

A Tale of Two Criminals: We're *Tougher* on Corporate Criminals, But They Still Don't Get What They Deserve¹

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These CEO's, man...If you're that ruthless, you're a scary dude. I tell you, now when I walk past a little gang banger, I don't even blink. But if I see a white dude with a *Wall Street Journal*, I haul ass. Before I walk past the Arthur Andersen building, I cut through the projects. If you cut through the projects, you may just lose what you have on you that day. I ain't never been mugged of my whole future.

Comedienne Wanda Sykes, *Tongue Untied*

After a brief period of high visibility, corporate and financial crime are fading into the background again. In December of 2001, Enron imploded in a wave of accounting fraud and declared the largest bankruptcy in U.S. history, although, within months, Worldcom's financial wrongdoings resulted in an even larger bankruptcy. Numerous other companies issued "restatements" of financial results, including Tyco, Global Crossing, Quest, Xerox, Adelphia, MicroStrategy, AOL-Time Warner, K-Mart, Haliburton, Lucent Technologies, Rite Aid, and Waste Management to name just a few. The scandal implicated accounting firm Arthur Andersen, which was closed

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down because it was already the subject of a Securities and Exchange Commission cease and desist order for misleading financial statements. Some major banks like Citigroup and J. P. Morgan Chase were implicated for helping firms book loans as revenue.ⁱⁱ

Prosecutions got off to a slow start, especially with Enron, because “Attorney General John Ashcroft and virtually the entire legal staff of the United States attorney’s office in Houston [were] disqualified from the Enron criminal investigation” writes the *New York Times*. Enron, and its Chairman Ken Lay, were major donors to the Bush campaign, and Ashcroft received substantial donations from them for his failed 2000 Senate campaign.ⁱⁱⁱ The Justice Department also had other—apparently more important—priorities, such as Operation Pipedream, which resulted in the February 2003 indictment of 55 individuals for selling drug paraphernalia over the internet.^{iv} Although each week through 2002 brought news of another major U.S. company shaken by financial misdeeds, and federal authorities were diverting resources to terrorism, the administration made it a priority to follow through against such “threats” to the public welfare as *pipesforyou.com* and ten other internet sites.

While the recent string of prosecutions and convictions is noteworthy, Enron’s Ken Lay has still not been criminally indicted nor have his assets been frozen so they could potentially be recovered. Lay, affectionately known to his longtime friend President Bush as Kenny Boy, helped secure the deregulation that facilitated Enron’s massive fraud and manipulation of the California energy crisis; he is given credit for building Enron into what it was and being its leader through the period of wrongdoing. One day near the beginning of Enron’s collapse, with its stock price plummeting, Lay told stock analysts, “We’re not hiding anything.” Yet, a special committee of Enron’s board found “a systematic and pervasive attempt by Enron’s Management to misrepresent the Company’s financial condition.” While Lay was advising employees to continue buying the stock, he cashed out many of his own shares to the tune of about \$103 million. In the

days surrounding the analyst's call and the advice to employees, Lay took \$19 million in cash advances from Enron that he repaid with stock – a trick that led some people to refer to as Ken's personal ATM.^v

Later that same day, Lay took questions from employees, one of whom wrote: "I would like to know if you are on crack? If so, that would explain a lot. If not, you may want to start because it's going to be a long time before we trust you again."^{vi} The sad reality is that it is more likely that Lay would have been in trouble with the criminal law if he had smoked crack – especially if he was a minority in the inner city – than he currently is for getting rich while leading his employees and stockholders on to the loss of their retirement accounts. Indeed, as we noted last year, *Forbes* magazine commented "If the president wants to make the case that his administration will not tolerate corporate wrongdoing, what better way than to indict his old friend and former Enron CEO, Kenneth Lay?" That was July 8th, 2002.^{vii}

Perhaps Ken Lay didn't know. It appears he didn't use email. He refused to sign documents, and when offered reports after meetings, he declined them, pushing them back to the person trying to show him a copy. Because of his repeated statements denying knowledge of a wide range of situations and problems at Enron, *Forbes* calls him "The Man Who Didn't Know Too Much."^{viii} He seemed very much "out of the loop" and, though not responsible for anything, managed to get paid \$103 million in salary, bonuses, incentives, annuities and cash advances for being Enron's leader in 2001.^{ix}

