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 Kozlowski 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."

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. Courts, as well as academics, have treated white-collar crimes less severely and even labeled such crimes victimless. 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,

---


robbery or assault. 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.

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

In 2002, the United States Sentencing Commission proposed tougher standards for white-collar crime. 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. 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. Furthermore, in July 2002,

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 owing $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.ussc.gov/PRESS/re10403.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

---

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).
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

---

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.


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. While the public prefers imprisonment for white-collar criminals, fines may be the most effective means of punishment. Additionally, the fairness of imprisoning one corporate officer to dissuade others must be addressed.

B. What is White-collar Crime?

White-collar crimes encompass crimes of a corporate nature, typically with non-violent effects. White-collar criminals are generally respected people in their profession and of high social status. Their crimes are typically economic in nature and result in direct monetary losses. 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. The leniency argument stems from the apparent ability of alleged white-collar criminals to utilize their resources to escape indictment or conviction. 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


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.” Id. 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).


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 inflxues). 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 affects 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. 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. At the behest of President Bush, subsequent legislative actions eliminated the historical leniency to which white-collar criminals were so accustomed.

The political response most widely associated with white-collar crime was the passing of the Sarbanes-Oxley Act (the Act). 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.”

Particularly significant to this Note, the Act changed the sentencing framework for white-collar crime. Several provisions of section 906 of the Act increased prison time for white-collar criminals. As a result, the United States Sentencing Commission approved new guidelines increasing penalties for corporate offenders by twenty-five percent or more. 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.”

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

---

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)
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.
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

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).
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. 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.

John Rigas, the founder of Adelphia Communications, was convicted of conspiracy and fraud for his actions contributing to the collapse of the corporation. 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. On June 17, 2005, John Rigas received a prison sentence of fifteen years. He was eighty years old at the time of sentencing. Timothy Rigas, due to his younger age, received a higher, twenty-year sentence in prison after being convicted of the same crimes. Prosecutors initially requested 215 year sentences for both John and Timothy Rigas.

In another headline-grabbing corporate scandal, Bernard Ebbers, the former chairman of WorldCom, was convicted for accounting fraud. 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


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).

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

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. Olis, unlike Rigas and Ebbers, was a mid-level executive at Dynegy, Inc. The court convicted Olis for devising a tax scheme that enabled the corporation to disguise a $300 million loan as cash flow. Two other Dynegy employees involved in the scheme both pleaded guilty and were expected to receive sentences of less than five years. 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. As a result, the court remanded the case for re-sentencing.

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 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.
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.
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. In addition, these men were sentenced under then-current federal sentencing guidelines for white-collar criminals. Many opponents of the federal sentencing guidelines argue that they take away sentencing discretion from federal judges, which is generally inherent in their duties. Under the federal sentencing guidelines, the amount of loss suffered by shareholders is taken into account in determining the appropriate sentence. In United States v. Booker, the United States Supreme Court addressed the constitutionality of the federal sentencing guidelines. 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.

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. 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. 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. 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.

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

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

III. ANALYSIS

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

Under this logic, if the media did not attention to white-collar crime, then public knowledge of the events would likely be minimal. Those in the business sector would have knowledge, but lay persons would not, unless the specific crime directly impacted their lives. 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. 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.  

In response to the public outcry, the political sphere took action. Politicians implanted drastic policy initiatives to put an end to white-collar crime and punish offenders. Corporate officers now face extremely harsh sentences, sometimes harsher than sentences for manslaughter. 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.  

In the past, corporate officers and white-collar criminals were merely required to return what they stole and reimburse those adversely affected. The white-collar crackdown of the 1980s proved to be ineffective, however, as corporate scandals continued. Then, during the economic boom of the 1990s, the media hailed corporate officers for their risky and “ingenious” accounting decisions. 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. Around this same time, the now disgraced Enron Corporation was hailed as the “most innovative company in the U.S.” 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.

---

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 (pointing out sentences received by corporate 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).  
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

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). 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.

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). 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.

132. 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.

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

134. 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.

135. See supra notes 43–51 (describing historical treatment of white-collar crime and sentences).
An additional problem exists due in part to the sentencing guidelines and the lack of judicial involvement in sentencing decisions.\footnote{See supra notes 97-102 and accompanying text (noting lack of judicial discretion under federal guidelines).} Federal sentencing guidelines, such as those found in the Act, strip federal judges of the ability to give sentences that truly fit the crime.\footnote{See supra note 98 and accompanying text (stating importance of judicial discretion).} Instead, the sentences are determined by the amount of money taken by the officer and the number of shareholders in the corporation.\footnote{See supra notes 67-68 and accompanying text (explaining formulaic approach to sentencing corporate officers).} 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.\footnote{See supra note 77 and accompanying text (noting Kozlowski’s serving of his sentence in state prison).}

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.\footnote{See supra note 75 and accompanying text (presenting influx of prosecutorial zeal in pursuing white-collar criminals).} Though newly implemented laws, political responses, and recent cases remain controlling, the cynical view is considering the trends of the past.\footnote{See supra note 60 and accompanying text (exploring longevity of Sarbanes-Oxley Act).} Either way, the corporate officers of Adelphia, WorldCom, and Tyco remain behind bars.\footnote{See supra note 1 (exploring length of sentences being served by corporate officers, some of which are effectively life sentences).}

**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
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.

Jamie L. Gustafson