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The Sentencing Structure of White-Collar Crime

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THE SENTENCING STRUCTURE OF WHITE-COLLAR CRIME

A Capstone Experience/Thesis Project

Presented in Partial Fulfillment of the Requirements for

the Degree Bachelor of Science with

Honors College Graduate Distinction at Western Kentucky University

By

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2013

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ABSTRACT

Corporate fraud is an all-too-common element in our society today. Unfortunately, many of those convicted of fraud end up with a seemingly light jail sentence. A possible explanation for this is that the judges could have many subconscious reasons to give lighter sentences in these cases than they do with other more violent cases. Since there are no strict guidelines for the sentencing of these “white-collar criminals,” the judge’s personal views can play a significant role. Many of the laws and guidelines for determining the sentence in fraud cases have stemmed from the corporate scandals of the early 2000’s, but they have not been able to make much of an impact. Fraud is often said to be a “victimless” crime, but it simply is not. It can wipe out people’s life savings, and easily ruin companies and lives. Therefore, it should be prosecuted just as vigorously as other serious crimes. Despite the many efforts to set standards for the sentencing of white-collar crimes, the guidelines given leave much to be desired. This study examines the possible reasons for the lighter sentences, some examples of the effects, and what can be done to help remedy this situation.

Keywords: White-collar crime, Fraud, Sentencing, Corporate fraud, Fraud punishment, White-collar criminals

Dedicated to my mom and dad

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You all are the best!

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CHAPTER 1

INTRODUCTION

Fraud is a problem that occurs in almost all businesses. Often it is just a small problem, but sometimes it can spell the end of a company. Why is fraud so prevalent in our society today? Is it greed? Or do people just have more opportunities to commit fraud? With all of the technological advances that have come over the past few decades, the nature of fraud has changed significantly. It has become more difficult to hide fraudulent activity, but it also is easier to access many types of assets, both internal and external to a company. Even with all of the restraints in place, why are people still committing these crimes? There are countless news stories centered on companies dealing with cases of fraud. Society has become jaded to the occurrence, since it seems to happen so often. While it would appear that these criminals usually get caught, fraud continues to occur.

Some seem to think that they can get away with fraud because of their standing in society, their wealth, and their expertise in the business and law worlds. They believe that they are smarter than those that have tried before them, and believe that because they know what they are doing, they will not get caught. Judges get the final say with each criminal's sentence, and they seem to go easier on white-collar criminals. One possible rationale for this is that judges view the defendants as people much like themselves, having a high standing in society. This view could possibly lead to a subconscious

reduction of their sentence. The judge often goes easy on them, therefore they, and others who are potentially going to commit these same crimes, do not learn their lesson.

Fraud is a major issue in the corporate world, and the fact that those committing the act are not severely punished does not help the situation at all. Given that there are so many cases of fraud that have gone under-punished indicates that a lack of governance exists in this area. Something needs to be done to prevent this from constantly occurring. Changes should be made to the sentencing structure so that white-collar crime is punished more severely and consistently. Perhaps a stricter set of guidelines for judges to use when sentencing white-collar criminals would make it more likely that the offenders would understand that they are not likely to get away with their crimes. Thus, it is hoped that fraud cases would become less frequent in our society.

CHAPTER 2

FRAUD

Fraud is a generic term that can describe many things in the business world. It can be anything from an employee stealing small amounts of cash or inventory to a large scheme where investors are cheated out of billions of dollars. Since the perpetrator is obviously trying to hide their crime, some cases of fraud are never discovered (Association of Certified Fraud Examiners 8). However, it is usually it is detected before it becomes wide scale. If it is not caught before it becomes a large issue, the consequences to the company become widespread, and the potential punishment should be the greatest. The Association of Certified Fraud Examiners states that a normal organization loses about 5% of its annual revenues to fraud (8), so it is a critical issue for most companies. According to the 2012 ACFE, in the previous two years, almost 1,400 cases of fraud were reported. Of those cases, more than twenty percent had losses exceeding \$1 million, with the median loss reported being \$140,000 (9). This is down slightly from the 2010 ACFE report, which reported a total number of frauds for those two years exceeding 1,800. These cases had a median loss of \$160,000 (9). The 2008 ACFE report documented 959 cases of fraud, with the median loss being \$175,000. More than twenty-five percent of these cases had losses exceeding \$1 million (9).