Further, why is it that asset forfeiture applies to other cases where the owner didn't know of criminal behavior only to find their car or house seized? As part of the drug war, houses owned by couples have been seized even if one party didn't know of the criminal activity. If a man takes his girlfriend's car and gets caught in a prostitution sting, the car can be taken even if she didn't know about his extracurricular activities. As the Cato Institute notes: "the family home is fair

game for forfeiture if a son, relative, or friend were to use it unlawfully--say, by using the telephone to arrange a drug purchase.”^x In one ‘reality’ police show like COPS, a scene involving this topic gets cut, but the police tell a drug suspect: ”We’re going to asset-seize your property. We’re going to asset-seize your vehicles. We’re going to asset-freeze your money. We’re going to send your girlfriend to prison and your kid to child protective services. That’s what I’m saying.”^{xi}

But Kenny Boy causes widespread damage and contributes to a loss of faith in the financial system and there’s no response from the criminal justice system.

To be sure, a number of mid-level executives have been prosecuted and sentenced – and indictments have started to reach the upper tiers of management. While some of these cases are still in progress and some initial attempts have resulted in mistrials, the perception that the criminal justice system has been vigorous in bringing corporate criminals to justice is bolstered by celebrity cases like Martha Stewart’s conviction for obstruction of justice. Prior to 2002, any corporate criminal getting prison time was newsworthy. Now, the shock comes from sentences like the 10 years Enron’s Chief Financial Office (CFO) Andrew Fastow received under a plea bargain.

From the news headlines about prosecutions and sentences, many people seem to believe that the tide has turned and the U.S. is now tough on corporate crime. In short, the point made by the *Rich Get Richer and the Poor Get Prison* about the unequal treatment of white-collar crime compared to street crime is seen by some as overstated or no longer valid. Further, as the Sarbanes-Oxley reform law is implemented, businesses are starting to complain more and more loudly about its cost and the burden it imposes on them. Their argument is that there were just a few bad apples, so the sweeping changes mandated by the law are unnecessary and impose excessive costs on honest businesses.

Both of these beliefs are false and dangerous. In the sections that follow, we will compare the wrongdoing and sentencing of Fastow to a case last year in which the Supreme Court upheld a sentence of 50 years for two counts of shoplifting videos worth a total of \$155. Of course, the *Rich Get Richer* critiques unnecessarily harsh sentencing schemes - and the point is not to 'get tough' for the sake of getting tough. Instead, the point, as discussed in the conclusion of Reiman's book, is that the punishment should fit the crime and the crime should fit the harm done. To appreciate why the harmful acts of corporate wrongdoers are worthy of serious criminal charges, the reader is urged to review Chapter 2 of *The Rich Get Richer*, where Reiman engages the objections of the "Defender of the Present Legal Order" in a debate about why we need to take white-collar crime more seriously.

Later, we will take up the current arguments that claim that Sarbanes-Oxley goes too far in trying to reform the system. Many people seem already to have forgotten how widespread and systemic the fraud was, thus necessitating the need for far-reaching and systemic reform. Unfortunately, the congressional response has been the reverse. According to the authors of *Big Money Crime*, soon after the Savings & Loan crisis, Congress went on a wave of "cavalier" financial deregulation, creating the "paradox of increasing financial deregulation coming on the heels of the most catastrophic experiment with deregulation in history"^{xii} The legacy of Enron and other financial fraud that has hurt so many American investors and holders of retirement accounts should not be another wave of deregulation or even a regression to the conditions under which so much corporate wrongdoing occurred.

Tale of Two Criminals: Too Tough on Corporate Crime?

In November of 1995, Leandro Andrade, a nine-year army veteran and father of three, got caught shoplifting five children's videotapes from K-Mart – a total heist of almost \$85 in value. Two weeks later, he was caught shoplifting four similar tapes – including *Free Willie 2*

and *Cinderella* – worth about \$70 from another K-Mart and was caught again. Under California law, Andrade's prior convictions for burglary in early 1982 made the shoplifting charges "wobbler" offenses that could trigger the Three Strikes law. He had pleaded guilty to at least three counts of residential burglary almost twenty years ago and had been sentenced to ten years in prison. Each of the two current K-Mart shoplifting charges then became strikes with a mandatory penalty of 25 years in prison each, thus totaling a 50 year sentence for the 37-year-old Andrade (who will likely die from old age before being released and cost the taxpayers about \$25,000 a year for his incarceration).

