

NOTES

Cracking Down on White-Collar Crime: An Analysis of the Recent Trend of Severe Sentences for Corporate Officers

*“On June 20, 2005, a judge sentenced John Rigas to fifteen years in prison. On July 13, 2005, Bernard Ebbers received twenty-five year sentence. On September 19, 2005, Dennis Kozłowski received a sentence of eight and one-third to twenty-five years. These men are not convicted murderers; they are corporate officers convicted for their actions as CEO’s of Adelphia Communications, WorldCom, and Tyco International.”*¹

I. INTRODUCTION

The criminal justice system has historically treated white-collar crimes differently than other crimes, even during the ongoing debate as to whether they deserve this distinction.² Courts, as well as academics, have treated white-collar crimes less severely and even labeled such crimes victimless.³ This classification suggests that either no one feels the injury at all or that the injury is substantially more indirect than the causal connection in, for instance,

1. See *Adelphia Founder Sentenced to 15 Years*, CNNMONEY.COM, June 20, 2005, http://money.cnn.com/2005/06/20/news/newsmakers/rigas_sentencing/index.htm (describing sentencing of founder and former CEO of Adelphia Communications); Krysten Crawford, *Ebbers Gets 25 years*, CNNMONEY.COM, July 13, 2005, http://money.cnn.com/2005/07/13/news/newsmakers/ebbers_sentence/index.htm (equating twenty-five year sentence to a life sentence for the sixty-three year old former CEO of WorldCom); Andrew Ross Sorkin, *Ex-Tyco Executives Get 8 to 25 Years in Prison*, N.Y. TIMES, Sept. 20, 2005, at A1 [hereinafter Sorkin, *Ex-Tyco Executives*] (reflecting courtroom demeanor of CEO and CFO of Tyco when court handed down their sentences); Andrew Ross Sorkin, *How Long to Jail White-Collar Criminals?*, N.Y. TIMES, Sept. 16, 2005, at C1 [hereinafter Sorkin, *How Long to Jail*] (discussing appropriate sentences for white-collar criminals).

2. See *Penalties for White-collar Crime: Hearings Before the Subcomm. on Crime and Drugs of the S. Comm. on the Judiciary*, 107th Cong. 102 (2002) (statement of Frank Bowman, Professor, Indiana University School of Law) (discussing statistics revealing economic crime defendants receiving lower sentences than robbery, drug, and firearm defendants); see also Stuart P. Green, *The Sarbanes-Oxley Act of 2002: The Concept of White-Collar Crime in Law and Legal Theory*, 8 BUFF. CRIM. L. REV. 1, 5 (2004) (noting Edwin Sutherland’s sociological classification of white-collar crime as a different breed); Michael D. Silberfarb, *Justifying Punishment for White-Collar Crime: A Utilitarian and Retributive Analysis of the Sarbanes-Oxley Act*, 13 B.U. PUB. INT. L.J. 95, 103-104 (2003) (arguing great difficulty in prosecuting white-collar crimes).

3. See Kurt Eichenwald, *White-Collar Defense Stance: The Criminal-less Crime*, N.Y. TIMES, Mar. 3, 2002, § 4, at 3 (arguing no real victim, per se, in certain white-collar crimes).

robbery or assault.⁴ Opponents argue that while the injuries may be theoretically indirect, they are still real and substantial, and many result in the loss of jobs or retirement plans.⁵

White-collar crime has recently received substantial media attention with the convictions of major corporate officials.⁶ There are a number of theories as to why public outrage is greater now more than ever.⁷ One reason is exposure of corporate officers' lavish lifestyles and expenditures.⁸ Another possible reason is increased public outrage over the massive losses caused by the officers' fraud.⁹ Media coverage has revealed the possessions and way of life of corporate officers, including "million dollar homes, private planes, golf courses[,] and art collections."¹⁰ The public has even bashed some corporate officers for their selection of home décor.¹¹

In 2002, the United States Sentencing Commission proposed tougher standards for white-collar crime.¹² The sentencing guidelines amendments came at a time when the Bush Administration, criticized by some Democrats for being soft on corporate criminals because of its close political ties to Wall Street, mounted an aggressive push against financial abuse.¹³ Also in 2002, Attorney General John Ashcroft ordered the Bureau of Prisons to end its "long practice of allowing certain low risk, short-term offenders" to serve time in halfway houses as an alternative to prison.¹⁴ Furthermore, in July 2002,

4. See Jonathan D. Glater, *Mad as Hell: Hard Time for White-Collar Crime*, N.Y. TIMES, July 28, 2002, § 4, at 5 (stating victims of white-collar crime suffer more indirect harm than traditional crimes).

5. See *id.* (arguing harm caused by corporate officers results in indirect physical suffering).

6. See *id.* (stating media attention to corporate scandals resulted in outcry against white-collar crime).

7. See *id.* (exploring reasons for public outrage with corporate criminals).

8. See Glater, *supra* note 4, at 5 (identifying lavish lifestyles of corporate officers at others' expense as reason for outrage).

9. See Glater, *supra* note 4, at 5 (exploring possibility of more Americans in stock market means more affected by white-collar crime).

10. See Glater, *supra* note 4, at 5 (discussing exposure to habits and styles of wealthy executives implicated for wrongdoing).

11. See Sorkin, *Ex-Tyco Executives*, *supra* note 1, at A1 (examining Dennis Kozlowski's role as face of corporate greed due to owning \$6,000 shower curtain).

12. Press Release, U.S. Sentencing Comm'n, Sentencing Commission Toughens Penalties for White-collar Fraudsters (Apr. 18, 2003), available at <http://www.usc.gov/PRESS/rel0403.htm> (stating emergency amendments to sentencing guidelines for officers of publicly traded companies permanent). These amendments doubled the previous mandatory sentence to ten years in prison where an officer of a publicly traded company with more than 250 employees or investors of more than \$1 million is convicted of fraud. *Id.*

13. See Eric Lichtblau, *Criticism of Sentencing Plan for White-Collar Criminals*, N.Y. TIMES, Dec. 26, 2002, at C2 [hereinafter Lichtblau, *Criticism of Sentencing Plan*] (discussing Justice Department's shift in policy imposing more serious consequences for white-collar criminals). Roughly half of the inmates transferred as a result of the directive were those convicted of financial crimes. *Id.*

14. See Jennifer Borges, *The Bureau of Prison's New Policy: A Misguided Attempt to Further Restrict a Federal Judge's Sentencing Discretion and to Get Tough on White-Collar Crime*, 31 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 141, 142-43 (2005) (exploring policy ramifications of removing those sentenced to halfway houses to serve their sentences in jail). Not only is this new policy affecting white-collar criminals, but the ramifications have also been felt by single mothers and check offenders who were also serving their sentences at halfway houses. *Id.*; see also *U.S. v. Arthur*, 367 F.3d 119, 120-22 (2d Cir. 2004) (discussing legality of new

President Bush made a speech from Wall Street calling “for tougher penalties for corporate criminals and greater corporate responsibility among CEOs.”¹⁵

This Note discusses the treatment of white-collar crime in the past as well as its current treatment. Part II.A-C discusses the history and development of white-collar crime before it entered the limelight.¹⁶ Part II.D explores reasons for the recent onslaught of attention paid to crimes of this nature and the corresponding public outrage.¹⁷ Next, Part II.F reviews the crimes and convictions of three recent corporate officers.¹⁸ Lastly, Part III of this Note provides potential alternatives to the harsh sentences handed down and addresses whether harsh sentencing is an effective tool for preventing crimes of this nature.¹⁹

II. HISTORY

A. Sentencing Justifications

In the criminal justice system, after an individual is convicted of a crime, the sentencing process occurs.²⁰ Two historical foundations for criminal punishment exist: the retributive justification and the utilitarian justification.²¹ There are several justifications within these two broad categories for punishing white-collar criminals, including retribution, deterrence, incapacitation, rehabilitation, and restoration.²²

The first oft-argued basis for punishing white-collar criminals is the retributive theory, which posits that the offenses deserve punishment.²³ Under

Bureau of Prisons policy decision).