Principles of Fraud by Joseph T. Wells defines fraud as “the use of one’s

occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization's resources or assets" (8). The key to this definition is that the misappropriation of the assets does not result from an honest mistake, but rather from a deliberate act of exploitation. The person in question uses their job, taking advantage of what they have access to and control over, to exploit the company's resources for personal gain. Regardless of the form of business, mistakes can happen. In the accounting field, however, these mistakes tend to be a bit more costly. Because of this, there are many restrictions in place to help prevent mistakes from happening, thereby making it easier to tell when something has been done deliberately.

One of the more common forms of fraud is that of embezzlement. *Principles of Fraud* by Joseph T. Wells states, "To embezzle means willfully to take, or convert to one's own use, another's money or property, which the wrongdoer acquired possession lawfully, by reason of some office or employment or position of trust" (9). This is a very interesting definition as it uses the term lawfully. Thus, embezzlement occurs when someone misuses property that was entrusted to him or her by an employer. Examples include an employee stealing cash, equipment, parts, or even the final product a company produces. According to the Association of Certified Fraud Examiners, this type of fraud is often committed by someone in the accounting or financial departments stealing cash or securities (52). The focus of this study is on a more specific type of fraud, commonly referred to as white-collar crime. Fraud of this type is common among account executives, corporate controllers, and anyone else who handles money or major accounts. It is the type of fraud found in the corporate world, committed by people that are sometimes the least expected (Hancox).

Fraud can occur at any level of a business. Everyone from upper management and Chief Executive Officers down to the transactional-level employees and interns have the opportunity to commit fraud. The significance of higher-level employees in the company committing fraud is the fact that they have access to, and control over, more of the company's assets than do the lower-level employees. Thus, higher-level employees are more likely to be tempted to commit significant fraud, and also more likely that the fraud will have a larger effect on the company as a whole (Wells 28).

There are many reasons why people commit fraud, but the following three main factors are ever present: opportunity, need, and finally, rationalization (Hancox). The need is the easy part. Who does not need or want more money? Most people have experienced hard times where it is difficult to make ends meet, and some look to criminal activity to help survive financially. Other times, especially in white-collar corporate crimes, the need factor also translates to greed. The person in question already makes a significant amount of money, but the greed of wanting more raises the temptation even higher.

Rationalization can come in various forms. On one hand, a feeling of entitlement may exist. Employees can feel that they are undercompensated for the work they perform, or they think they should be making more than someone else. On the other hand, they can rationalize it by promising themselves that they will pay the money back (Hancox). To them, it is seen as a loan from the company, instead of the criminal activity that it actually is. Believing that it is not a big deal, the idea is that the amount stolen will be repaid before anyone even notices. Unfortunately, they usually dig themselves a hole

deeper than they can get out of, and they start trying to cover it up instead of actually repaying it.

Opportunity is the final factor, and it is usually the hardest part to overcome (Hancox). All companies should have internal controls that are set up to prevent things like this from occurring, but some employees seem to be able to find ways of circumventing these controls. A common scenario is one where employees have too much control in a company, and not enough people keeping them in check. Once the opportunity arises and the embezzlement begins, it all goes downhill from there. Typically, the fraud starts out small. But as soon as it is realized how much they can get away with, greed often takes over and the fraud becomes much larger than they imagined. The more they try to cover it up, the deeper they get into the fraud. As paranoia sets in, an attempt to become more controlling about what others are doing occurs. Often, they stop taking days off and insist on handling all of their own paperwork (Hancox). What once seemed like a small offense grows and grows and ends up being more of a cover-up scheme than a job. All of their time and attention becomes focused on not getting caught, and their actual job duties begin to fall by the wayside.