Andrade contended that his sentence was grossly disproportionate to the crime and violated the U.S. Constitution's Eighth Amendment prohibition on cruel and unusual punishment. The Supreme Court decided the sentence was not unreasonable and found that "the gross disproportionality principle reserves a constitutional violation for only the extraordinary case."^{xiii} In deciding that 50 years for stealing less than a dozen videos does not rise to the level of extraordinary, the Court relied in part on an earlier case, *Rummell v Estelle* decided in 1980.^{xiv} William Rummel had been convicted of a felony involving the fraudulent use of a credit card to obtain \$80 worth of goods; another felony for forging a check in the amount of \$28.36; and a third felony for obtaining \$120.75 by false pretenses for accepting payment to fix an air conditioner that he never returned to repair. For these three felonies, Rummel received a mandatory life sentence under Texas's recidivist statute. The Supreme Court affirmed Rummel's life sentence for the theft of less than \$230 that never involved force or the threat of force. Partly on the basis of this decision, the Court upheld Leandro Andrade's 50-year sentence for stealing nine video tapes.

Worse still, it appears that Andrade was stealing to support a drug habit. The presentence report noted he had been a heroin addict since 1977: "He admits his addiction controls his life and he steals to support his habit." The obvious question is why he didn't just go for treatment.

While Andrade's personal history is unknown, a common story is told by another person in a similar situation – a drug addict who went to prison, got a PhD after release, and now teaches criminology. Charles Terry – one of the "convict criminologists" wrote in his book, *The Fellas*:

Before that particular arrest, I made phone calls to various hospitals or 'recovery' centers asking for help because I was hopelessly addicted. I was tired of the pain, the remorse, and the sure knowledge that sooner or later I was going back to prison. When someone on the other line answered, I'd say, "Hi. I need help. I'm a heroin addict who has already been to prison twice. I'm hooked like a dog. I'm doing felonies everyday to support my habit, *and I can't stop!*" In response came the inevitable question, "Do you have insurance?... the cost is five hundred dollars a day."^{xv}

The point here is not that Andrade or Rummel or Terry are innocent victims. They committed crimes, and deserve to be punished. The issue is whether the punishments they received were fitting and just compared to how evil or harmful their acts were—and compared to the punishments that corporate crooks get for acts that are both more evil and more harmful. And, this comparison can't ignore the differences in the criminals' starting points. The recent corporate crooks committed their acts after receiving all the advantages that society has to offer. Andrade and company committed their acts in the face of need and of the absence of either viable alternatives or treatment for their problems.

Contrast Andrade with Fastow, who as chief financial officer (CFO) was at the heart of the command center of Enron's financial fraud. Fastow was hired at Enron because of his expertise in structured finance, a legal device for taking financial risks off the balance sheet. For example,

according to *Fortune* magazine, “companies often set up separate entities to finance construction projects and offload the risk of something going wrong.”^{xvi} Fastow came up with ‘creative’ ways to use structured finance in order to book loans from banks as sales to impress Wall Street with Enron’s revenue growth, and do so in a way that accountants at Arthur Andersen would approve in their audits. Under the law, the separate company – a “special purpose entity” - is considered “independent” if only 3% of outside capital is truly “at risk.” Effectively, then, Enron would create a separate firm using most of their own money, then the “separate” entity would borrow money and have the loan on its books. It would pass the money to Enron by pretending to buy something in return for Enron pretending to render a service to the separate firm: “The commodity trades in effect canceled one another out, leaving Enron with a promise to pay a fixed return on the money it received – exactly like a loan with interest!”^{xvii}

As Enron needed more and more money to appear to be growing (and pay interest on earlier deals), Fastow needed to create more and more “special purpose entities.” He became a partner in some of these separate companies himself, creating an obvious conflict of interest described by one skeptical Enron executive as “heads the partnership wins, tails Enron loses” – an accurate assessment given that Fastow reaped \$50 million on his investment.^{xviii} Gradually, he included friends, family and co-workers as partners; people at Enron didn’t want to blow the whistle because they wanted to be in on these lucrative deals. Banks, too, knew they were questionable deals but wanted the fees generated by the transactions - \$237.7 million in 1999.^{xix} (Of course the fees and the payouts to the partners, along with the interest, all needed to be covered by the next round of borrowing. If this sounds like a Ponzi scheme, you’re getting the point!)

