount of income are compared to the reported amount or lack thereof to calculate the unreported income of the taxpayer. Investigators displayed the net worth method in Exhibit 2 which they submitted as official evidence of the income Capone failed to report. The net income totals displayed a steady increase well above the \$5,000 standard deduction of the time. Lastly, through the net worth method, the acting jury is asked to “infer willfulness” of the taxpayer to fail or evade submission of a tax income return (*Holland, 1954*). Typically, when compared to “direct evidence” and the presented history of the conduct of the taxpayer, the inferred intent of the taxpayer is to “mislead or conceal” through the failure or evasion of submission (*Holland, 1954*).

In order to prove Capone’s “willful” evasion, the prosecution utilized character witnesses throughout the course of the trial. The raid of the Hawthorne Smoke Shop gambling hall produced multiple witnesses. Chester Bragg, a member of the vigilante group of ministers that led the raid of the hall, recalled Capone’s self-proclamation of the ownership of the establishment (Linder, 2021). He described Capone’s agitation upon discovering the raid as he asked, “Why are you fellows always picking on me?” (Linder, 2021). Following Bragg’s testament, Reverend Henry Hoover, leader of the raiding pastors, spoke of Capone’s usage of a fake alias upon arriving to the scene of the raid. In an attempt to bribe the raiders into silence, Capone asked Hoover, “Reverend, can’t you and I get together – come to some understanding?” (Linder, 2021). Through testimonies, prosecutors conveyed Capone’s desperation to conceal the information contained in the

financial records of the gambling hall. His attempts to lead ordained ministers astray from the path of honesty was just one example. Jurors heard further testaments from multiple cashiers at Capone's various gambling halls who spoke of the accounting procedures utilized to conceal the mass volumes of cash that flowed through the establishments (Agents, 1933). Prosecutors assembled witnesses to speak of Capone's lavish lifestyle. Parker Henderson, the realtor that sold Capone his Palm Island mansion located in Miami detailed Capone's adamancy that the transaction be solely cash-based with the title of the home placed under his wife's name (Linder, 2021). Other witnesses such as clerks from the Metropole Hotel and bookies who assisted Capone in his gambling ventures testified to the extreme spending habits of the mobster (Linder, 2021). Through the compilation of the various witnesses, prosecutors established sound proof of Capone's vast wealth and his extended efforts of willful concealment. The net worth method proved extremely successful in the course of the Capone investigation and trial.

The establishment of the net worth method allowed the Special Investigative Unit to dismantle Capone's operation and other bootlegging operations alike. Members of Capone's organization who were indicted and later convicted of tax evasion throughout the course of his investigation and trial included Frank Nitti, Jack Guzik, Sam Guzik and Louis Lipschultz (Agents, 1933). The practices used in securing evidence for those cases further strengthened the net worth method (Agents, 1933).

The investigations and successful convictions of tax evasion extends beyond the immediate impact of the Capone case and the prosecution of his inner circle. By 1932, other tax evasion cases cited the conviction of Capone. For example, in *the United States v. Miro* (1932), utilizing reference to *Capone* (1932), the Court affirmed the taxpayer's

willful failure to file a tax return due to the presence of sufficient evidence of a net income above the \$5,000 standard deduction. This case reinforced the effectiveness of the net worth method by displaying confidence in the presentation of estimated net income to convey the amount of taxable income evaded by the taxpayer.

The net worth method demonstrates that identification of the exact ways in which a taxpayer evades taxation is not necessary, but that the presence of an income amount suffices as evidence. The ruling in *Reynolds v. United States* (1955) demonstrates that a taxpayer “need not specify the means whereby an accused attempted to evade and defeat his tax obligation”. This published ruling referenced *Capone* (1932) as precedent of the Court not demanding specification of the means of evasion, but rather accepting evidence of limited transactions to convey the taxpayer’s evasion. *Reynolds* (1955) reinforced the need for forensic accounting because it demonstrated increased assurance about the claims made against a taxpayer through the presentation of financial evidence.

