WHITE-COLLAR CRIME IN CORPORATE AMERICA
RIGHTING A WRONG: THE FIGHT AGAINST WHITE-COLLAR CRIME

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I. INTRODUCTION

Statement of the Problem

White-collar crime has been considered a victimless and less serious offense for years. According to Legal Dictionary and Merriam-Webster, a victimless crime is one involving a moral wrong; something that does not cause physical harm to another individual and, one important element, people who authorize consent who potentially become victims (Legal Dictionary, 2013; Merriam-Webster, 2013). White-collar crime is categorized as such considering its detrimental effect to federal, state and local governments, in addition to the private sector and individuals. Between 2004 and 2005, the United States Corporate Fraud Task Force documented over five hundred white-collar crime convictions – this figure more than doubled from the previous year (Huynh, 2010). Additionally, the loss attributed to white-collar crime on an annual basis is astronomical. It is believed white-collar crime costs the United States over $200 billion annually (Huynh, 2010). Some assert that organizations that commit corporate fraud affect society in such a manner, the affects are more detrimental than street level offenses (Murphy, 2002). Considering the price the United States pays for white-collar crime, it should not be considered victimless.

The United States Supreme Court stated its stance on white-collar crime in 1988, asserting "white-collar crime is one of the most serious problems confronting law enforcement authorities," discrediting the victimless designation (Strader, 2002). This sentiment dates back to 1939 when Edwin Sutherland published his work *White Collar Crime*, detailing his belief that white-collar crime is significantly underreported. Contributing additional controversy to this theory are the numerous definitions of white-collar crime. According to the U.S. Justice Department, white-collar

crime/criminals consist of one or more of the following: "illegal acts that employ deceit and concealment rather than the application of force; the intent to obtain money, property or service; avoiding the payment or loss of money or to secure a business and/or professional advantage; white-collar criminals who occupy positions of responsibility and trust in government, industry, the professions, and civil organizations" (Lippman, 2007). While the Federal Bureau of Investigation does not provide as detailed a definition, they refer to white-collar crime as containing the following elements: deceit, violation of trust and the non-dependence on the application or threat of physical force or violence (Wallace & Roberson, 2011). So, while the technical term may vary depending on the organization, the premise remains the same.

Another area of consideration is the matter of the crime itself and its contents. Theft by means of white-collar crime is not viewed as heinous as murder or armed robbery; therefore many feel white-collar crime should not have legal ramifications similar to more serious offenses. The basis of this argument is that because the crime itself is often unreported, underreported or discovered after a length of time has elapsed, it should not take precedence over more serious crimes. Doing so could potentially flood an already overwhelmed criminal justice system. For some time a stigma has been attached to prosecuting and/or defending white-collar criminals. Many offenders do not want their reputations and families ruined, and the exposure alone will build distrust from not only the outside community, but within an organization as well. This, consequently, may have an impact in the prosecution of white-collar criminals. In order for a white-collar offender to protect his/her family's privacy and ensure they are not exploited, he/she might resort to extreme measures (i.e. deception, suicide, etc.) so his/her loved ones do not have to suffer for his/her selfish actions. In the event that a

white-collar criminal does not have a prior criminal record, his/her family life is taken into consideration. If he/she is considered to be an "upstanding family person" or "valuable to the community," the judge might view this as favorably and ultimately sentence him/her to less time in jail.

As early as 1907, offenders received a "status shield" for criminal activity related to white-collar crime (Slyke & Bales, 2012). Status shield suggests white-collar crime is associated with someone who possesses "high social status" and therefore requires a specific level of decorum. The status shield provision also provides a safety net from prosecution and many other sanctions only white-collar offender counterpart's experience. Another aspect of status shield is that judges and others with similar backgrounds are hesitant to prosecute white-collar offenders because of similarities they share in their personal lives (Slyke & Bales, 2012). In comparison to non-white-collar offenders, judges might deem prosecution unnecessary whereas revoking a license and/or other professional attainment is more beneficial; in other words, remove his/her status. In addition, their personal life (i.e. family life, community relationship, and occupation) play a role in status shield and how the court system may perceive such individuals.