Fastow was the strategist making all the deals happen. Even though the banks knew the reality of the situation and helped disguise the loans, Fastow used the large banking fees (paid by Enron) to play the banks off each other to get to even bigger deals. Thus, he multiplied the scams and the extent of the victimization. *Fortune* notes that Fastow was not a passive player here: "Fastow was ruthless at exploiting Wall Street's greed and forcing the bankers to curry favor with him."^{xx} Cooperative banks got a "Tier 1" rating and, among other rewards, those bankers would be invited "on an expensive jaunt to some fancy locale": "At a Tier 1 outing to Las Vegas, Enron rented a fleet of 15 helicopters to fly the bankers over a mountain for dinner at a vineyard and later to the Grand Canyon for a picnic."^{xxi}

Because banks like Chase, J.P Morgan (later J.P Morgan Chase) and Merrill Lynch were making so much in fees, Fastow leaned on them to ensure that their investment analysts wrote reports encouraging investors to purchase Enron shares; skeptical Enron analysts were sometimes fired, or at least moved to reporting on other companies. Accountants at Arthur Andersen had misgivings about the loans appearing as revenue, but also succumbed to the consultant fees. Enron paid one division of Arthur Andersen for "consulting," then Arthur Andersen's auditing division would approve and certify Enron's financial statements. On a recent cover, the mainstream business publication *Fortune* magazine summarized the situation: "Partners in Crime: The Untold Story of How Citi, J.P Morgan Chase and Merrill Lynch Helped Enron Pull Off One of the Greatest Scams Ever." Fastow was the mastermind – commander of "one of the greatest scams ever."

Fastow was originally charged with 109 felony counts, including conspiracy, wire fraud, securities fraud, falsifying books, as well as obstruction of justice, money laundering, insider trading, and filing false income tax returns.^{xxii} Under his plea bargain, he will receive 10 years in prison, which is the same sentence Andrade received for his several residential burglaries back

in the 1980s. Fastow is still free on a bond while he cooperates with authorities, and he will not start serving time until his wife is done serving her one-year sentence for involvement in some of the “special purpose entities” and filing false tax statements. This way, their children will always have one parent at home, a rational and humane arrangement, not likely to be available to street criminals.

How Bad is Bad?

You might think that Andrade’s penalty is fair because he did commit two new crimes after he had already committed some earlier ones, the burglaries for which he had done time. And, given the severity of Fastow’s sentence—ten years is a serious prison sentence!—the system has worked pretty fairly. But, think first of the harm that each did. No doubt Andrade’s burglaries were harmful crimes, but he already served prison time for them. He ended up with life in prison for the additional crime of shoplifting and, in upholding his sentence, the Supreme Court explicitly endorsed the *Rummell* case, where a life sentence was imposed for crimes of which Justice Powell said in dissent: “it is difficult to imagine felonies that pose less danger to the peace and good order of a civilized society than the three crimes committed by the petitioner”.^{xxiii} Fastow cannot be described the same way, because of the number of victims and the amount of the loss in dollars he caused, as well as the lost in trust in our financial system.

In Chapter 2, Reiman presents a discussion with The Defender of the Present Legal Order – someone not ignorant or mean-spirited, but who believes that street crimes are worse than corporate crime. One of the Defender’s objections is that direct crime is worse than indirect crime because meeting face-to-face with the criminal is more terrifying. Reiman responds that what the law prohibits is people having what is rightfully taken by another through fraud, and while face-to-face victimization may be more scary, that is not enough to justify some of the dramatic differences in outcomes that are documented in Chapter 3 of the *Rich Get Richer*.

Fastow's case is a good addition to this argument. Indirect crime – as Wanda Sykes notes in the opening quote – can take someone's entire life savings and not just what was in their wallet the day they were victimized. So, while Fastow's crime may not have caused fear in the way a face-to-face crime might, it caused enormously more loss to enormously more victims. Fear is only part of the equation when determining the gravity of a criminal act. The amount of loss as well as the number of victims must also be counted.