*Lott v. United States* (1962) referenced *Capone* (1932) and further defined the evidence which may be compiled by forensic accountants. *Lott* (1962) stated that willful evasion need not be explicitly explained but can be “inferred from such conduct as keeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one’s affairs to avoid making the records usual in transactions of the kind and any conduct, the likely effect of which would be to mislead or conceal.” The increased definition of financial evidence maintained broad phrases such as “transactions of the kind and any conduct” allowing for interpretation and wide applicability of the law in future tax cases.

Succeeding citations of *Capone* (1932) expanded confidence in the net worth method over time. Even further, the use of forensic accounting and the pursuit of tax evasion indictments is one of the most commonly charged federal crimes (Litman, 2004). Because of the successful result of Capone and his associate's convictions, employing the charge of tax evasion to convict individuals who are suspected in far graver crimes increased in popularity. In fact, convicting an individual of a less severe crime for the sake of reaching some form of conviction against them is often referred to as "The Capone Approach" of prosecution (Litman, 2004). Pretextual prosecution is the legal term for this approach or strategy.

Pretextual prosecution involves indicting "for a putatively lesser crime of a defendant who has been targeted for a more serious crime that is too difficult to prove. [It] is not a baseless prosecution; the accused has allegedly committed the lesser crime" (Schimick, 2014). In the case of Al Capone, the government cited *United States v. Sullivan* (1927) to find backing for the utilization of tax evasion to convict the notorious mobster. Legal scholars view *Sullivan* (1927) as the basis for pretextual prosecution due to its interpretation of the Fifth Amendment (Schimick, 2014). However, the successful prosecution of Capone established the government's confidence to pursue pretextual prosecution due to its thorough citation of the *Sullivan* (1927) ruling (Schimick, 2014).

Equipped with newfound confidence, the Government sought the conviction of other bootleggers and gangsters such as Anthony Accardo, another infamous mob figure in the Chicago crime scene who served as a hitman for Capone (Schimick, 2014). Accardo is notoriously assumed to be the hitman responsible for the St. Valentine's Day massacre and the suspect of multiple murder cases throughout the 1920s. In 1960, courts

“convicted [Accardo] of income tax evasion” after he falsely deducted his sports car as a business expense on his tax return (Schimick, 2014). Subsequently, in 1962, courts convicted Meyer Harris “Mickey” Cohen, another notorious figure from the Prohibition-era, on eight felony counts of falsifying a tax return, presenting fraudulent information, concealing the possession of property and willfully evading taxation (*Cohen*, 1962). Another notable figure from the Prohibition-era to be brought to justice on the charges of tax evasion was Meyer Lansky, who served as an organizational operator within the underground. Lansky interestingly took note of the Capone ruling and filed a yearly tax return with enough net income listed to demonstrate his lifestyle. However, he vastly understated the income reported and was later indicted for the falsifying the information (Schimick, 2014).

The backgrounds of the defendants and the investigative and prosecution approaches utilized against them were practically identical to the Capone case. The reference of cases in subsequent years displays the common act of citing *Capone* (1932) to support the use of forensic accounting in the pursuit of a conviction on tax evasion. The conviction of Capone is the pinnacle of pretextual prosecution. The motivation behind the application of tax evasion is the same for all of the cases tried against Capone, his associates, and other underworld figures. Tax evasion was not pursued to prompt defendants to comply with taxation, but rather because “no other recourse to prosecute” was available for prosecutors seeking to impede the illegal activities of the defendants (Schimick, 2014). Together, the successful prosecutions cemented the pairing of tax evasion and pretextual prosecution. Forever, people will know tax evasion as the force that led to the downfall of the golden age of the mob.