15. President George W. Bush, Address from Wall Street (July 9, 2002), available at http://pbs.org/newshour/bb/business/july-dec02/bush_7-9.html [hereinafter Wall Street Speech] (discussing ramifications of corporate scandal on stock market and individuals alike).

16. See *infra* Part II.A-C (discussing past and present sentencing theories of white-collar crime).

17. See *infra* Part II.D (addressing causal relationship between media and political attention to corporate scandals and resulting public outrage).

18. See *infra* Part II.F (exploring convictions of former CEOs of Adelphia Communications, WorldCom, and Tyco International).

19. See *infra* Part III (exploring potential for recidivism in white-collar crimes and alternative methods of punishment to incarceration).

20. See CASSIA C. SPOHN, HOW DO JUDGES DECIDE 1 (2002) (listing questions regarding proper process after finding individual guilty of criminal acts).

21. See *id.* at 6 (classifying retributive justification as “desert-based” and utilitarian justification as “result-based”); see also Silberfarb, *supra* note 2, at 98 (describing retributive and utilitarian rationales for punishment of white-collar criminals). The retributive theory states that the acts of white-collar criminals deserve punishment that must be proportional to the crime committed. Silberfarb, *supra* note 2, at 98. The utilitarian rationale rests on preventing future harm to society, and therefore uses the cost-benefit analysis to determine severity of punishment. *Id.*

22. See SPOHN, *supra* note 20, at 6 (explaining routine justifications for criminal punishment).

23. See Elizabeth Szockyj, *Imprisoning White-Collar Criminals?*, 23 S. ILL. U. L.J. 485, 495 (1999) (raising doubts of effectiveness of deterrence). These doubts resulted in an influx of proponents of stricter sentences for white-collar crime under the retributive theory. *Id.*; see also Silberfarb, *supra* note 2, at 99

this “just deserts” justification, courts impose fines and prison time to white-collar criminals.²⁴ Determining the proper amount of punishment for white-collar criminals is a difficult task.²⁵ Compared to street criminals, the harm caused by white-collar criminals is more indirect, and it is therefore more difficult to gauge the exact level of harm caused by many corporate officers.²⁶

Another justification for punishing white-collar criminals is the utilitarian theory of punishment.²⁷ Most judges and prosecutors recognize the utilitarian theory as the purpose of white-collar crime punishment.²⁸ The problem with the utilitarian justification, however, is that empirical evidence of its effectiveness is inconclusive.²⁹ The utilitarian argument of specific deterrence is problematic because corporate officers are unlikely candidates for recidivism.³⁰ By definition, specific or special deterrence is “a goal of a specific conviction and sentence to dissuade the offender from committing crimes in the future.”³¹ General deterrence, on the other hand, is “a goal of criminal law generally, or of a specific conviction and sentence, to discourage people from committing crimes,”³² and serves as another preventative rationale for punishment of white-collar criminals.³³

(arguing retributive approach to punishment ensures a just punishment).

24. See Szockyj, *supra* note 23, at 496 (observing public opinion favors prison time for white-collar criminals); see also Silberfarb, *supra* note 2, at 100 (stating judges possess ability to assess \$5 million under Sarbanes-Oxley legislation).

25. See Silberfarb, *supra* note 2, at 100-01 (describing “inflationary” and “meaningful fine” problems resulting in difficulty determining appropriate level of punishment); Szockyj, *supra* note 23, at 496 (revealing difficulty in determining level of culpability and harm in white-collar crime). The inflationary problem exists because statutory fines are not indexed for inflation. Silberfarb, *supra* note 2, at 100. The meaningful fine issue results because convicted corporate officers, due to their wealth, may view the fines as insignificant. *Id.* at 101

26. See Sorkin, *How Long to Jail*, *supra* note 1, at C1 (noting no figure determined at trial regarding how much money shareholders lost).

27. See Szockyj, *supra* note 23, at 492 (stating utilitarian justification most effective because greed motivates white-collar crimes). Szockyj observes that “[m]ost judges and prosecutors view general deterrence as the one of the goals, if not the major purpose, in sentencing white-collar offenders.” *Id.*

28. See Szockyj, *supra* note 23, at 492 (arguing corporate crime inherently lends itself to media attention and exposure). This exposure can be utilized to deter other corporate officers from committing the same offense. *Id.*

29. See Szockyj, *supra* note 23, at 493 (observing mixed results for effectiveness of criminal punishment on white-collar crime). Although extensive studies on this topic have been conducted, there is only “lukewarm support for the position that criminal penalties effectively deter corporate crime.” *Id.*; see also Jennifer Recine, *Examination of the White-Collar Crime Penalty Enhancements in the Sarbanes-Oxley Act*, 39 AM. CRIM. L. REV. 1535, 1569-70 (2002) (asserting that according to “optimal theorists,” deterrence obtained from fines equal to that obtained from jail sentences).

30. See Szockyj, *supra* note 23, at 495 (presenting criminology study revealing sentenced white-collar offenders’ rates of recidivism regardless of prison); David Weisburd, *Specific Deterrence in a Sample of Offenders Convicted of White-Collar Crimes*, 33 CRIMINOLOGY 587, 597 (1995) (finding no evidence of specific deterrence from prison sentence). Weisburd’s study showed that white-collar criminals sentenced to prison were more likely to recidivate than those who were not imprisoned. See Weisburd, *supra*, at 597.

31. BLACKS LAW DICTIONARY 481 (8th ed. 2004) (providing definition of special deterrence).

32. *Id.* (defining general deterrence).

33. See Silberfarb, *supra* note 2, at 105 (arguing increase in incarceration levels of white-collar criminals

Under either the retributive or utilitarian justifications, jail time as a means of punishing white-collar criminals remains a disputed issue.³⁴ While the public prefers imprisonment for white-collar criminals, fines may be the most effective means of punishment.³⁵ Additionally, the fairness of imprisoning one corporate officer to dissuade others must be addressed.³⁶

B. What is White-collar Crime?

White-collar crimes encompass crimes of a corporate nature, typically with non-violent effects.³⁷ White-collar criminals are generally respected people in their profession and of high social status.³⁸ Their crimes are typically economic in nature and result in direct monetary losses.³⁹ White-collar crime is considered a special breed in the criminal justice system, as there is a long history of perceived leniency with regard to these criminals.⁴⁰ The leniency argument stems from the apparent ability of alleged white-collar criminals to utilize their resources to escape indictment or conviction.⁴¹ Another reason for the historically few white-collar prosecutions and convictions is the difficulty in discovering the infraction and then subsequently explaining the offense to

expresses societal condemnation of acts).