An example of a person who possesses status shield is Bernard Madoff. Bernard Madoff, 74, became a businessman after he earned his bachelor's degree in political science from Hofstra University (Biography, 2013). Shortly after graduation and a brief period in law school, (subsequently dropping out in 1961), Mr. Madoff and his wife formed Bernard L. Madoff Investment Securities, L.L.C., which began to thrive virtually immediately with the support of his clients, some of whom included celebrities. Over a twenty year timeframe, Mr. Madoff amassed $65 billion from investors but in actuality

only held $17.3 billion in investments (Washington, 2012). This gross discrepancy is attributed to many of the characteristics required for effective accounting and auditing procedures, which Bernard L. Madoff Investment Securities, L.L.C. lacked, to be discussed later in this composition. Because of the duration of his Ponzi scheme and it being "the largest fraud in Wall Street history," Madoff was sentenced to 150 years in prison (Washington, 2012). Many white-collar criminals and organizations (for example, Enron and Tyco) preceded Bernard Madoff prior to his exposure in 2009 and many will follow so long as laws allow white-collar offenses to continue without more harsh penalties, unless circumstances surrounding the case are extreme to warrant an extensive sentence . There is also the perception that even in the event of a less serious street offense, penalties for the white-collar offender will still be less for him/her rather than the criminal with a less serious street offense (Slyke & Bales, 2012).

Prior to the year 2000 when Enron was profitable and before the dot com (Internet/communication businesses) crash, offenders received sentences similar to a slap on the wrist. Because of offenders' status in the community, white-collar criminals were able to escape prosecution and responsibility for their actions for many years. Many investors questioned Madoff's practices and attempted to advise others of his wrongdoing, but it took years for authorities to take those complaints seriously. Political affiliation also plays a role in enforcement of white-collar crime. In this regard, the politics of prosecuting a well-regarded member of the community who has committed such crimes becomes a consideration. Prosecutors might feel intimidated by white-collar criminals and their power, in addition to being threatened and possible retaliation for bringing charges against these offenders (Slyke & Bales, 2012). This is common throughout the criminal justice system; however, white-collar criminals

intimidating prosecutors is challenging because the more prosecutors are intimidated, the less likely the government will proceed with charges against white-collar offenders – prosecutorial discretion.

Prosecuting white-collar criminals is half the battle. Laws must be in place to prohibit white-collar crime and facilitate enforcement. Established in 1934, United States Congress developed the United States Securities and Exchange Commission ("SEC") to focus on the following: interpreting federal securities laws, issuing new rules and making changes to current rules; reviewing and overseeing the inspection of securities firms, brokers, investment advisors and ratings agencies; overseeing private regulatory organizations in securities, accounting and auditing; and coordinating regulations among federal, state and foreign agencies (SEC, 2012). While the SEC's authority is broad, it lacks effective means of enforcement. Specifically, current laws only allow the SEC to bring civil charges against individuals and fines against corporations. Civil charges simply are not enough to deter offenders, especially when they have been afforded countless luxuries for the duration of fraudulent activity. In instances where the grounds exist for civil charges, the case is referred to the Justice Department for investigation with the assistance of the Federal Bureau of Investigation. Depending on the scale of the operation and the position of the organization and/or individuals involved (i.e. if they plead guilty), it will determine which courts become involved in proceedings. Even with the involvement of this federal agency, criminal charges often do not coincide with the crime committed.

Another aspect to consider is public perception. Previously, it was believed public and criminal justice figures alike shared the belief that white-collar crime is not a serious offense (Slyke & Bales, 2012). However, this attitude is slowly changing. As

more individuals participate in white-collar crime and the amount in question becomes more significant, the likelihood of apprehension and prosecution increases. The terms of prosecution continue to exhibit incongruity. Individuals who have funds invested with specific brokers may feel victimized and, therefore, feel as though the offender should receive harsh penalties. Courts may feel otherwise based on the aforementioned elements (status shield, political affiliation, personal life and education level). By contrast, corporations may be more likely to review their losses and any negative exposure they might receive in the event the theft is publicized.