The celebrity status of defendants and the legendary era in which they existed heightens the common awareness of the details of the cases. Therefore, it is of no surprise that federal prosecutors commonly reference the approaches of the ruling in succeeding cases (Litman, 2004). In fact, the approach's prevalent use received little examination or criticism because of its origins in such infamous cases (Litman, 2004). Direct reference to the case did not cease when recency to the case ended. Prosecutions continue with their citation of *Capone* (1932) to verify the legitimacy of their application of tax evasion in pretextual prosecutions. For example, the ruling of the *United States v. Edwards* (1985), cited *Capone* (1932) to certify that a description of the exact ways in which the defendant evaded taxation was not necessary. The defendant stated that he did not file a return in order to conceal the obtainment of income through the illegal sale of marijuana (*Edwards*, 1985). In response, the prosecution cited *Capone* (1932) in notifying the defendant that an obligation to file a return despite the illegal nature of the income existed and that the Fifth Amendment protection allowed for the defendant to refuse to answer specific questions on the return that may incriminate him (*Edwards*, 1985). The logic employed in the ruling mirrors the interpretations presented in *Capone* (1932), and displays the continued reliance on the legal avenues established in that ruling.

Pretextual prosecution's marriage with tax evasion is commonly exercised in criminal investigations. Many of the cases involving the pursuit of a tax evasion conviction follow a similar pattern in the defendant's background and their financial practices. However, there are numerous cases of pretextual prosecution's application that do not involve the prosecution of a defendant suspected of extreme crimes. In many of these cases, legal scholars critique the application of pretextual prosecution because of

the negative impact on the integrity of the body of precedent established by its overuse (Litman, 2014). The justification centered in the application of pretextual prosecution in cases such as *Capone* (1932) is the creation of “important collateral benefits, such as the incapacitation of a repeat violent offender” who otherwise would walk free without the pursuit of a financial prosecution (Litman, 2014). However, critics note the liberal usage of pretextual prosecution by the Federal Government in surveillance cases following the 9/11 terrorist attack on the United States. Often, critics state pretextual prosecution serves as the legal arm that incriminates individuals because of prosecutors pre-existing biases and assumptions that defendants are guilty because of their association with easily identified groups or communities that are often accused of crime (Litman, 2014). There is clear acknowledgement of the usefulness of pretextual prosecution and tax evasion in the deportation of suspected terrorists. However, pursuing every possible legal avenue creates opportunity for misuse of the legal approach. An awareness of the dangers overuse creates for innocent members of targeted communities must be acknowledged and mitigated by the Federal Government (Litman, 2014). Critics cite the disproportionate incarceration of African American citizens and the role of pretextual prosecution in allowing for assumptions to be made about the individual’s nature and character instead of focusing on the crime at hand (Litman, 2014). Clearly, misuse leads to severe consequences for the legal history of the nation. Despite these negative concerns, the approach of pretextual prosecution is appropriate and salutary in circumstances where extremely dangerous and harmful individuals would walk free without its application. The exercise of pretextual prosecution must be subject to

limitations or receive more thorough scrutiny when discussing the potential charges against a defendant.

In the case of *Capone* (1932) the utilization of pretextual prosecution positively impacted society by freeing Chicago and the greater nation of the senseless violence brought about by Capone's operation. Additionally, Capone's celebrity figure publicized the accountability to which the federal government holds every citizen. Throughout legal history, the Federal Government utilized celebrities as a public example of the consequences of illegal activity. For example, in the ruling of *United States v. Stewart* (2004), the conviction of media personality Martha Stewart publicized the severe repercussions of insider trading activity. Stewart was briefly imprisoned, but her federal conviction is commonly referenced to this day, propagating the public's awareness of the potential of imprisonment should they choose to engage in illegal investing activities. This situation is recurrent in many other criminal cases such as the tax evasion of rapper DMX, singer Lauryn Hill, actor Wesley Snipes, and reality television star Mike 'The Situation' Sorrentino to name a few (Woods, 2019). Their legal troubles were highly publicized and, much like with Capone, made the public hyperaware of the negative consequences resulting from the evasion of taxes. Seeing as the IRS dedicates over 70% of its criminal investigation efforts to the evasion of taxation, making an example of celebrities is a logical strategy to curbing the high frequency of the crime (Internal Revenue Service, 2020).

The *Capone* (1932) ruling impacts the legal landscape of the United States in a multitude of way—both good and bad. Prosecutors must actively preserve the legacy of the ruling by applying its legal approaches with discipline instead of utilizing them as a

crutch in desperate situations. Doing so preserves the legitimacy of tax evasion and the role of forensic accounting in criminal investigations. This restraint allows for the acceptance of the approach when it is truly needed to positively impact society.