34. See Recine, *supra* note 29, at 1559-60 (realizing economic effectiveness of punishing white-collar criminals with fines rather than jail time). Based on the optimal penalty theory, recovering fines from those with the financial ability to pay them is more effective than imprisonment under a cost-benefit analysis. *Id.* at 1560.

35. See Recine, *supra* note 29, at 1560 (contending equal measure of deterrence satisfied by fines while simultaneously conserving societal resources); see also Glater, *supra* note 4, at 1 (illustrating public outrage with white-collar crime and desire for prison terms for those convicted).

36. See Szockyj, *supra* note 23, at 495 (demonstrating effects media, politics, and public opinions have on each other). The cases inherently gain media attention and serve as a general deterrent while also pressuring judges to give strict sentences to those convicted. *Id.*

37. See Szockyj, *supra* note 23, at 485-86 (stating white-collar crimes do not involve weapons). Most white-collar crimes "customarily are committed through . . . deception, omission, concealment, misappropriation, and abuse of public trust." *Id.* at 487; see also Silberfarb, *supra* note 2, at 103-04 (recognizing incarceration opposition's view of imprisonment for white-collar criminals). Opponents of incarcerating white-collar criminals argue that because the harm caused by white-collar criminals is less violent and more indirect than the harm caused by street criminals, white-collar criminals deserve more lenient sentences. Silberfarb, *supra* note 2, at 103-04.

38. See Szockyj, *supra* note 23, at 485-86 (quoting EDWIN H. SUTHERLAND, WHITE COLLAR CRIME 2 (1949)) (providing general definition for white-collar criminal while stipulating exact parameters are debatable). It is generally accepted that the harms of white-collar crime are "financial, physical, or social" in nature. *Id.* at 486.

39. See Szockyj, *supra* note 23, at 486-87 (discussing harm resulting from white-collar crimes). Some argue, however, that these crimes extend beyond financial harm and can result in personal injury and even death. *Id.*; see also Glater, *supra* note 4, at 5 (recognizing potential for physical harm due to individual's inability to pay for medical care).

40. See Szockyj, *supra* note 23, at 487 (stating white-collar criminals rarely prosecuted).

41. See Szockyj, *supra* note 23, at 487-88 (insisting white-collar criminals consistently escape conviction). White-collar criminals are arguably able to elude conviction by paying for superior legal counsel, relying on political and social connections, and possessing financial resources in excess of the prosecution. *Id.*

the jury in an understandable manner.⁴²

C. *White-collar Crime Cases of the Past*

Prior to the recent crack down on white-collar crime, the government attempted to cleanse white-collar crime in the 1980s.⁴³ In the wake of the Watergate scandal, which resulted in prison terms for President Nixon's Administration officials, prosecutors exhibited heightened interest in pursuing corporate criminals.⁴⁴ Convictions in federal court for white-collar criminals between 1980 and 1985 rose eighteen percent.⁴⁵ In addition, during that same time period, the average sentence for white-collar criminals increased twenty percent.⁴⁶

Some argue, however, that white-collar criminals ignored the increased attention and continued their misbehavior.⁴⁷ In the 1980s, Michael Milken, known as the "junk bond king," pleaded guilty to racketeering, securities fraud, and insider trading, serving two years in prison.⁴⁸ In 1985, the stock brokerage firm E. F. Hutton pleaded guilty to 2,000 felonies, admitting guilt in a massive check-kiting scheme.⁴⁹ Although the firm agreed to pay \$2 million in fines, no firm employees spent any time in jail.⁵⁰ In 1994, Prudential Securities admitted to committing fraud in a \$1.4 billion investments sale involving 120,000

42. See Szockyj, *supra* note 23, at 489 (arguing complexity and difficulty clarifying ambiguity in law and culpability); see also John Hasnas, *Overcriminalization: The Politics of Crime: Ethics and the Problem of White-Collar Crime*, 54 AM. U. L. REV. 579, 594 (2005) (noting evidence in white-collar crime cases primarily business documents and rarely physical).

43. See Sorkin, *How Long to Jail*, *supra* note 1, at C1 (discussing whether lengthy sentences for white-collar criminals warranted). Some prosecutors and lawyers suggest that the goal of the corporate crackdown in the 1980s did not make an impact because sentences were too short to make a point. *Id.*; see also Neil Weinberg & Mary Ellen Egan, *Criminal Injustice System*, FORBES, Apr. 26, 2004, at 42 (discussing extreme nature of recent sentences for white-collar crimes). Weinberg and Egan explain that "if the corporate officers were caught for trafficking forty grams of heroin, they would likely be back on the street in three years." Weinberg & Egan, *supra*, at 42. In addition, the maximum sentence under federal law for voluntary manslaughter is ten years, meaning any sentence greater is disproportionate for nonviolent, non-drug offenses. *Id.*

44. See Stuart Taylor, Jr., *Sentences Getting Stiffer*, N.Y. TIMES, May 9, 1985, at D4 (describing overall influx in number of white-collar cases brought in federal court).

45. See *U.S. Reports 18% Rise in '85 in White-Collar Convictions*, N.Y. TIMES, Sept. 29, 1987, at A24 (citing statistics from federal report noting 10,733 defendants convicted in 1985 for white-collar crimes).

46. See *id.* (noting twenty-nine months as average length sentence for white-collar criminals in 1985). In contrast, the article notes that in 1985 "[t]he average length of a prison sentence for other types of Federal criminals was 50 months . . ." *Id.*

47. See Sorkin, *How Long to Jail*, *supra* note 1 at C1 (suggesting short sentences of the 1980s ineffective because corporate officers not deterred from illegal behavior).

48. See Eichenwald, *supra* note 3, at 3 (stating Milken pleaded guilty to six felonies total, for which he served his prison time).