Those committing fraud are often caught immediately, while sometimes the auditors find it in their yearly audit. But there are times when this type of activity can go unnoticed for years. Typically, there are many red flags that should signal to an employer that fraud might be occurring. The biggest clues are employees exhibiting a lifestyle change or living beyond their means (Association of Certified Fraud Examiners 59). If an employer ever has to wonder how their employees are able to afford the lifestyle that they are living given the knowledge of their pay, then it's probably time to begin an

investigation. Anytime it seems that employees are living outside of their means, it is possible that there is some illegal activity taking place. Employees starting to act suspiciously, such as being paranoid about others helping them, people checking their work, or worrying about taking days off, are all signs that something may be going on (Association of Fraud Examiners 57). There should also be added suspicion if employees are known to have any type of addiction, whether it is drugs, alcohol, or gambling (Hancox). When employees' spouses lose their job, health problems come up, or there are other financial issues within the family, there is a much higher probability that the employee will be tempted to commit some type of fraud to help alleviate their troubles (Wells 22). The Association of Certified Fraud Examiners states that the common red flags were present in 81% of the cases studied in the 2012 report (4). This shows that the common behavioral changes associated with fraud are a great way to detect the problem. As soon as management notices one of these red flags, the case should be looked into. Often there is a reasonable explanation for the changes in behavior, but it never hurts to keep a closer eye on employees who have a high potential to commit fraud.

When fraudulent practices are exposed, it is up to the employer to determine how to deal with the situation. They typically have the option to take it to court and simply seek restitution, or they can pursue criminal prosecution. If the employer seeks restitution, they should be warned that the person may not actually be able to pay the company back and the courts will not be able to help much at that point. Therefore, most companies decide to criminally prosecute (Association of Certified Fraud Examiners 63).

In the end though, what does that get them? Typically they receive bad publicity, one or more of their key employees are behind bars, and they will never see the money or

items that were stolen. It almost does not seem worth it to prosecute. So why do it? Many companies want to use it to teach criminals a lesson, to set an example to show that fraud will not be tolerated. Unfortunately, while the courts have this same mindset, they do not always follow through when sentencing. Those with no criminal history or only minor charges are likely to be sentenced to community service. Even when jail time is involved, it is often at the lower end of what was possible. Throughout this study, cases will be provided to highlight this potential discrepancy in the judicial system, and to provide suggestions to improve upon the way the system works.

CHAPTER 3

SENTENCING

When judges are going through the sentencing process, there are many things that come into play. Obviously the guidelines set forth in the law and the jury's recommendations have the most weight in the situation, but there are other things that may impact the outcome as well. One example would be social standing. When a person comes before a judge for sentencing and they are wearing a nice suit and have an expensive lawyer by their side, the judge has a better idea about them than they would have if the person had walked up covered head to toe in tattoos and piercings. Judges, as do other people, seem to better relate with those who seem to be more like them. When there are people like that in front of them, they are reminded of themselves, and for that reason they seem to go easier on these types of people, instead of treating them like they would treat a murderer or a rapist ("Go Directly to Jail: White Collar Sentencing After the Sarbanes-Oxley Act" 1739). These white-collar criminals are often well known, and the judges might even recognize them. Sometimes, they even have well known people from the society take the stand for them as character witnesses. This could potentially make it much harder for the judge to strictly sentence them for their crime. These stories are also followed more closely by the media, which also puts a lot of pressure on the judge to follow what the public wants to have happen.

Many judges often see corporate fraud as a victimless crime. It seems to only impact the company itself, and to the outside observer, that does not seem like a very big issue (“Go Directly to Jail: White Collar Sentencing After the Sarbanes-Oxley Act” 1729). In reality, there are more victims from corporate fraud than there are from many other types of crimes. Corporate fraud, depending on how wide-scale it becomes, can affect an entire company, including employees, investors, management, and consumers. Sometimes, such as in the Enron case, fraud can be the end of a company altogether (CNN Library). Even in cases that are not so extreme, the fraud still has a large effect. Many people lose their jobs, and the company will take a significant hit financially. Prices often go up, which hurts the consumers, and all of the employees will be under more direct scrutiny. After a fraudulent act has been discovered, others in their same department or area often become suspects as well, since this type of activity tends to involve a group effort. The victims in these cases are countless, as it is virtually impossible to pinpoint every person that has been affected. In each case though, there are many people that can be counted, since there are always some who have been directly affected.

In the recent Bernie Madoff case, investors were cheated out of millions of dollars. Many of the victims were elderly people who had trusted him with their money, and ended up losing their life savings. “There are several kinds of Madoff victims... Some are wealthy beyond imagination and hardly affected at all. Others are clear hardship cases, people living in squalor after losing everything... But then there is a middle population... who led quiet lives building savings only to watch it vanish... They lost

virtually all of their money...and suffered the public embarrassment of having fallen for one of history's biggest frauds" (Kolker).