Fastow ended up with a ten-year sentence for bringing about the financial ruin of thousands of Enron employees and investors, including pension funds that held the retirement hopes of many. Moreover, while Andrade did commit the three felonies that qualified him for life in prison under a "three strikes and your out" law, Fastow was charged with 109 felonies! A poor guy ends up in jail for life for stealing less than \$200 worth of goods, a rich guy ends up in jail for ten years for ruining thousands while making millions for himself, and Ken Lay has not even been charged! Can you deny that *the rich get richer and the poor get prison*? Is this fair?

Sarbanes-Oxley: Going Too Far?

While Enron was big news, in the end, it was just one of a number of stories about financial fraud that involved billions of dollars and involved the corruption of corporate executives, bankers and accountants. According to John Coffee, a Columbia Law School Professor, "from 1990 to 1997, earnings restatements averaged 49 a year. In 1998 they soared to 91; the next year there were 150; and in 2000 there were 156." He also notes that stock analysts lost their skepticism during the same period: "In 1990 they issued six "buy" recommendations for every "sell." By 2000, the ratio was nearly 100 to 1."^{xxiv} The picture here is of a deep and systemic problem that mirrored what happened at Enron where banks became "partners in crime" because of the fees, which was an incentive to rein in critical stock analysts who were providing a service to the public by asking the right questions. *Fortune* asks, "Did the banks

know these transactions were deceitful? Without question – as their e-mails make abundantly clear. ‘Enron loves these deals,’ wrote a Chase banker in 1998, ‘as they are able to hide funded debt from the equity analysts.’^{xxv} Accountants fudged audits because of lucrative consulting fees, and evidence shows they too knew what they were doing.

The Sarbanes-Oxley legislation, which went beyond the minimalist reforms President Bush requested and which was billed as the most far reaching financial reform since the Depression, was supposed to fix these problems with the system. However, the ink was no sooner dry on the legislation than “members of Congress from both parties accused the administration of undermining or narrowing the scope of provisions covering securities fraud, whistle-blower protection and punishment for shredding documents.” Critics, including the bill’s authors, charged that the Justice Department drew up interpretations and prosecution guidelines that contradicted the legislative intent of the reform measure.^{xxvi} By November of 2002, the *Washington Post* reported: “Harvey L. Pitt’s resignation from the Securities and Exchange Commission, coupled with the Republican Party’s success in the midterm elections, has emboldened some Wall Street executives to stiffen their resistance to strong reforms that only days ago seemed almost certain, industry and regulatory sources say.”^{xxvii}

As the scandals recede into history and as business implements provisions of Sarbanes-Oxley, more complaints arise about the regulatory burden of complying with the law, which includes requirements that top executives certify the financial statements as reliable and accurate. As *Washington Post* columnist, Steve Perlstein, noted, “much of the cost of compliance has to do with beefing up internal controls. Companies used to argue that they already had them. Now they argue that they are too expensive. It’s hard to see how they can be both.”^{xxviii} The top executives in many troubled firms say they did not know anything about the fraud going on, but now argue that the new controls are unnecessary: “It’s a tad disingenuous for corporate

directors to say they knew nothing about the skullduggery that went on during their watch, as many have, and then turn around and argue there's no need for internal controls." Finally, Perlstein estimates the cost of these controls to be between 0.5% and 1% of company revenue, "hardly an excessive fee for restoring investor confidence."

Other provisions of the law were meant to disrupt the deep seated and corrosive conflicts of interest that facilitated the frauds and misled the investing the public. Enron was able to buy off the bankers and, through them, the analysts; Enron also bought off the accountants through consulting fees. When Sharon Watkins blew the whistle and wrote to Lay that Enron would "implode in a wave of accounting scandals," Lay asked its main law firm to investigate, even though the firm had previously been paid to consult on and approve the deals.^{xxix} Enron's outside board of directors, described by the *Washington Post* as "friends and admirers of Lay" didn't probe for details about Watkins memo or the issues it raised and "left the meeting thinking Enron was doing fine."^{xxx}