49. See Eichenwald, *supra* note 3, at 3 (stating even seemingly successful convictions of past unsuccessful in general). Other cases were reversed on appeal due to the "complex evidentiary and legal issues." *Id.*

50. See Eichenwald, *supra* note 3, at 3 (arguing more likely to serve jail time for robbery than white-collar felonies).

people; again, fines were paid and no one went to jail.⁵¹

D. Recent Media Attention to White-collar Crime

In the past few years, there has been a significant increase in the public's awareness of white-collar crime.⁵² Recent media attention to white-collar crime has risen and the general public has become more aware and sensitive to corporate crime than in the past.⁵³ This heightened media attention has impacted the public in two ways: First, the public now possesses a better understanding of how white-collar crimes are committed, and second, the public shares a general disgust with the lavish lifestyles of those accused.⁵⁴ Public outrage increased when they learned that executives' lavish lifestyles continued even after the collapse of their companies, while average citizens suffered the harsh consequences.⁵⁵ Indeed, one of the major harms resulting from white-collar crime is that corporate officers did more than adversely harm the stockholders; they abused the public's trust.⁵⁶

E. Political Response to Corporate Scandal

The political arena also made recent changes in dealing with white-collar

51. See Eichenwald, *supra* note 3, at 3 (noting difficulty in prosecution of white-collar criminals due to general financial schemes). Although prosecutors are aware that a crime took place, the complex schemes are difficult to explain to a jury to obtain a conviction. *Id.*

52. See Glater, *supra* note 4, at 5 (stating attitudes shifted due to corporate failures and impact on stock market).

53. See Glater, *supra* note 4, at 5 (discussing constant media coverage resulting in heightened awareness of society). In response to the corporate scandals' media attention, society has generated an "understanding, thoughtful outcry against white-collar crime." *Id.*

54. See Glater, *supra* note 4, at 5 (noting public saturated with examples of wealthy executives' lavish lives). The media provided the public with access into the homes, personal collections, and private planes of those implicated. *Id.* At the same time, the media also made the public aware of the crimes and how they are carried out; through the Internet, the public has become experienced in the financial world, some even becoming day traders. *Id.* Additionally, the overall increase in stock ownership among the general population results in more people being adversely effected when a corporation collapses. *Id.*; see also Recine, *supra* note 29, at 1544 (stating as investor confidence drops, public outrage increases to "furor"). A 2002 CNN/Gallup poll revealed that sixty-five percent of the public agreed that Enron executives acted criminally by concealing company debt in other partnerships. Recine, *supra* note 29, at 1544.

55. See Recine, *supra* note 29, at 1544 (noting peaked public interest due to effect on society through stock market); see also Glater, *supra* note 4, at 5 (noting public reaction to scandals measured through stock market influxes). People close to retirement suffered a loss to their portfolio value while others just pulled out of the market altogether. Glater, *supra* note 4, at 5.

56. See Joan Biskupic, *Why It's Tough to Indict CEOs*, USA TODAY, July 24, 2002, at 1A, available at http://www.usatoday.com/news/nation/2002-07-24-corporate-cover_x.htm (presenting inadequacy of political efforts to restore investor confidence); Eric Lichtblau, *Bush Officials Vowing to Seek Tough Penalties in Wall St. Cases*, N.Y. TIMES, Dec. 19, 2002, at A1 (noting that defrauding shareholders abuses public trust and adversely effects individuals' lives); see also Wall Street Speech, *supra* note 15 (explaining illegal acts of corporate officers result in loss of public faith in stock market). According to legal analysts, penalties are only effective if the corporate offenders believe they will get caught. Biskupic, *supra*, at 1A.

crime.⁵⁷ On July 2, 2002, President Bush spoke from Wall Street, declaring the need for greater responsibility among corporate CEOs and harsher penalties for corporate criminals.⁵⁸ At the behest of President Bush, subsequent legislative actions eliminated the historical leniency to which white-collar criminals were so accustomed.⁵⁹

The political response most widely associated with white-collar crime was the passing of the Sarbanes-Oxley Act (the Act).⁶⁰ The Act addressed the perceived sources of the problems, including “accounting oversight, auditor independence, insider trading, corporate responsibility, the transparency of financial statements, conflicts of interest among analysts, the resource needs of the SEC, criminal fraud accountability, and criminal penalty enhancements.”⁶¹

Particularly significant to this Note, the Act changed the sentencing framework for white-collar crime.⁶² Several provisions of section 906 of the Act increased prison time for white-collar criminals.⁶³ As a result, the United States Sentencing Commission approved new guidelines increasing penalties for corporate offenders by twenty-five percent or more.⁶⁴ With the passing of the new sentencing guidelines, a member of the Commission stated, “The message of today’s amendment is very simple: If you do the crime, you’ll do the time Crimes in the suites will be treated the same, if not more seriously, than crimes in the streets.”⁶⁵

The sentencing guidelines use a point system to determine a sentencing range for each person convicted of a federal crime.⁶⁶ The sentencing guidelines

57. See Wall Street Speech, *supra* note 15 (exploring political avenues for harsher sentences to restore shareholder confidence in market).

58. See Wall Street Speech, *supra* note 15 (stating need for higher ethical standards for corporate officers). President Bush’s speech called for doubling the maximum sentence for those convicted and higher corporate accountability. *Id.*

59. See Eichenwald, *supra* note 3, at 3 (noting weak white-collar criminal enforcement because difficulty of discovering and proving complex schemes).

60. See Recine, *supra* note 29, at 1549 (describing the Act as solution to market problems and high-profile cases of 2001 and 2002).

61. See Recine, *supra* note 29, at 1549 (noting issues addressed by the Act).

62. See Silberfarb, *supra* note 2, at 105 (explaining significance of the Act on sentencing for white-collar criminals)

63. See Sarbanes-Oxley Act of 2002, H.R. 3763, 107th Cong. 62 §§ 901-906 (2002) (suggesting higher sentences for those found in violation of new laws governing corporate officers); Silberfarb, *supra* note 2, at 105 (explaining § 906 of Act directs harsher sentencing guidelines for white-collar criminals).

64. See Eric Lichtblau, *Panel Clears Harsher Terms in Corporate Crime Cases*, N.Y. TIMES, Jan. 9, 2003, at A1 [hereinafter Lichtblau, *Panel Clears*] (stating guidelines resulted from influx in corporate scandal). Due to these new guidelines, which Congress passed on January 8, 2003, a securities fraud conviction for a corporate officer now results in a ten-year sentence as opposed to a six and one-half year sentence. *Id.*

65. See Lichtblau, *Panel Clears*, at A1 (defending decision to raise sentences). Reuben Castillo, the aforementioned member of the commission, defended the measure as part of a “corporate cleanup measure” to restore investor confidence in the wake of the scandals. *Id.*

66. See Perkins Coie, LLP, *Amendments to Federal Sentencing Guidelines Increase Risks and Highlight Areas of Concern for Corporate Compliance Programs*, Dec. 10, 2003, http://www.perkinscoie.com/news/pubs_detail.aspx?publication=626&op=updates (explaining determination of

assign points based on the “type of crime, the amount of the loss[,] and other factors.”⁶⁷ The accrual of points determines the “offense level” for the crime, which then determines the sentencing range—“the” higher the offense level, the harsher the sentence.”⁶⁸

Additionally, the sentencing guidelines imposed significant sentencing enhancements for white-collar offenses that “affect a large number of victims or endanger the solvency or financial security of publicly traded corporations, other large employers, or 100 individual victims.”⁶⁹ Specifically, the guidelines target officers and directors of publicly traded corporations who commit securities violations and subject offenders to substantially increased penalties.⁷⁰ For example, “an officer of a publicly traded corporation who defrauds more than 250 employees or investors of more than \$1 million will receive a sentence of more than 10 years in prison[,] . . . almost double the term of imprisonment previously provided by the guidelines.”⁷¹

In addition to stricter sentencing guidelines, the Bureau of Prisons changed where convicted white-collar criminals serve out their sentences.⁷² In an attempt to toughen penalties for white-collar crime, Attorney General Ashcroft ordered the Bureau of Prisons to end its practice of permitting many white-collar criminals to serve their sentences in halfway houses.⁷³ Instead, they now serve time in federal prisons.⁷⁴

F. Recent Cases of Corporate Scandal

Under the aforementioned stricter legal trends, corporate officers have been indicted, convicted, and sentenced for their crimes.⁷⁵ The Enron scandal first

offense level based on points assigned to crime).