Obviously fraud is not a victimless crime, but that is not the only misconception judges seem to have when passing sentence. They also take into account that these crimes are nonviolent ("Go Directly to Jail: White Collar Sentencing After the Sarbanes-Oxley Act" 1729). While that is true, it does not take away from the hurtful nature of these crimes. Because there is a lack of physical violence does not mean these criminals should get off easily. Just as much punishment is deserved for this type of crime as is deserved for a violent crime. Like violent offenders, those convicted of white-collar crimes ruin many lives and cause much trouble for their victims, and should be sentenced accordingly.

Judges also know that as opposed to a violent offender, these criminals will probably not be repeat offenders ("Go Directly to Jail: White Collar Sentencing After the Sarbanes-Oxley Act" 1741). A robber that gets let out of jail is likely to commit the crime again, but a corporate criminal is not likely to be able to commit the same crime again. Corporate fraud comes from having a lot of trust from a company, and having access to company assets, both of which are not likely to happen again if a fraud indictment/conviction is on the person's record. They might be able to work up small schemes again, but nothing compared to what they were convicted of in the first place.

Judges also seem to take a time-served approach ("Go Directly to Jail: White Collar Sentencing After the Sarbanes-Oxley Act" 1738). When a wide-scale fraud is committed, the offender tends to become paranoid. They stop taking days off, try to take over other aspects of their work, and are not able to delegate anything, all in an effort to

not get caught (Hancox). Once they are caught, the loss of social standing and the grief that is caused to them and their family is viewed as a big part of their punishment (Richman 55). That should not, however, be considered during the sentencing process. While technically considered part of their overall punishment, it should not lessen their formal punishment. To do so lets them get off with a lighter sentence, when in reality the punishment they get from society should only add to what they have to deal with as punishment for their crime.

CHAPTER 4

SARBANES-OXLEY ACT OF 2002

The Sarbanes-Oxley Act (SOX) was written in 2002 after a decade or so of hard-hitting white-collar crimes. Following the scandals of Enron and WorldCom, many realized that something had to be done to change the way things in the corporate world were going. And so, SOX was created in an effort to address these problems.

SOX created accountability for public firms, in the hopes that management would begin to look more closely at the company's books, and be able to catch corporate fraud more quickly. This, in turn, would protect not only management themselves, but also the employees, customers, and most importantly, the investors. One of the most important things that SOX did was create the Public Company Accounting Oversight Board, PCAOB, which is in charge of overseeing the accounting practices of public companies. It was important to regulate these practices for publicly traded companies so that investors, as well as the company, could be protected against fraud. This part of SOX has had significant impact on the amount and severity of fraud that has occurred in the last ten years.

One of the significant parts of SOX was an act called the White-Collar Crime Penalty Enhancement Act. This act was made to increase the maximum penalty for criminals found guilty of corporate fraud. While the main purpose of the act was to

discourage people from committing the crime; in all reality it did not help much. While the act increased the maximum penalty, it did not increase the minimum penalty. Therefore, it only widened the range of jail time that those convicted could be sentenced (“Go Directly to Jail: White Collar Sentencing After the Sarbanes-Oxley Act” 1732). As a result, it did not help the sentencing situation much at all. Harvard Law Review reports that as of 2001, the year before SOX was signed, approximately 65% of white-collar criminals were sentenced to prison. Six years later, that rate went up only 3%. By 2008, the rate had only risen to 71% (“Go Directly to Jail: White Collar Sentencing After the Sarbanes-Oxley Act” 1731). While there was a slight increase in the number of prison sentences, there is much more room for things to improve.