The problem that Sarbanes-Oxley had to address was not "a few bad apples" but "business as usual." Changing "business as usual" does involve significant change that needs to target all the problems: investment bankers, stock analysts, accountants, outside directors, and allegedly clueless CEOs who are paid millions but somehow are not responsible for anything bad. Further, deterring misconduct was an important goal – needing to send the message that misconduct will not be tolerated. The target audience of slick executives needs a strong message. As noted by Donald Langevoort, a professor at the Georgetown University Law Center and a former lawyer for the Securities and Exchange Commission: "A lot of these people think they can talk their way out of anything, and with all their power, their contacts, their cleverness, they can be fine."^{xxxi}

Lest you still think that business can be trusted to regulate itself, along comes the mutual fund scandal, which lost out to Martha Stewart in press coverage even though it involved considerably more wrongdoing and victims. A deputy to New York Attorney General Spitzer, who was far ahead of the Securities and Exchange Commission, commented that “a whole grotesque industry [grew] up based on screwing small investors. It’s about as bad as it gets.”^{xxxii} Mutual fund companies allowed select investors to place trades after the 4 pm closing bell when prices have been set, a practice compared to allowing someone to place a bet after the horses crossed the finish line. (Some of the trade requests came as late as midnight.) Although such market timing is not illegal when properly disclosed, mutual fund companies said publicly they didn’t allow it, but did allow favored clients to do so, even though the practice creates costs that are shared by the people who play by the rules.^{xxxiii} And, “just as with the other corporate scandals, banks helped enable the illegalities – and then helped cover them up.”^{xxxiv}

Undermining Sarbanes-Oxley’s provisions or denying the importance of full extent of the reforms are the first steps in recreating the deregulated environment in which the recent spate of frauds occurred. It would seem that, after such enormous financial catastrophes, this shouldn’t be an issue, but history tells us differently. Indeed, the quote at the end of the introduction notes that after the Savings and Loan scandal that cost a half *trillion* dollars, Congress went on a deregulation binge! According to a *New York Times* article: “In an eerie flashback to the savings and loan scandal a decade ago, it turns out that some of the same lawmakers and regulators investigating some of the causes behind the Enron-Arthur Andersen scandal – Democrats and Republicans alike – may need to look no further than the mirror.”^{xxxv} The article suggests that some of these very investigators were responsible for “legislation that shielded companies and their accountants from investor lawsuits [and forced] regulators to dilute proposed restrictions on accountants.”

Many of these attempts to water down legal restrictions were the result of industry lobbying and campaign donations, which brings up a final lesson worth emphasizing. Many people seem to think that, because politicians did not help Enron in its final desperate moments, Enron's political donations did the company no good. However, John Dean, legal counsel to former President Nixon, noted in a column for *Findlaw.com* that: "Enron's contributions may have helped slow detection of its troubles, and helped the company fly under the radar for as long as was possible given what now appear to be some egregious accounting and business practices." Further,

when Enron hit the wall, the Bush Administration remained mute, even knowing Enron was disintegrating. Certainly the former governor of Texas had some idea of what this would mean to his beloved state. For one thing, twenty thousand employees of Enron would be out of work, with their 401(k) plans worthless. Surely a man with a Harvard MBA could envision the devastation this business failure (of a company he had once promoted) would have on countless thousands of Enron stock and bond holders, not to mention major lending institutions who had provided Enron working capital.

In all these ways - through favorable regulatory changes, lack of government oversight, and administration silence until the very end - Enron's investment in Washington paid handsome returns for a few insiders, who personally made millions (but obviously wanted billions) from Enron. Sometimes buying influence can simply mean buying silence - not buying specific actions or intervention.^{xxxvi}

Conclusion

There is no doubt that the public is becoming less tolerant of costly corporate shenanigans, and that some executives now face the prospect of serving serious prison time for their wrongdoing. Thus, we can say that there has been some progress in making our criminal justice system fairer, in making punishments fit crimes and crimes fit harms, and in reducing the gap between the iron hand that poor street criminals have always encountered in the system and the velvet glove treatment which corporate bigwigs have commonly received. But the jury is not in on how far this gap has been reduced, and the signs are not good.