67. See *id.* (explaining formula utilized under new federal sentencing guidelines to determine proper sentence). The formula includes the amount lost by investors to calculate the appropriate sentence for those convicted. *Id.*

68. See *id.* (describing how new federal sentencing guidelines function and acknowledging corporate officers face stiffer sentences as result of new guidelines).

69. See Press Release, U.S. Sentencing Comm’n, *supra* note 12 (providing example of how new federal sentencing guidelines potentially effect certain corporate officers).

70. See Press Release, U.S. Sentencing Comm’n, *supra* note 12 (revealing certain types of crimes targeted by new federal sentencing guidelines).

71. See Press Release, U.S. Sentencing Comm’n, *supra* note 12 (describing gravity of effect of sentencing guidelines on length of sentence).

72. See *More White-Collar Criminals to be Jailed*, N.Y. TIMES, Jan. 8, 2003, at A20 (stating directive results in transfer of approximately 125 prisoners from halfway houses to federal prisons).

73. See Lichtblau, *Criticism of Sentencing Plan*, *supra* note 13, at C2 (noting Ashcroft argued practice violated laws requiring imprisonment and provided white-collar criminals with favorable treatment). The practice was in effect for over twenty years for nonviolent offenders and was not limited solely to those sentenced for white-collar crimes. *Id.*

74. See Lichtblau, *Criticism of Sentencing Plan*, *supra* note 13, at C2 (stating many criminals were taken from halfway houses and returned to federal prisons).

75. See Glater, *supra* note 4, at 5 (noting exposition and prosecutorial “zeal” in pursuing prosecution of corporate officers for alleged criminal acts).

grabbed the public's attention.⁷⁶ The scandal, however, did not end with Enron, and law enforcement continued the corporate crime crackdown as further indictments of corporate officers followed, including those of Adelphia, WorldCom, and Tyco.⁷⁷

John Rigas, the founder of Adelphia Communications, was convicted of conspiracy and fraud for his actions contributing to the collapse of the corporation.⁷⁸ Rigas and his son Timothy were charged with concealing \$2.3 billion in debt at the cable company, deceiving investors, and stealing company cash for their own personal benefit.⁷⁹ On June 17, 2005, John Rigas received a prison sentence of fifteen years.⁸⁰ He was eighty years old at the time of sentencing.⁸¹ Timothy Rigas, due to his younger age, received a higher, twenty-year sentence in prison after being convicted of the same crimes.⁸² Prosecutors initially requested 215 year sentences for both John and Timothy Rigas.⁸³

In another headline-grabbing corporate scandal, Bernard Ebbers, the former chairman of WorldCom, was convicted for accounting fraud.⁸⁴ The jury found Ebbers guilty on all counts—including securities fraud and false regulatory filings—for his role that led to the downfall of the telecommunications

76. See Eichenwald, *supra* note 3, at 3 (stating Enron exemplifies recently developed pattern of big name corporations caught up in scandal). Enron, once the seventh largest corporation in America, was fraught with scandal after the revelation that it had partnerships to inflate profits and hide its \$1 billion debt. Krysten Crawford, *Lay Surrenders to Authorities*, CNNMONEY.COM, July 12, 2004, <http://money.cnn.com/2004/07/08/news/newsmakers/lay/> (describing Enron accounting scandal and its subsequent demise). Ultimately, Enron filed for bankruptcy on December 2, 2001. *Id.*

77. See Grace Wong, *Kozlowski Prepares to do Time*, CNNMONEY.COM, Sept. 16, 2005, http://money.cnn.com/2005/09/16/news/newsmakers/kozloski_sentencing/index.htm [hereinafter Wong, *Kozlowski Prepares*] (noting high profile cases of Adelphia and WorldCom served as examples for Kozlowski's impending sentencing).

78. See *Adelphia Founder Sentenced to 15 Years*, *supra* note 1 (discussing sentencing of Rigas nearly one year after his conviction for criminal actions taken as CEO).

79. See *Adelphia Founder Sentenced to 15 Years*, *supra* note 1 (noting John Rigas and his son convicted of eighteen out of twenty-three counts).

80. See *Adelphia Founder Sentenced to 15 Years*, *supra* note 1 (explaining John Rigas also fined \$2,300). The article further explains that the fifteen-year sentence for John Rigas is "substantial" in the context of historical sentences for white-collar crimes. *Id.* (quoting Jacob Frenkel, former federal prosecutor).

81. See *Adelphia Founder Sentenced to 15 Years*, *supra* note 1 (explaining fifteen-year sentence amounts to effective life sentence for John Rigas). The judge presiding over the sentencing stated that John Rigas' term could be altered after two years, conditioned on the Bureau of Prisons finding that his life expectancy is less than three months. *Id.* Additionally, attorneys for John Rigas argued mitigating factors in sentencing hearings, namely that their client had heart troubles and bladder cancer. *Id.*

82. See *Adelphia founder sentenced to 15 years*, *supra* note 1 (noting CFO Timothy Rigas sentenced to twenty years).

83. See *Adelphia Founder Sentenced to 15 Years*, *supra* note 1 (arguing sentences deserved as two men caused Adelphia's bankruptcy).

84. Jonathan D. Glater, *Seeking Deterrent, U.S. Wants a Life Prison Term for Ebbers*, N.Y. TIMES, June 29, 2005, at C5 [hereinafter Glater, *Seeking Deterrent*] (explaining Ebbers convicted for "securities fraud and submitting false filings to regulators").

corporation.⁸⁵ His acts resulted in investors losing billions of dollars.⁸⁶ Ebbers received a twenty-five-year sentence.⁸⁷ Ebbers was sixty-three years old, and thus many believe the twenty-five-year sentence is effectively a life sentence.⁸⁸ Prosecutors originally asked for the judge to sentence Ebbers to life in prison for his crimes.⁸⁹

In a case closely monitored by critics of lengthy white-collar sentences, a Houston federal judge sentenced Jamie Olis to twenty-four years in March 2004.⁹⁰ Olis, unlike Rigas and Ebbers, was a mid-level executive at Dynegy, Inc.⁹¹ The court convicted Olis for devising a tax scheme that enabled the corporation to disguise a \$300 million loan as cash flow.⁹² Two other Dynegy employees involved in the scheme both pleaded guilty and were expected to receive sentences of less than five years.⁹³ In 2005, the Fifth Circuit held that the district court judge miscalculated the amount of money lost by Dynegy's investors, and therefore improperly inflated the sentences.⁹⁴ As a result, the court remanded the case for re-sentencing.⁹⁵

85. See *id.* (stating Ebbers orchestrated \$11 billion accounting fraud and bankrupted the corporation).

86. See *id.* (noting huge drop in WorldCom's market value may justify harsh sentence). The effect of Ebbers's fraudulent actions resulted in a significant decline in the stock value of WorldCom. *Id.*

87. See Crawford, *supra* note 1, at 1 (providing twenty-five-year sentence resulted from Ebbers defrauding corporation of \$11 billion); see also Sorkin, *How Long to Jail*, *supra* note 1, at C1 (arguing long sentences handed down for corporate officers, including Ebbers, were excessive). In response to this sentencing, former Manhattan United States Attorney Otto G. Obermaier stated, "Ebbers's sentence moved the goal posts pretty far back. You can describe it as a pendulum switch, but it is an overreaction." Sorkin, *How Long to Jail*, *supra* note 1, at C1.