## CONCLUSION

The life of Al Capone is a story epically woven into the cultural fabric of America. Depictions of Capone dressing lavishly in custom suits, traveling in armored vehicles and residing in luxurious hotels in a multitude of literature and films greatly contribute to society's romanticism of the mobster and the era in which he existed (Morone, 2016). For these reasons, his infamy lives on and Capone remains a legendary figure in American history. Throughout the course of his trial, Capone's celebrity status drew great attention from the media and fanfare from the public. The trial was one of the most highly publicized events of the decade. Therefore, the success of *Capone* (1932) brought great attention to the effectiveness of tax evasion as a vehicle of criminal prosecution. Capone's fame does not detract from the sound work of special investigators, but instead broadcasts their successes.

The ruling of *United States v. Sullivan* (1927) laid the foundation for *Capone* (1932) through its interpretation of the Fifth Amendment protections. Scholars attribute the ruling as the establishment of the pairing between tax evasion and pretextual prosecution (Scott D. Schimick, 2014). Examination of *Capone* (1932) revealed the prosecutions utilization of the legal approach applied in *Sullivan* (1927) to justify the pursuit of a tax evasion conviction against Capone. In 1932, the Supreme Court denied Capone's petition for writ of certiorari thereby certifying the legitimacy of the legal approach utilized by prosecutors. This certification validated the strength of the evidentiary body compiled by special investigators assigned to *Capone* (1932). The

compiled evidence's sufficiency in soundly supporting the legal approach of *Capone* (1932) set a standard for the evidentiary body that a successful tax evasion prosecution requires. Furthermore, the celebrity status of the defendant brings significant recognition to the court proceedings of *Capone* (1932), making it a highly referenced case throughout legal history. In fact, legal scholars often refer to the application of pretextual prosecution through tax evasion as "the Al Capone method of law enforcement" (Sorrow, 95).

Through its common citation, the prosecution of tax evasion in criminal cases became more prevalent and the demand for forensic accounting grew. These common references outlined throughout the course of the thesis (i.e. *Miro* (1932), *Spies* (1943), *Holland* (1954), *Johnson* (1942), *Reynolds* (1955), *Lott* (1962), *Edwards* (1985), etc.) display the immense impact of *Capone* (1932) on approaches to criminal prosecution. In terms of forensic accounting's evidentiary evolution, *Sullivan* (1927) established the legal framework for pursuing tax evasion convictions, but *Capone* (1932) established its legitimacy and effectiveness. Prior to *Capone* (1932), an opportunity to observe the use of tax evasion over an extended period of time and through multiple cases was unavailable. However, its success in one of the most famous criminal prosecutions in legal history created an avenue for prosecution widely used by the government as they desperately sought to control the rampant crime of the Prohibition-era.

Altogether, these cases forged the path which many criminal prosecutions continue to utilize today. The legal chronology recognizes the clear benefit of this approach in bringing criminals to justice who may otherwise walk free because of the insufficiency of evidence to support their conviction of nonfinancial crimes. However,

application of this approach must not be abused. Overuse compromises the integrity of the body of precedent on which the legal system relies. Furthermore, overuse creates opportunity for injustice where pretextual prosecution can be applied liberally to convict individuals of crimes for which they may not be guilty (Litman, 2014). It is imperative that investigators do not fabricate the existence of evidence in their efforts to build a compelling case. Therefore, it is recommended that investigators exhaust every effort to obtain adequate evidence for the more severe crimes an individual may be suspected of before they default to the strategy of utilizing tax evasion.

*Capone* (1932) impacted the evidentiary evolution of tax evasion by popularizing its application in criminal prosecutions. The unique circumstances of the case, and the confines that investigators worked within gave their work legitimacy. Overall, the success of *Capone* (1932) revealed the imperative role of forensic accounting in carving out an adequate financial case against a defendant. Preservation of the legacy of *Capone* (1932) through disciplined application of its legal approaches maintains the integrity of its precedent and ensures the necessity of forensic accounting in criminal investigations for the foreseeable future.

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