One Wall Street executive commented that “the corporate sector was healing itself in the Betty Ford clinic for balance-sheet rehabilitation.”^{xxxvii} Notice his emphasis on the whole ‘sector’ – and, in contrast with Terry, the executives could afford the private drug clinic. Indeed, they seem to have come out of rehab with a pay increase: “Despite last year’s loud cries for pay reform, Fortune 500 CEOs made more money than ever in 2003,” declares *Fortune*. The 2003 pay is higher than 2002, when “the average pay U.S. CEO earned 282 times what the average worker did...in 1982 the ratio was 42 to one.”^{xxxviii}

While the Martha Stewart case may get more TV time than those involving giant corporations like Enron or J.P. Morgan Chase, cases like the latter deal with the top executives at companies where the financial fraud was the greatest (and thus had the most victims). Although Stewart’s problems started with possible insider trading, her conviction was for obstructing the investigation into the insider trading – four counts, compared to 109 for Fastow. Critical thinking students of criminal justice in America must now watch the prosecutions for the recent frauds unfold, especially among those who held posts similar to Fastow or higher at companies that

had fraudulent bookkeeping. Keep an eye on who gets charged, who gets sentenced, and then—later, when the memories of Enron and its like have faded—on how much of their sentences they actually serve? Likewise, we must watch to see if Congress maintains the integrity of the reforms or quietly relaxes them after a sufficient amount of campaign contributions. Will all the wrongdoers be charged and tried and punished? Will the convicted ones serve the full sentences that they received? Will laws to restrain predatory business practices be enforced, or will they be watered down once the public's attention is elsewhere? In the past, after a flurry of headline grabbing activity, the system has gone back to business as usual. Will this happen again?

NOTES

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- ⁱ Sykes, Wanda. 2003. *Tongue Untied*. Comedy Central Home Video.
- ⁱⁱ See Reiman, Jeffrey and Paul Leighton. 2003. *Getting Tough on Corporate Crime? Enron and a Year of Corporate Financial Scandals*. Boston: Allyn & Bacon. Available, <http://paulsjusticepage.com> > Rich Get Richer.
- ⁱⁱⁱ Johnston, David. 2002. "Justice Dept's Inquiry Into Enron Is Beginning to Take Shape, Without Big Names" *New York Times*, January 16, p C7.
- ^{iv} Department of Justice. 2003. "Operation Pipe Dreams Puts 55 Illegal Drug Paraphernalia Sellers Out Of Business". Available, http://www.usdoj.gov/opa/pr/2003/February/03_crm_106.htm .
- ^v Witt, April and Peter Behr. 2002. Losses, Conflicts Threaten Survival: CFO Fastow Ousted In Probe of Profits. *Washington Post*. July 31, p A01. Peter Behr, "Chairman Told Workers Stock Was 'Bargain,'" *Washington Post* (January 19, 2002), pp. A1, A6; Daniel Altman, "Enron Had More Than One Way to Disguise Rapid Rise in Debt: Billions Were Listed as Trades Instead of Loans," *New York Times* (February 17, 2002), pp. 1, 26; Peter Behr, "Skilling to Face Senators, Accusers," *Washington Post* (February 26, 2002), pp. A1, A10; and Gimein, "You Bought. They Sold," p. 68.
- ^{vi} Witt, April and Peter Behr. 2002. Losses, Conflicts Threaten Survival CFO Fastow Ousted In Probe of Profits. *Washington Post*. July 31, p A01. This article is an installment of a five part series on the fall of Enron.
- ^{vii} Ackman, Dan. 2002. "Where Are The Indictments?" *Forbes*. Available, <http://www.forbes.com/2002/07/08/0708topnews.html>.
- ^{viii} Ackman, Dan. 2002. Enron's Man Who Didn't Know Too Much. *Forbes*. Available, <http://www.forbes.com/2002/02/08/0208topnews.html>
- ^{ix} Behr, Peter and April Witt. 2002. Concerns Grow Amid Conflicts: Officials Seek to Limit Probe, Fallout of Deals. *Washington Post*. July 30, p A01.
- ^x Reed, Terrance. 1992. "American Forfeiture Law: Property Owners Meet The Prosecutor" Cato Policy Analysis No 179. Available, <http://www.cato.org/pubs/pas/pa-179es.html>. See also, Drug Policy Education Group, "Asset Forfeiture" Available, <http://www.dpeg.org/Issues/assetforfeiture.htm>.
- ^{xi} Seagal, Debra. 1993. Tales from the Cutting Room Floor: The Reality of 'Reality Based' Television. In, Paul Leighton and Jeffrey Reiman (eds) *Criminal Justice Ethics*. Upper Saddle River: Prentice Hall (2001), p 507.
- ^{xii} Calivita, Pontell & Tillman, *Big Money Crime: Fraud and Politics in the Savings and Loan Crisis*.
- ^{xiii} *Lockyer v Andrade*, 538 U.S. ____ (2003) No. 01-1127. The full text of this case, along with briefs and a transcript of oral argument, is available through sites like <http://findlaw.com> and <http://www.law.cornell.edu/>. In a companion case, *Ewing v California*, the court upheld another life for stealing several golf clubs valued at \$1,200.
- ^{xiv} 445 U.S. 263. The full text and other information is available on the internet – see note xiii.
- ^{xv} Terry, Charles. 2003. *The Fells: Overcoming Prison and Addiction*. Belmont: Wadsworth. P. 4.