88. See Sorkin, *How Long to Jail*, *supra* note 1, at C1 (noting Ebbers's twenty-five-year sentence results in spending his final years of life in prison); see also Brooke A. Masters, *What Does 25 Years Do?*, WASHINGTON POST, July 14, 2005, at D1 (exploring effects of lengthy sentences on corporate officers). As federal prisoners generally serve eighty-five percent of their terms, even considering early parole, Ebbers faces over twenty years in prison. Masters, *supra*, at D1.

89. See Glater, *Seeking Deterrent*, *supra* note 84, at C5 (suggesting terms imposed proportional to amount of fraud committed by Ebbers). Ebbers's lawyers countered the call for a life sentence by stating that the dollar losses experienced by the corporation overstated the gravity of his crimes. *Id.*

90. See Simon Romero, *Ex-Executive of Dynegy is Sentenced to 24 Years*, N.Y. TIMES, Mar. 26, 2004, at C2 [hereinafter Romero, *Ex-Executive of Dynegy Sentenced*] (explaining substantiality of twenty-four-year sentence considering mid-level position held by Olis); see also Simon Romero, *Revision of 24-Year Prison Term Ordered in Accounting Fraud*, N.Y. TIMES, Nov. 2, 2005, at C3 [hereinafter Romero, *Revision of Prison Term*] (stating Olis became poster child for excessive punishment for white-collar crime).

91. See Romero, *Revision of Prison Term*, *supra* note 90, at C3 (explaining sentence in context of other white-collar criminals recently sentenced).

92. See Romero, *Revision of Prison Term*, *supra* note 90 (delineating "Project Alpha" plan devised by Olis as tax planning official at Dynegy).

93. See Romero, *Ex-Executive of Dynegy Sentenced*, *supra* note 90, at C2 (noting both the vice president for taxation and the risk assessment official pleaded guilty in 2003). A United States Attorney insisted that the goal of Olis's sentence was to serve as a warning to other indicted officers and show the need for cooperation with prosecutors. *Id.*

94. See *U.S. v. Olis*, 429 F.3d 540, 548-49 (5th Cir. 2005) (describing misapplication of federal sentencing guidelines in case of Olis and remand for re-sentencing).

95. See *id.* at 549 (articulating need to re-sentence Olis, even though conviction affirmed). The judge ordered the re-sentencing to follow the sentencing guidelines and observed the need to reevaluate the loss for which Olis was responsible. *Id.*

Federal law governed each one of the aforementioned cases.⁹⁶ In addition, these men were sentenced under then-current federal sentencing guidelines for white-collar criminals.⁹⁷ Many opponents of the federal sentencing guidelines argue that they take away sentencing discretion from federal judges, which is generally inherent in their duties.⁹⁸ Under the federal sentencing guidelines, the amount of loss suffered by shareholders is taken into account in determining the appropriate sentence.⁹⁹ In *United States v. Booker*,¹⁰⁰ the United States Supreme Court addressed the constitutionality of the federal sentencing guidelines.¹⁰¹ In *Booker*, the Court held that federal sentencing guidelines were constitutional, so long as they were advisory and the federal district court judge followed the guidelines according to the standard of reasonableness.¹⁰²

Dennis Kozlowski was the first corporate officer charged under state law for white-collar crime since the implementation of new federal laws and sentencing guidelines for white-collar crime.¹⁰³ Although Kozlowski's first trial ended in a mistrial, in the second trial, a New York jury found Kozlowski guilty of grand larceny, falsifying business records, securities fraud, and additional crimes while CEO of TYCO International.¹⁰⁴ Convicted of twenty-two of the twenty-three charges brought against him, the judge sentenced Kozlowski to eight and one-third to twenty-five years in state prison.¹⁰⁵ As opposed to federal judges,

96. See Wong, *Kozlowski Prepares*, *supra* note 77 (stating Ebbers and Rigas sentenced in high profile cases by federal judges).

97. See Wong, *Kozlowski Prepares*, *supra* note 77 (explaining difference between federal judges and state judges in sentencing process). While federal judges must follow strict sentencing guidelines, state court judges have greater discretion in determining the appropriate sentence. *Id.*

98. Alain L. Sanders, *The Wrath of "Maximum Bob"; Jim Bakker's Stiff Punishment Raises Questions over Sentencing*, TIME, Nov. 6, 1989, at 62 (exploring importance of judges' discretion to decide appropriate sentence). Trial judge discretion is valued in the justice system because it allows the judge to tailor the sentence to properly fit the circumstances of the crime and culpability of the individual defendant. *Id.*

99. See Perkins Coie, LLP, *supra* note 66 (explaining federal sentencing guidelines formula). The formula functions by calculating the amount of loss suffered by investors to be weighed by a point system which determines the appropriate sentence. *Id.*

100. 543 U.S. 220 (2005).

101. 543 U.S. at 754-55 (upholding sentencing guidelines as constitutional grant of legislative power).

102. *Id.* at 764 (making guidelines advisory). When determined consistent with overall reasonableness, however, sentencing guidelines are constitutional. *Id.*

103. See Sorkin, *How Long to Jail*, *supra* note 1, at C1 (noting Kozlowski trial in state court).

104. See Dan Ackman, *Judge Declares Kozlowski Mistrial*, FORBES.COM, Apr. 2, 2004, http://www.forbes.com/management/2004/04/02/cx_da_0402tycomistrial.html (reporting mistrial); Sorkin, *How Long to Jail*, *supra* note 1, at C1 (explaining breadth of charges and general description of case brought against Kozlowski). Many argue that the failure of prosecutors to convict in the first instance is due in large part to the overemphasis of Kozlowski's lavish lifestyle. See *The Crime and the Time*, N.Y. TIMES, Sept. 20, 2005, at A28. In the first trial, prosecutors focused on Kozlowski's expenditures of misappropriated funds including a birthday party, home décor, and real estate. *Id.* Prosecutors even presented evidence of a purchase that was made by Kozlowski of a \$6,000 shower curtain for his New York residence. *Id.*