Since judges seem to have a lot of freedom when choosing a jail sentence for this type of crime, only increasing the maximum sentence without doing anything to the minimum sentence actually did the opposite of what it was intended to do (“Go Directly to Jail: White Collar Sentencing After the Sarbanes-Oxley Act” 1732). This can lead to judges being allowed to use their personal judgment in making the decision on the length of the sentence. Those convicted of fraud tend to know the law well, and know that a reduced sentence is much more likely if they can appeal to the judges’ emotions. In addition, this type of defendant typically knows how to find loopholes and ways to work the system in an attempt to receive the least amount of jail time possible. According to Harvard Law Review, “The individuals who most deserve punishment for a fraud are the ones who are most likely to escape it” (“Go Directly to Jail: White Collar Sentencing After the Sarbanes-Oxley Act” 1738). Because these people know the law so well, they are able to turn things around and get the heat off their own backs and on to someone

else. When there are several people involved in the fraud, the mastermind behind the operation is typically the one that is able to get away with the least amount of punishment. While it seems unfair to the others involved, they are getting the punishment that they deserve.

CHAPTER 5

CASE STUDIES

Scotty's Contracting and Stone

In 1998, the Internal Revenue Service began an investigation on a local contracting company in Kentucky, Scotty's Contracting and Stone. The business was under scrutiny for possible tax fraud from the years 1994, 1995, and 1996 ("Jim Scott Will Plead Guilty to Tax Fraud").

Under the current tax laws, the statute of limitations will only allow the IRS to go back three years from the time they begin their investigation. Due to this, the 1994 tax year, which would have been filed in 1995, was the first year they were able to investigate. According to *Scotty's Contracting and Stone v. US*, in June of 2001, the IRS sent out summonses to the two Certified Public Accountants who had worked on the tax returns involving those three years. The IRS wanted to look over the paperwork for the tax returns as well as the audits that the CPA's respective firms had done over that time period. Mr. Scott asked the CPA's to keep his information private, so an extensive legal battle ensued.

According to the court case documents of *Scotty's Contracting and Stone v. US*, in 2002, the US District Court ruled in favor of the IRS, a ruling that Mr. Scott quickly appealed. However, in 2003, the 6th Circuit Court of Appeals upheld the earlier

ruling, therefore requiring the CPA's to hand over their work papers. In 2004, the case went before the Grand Jury, and Mr. Scott was indicted on four counts of tax fraud (Speakman).

The IRS investigative team discovered that Mr. Scott had been running personal expenses through his business, thereby reducing both his tax and book income. Mr. Scott was in the long process of having a luxurious house built in a new subdivision in Kentucky (Speakman). Instead of paying for the building expenses out of his personal accounts, he did so out of the company's accounts instead. Mr. Scott was the sole proprietor of his company, so in the end the money was coming out of his pocket regardless of how he paid for it. The issue was how the overstated expenses affected his company's tax liability. Since he was applying all of the expenses to the revenue his company earned, it significantly reduced the amount of taxes that were owed.

Mr. Scott was found to have used the company to pay for \$940,000 worth of personal expenses to fund the building of his new home, which amounted to \$350,000 worth of taxes that his company avoided (Speakman). Since he was the sole proprietor of this business, he was held personally responsible for the tax liability, including all penalties and interest. Mr. Scott pleaded guilty to the charges in 2006 and was required to pay over \$1.2 million of back taxes, penalties, and interest. He was also sentenced to one year and one day in federal prison ("Jim Scott Gets 12 Months in Prison").

The sentence was very interesting in that it was specifically set at one year and one day. Typically called the year-and-a-day rule, it stems from an old law stating that a death could not be ruled a murder if the actual death occurred more than one year after the incident. The "year and a day" rule in that case determined whether or not the

incident was classified as a felony. In today's terms, the rule represents the minimum sentence that a felony offender can receive (Reinhart). The rule applies in this case, since Mr. Scott's fraud charges were considered to be a felony. Therefore the minimum sentence he could receive was one year and one day. The extra day also subjected him to the possibility of parole, since parole is only possible if the sentence is greater than one year (Ellis).

Mr. Scott was found guilty of four charges of tax fraud. He was a well-known and highly respected man in the community. When he went to trial, many of his friends came to his rescue; he had many strong character witnesses. The jury recommended a sentence of at least fifteen months, and the prosecutors were pushing for closer to eighteen months (Speakman). In the end, the judge had the final decision, and Mr. Scott was only given one year and one day. This was the minimum that he could have received given the nature of the crime, but did not seem fitting given the severity of the charges.

