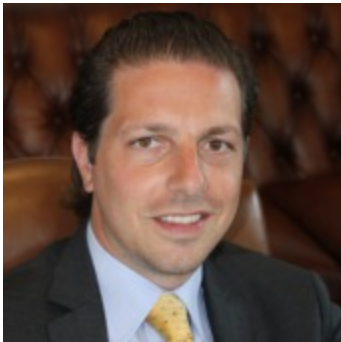




Expert View

White-Collar Defendants Pay For Predecessors' Crimes

Joseph DiBenedetto, 02.17.10, 11:20 AM ET



Public perceptions of white-collar crime, along with the scrutiny and penalties associated with it, have changed drastically over the last decade. Individuals who once enjoyed positions of power and prestige have lately become scapegoats for a declining economy.

The American public's prevailing sentiment these days is that chief executives and financiers are crooks out to make big bucks at the expense of the greater good. Economic trouble has only added fuel to the fire, resulting in increased prosecutions and harsher punishments for white-collar defendants.

A decade or so ago things were quite different. Back then prosecutions for securities fraud focused on pump-and-dump schemes in which stockbrokers bought blocks of stock in shell companies for pennies a share and then pitched them to clients. The artificial demand inflated the prices and enabled the brokers to sell at huge markups. Investors were left with worthless paper.

Federal authorities raided brokerage houses and arrested financiers in droves. The brokers' failure to tell investors of their conflicts of interest was often prosecuted criminally as securities fraud. Although these defendants were responsible for millions of dollars in losses, they were regularly released for a reasonable amount of bail, allowed to retain assets and faced lenient sentences.

Ten or 15 years for even a lead defendant responsible for tens of millions of dollars in investor losses was viewed as draconian. Many defendants were granted downward departures from their sentences, or avoided prison time altogether, due to health concerns, family circumstances and the like.

All this changed in the wake of the Enron, WorldCom and Adelphia prosecutions. These high-profile cases involved fraud on a massive scale, with senior executives of multibillion-dollar corporations altering corporate records to disguise huge losses. The executives came to typify a new corporate stereotype: the deceitful scammer who is paid enormous sums while indulging in a lavish lifestyles at the expense of shareholders, low-level employees and the public.

Do you think white-collar convicts are treated too harshly or too leniently? Share your thoughts in the Reader Comments section.

Enron's collapse, followed by those of Bear Stearns (now a part of JPMorgan Chase) and Lehman Brothers (now a part of Barclays PLC) a decade later, corporate bailouts, the housing crash and the devastation Bernie Madoff wreaked all contributed to the vehement public distrust of the financial arena--so much so that President Obama has campaigned heavily on this very issue.

In response to these significant financial setbacks, the number of securities fraud investigations has increased significantly in the last year. The FBI opened more than 2,100 securities fraud investigations in 2009, up from 1,750 the previous year. The SEC also issued 82% more restraining orders against Ponzi schemes and other securities fraud cases in 2009. Near year's end Attorney General Eric Holder announced the formation of a new U.S. Task Force that will target financial fraud.

With antipathy toward the financial industry at a peak, employees are being forced to suffer for the sins of their predecessors and colleagues. Their actions are more closely scrutinized than ever, and many business practices

formerly regarded as regulatory in nature have now been recast as potentially criminal.

Anyone charged with a white-collar crime these days will quickly discover that they will receive no preferential treatment merely because their alleged offense was non-violent. Rather, they should expect to be regarded as public enemy No. 1. They will be forced to combat not only stiff criminal charges but also the stigma and backlash of being fingered as yet another financial bad guy.

The potential criminal sentences for a white-collar defendants are staggering compared with those meted out in years and decades past. Defendants' exposure is based largely on the losses attributed to their conduct, as well as "enhancements" for their roles in the offense, abuse of trust, number of victims and sophistication of the means employed. This translates into lengthy sentences for anyone found guilty. Gone are the days of substantially reduced sentences or no prison time at all.

Not only must white-collar defendants overcome the rigors of public demonization and a drawn-out trial, they must also fight to maintain their assets. It is not uncommon for either state or federal prosecutors to seek forfeiture of even assets that are not linked to alleged criminal activity to satisfy a forfeiture judgment.

White-collar defendants have clearly become scapegoats for an economy in flux. While there's never a good time to be a defendant in any type of criminal case, the uphill battle white-collar defendants face today raises the question of whether the potential punishments fit the crimes or rather fit the public's thirst for revenge against Wall Street's bigger sins.

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