Finally, white-collar criminals and their low conviction rates can be attributed to his/her background, as previously mentioned. Their educational attainment, family lifestyle, wealth and professional connections allow legal representation that murderers and other street level offenders normally cannot afford. With expensive attorneys, white-collar criminals have access to experts who testify on their behalf, misconstrue information, and possibly delay proceedings (if necessary) in order to escape conviction. From a statistical perspective, studies have shown that most white-collar criminals are Caucasian (77.4%) and between the ages of twenty-one and thirty (59.7%) (Ragatz, Fremouw, 2010). This is a statistic based solely on those who are involved with embezzlement. With regard to other types of white-collar crime, Caucasians make up more than 80% of the demographic. Based on these factors, white-collar criminals are more difficult to prosecute.

Significance of the Problem

As demonstrated during the 2008 recession, there were instances where white-collar criminals were held accountable for their actions, but not to the fullest extent of the law. Sure, their reputation suffered and, for some, his/her conscience haunted them

and they resorted to extreme measures (Freddie Mac CEO David Kellerman committed suicide; CNN Money, 2009), but it was not until recently that court officials began to seriously consider holding offenders accountable. Culpability not only serves as deterrence; it also provides investors and the general public with a sense of confidence that when individuals defraud them and/or the company, overall, the matter will be handled appropriately.

Purpose of the Study

Most economic strategists agree that our country experienced an economic recession in 2008 (Borbely, 2009). Housing, automobile, credit and financial markets suffered, with high unemployment following shortly thereafter. During the fourth quarter of 2008, there were an estimated 6.1 million unemployed individuals between the ages of 25 and 54, and this figure increased sharply (by 2.1 million) in just one year (Borbely, 2009). The United States had not experienced such rates of unemployment since the Great Depression and many financial analysts and economists believed this recession exacerbated the prevalence of white-collar crime. For instance, one correlation is the crash of the housing market due to fraudulent mortgages. Fraudulent mortgages were oversaturating the market, while executives received kickbacks and other financial benefits. Many executives were simply released of their duties, banks and other major businesses closed, and some executives were forced to testify before the Senate. For many of the executives involved in those fraudulent mortgages, severe consequences did not exist. The purpose of this research paper is to identify issues related to current legislation and propose ways in which it can be enhanced to further deter white-collar crime or effectively punish offenders for their actions. Additionally, it

will discuss best practices organizations and individuals can follow to ensure compliance with SEC established rules.

II. CASE REVIEW

SEC v. Koss Corporation and Michael J. Koss

John Koss founded Koss Corporation ("Koss") in 1958, when he developed the first set of stereo headphones. During this era, the only types of stereo headphones available were those made for pilots to listen and/or communicate with air traffic controllers when flying their aircraft. Koss prided itself on being the originator of stereo headphones and thrived throughout the years, until 2010, when the SEC initiated an investigation against the company, specifically Sujata Sachdeva. Sachdeva was an executive within the business who embezzled millions of dollars from her employer with the assistance of accountant Julie Mulvaney, who was also employed by Koss. From 2005 through 2009, Sachdeva and Mulvaney successfully manipulated financial statements, records and other internal controls to accomplish their goal of defrauding the organization of over $30 million. As the company's Chief Executive Officer and Chief Financial Officer, Michael Koss was responsible for ensuring proper policies and procedures were implemented and utilized to minimize the risk of such behavior. While Sachdeva and Mulvaney were fraudulently wiring money, using counterfeit cashier's checks and petty cash withdrawals, Mr. Koss approved financial statements they produced without proper auditing procedures (SEC, 2011). As a result, those financial documents were filed with the SEC and were not amended until after the embezzlement was discovered.

Sachdeva and Mulvaney were the prime perpetrators in this string of fraudulent activity and their reputations were ruined, but Michael Koss did not emerge unscathed.

