

# America's First (and Most Fearless) High-profile Forensic Accountant

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There are competing claims as to when the term “forensic accountant” was first used in print, and by whom. Maurice E. Peloubet used the term in 1946 in the *Journal of Accountancy*.<sup>1</sup> Two other people would later mistakenly in print claim credit for inventing the phrase: Max Lourie in 1953<sup>2</sup> and Robert Lindquist in 1986. Lindquist stated that he coined the phrase around 1976.<sup>3</sup> Michael G. Kessler, in a press release on January 15, 2001, claims that he was the first “forensic auditor.”<sup>4</sup>



Zeph Telpner may have created the first forensic accounting CPE seminar. In the preface to his book *Expert Witnessing in Forensic Accounting*, he states that he wrote in 1979 a CPE seminar for CPAs entitled “The Practical Aspects of Forensic Accounting and Litigation Support.” The seminar was presented five times by state CPA societies. The average attendance was eight students, so the course died.<sup>5</sup> An early supporter of the American College of Forensic Examiners’ accounting group, Telpner says that his first forensic engagement occurred in 1961 when he was assigned to the Sister Elizabeth Kenney embezzlement case in Minneapolis. He later discovered falsified records and inventory theft by the manager of a gas distribution subsidiary of a natural gas company.

## The Gangster

Although the term may not have been used before the 1940s, a strong argument can be made that the first high-profile forensic accountant was Frank J. Wilson, the man who spearheaded the campaign to convict Alphonse “Scarface” Capone of tax evasion in 1931. During Prohibition, Capone dominated the

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<sup>1</sup> M.E. Peloubet, “Forensic Accounting: Its Place in Today’s Economy,” *Journal of Accountancy*, June 1946, pp. 458-462.

<sup>2</sup> Max Lourie, “Forensic Accounting,” *New York CPA*, November 1953, pp. 696-705. For more historical detail, see D.L. Crumbley, “Forensic Accounting: Older than You Think,” *Journal of Forensic Accounting*, July-December 2001, pp. 181-202.

<sup>3</sup> Ann Shortell, “The New Crime Sleuths,” *Macleans*, June 30, 1986. If you are aware of an earlier use of the phrase, please send evidence to the authors.

<sup>4</sup> “Michael G. Kessler Cited as the First ‘Forensic Auditor,’” press release January 15, 2001, available at [www.investigation.com/press/press14.htm](http://www.investigation.com/press/press14.htm).

<sup>5</sup> Zeph Telpner and Michael Mostek, *Expert Witnessing in Forensic Accounting*, CRC Press, Boca Raton, FL, 2003, pp. iii-iv.

city of Chicago. He owned or controlled speakeasies, distilleries, brothels, gambling houses, nightclubs, and horse and dog tracks throughout the city. He corrupted politicians (including the mayor), judges, police, and reporters—eventually he controlled politics throughout most of Illinois and influenced other state governments. He ruthlessly and brutally exterminated most of his competitors. Attempts by local and federal law enforcement agencies to build a racketeering case against him went nowhere, mainly because he bribed investigators, fixed judges and juries, and intimidated (or eliminated) witnesses. He was also very clever at covering his tracks.

Elliot Ness and his squad of “Untouchables,” working under the Prohibition Bureau, tried to destroy the Capone crime syndicate by brute force. They wrecked some of Capone’s illegal establishments, but Ness was much more effective at public relations than at law enforcement. In a letter dated December 2, 2004, J.C. Tomaino, who spent 22 years as an U.S. postal inspector, said that the movie “The Untouchables” is “a complete fabrication . . . Elliot Ness for the most part sat in his office and spent his days calling the newspapers. Although, in his defense, he certainly was much more aggressive than J. Edgar Hoover, who refused to participate in this investigation.”

## The Feds

In 1929, President Hoover and Treasury Secretary Andrew Mellon vowed to put Capone behind bars. Mellon enlisted the Treasury Department’s Special Intelligence Unit, headed by Elmer Irey, and they conceived the strategy of prosecuting Capone for tax evasion. This strategy was made possible by the 1927 Supreme Court decision in *U.S. v. Sullivan* (274 U.S. 259), which held that a bootlegger, Manny Sullivan, had to pay income tax on his illegal income. (Sullivan had argued that having to declare his illegal income would violate his Fifth Amendment protection against self-incrimination.)

Although Capone lived opulently and spent money lavishly, he had never filed a tax return, he did not have a bank account, he apparently never signed or endorsed anything, he paid cash only, and he didn’t acquire property in his name. To get Capone on income tax evasion, the government had to prove he had income in excess of \$5,000, the standard deduction at the time. (The federal courts did not legitimize the net-worth method until 1954.) Federal tax agents estimated his annual income to be \$50 million.<sup>6</sup>

Irey assigned 42-year-old Frank Wilson, one of his special agents in Baltimore, to go to Chicago with five other agents and build a tax case against Capone. Wilson was an aggressive investigator who, Ivey later wrote, “fears nothing that walks. He will sit quietly looking at books eighteen hours a day, seven days a week, forever, if he wants to find something in those books.” One of the suspects whom Wilson interrogated said, “He sweats ice water.”<sup>7</sup>

## The Investigation

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<sup>6</sup> Thomas Reppetto, *American Mafia*, New York: Henry Holt, 2004, p.114.

<sup>7</sup> Frank Spiering, *The Man Who Got Capone*, Bobbs-Merrill, New York, 1976, page 63.