Mr. Scott's status in the community likely played a large role in the sentencing process. Many people testified about his strong character, and consequently, the judge let him off relatively easy. Had he been a middle-class man that was not so well known, he might have gotten a harsher sentence, or at least one that was more fitting to the crime. In the end, Mr. Scott ended up walking away from the ordeal with little more than a slap on the wrist for his actions.

Enron

One of the most well-known fraud cases of recent times is that of Enron. Most everyone has heard the stories, and probably remember where they were when they first

heard the news, much like any other significant event in history. This case changed the way people looked at large corporations, white-collar criminals, and fraud. It got the ball rolling on the passage of SOX, and forever changed the way fraud would be handled. The case of Enron was particularly large in that it spelled the end for not only the company itself, but also for its auditor, Arthur Andersen (CNN Library).

Enron was a large energy company in the 1990's. Fortune Magazine named them "America's Most Innovative Company" for six consecutive years. (McLean and Elkind). They were one of the world's leading companies in their industry, using their innovation to their advantage. However, they greatly inflated their revenues to boost their stock prices by using methods of revenue recognition that were not accurately portraying their generated revenue. In addition, they took advantage of special-purpose entities to help alleviate some of their own risks (O'Leary). Because of these things, their stock prices tended to reflect company values that were well over the actual book value of the company. Their stock price rose to unsustainable levels, so a dramatic decline was inevitable. Still, they continued to falsify their financial statements to try to hold on as long as they could (McLean and Elkind).

In March of 2001, Bethany McLean released an article in Fortune Magazine titled "Is Enron Overpriced?" In it, she argued that their stock value was elevated and that they would not be able to maintain that level much longer. She also pointed out that no one knew exactly how Enron was earning all of its revenue. This article, and the famous whistleblower Sharron Watkins, started the questions that eventually led to the formal SEC investigation of the company.

At the end of 2001, Enron filed Chapter 11 bankruptcy. The CEO at the time, Kenneth Lay, was charged with six counts of securities and wire fraud. Later, he was also indicted on four counts of fraud and falsifying financial statements. With these charges, he would have faced up to forty-five years in prison (CNN Library). Prior to his sentencing, he unfortunately died of a heart attack. Because he had not exhausted his appeals, his charges were resigned (Rubin).

Jeffrey Skilling was the president and Chief Operating Officer of Enron for many years. In the midst of the scandal, he was promoted to CEO. He resigned after just six months in that position, selling 45,000 shares of his stock in the company upon his exit. Although he was found not guilty of insider trading, he was indicted on nineteen counts of securities and wire fraud. He was sentenced to twenty-four years and two months in prison, with no release before twenty years and four months had been served, and was ordered to pay \$630 million in penalties and fines to the government (CNN Library). This sentence ended up being just over a year for each count of fraud that he was indicted on.

Missouri State University Bookstore

There have been many cases of fraud in the corporate world over the years. Many of them end up being big new stories gaining national attention. Other times, however, these stories do not make national headlines. They rattle the small towns that they come from, and the excitement from it eventually dies out. The names of the criminals do not become common knowledge, and their stories are soon forgotten. Those stories, the ones of ordinary people committing these crimes, are the ones that sometimes actually seem to have punishments that fit the crimes. Unfortunately for them, they often do not have the

standing in the community to possibly gain the judge's good favor like some of their better-known counterparts.

Mark Brixey was the director of the University Bookstore at Missouri State University (MSU). He was found to have stolen more than \$1 million dollars through the campus's textbook buyback program over a period of ten years ("Examples of General Fraud Investigations – Fiscal Year 2013."). Mr. Brixey became director of the program in 2000, and the embezzlement began just three years later. It continued until 2012, when auditors began asking questions about issues with the cash account. When he was unable to explain the missing amounts, Mr. Brixey was finally forced to confess (Pokin).

Once found guilty, the sentencing process began. A sentence of sixty-three months in prison, which comes out to just over five years, was imposed on him ("Examples of General Fraud Investigations – Fiscal Year 2013."). In addition, Mr. Brixey was required to pay back \$1 million dollars to MSU's insurance company, and the remainder of the money that was taken from MSU back to the school. He was also required to pay the back taxes, interest, and penalties for not reporting the income from the fraud. A system was set up that required him to pay back the greater of \$100 or 10% of his income per month towards restitution (Pokin). This payment plan will significantly increase the chances of any of the related parties actually seeing some of their money again. Typically, the direct victims of a fraud know that they will not be receiving their money back, so they settle for criminal prosecution alone. In this case, however, setting up of a plan to be repaid, will greatly increasing their chances of actually collecting some of what was stolen.