^{xvi} McLean, Bethany and Peter Elkind. 2003. Partners in Crime. *Fortune*, October 27, p 82. This article is an excerpt from the authors' book, *The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron*. New York: Portfolio, 2003.

^{xvii} "Partners in Crime" p 81; see note xvi.

^{xviii} Behr and Witt 2002. See note ix.

^{xix} Partners in Crime, p 86; see note xvi.

^{xx} Ibid.

^{xxi} Partners in Crime, p 88; see note xvi.

^{xxii} Florian, Ellen. 2003. Scandal Cheat Sheet. *Fortune*, 7 July, p 48-9.

^{xxiii} 445 US 263, 295.

^{xxiv} Coffee, John. 2002. "Guarding the Gatekeepers" *New York Times*, May 13, p A 25.

^{xxv} Partners in Crime, p 81; see note xvi.

^{xxvi} Jonathan Weisman. 2002. Some See Cracks In Reform Law. *Washington Post*. August 7, p E1. quoted in Reiman & Leighton, 2003 (see note ii).

^{xxvii} White, Ben. 2002. Wall Street Sees Chance To Put Off Reforms: Pitt's Departure, GOP Win Prompt Go-Slow Sentiment. *Washington Post*, November 8, p E 01.

^{xxviii} Perlstein, Steve. 2004. Corporate Class Pushes Weak Case Against Reform. *Washington Post*, March 10, p E01.

^{xxix} Witt, April and Peter Behr. 2002. Dream Job Turns Into a Nightmare : Skilling's Success Came at High Price. *Washington Post*. July 29, p A01.

^{xxx} Ibid.

^{xxxi} Berenson, Alex. 2004. Are We Deterring Corporate Crime? *New York Times*. March 8. Available, http://reclaimdemocracy.org/articles_2004/deterring_corporate_crime.html.

^{xxxii} Elkind, Peter. 2004. The Secrets of Eddie Stern. *Fortune*. April 19, p 108. *Fortune* characterizes the SEC as 'clueless' about the mutual fund scandal.

^{xxxiii} Elkind notes market timing is a problem "because rapid trading by one very large customer can wreak havoc on the ability of a fund manager to make money for everyone else. Big sums rush in and out and rob the manager of flexibility in buying and selling stocks. He has to keep extra cash at the ready to pay the exiting timer, which dampens performance. Timing also boosts trading expenses and generates capital gains, which imposes costs on the fund's shareholders. According to one academic study, timing costs long term mutual fund shareholders as much as \$4 billion a year." *The Secrets of Eddie Stern*, p 110. See note xxxii.

^{xxxiv} *The Secrets of Eddie Stern*, p 122. See note xxxiii.

^{xxxv} Labaton, Stephen. 2002. "Now Who, Exactly Got Us Into This?: Enron? Arthur Andersen? Shocking Say Those Who Helped It Along" *new York Times*, February 3, p C01.

^{xxxvi} Dean, John. 2002. Some Questions About Enron's Campaign Contributions: Did Enron Successfully Buy Influence With The Money It Spent? Available, <http://writ.news.findlaw.com/dean/20020118.html>.

^{xxxvii} Serwer, Andy. 2004. After 23 Years of Falling Interest Rates, the U.S. Is At A Turning Point. *Fortune*. May 17, p 86.

^{xxxviii} Boyle, Matthew. 2004. When Will They Stop. *Fortune*. May 3, p 123.