In Chicago, through the summer of 1930, Wilson and his agents examined close to 2 million documents and other evidence that had been seized in various raids on Capone's establishments over the previous six years. To show that Capone spent a lot of money, which would suggest to a jury that he must have had some income, they questioned merchants, real estate agents, proprietors, hotel clerks, bartenders, and accountants, many of whom were overwhelmed by fear (even after Wilson promised some of them protection) and would not admit to any dealings with the gangster. The T-men analyzed phone records and investigated banks and credit agencies. They developed informers, tapped phones, seized books, and looked for weak points in Capone's empire. Still they could not find a shred of evidence that a dollar, much less millions, had flowed to Capone from any of his illicit businesses.

After months of work, Wilson received a tip that a large part of Capone's personal income was derived from his interest in the Hawthorne Kennel Club, a dog racing track. Capone was not a shareholder, but allegedly he received a big cut from the track's proceeds. Wilson's crew examined Hawthorne's books, records, and correspondence; they interviewed employees of the club; they investigated the banks that did business with it; but could not find any clues that proceeds had been diverted to Capone. Potential key witnesses fled or disappeared.

## **The Evidence**

Finally one night, around 1:00 a.m., Wilson himself found three bound ledgers that seemed to be financial records of an enormous gambling operation. Every few pages showed a calculation of net income that was to be divided among three people, referred to only as A, R, and J. On some pages there were references to "Al."<sup>8</sup> On one page, there was this notation: "Frank paid \$17,500 for Al." This was the first shred of evidence that Wilson had which might link Capone to proceeds of a gambling operation.

According to local police, these three ledgers had been seized in a raid on a gambling establishment in Cicero. On the night of the raid, Capone had showed up claiming to be the owner of the place, according to witnesses. Now what Wilson needed was to find the bookkeeper who had made the notations who could testify that "A" and "Al" referred to Al Capone.

For three weeks, Wilson collected handwriting samples of every known associate of Capone's in Chicago. He examined voting registers, bank deposits, bail bond certificates, etc. Finally he found a deposit slip from a bank in Cicero on which the handwriting matched the writing in the three ledgers. Wilson personally tracked the bookkeeper, a man named Shumway, found him at a dog track in Miami, and persuaded him to testify against Capone, first before a grand jury and then at trial, to the effect that a substantial amount of the proceeds from the gambling operation were intended for Capone in the years 1924 through 1926.

Wilson still had to prove that the gambling proceeds intended for Capone actually found their way into Capone's pocket. At a bank in Cicero he found that someone called J.C. Dunbar had brought hundreds of

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<sup>8</sup> Spiering, pp. 108-109.

thousands of dollars in cash to the bank in gunnysacks and purchased \$300,000 worth of cashier's checks. With help from informants, Wilson found that Dunbar's real name was Reis, who was hiding in St. Louis. Wilson hurried to St. Louis, of course, and with the help of postal inspectors found Reis, arrested him, and brought him to Chicago to testify that the cashier's checks represented Capone's share of the profits of various casinos, and the cash from the checks went directly into Capone's pockets.

Around the same time, while examining Western Union wire transfers from Chicago for the years 1927 and 1928, Wilson's team found evidence that members of Capone's family in Chicago regularly received money by wire; and Capone himself received wired funds in Miami under an assumed name.

Also around this time, Wilson learned that Capone had put a contract out on him, and Mafia killers had arrived in Chicago from Brooklyn to assassinate him. When Capone learned (within minutes, of course) that the state's attorney's office was looking for the Mafia killers, he paid off the contract and ordered the killers back to New York. It was a close call for Wilson and his wife, who had to move from one Chicago hotel to another while the killers were still at large. But Wilson was undeterred and didn't even consider leaving Chicago.

## **The Trial**

The Treasury Department at last had the evidence they needed, and in March and June of 1931 a grand jury indicted Capone on 23 counts of evading taxes of over \$250,000 on unreported income for 1924 through 1929.

Capone's trial was held in October 1931. The kingpin of organized crime in the Midwest was confident that he would be acquitted until Judge Wilkerson switched juries with another courtroom down the hall. Wilson had learned, through his informants, that Capone had rigged the original jury. The new jurors were sequestered so that the Capone gang could not get to them.

During the trial, Shumway and Reis testified nervously. The U.S. attorney brought other witnesses and introduced evidence to demonstrate Capone's exorbitant consumption of clothing, furnishings, food, gifts, etc.—in all, \$116,000 in non-deductible expenses—and pointed out the absurdity of Capone's claim that he had no income at the time.<sup>9</sup>

Capone still believed that his high-priced lawyers would find a way to get him acquitted, as they had many times before. But to his surprise he was found guilty of tax evasion, and received an 11-year prison sentence, plus fines totaling \$250,000 and \$30,000 in court costs. It was the largest penalty levied against a taxpayer up to that time.

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<sup>9</sup> Amy Hamilton, "IRS: Setting the Stage for a Sequel," *Tax Notes*, January 6, 2003, p.34.

After he was released from Alcatraz in 1939, probably suffering neurological damage from advanced syphilis, he settled in Florida, and died in 1947 at age 48.<sup>10</sup>

## **The Career**

As a forensic expert, Frank Wilson was engaged in both the investigation and prosecution of Capone. Later in his career, Wilson was assigned to investigate the kidnapping of Charles Lindbergh's baby in 1932. It was his suggestion that the serial numbers on the gold certificates paid in ransom be recorded, and this method of recording serial numbers would become common practice in prosecuting criminals. In 1936, Wilson became chief of the U.S. Secret Service, and received credit for the creation of a nationwide education program to eliminate the production and distribution of counterfeit money.<sup>11</sup> Wilson died in 1970 at the age of 83.

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<sup>10</sup> Repetto, *op. cit.*, p. 131.

<sup>11</sup> Wikipedia, the free encyclopedia.