According to the SEC, in its complaint against Koss Corporation and Michael Koss, the company specified that its process of approving invoices in excess of $5,000 includes Mr. Koss reviewing, approving and signing the checks himself (SEC, 2011). Additionally, Michael Koss was responsible for approving wire transfers to vendors outside the United States and wires related to personal services, and approving and reviewing petty cash accounts, none of which he approved in this matter. Based on this information, he was grossly negligent in his duties to the organization.

Koss overall admitted its deficiencies, but this was only after Sachdeva and Mulvaney infiltrated its system. Koss employed few employees in its accounting department, creating many roles for one individual with the potential of being overwhelmed by those tasks and increasing the risk of fraudulent activity. Specifically, Sachdeva was authorized to sign checks and approve and wire funds. Koss also lacked efficiency in balancing its accounts and/or balance sheets regularly; this was not performed internally or externally. As a result, documentation was not reviewed, physical ledgers were disregarded and there was a lack of controls within the organization.

Another serious inadequacy within Koss was its information system, or lack thereof. Using a system over thirty years old, which could not be locked to limit exposure, regularly allowed unauthorized individuals to use its accounting records. Mr. Koss did not perform regular audits of the program, recent activity was not traced recurrently and passwords were not maintained and/or changed frequently to ensure security of the database. Michael Koss's lack of quality control and an outdated system further contributed to Sachdeva's and Mulvaney's ability to manipulate the company

and continue their theft. Sachdeva is currently serving an eleven-year sentence in a federal prison (Kirchen, 2012).

SEC v. L. Dennis Kozlowski, Mark H. Swartz, and Mark A. Belnick

Similarly, the SEC prosecuted another instance of white-collar crime against Tyco International, Ltd. Tyco is the manufacturer and distributor of fire sprinkler and monitoring systems, carbon monoxide detectors, lifesaving products (similar to gas masks), and video surveillance equipment. L. Dennis Kozlowski, Mark Swartz and Mark Belnick were involved in swindling Tyco out of multimillions of dollars using self-dealing loans and violating SEC rules on financial reporting (SEC, 2002). From 1996 until 2002, these men created loan transactions unauthorized by the company and withheld information from shareholders. In addition to the loans, they provided themselves with unauthorized lavish gifts and expenses. This was accomplished through not only the loans and misrepresentation to the Board of Directors, but also through fraudulent recordkeeping and stock sales during their tenure (SEC, 2002).

L. Dennis Kozlowski was Tyco's Chairman of the Board, President and Chief Executive Officer from 1997 through 2002. Mark Swartz was the Chief Financial Officer and Executive Vice President during 1995 until 2002. Through the use of Tyco's Key Employees Corporate Loan Program ("KELP"), Kozlowski and Swartz purloined millions for their own benefit. KELP was originated to guarantee proper taxes were paid on behalf of executives who owned shares under Tyco's restricted share ownership plan. During his tenancy, Kozlowski received $270 million in KELP funds and used it for fine art, yachts, estate jewelry, an apartment on Park Avenue, and an estate in Nantucket (SEC, 2002). Mr. Kozlowski also used these misappropriated funds in the name of "relocation funds" to purchase a waterfront property in Boca Raton, Florida.

Mr. Swartz was equally guilty. He amassed $85 million, to which only $13 million was used appropriately for tax purposes under KELP; the remaining funds were used for his personal investments, business ventures, real estate holdings and trust accounts (SEC, 2002). Both Swartz and Kozlowski failed to disclose KELP funds on their Director and Officer Questionnaires, in addition to disclosure on the Form 10-K and proxy statements, as required by the SEC (SEC, 2002). This further demonstrates their intent to conduct fraudulent behavior. Using KELP funds and funds under the relocation program, Swartz purchased a $17 million property in Boca Raton, Florida, and spent remaining funds spent on real estate investments and a yacht. Messrs. Kozlowski and Swartz also, ultimately, approved loan forgiveness for almost $50 million on behalf of Tyco, which was never approved or disclosed to the Board of Directors (SEC, 2002).