105. See Grace Wong, *Kozlowski Gets up to 25 Years*, CNNMONEY.COM, Sept. 19, 2005, http://money.cnn.com/2005/09/19/news/newsmakers/kozlowski_sentence/index.htm [hereinafter Wong, *Kozlowski Gets 25*] (explaining prosecution requested a fifteen- to thirty-year sentence).

state judges have broad discretion in sentencing.¹⁰⁶ Kozlowski's sentence may indicate a judicial response to both the recent harsher federal guidelines and the public outrage with this class of criminals.¹⁰⁷

In addition to the difference between the severity of state and federal sentences, differences exist regarding where the sentences are carried out.¹⁰⁸ As opposed to the "club fed" environment of many of the federal prisons, state prisons are notoriously harsher.¹⁰⁹ Kozlowski will therefore be incarcerated alongside rapists and murderers in high security facilities.¹¹⁰ Even though his sentence is shorter than those sentenced under federal guidelines, it is nonetheless equally harsh.¹¹¹

III. ANALYSIS

Courts must consider whether corporate crimes inherently deserve strict sentencing or whether recent media and political attention has created undue scrutiny.¹¹² The reasoning is circular either way.¹¹³

Under this logic, if the media did not attention to white-collar crime, then public knowledge of the events would likely be minimal.¹¹⁴ Those in the business sector would have knowledge, but lay persons would not, unless the specific crime directly impacted their lives.¹¹⁵ Nonetheless, public interest in corporate scandal spiked as a result of the media coverage, presenting officers as greedy businessmen with extravagant yachts, real estate, and art.¹¹⁶ The

106. *Id.* (noting Judge Obus not bound by federal sentencing guidelines during sentencing).

107. *Id.* (stating Kozlowski case indicative of state judges following lead of federal court judges). Federal judges recently handed out substantial sentences on white-collar criminals and state courts followed suit. *Id.*

108. *See* Wong, *Kozlowski Prepares*, *supra* note 77 (discussing contrast between federal courts and their special facilities and New York state prison).

109. *See* Wong, *Kozlowski Prepares*, *supra* note 77 (articulating state prisons generally contain more violent criminals and offer little special treatment).

110. *See* Wong, *Kozlowski Gets 25*, *supra* note 105 (describing types of violent offenders housed in state prison compared to minimum security federal facilities).

111. *See* Wong, *Kozlowski Gets 25*, *supra* note 105 (stating sentence for Kozlowski ensures severity). Although Kozlowski faced a lesser sentence in terms of years, other corporate officers prosecuted thus far have been sentenced to federal prison. *See* Wong, *Kozlowski Prepares*, *supra* note 77.

112. *See supra* notes 52-73 and accompanying text (describing recent media and political attention to white-collar crime).

113. *See supra* note 23 (arguing series of occurrences once corporate officer exposed for wrongdoing).

114. *See supra* notes 53-56 and accompanying text (discussing how media attention on corporate crime results in an informed public and causes outrage). Media attention reaches the masses and effects the attitudes of the public. *Id.* Cases are presented before society and tried in the public eye before ever reaching the courtroom. *Id.*

115. *See supra* note 4 and accompanying text (noting indirect nature of white-collar crime). As opposed to violent crimes, where the causal connection between the crime and the injury is obvious, white-collar crime does not reveal an obvious connection between the crime and injury suffered by employees and shareholders. *Id.* Problems also exist in determining the amount of harm. *Id.*

116. *See supra* note 4 and accompanying text (discussing increase in frustration and public outrage resulting from greed of corporate officers). As the public became more aware of the corporate scandals, its anger increased with stock market losses while the corporate officers continued their lavish lifestyles. *Id.*

media portrayed an image of the greedy business executive stealing from the pocket of hardworking citizens.¹¹⁷

In response to the public outcry, the political sphere took action.¹¹⁸ Politicians implanted drastic policy initiatives to put an end to white-collar crime and punish offenders.¹¹⁹ Corporate officers now face extremely harsh sentences, sometimes harsher than sentences for manslaughter.¹²⁰ Some corporate officers find themselves in the prison cells next to such offenders, a far cry from the “club fed” environment to which corporate officers were accustomed.¹²¹

In the past, corporate officers and white-collar criminals were merely required to return what they stole and reimburse those adversely affected.¹²² The white-collar crackdown of the 1980s proved to be ineffective, however, as corporate scandals continued.¹²³ Then, during the economic boom of the 1990s, the media hailed corporate officers for their risky and “ingenious” accounting decisions.¹²⁴ In fact, in 1999, *Business Week Magazine* named Kozlowski to their list of the twenty-five top executives in part due to his bold action and aggressive acquisition strategy.¹²⁵ Around this same time, the now disgraced Enron Corporation was hailed as the “most innovative company in the U.S.”¹²⁶ However, the line between legal and illegal blurred for many corporate officers, and when they crossed it, they faced higher sentences than seen at any point in history.¹²⁷

117. See *supra* note 15 and accompanying text (citing President Bush’s speech voicing financial ramifications for hardworking American citizens). President Bush articulated that corporate officers were depriving millions of Americans of their life savings and damaging public trust in the stock market. *Id.*

118. See *supra* Part II.E (presenting numerous political acts designed to punish white-collar criminals and prevent future violations).

119. See *supra* Part II.E (discussing political response to public outrage over corporate scandals). Responses took the form of legislation initiatives, new prison policies, and a request for the legal community to severely punish convicted corporate officers. *Id.*

120. See Weinberg & Egan, *supra* note 43, at 42 (arguing harsh sentences for corporate officers excessive). Although white-collar criminals deserve tough punishment, politicians turned financial fraud into a crime more severe than drug trafficking or murder. *Id.*

121. See Wong, *Kozlowski Prepares*, *supra* note 77 (explaining Kozlowski’s conviction under federal law resulted in incarceration in state prison).

122. See *supra* Part II.C (exploring white-collar crimes and sentences of the 1980s).

123. See Sorkin, *How Long to Jail*, *supra* note 1, at C1 (observing ineffectiveness of white-collar crime punishment in the 1980s). Many argue that white-collar crime persisted because sentences were not harsh enough and did not provide sufficient deterrence. *Id.*

124. See Weinberg & Egan, *supra* note 43, at 42 (discussing pressure on corporate officers to provide return on investment for shareholders).

125. See *The 25 Top Executives of the Year*, BUSINESS WEEK, Jan. 11, 1999, at 58 (ranking top executives); see also Subrata N. Chakaravarty, *Deal-a-month Dennis*, FORBES, June 15, 1998, at 66 (describing impressive earnings resulting from acquisition strategy).

126. See Harry Hurt, III, *Power Players; Enron Has Shaken up the Sleepy Gas Pipeline and Power Businesses by Aggressively Embracing Risk and Continually Remaking Itself. So What’s Not to Like?*, FORTUNE, Aug. 5, 1996, at 94 (explaining Enron surpassed even Microsoft and Intel in list of “America’s Most Admired Corporations”).