It is very interesting that this man, who stole a relatively small amount per year compared to what many others have done, got sentenced to five years in prison and was required to pay back the money. Others such as Mr. Scott, who defrauded the government out of much more than that over a shorter period of time, got only one year in prison. One could reasonably argue that a major factor in the difference in the sentences may be related to social standing.

In a press conference, Mr. Brixey said, “I am a good man and I made a huge mistake” (Pokin). Unfortunately for him, the judge sentenced him more appropriately for his crime. Mr. Brixey was not well known in his community; he was not on the board of several companies or constantly attending large fundraisers. He was just a normal man, who took advantage of his job privileges in a classic case of embezzlement. Because of his status as an ordinary citizen, he unfortunately had to do the time for his crime.

Bank of America

Another case of light sentencing is that of Donnie Wright, a former branch manager at the Bank of America in Lubbock, Texas. Mr. Wright was a Deacon and a member of the Board of Trustees at Community Baptist Church, also in Lubbock (Saldaña). Among other things, he prepared the financial statements and reconciled the bank statements for the church. Since he was a banker, he also personally handled all of the church’s financial accounts. While he was not allowed to sign the checks from the church (Nett, “Former banker Donnie Wright facing federal embezzlement charge”), the people that were trusted him enough to not ask too many questions when he requested that a check be signed. Unfortunately for the church, the fact that he had easy access to

the bank accounts and reconciled the bank statements showed a significant lack in internal control. This is an example of the first point in the fraud triangle, namely, opportunity.

Mr. Wright was also known for his gambling addiction. According to Nett, most nights he would leave work and drive to casinos to gamble until the early hours of the morning (“Ex-Bank of America Manager Gets 37 Months in Embezzlement Case”). This problem led him to personal financial troubles, and also to the second point in the triangle, need (Hancox). It also demonstrated several of the red flags of potential fraud. Like any gambler, Mr. Wright might have assumed he would eventually win big, and probably would have paid the money back had he ever gotten the chance. This rationalization factor completes the triangle, and is what opened the door to the considerable embezzlement.

Unfortunately, Mr. Wright never paid back the money, and three years down the road, the pastor’s paycheck was unable to be cashed due to insufficient funds (“Ex-Bank of America Manager Gets 37 Months in Embezzlement Case”). Mr. Wright had to start answering questions about where the money had gone, and eventually admitted to his crime. He had been embezzling from the Certificate of Deposit accounts that the church held at the bank, withdrawing from the church account, and having checks written to himself (Saldaña). Once the church found out about the embezzlement, they filed a lawsuit against Bank of America and Mr. Wright. Bank of America’s insurance company paid back some of the money to the church, and the church dropped the suit against the bank with an agreement not to re-file. Eventually, their suit against Mr. Wright was also

dropped, but they held the right to re-file if they ever decide to (“Ex-Bank of America Manager Gets 37 Months in Embezzlement Case”).

Mr. Wright was finally sentenced in May of 2013, three years after the fraud was originally discovered. The final amount embezzled was \$385,356, which he will be required to pay back in restitution. He was sentenced to 37 months in prison, and 40 hours of community service to be completed over the course of the first two years after his release. He will also be under supervised release for five years (“Ex-Bank of America Manager Gets 37 Months in Embezzlement Case”).

According to Nett, since Mr. Wright was a bank employee, the maximum sentence that he could have faced for his embezzlement was thirty years in prison, a \$1 million fine, and full restitution (“Ex-Bank of America Manager Gets 37 Months in Embezzlement Case”). Mr. Wright got a tenth of the prison sentence, community service instead of a fine, and was set up on a payment plan for restitution to begin after his release. Although bank employees are subject to much stricter sentencing for fraud, Mr. Wright got off fairly easy. Even if this had been a normal case of embezzlement and not involved a bank, the sentence was still fairly light. The reason for this light sentence, yet again, seems to be social standing.