Concealing information regarding the loans and dishonesty to the board were the modus operandi for Swartz and Kozlowski. On the other hand, Belnick specialized in the sale of unauthorized shares of stock. Mr. Belnick served as the Chief Corporate Counsel and Executive Vice President of Tyco during the 1998-2002 terms. While he did receive $14 million in relocation funds ($4 million for a property in New York City and $10 million for another in Park City, Utah), he improperly sold millions of dollars of Tyco stock, which did not coincide with the terms and conditions set forth by Tyco shareholders (SEC, 2002). This, consequently, led to the falsification of annual reports and proxy statements filed with the SEC.

In the end, the SEC charged Kozlowski, Swartz and Belnick with the following: fraud, false and misleading proxy statements, fraudulent stock sales, and reporting violations (SEC, 2002). Recordkeeping violations were also filed against Kozlowski and

Swartz. All three were forced to pay fines and penalties in addition to their sentences: Kozlowski received 8 1/3 and 25 years in prison (with parole being in 2012); Swartz received 8 1/3 and 25 years in prison (he recently filed suit against Tyco, alleging he is owed $60 million in retirement funds); and Mark Belnick was tried but was eventually acquitted of all charges against him.

SEC v. Bernard L. Madoff, Bernard L. Madoff Investment Securities, LLC

As briefly mentioned earlier, Bernard Madoff was the mastermind of a twenty-year Ponzi scheme involving investments (New York Times, 2012). In proceedings brought by the SEC, it alleges Mr. Madoff admitted to employees of Bernard L. Madoff Investment Securities LLC ("BMIS") that he was fully aware of fraudulent activity occurring within his organization (SEC, 2008). Deceitful activity conducted by Bernie Madoff was typically in the form of poor investment advice, though he also kept financial statements and other pertinent information about the firm a well-kept secret. Irwin Lipkin, a former employee of Madoff, admitted to falsifying financial records on behalf of BMIS (Katz, 2012). At one point, Madoff conducted a meeting in his home informing close members of his staff that he would be providing bonuses and other incentives sooner than expected because he was anticipating their downfall. Ultimately, the assets he possessed were liquidated to close family, friends and select employees (SEC, 2008).

In 2008, the SEC confirmed the following violations against Madoff and BMIS: violations of Section 206(1) and 206(2) of the Advisers Act, violations of Section 17(a)(1) of the Securities Act, violations of Section 17(a)(2) and 17(a)(3) of the Securities Act, and violations of Section 10(b) of the Exchange Act and Rule 10b-5 (SEC, 2008). The Order for Relief requested by the SEC led to the request for Madoff and all members of his staff

to discontinue their services to ensure they do not continue to violate the above referenced laws. Without hesitation, the United States District Court Southern District of New York approved and signed the order.

Ultimately, Bernie Madoff, was responsible for over $50 million lost by his clients during BMIS operations, carried out over numerous the years (Huynh, 2010). Coincidentally, it was Madoff's sons who turned their father in to authorities. Even more interesting is that the SEC received several complaints about Madoff and his questionable operation since 1992 (New York Times, 2012). Bernard Madoff was sentenced to 150 years in prison.

SEC v. Kenneth L. Lay, Jeffrey K. Skilling, and Richard A. Causey

Enron, founded in 1985, was an organization concentrated in the energy trading and communications industries. Kenneth Lay, Jeffrey Skilling and Richard Causey were senior executives of Enron Corporation and very familiar with the operations of the organization; both legitimate and illegal. Based on the Second Amended Complaint filed by the SEC, the three men accomplished their goal of defrauding the organization, similar to other companies mentioned in this composition, through falsifying documentation, filing fraudulent financial statements and grossly misrepresenting their financial holdings (SEC, 2004).

Kenneth Lay functioned as Chairman of the Board of Directors from 1998 through 2002. As Chairman, Lay was instilled with the responsibility to communicate information to the board related to the company – stock sales, positive and negative performance and other pertinent information related to the organization. Not only was he aware of such information, but he also failed to provide it to his peers on numerous

occasions. He signed the company's annual Form 10-K report filed with the SEC and approved the sale of Enron securities, fully aware of the deception.