127. See Sorkin, *How Long to Jail*, *supra* note 1, at C1 (pointing out sentences received by corporate

Many argue that because the crimes are economic in nature, the punishment should be as well.¹²⁸ Unlike many offenders who lack the means to pay a heavy fine, corporate officers are in a position to provide economic restitution to their victims.¹²⁹ Furthermore, as evidenced by a recent criminology study, the deterrent effect of prison time for white-collar criminals has little to no impact.¹³⁰ The study showed that imprisoned white-collar criminals are more likely to repeat their offenses than those who are not.¹³¹ Furthermore, in the cases of corporate officers, once their misdeeds are exposed in the public sphere, the corresponding media attention serves as a deterrent without necessitating the prison system.¹³² A corporate officer, once convicted of a white-collar crime, will not be put in a position of power to even allow him or her to carry out such crimes again.¹³³

One argument in favor of these recent harsher sentences is that previous punishments were not adequate.¹³⁴ A response to this line of thinking is that the pendulum has swung too far.¹³⁵ The crimes of the 1980s were just as severe as those committed in recent years, yet the sentences are drastically different, and a middle ground is needed.¹³⁶

officers harsher than ever before).

128. See Recine, *supra* note 29, at 1569-60 (providing optimal theory permits fines as punishment for corporate officers); see also Szockyj, *supra* note 23, at 493 (arguing prison time not effective for white-collar criminals). Because corporate officers have the ability to pay and the public desires to be cost-effective, punishment should not force taxpayers to pay for corporate officers' imprisonment. Szockyj, *supra* note 23, at 493.

129. See Recine, *supra* note 29, 1569-60 (arguing large paychecks to corporate officers enable them to reimburse). Such a financial situation distinguishes corporate officers from other criminals, as most criminals do not possess the means to actually provide restitution. *Id.* at 1559-62. In addition to the officer's ability to reimburse, another variable in the reimbursement calculus is the amount that the officer was convicted of defrauding the company. *Id.* at 1560.

130. See also Szockyj, *supra* note 23, at 493 (arguing prison carries no specific deterrent value); see also Weisburd, *supra* note 30, at 597 (discussing criminological study on recidivism rates of white-collar criminals).

131. See Szockyj, *supra* note 23, at 493 (recognizing prison and specific deterrence unrelated); see also Weisburd, *supra* note 30, at 597 (stating results of criminological study on recidivism rates of white-collar criminals). The study showed that there is no greater rate of recidivism for white-collar criminals who were not imprisoned, and that those who were imprisoned actually had higher rate of recidivism. Weisburd, *supra* note 30, at 597.

132. See Szockyj, *supra* note 23, at 492 (stating media attention acts as deterrent for corporate officers). This exposure has two adverse impacts on the corporate officer: (1) it precludes the officer from getting another job at the same level, and (2) it stimulates public and political attention, which results in harsher laws. *Id.*

133. See *supra* note 43 and accompanying text (arguing corporate officers never again able to commit similar crimes or get comparable employment). Putting officers' on the front pages of newspapers for their misdeeds makes it improbable that any board or shareholder would allow the disgraced officer to run or even work for their company. *Id.*

134. See *supra* note 47 (noting insufficiency of prior white-collar crime punishments).

135. See *supra* note 87 and accompanying text (portraying recent response to corporate crime as an overreaction). Proponents of harsh sentences argue that the sentences are a necessary deterrent. Sorkin, *How Long to Jail*, *supra* note 1, at C1. Opponents, however, present the opinion that the strict sentences are disproportionate to the crimes themselves. *Id.*

136. See *supra* notes 43-51 (describing historical treatment of white-collar crime and sentences). The

An additional problem exists due in part to the sentencing guidelines and the lack of judicial involvement in sentencing decisions.¹³⁷ Federal sentencing guidelines, such as those found in the Act, strip federal judges of the ability to give sentences that truly fit the crime.¹³⁸ Instead, the sentences are determined by the amount of money taken by the officer and the number of shareholders in the corporation.¹³⁹ As exemplified in the Kozlowski case, state judges have followed the lead of the federal judges and have imposed similarly lengthy sentences, further compounded by the less pleasant state facilities in which the term is served.¹⁴⁰

Cynics question if outrage with corporate crime is merely a trend that will dissipate once the string of cases that first garnered headlines are completed.¹⁴¹ Though newly implemented laws, political responses, and recent cases remain controlling, the cynical view is considering the trends of the past.¹⁴² Either way, the corporate officers of Adelphia, WorldCom, and Tyco remain behind bars.¹⁴³

IV. CONCLUSION

In the past few years, the treatment of white-collar criminals in the American criminal justice system has changed drastically. Historically viewed as victimless crimes, judges have recently sentenced white-collar criminals to similar prison time as violent felons. It remains to be seen whether these tough sentences will actually deter would-be white-collar criminals. What is known, however, is that there is a heightened public awareness and sensitivity to these

average sentence in 1985 for a white-collar crime was twenty-nine months, as opposed to fifteen to twenty-five years today. *Id.*

137. See *supra* notes 97-102 and accompanying text (noting lack of judicial discretion under federal guidelines).

138. See *supra* note 98 and accompanying text (stating importance of judicial discretion). Judges are typically given a great amount of discretion in determining the appropriate sentence for the crimes committed. *Id.* With this discretion, the judge is able to weigh the facts of the case and ensure sentences proportionate to the crime for which the corporate officer is convicted. *Id.*

139. See *supra* notes 67-68 and accompanying text (explaining formulaic approach to sentencing corporate officers). With this approach, regardless of the person or the degree of wrong, the corporate officer is given a sentence that results from calculating the amount of the shareholders' loss and the size of the company. *Id.*

140. See *supra* note 77 and accompanying text (noting Kozlowski's serving of his sentence in state prison). Even though his sentence is similar in length to other corporate officers, because the state trial judge followed the lead of his federal colleagues, Kozlowski faces a harsher prison term. *Id.*

141. See *supra* note 75 and accompanying text (presenting influx of prosecutorial zeal in pursuing white-collar criminals).

142. See *supra* note 60 and accompanying text (exploring longevity of Sarbanes-Oxley Act). Although Congress originally implemented the Act to be a temporary measure, it has since been given full legal effect. *Id.*; see also *supra* note 14 (discussing new prison policies). In the midst of this crackdown on corporate crime, the longstanding practice of sentencing some criminals to serve their sentences in halfway houses ended abruptly. Borges, *supra* note 14, at 142-43.

143. See *supra* note 1 (exploring length of sentences being served by corporate officers, some of which are effectively life sentences).

2007]

CRACKING DOWN ON WHITE-COLLAR CRIME

701

crimes. Responses from the political sphere, legal sphere, and the public at large depict a society fed up with corporate greed.

Many unknowns exist when it comes to sentencing white-collar criminals. It is unknown whether these high profile sentences will prove to be a successful deterrent. It is unknown whether these few convictions will be viewed in the future as an example of over-criminalization driven by emotions and not the law. The cause of the trend is also unknown, although the theories are numerous. Possible sources include the media, politicians, society at large, and the corporate officers themselves, who were so engrossed with the idea of success that they went too far. Whatever the cause, and whatever the longevity of the trend of harsher sentences for white-collar crime, the question still remains whether it is justifiable for corporate officers to receive and serve the same sentences as rapists, drug dealers, and murderers.

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