All of the news releases noted how well known Mr. Wright was and how much of an impact he had on the community. He was a Deacon, a member of the Board of Trustees at his local church, a prominent banker, and was deemed “man of the year” by Lubbock’s chapter of Delta Sigma Theta for his work as a tutor and for being on the Martin Luther King Jr. Celebration Committee (“Former Banker Donnie Wright Facing Federal Embezzlement Charge”). The fact that he was a notable member of society

seemed to help him tremendously in his plea for a reduced sentence. He was noted as saying, “My heart aches daily for the wrongs that I have done” (“Ex-Bank of America Manager Gets 37 Months in Embezzlement Case”). Very similar to the confession that Mr. Brixey offered to Missouri State University, Mr. Wright’s tearful apology (unlike Mr. Brixey’s) seemed to help him in the course of his trial.

CHAPTER 6

SOLUTIONS

There are many inconsistencies in the way that those convicted of fraud are dealt with. Since strict guidelines for sentencing do not exist, the judges' feelings have the ability to get in the way, and these criminals tend to get off with little-to-no actual punishment. Obviously, preventing fraud in the first place is the best course of action (Weisman and Brodsky). Strict internal controls and the watchful eye of management are the keys to preventing fraud. However, it cannot always be prevented, even by the most careful of companies. That being said, if the punishment was known beforehand, then there might be more of a deterrent to commit the crimes. Is that not what the justice system is intended to do? To make sure that works, there should be stricter guidelines of how these white-collar criminals are punished.

According to a study done by Sitren and Applegate on the validity of the deterrence theory, punishment of a crime is a compelling deterrent of crime. However, the chances of being punished also weigh in. If the chances of being punished are low, then punishment becomes less of a deterring factor (501). Instead of just increasing the maximum punishment, as was the result of SOX, the minimum punishment should be increased as well. That way, the punishment is increased, but it does not widen the range ("Go Directly to Jail: White Collar Sentencing After the Sarbanes-Oxley Act" 1732). Therefore, the actual punishments will be more intense. If the judges had a smaller

window of time to choose for a sentence, then it would leave less room for their personal judgment and feelings to influence their decisions. A stricter set of guidelines would lessen the chance of those convicted from getting out of their ‘appropriate’ punishment. The jury’s recommended punishment should be given more consideration. As it stands, the jury’s recommendation is more of a formality, as the judge makes the final decision on his own. When the judge decides alone, it opens the door for emotions to play a significant role. If the jury has more weight in the decision, then there is less of a chance that the defendant’s status will play such an important part in the sentencing. The jury is an outside party that does not have all of the subconscious ideas about white-collar criminals that the judges often seem to, so they would likely be more reliable and consistent.

Another possible solution to this inconsistency would be to have those affected by the fraud testify. Being able to tell their stories in front of the judge and jury might make the case become real to them. If the judges were able to discount all of the character witnesses on the stand for the defendant talking about what a good person they are, they might be able to better appreciate the true issues behind the case: that fraud is not a victimless crime. Then, hopefully, the punishment would fit the crime. When judges and juries see crime scene photos after a gruesome crime, there is little question that the perpetrator will be severely punished. If the judges heard from the victims in fraud cases, it might provide the same type of influence. Not only would judges be relating to the criminal, they could be able to relate to the victim as well. This would help change their mindset when they were going through the sentencing process, which would hopefully solve some of the consistency problem.

CHAPTER 7

CONCLUSION

There are many things that come into play when judges sentence white-collar criminals. After taking into account all of the rules and guidelines that the law sets forth, there is the potential to let a lot of personal feelings influence the decisions that are made. When a judge takes the criminal's socioeconomic status into account when deciding on a punishment, it sends the message that those who are well known or have a lot of money appear to get away with their crimes. Additionally, it suggests to other white-collar criminals that their punishment, if caught, may not be as severe as possible and is worth taking the risk. Therefore, the punishment process for white-collar criminals actually does the opposite of what it is intended to do.

The case studies presented give examples as to how this process has affected the prevalence of fraud in our society today. The passage of SOX was a significant step towards implementing stricter guidelines for the sentencing of fraud cases, but there is still much more work to be done. Over time, the idea is that judges will become more consistent in their punishment of fraud in the hopes that one day fraud will seldom occur.

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