Beginning in the 1980's, Jeffrey Skilling was a consultant for Enron appearing on its payroll, although technically he was employed by consulting firm McKinsey & Co. (SEC, 2004). In 1990 he was "officially" hired by Enron and became the CEO and COO of the business until 2001. As supervisor of senior executives and management, Skilling's role was to declare they were performing their duties effectively and efficiently in addition to executing financial documents and/or reports from auditors. While he did sign documents from Enron auditors to be filed on behalf of the organization, he did not examine them for accuracy nor question executives about their conduct.

Richard Causey was an accountant when he began his career with Enron, but later was promoted to Chief Accounting Officer. Causey was responsible for the company's finances, was the manager of Enron's financial disclosures and also signed annual reports required by the SEC and representation letters from auditors within the corporation (SEC, 2004). Similar to Lay and Skilling, Mr. Causey behaved haphazardly in his duties to the organization.

The SEC conducted an investigation and found countless violations against Enron including, but not limited to, falsifying records and improperly selling and trading assets, the creation of counterfeit entities by executives to invest funds to keep from reporting the earnings to the SEC, the formation of offshore accounts to reroute money, the invention of clandestine loans to mask company earnings, violations of Section 10(b) and 13(b)(5) of the Exchange Act and Exchange Act Rule 10b-5, violations of Section 17a of the Securities Act, and violations of Exchange Act Rule 13b2-2 (SEC, 2004). A request to curtail Lay, Skilling and Causey from participating in any further

business with regard to Enron was requested in addition to civil penalties sanctioned to guarantee victims were compensated appropriately. Kenneth Lay was never sentenced for his actions, as he died on July 5, 2006 (Biography, 2013). Skilling received a 24-year sentence for his role in the collapse of Enron, which he is currently serving in a Texas federal prison (Vicini, 2012). Finally, Richard Causey pled guilty to securities fraud and received a 5½-year prison sentence by a Texas court (Johnson, 2006).

III. THEORETICAL FRAMEWORK

Considering the rate in which instances of white-collar crime occur and the high-ranking individuals involved in the previously mentioned cases, one may question the cause of such behavior. One possible explanation is strain theory. Strain theory is associated with the belief that individuals, overall, are obedient to rules and regulations unless they experience duress and feel compelled to behave in an unethical matter (Paternoster & Bachman, 2001). In America, it is conventional for wealth and educational attainment to be emphasized. Provided that one reaches those accomplishments, maintaining it is equally as difficult. As witnessed in cases involving the SEC, the offenders involved were well into their careers and doing well financially. When this occurs, the question arises as to the amount of greed developed to meet and/or exceed educational and financial goals.

Robert K. Merton developed five adaptations to strain: conformity, which involves an individual accepting societal standards and resources to achieve those standards; innovation, the process in which an individual acknowledges societal standards but establishes his/her own process in attaining them (including criminal behavior); rebellion exists in an individual who disregards society and all processes of achieving goals; ritualism provides that people do things for themselves, regardless of

society – they often go with the grain of an organization; and retreatism, the worst form of strain, whereby an individual completely disregards the standards and resources available and resorts to other self-inflicting destructive conduct (i.e., extreme drug and alcohol abuse; mental anguish) (Paternoster & Bachman, 2001). Based on the cases reviewed in this composition and the charges presented to people involved, if Merton's adaptations are applied, innovation is closely related to their behavior. Each of these individuals held positions that allowed them to provide for their organizations in a manner that would make them profitable (which was stressed in their industries), regardless of how it occurred.

In addition to Merton's adaptations, Robert Agnew studied strain theory and proposed three categories in relation to it: failure to accomplish reasonable goals; stimuli of a positive nature removed from circumstances; and the existence of negative stimuli (Langton, 2007). Based on this perspective, Agnew believes that when an individual is faced with certain stressors, he/she forms negative stimuli, creating an extremely tense situation. Depending on the length of time the negative stimuli exists, the internal feelings an individual may experience potentially leads him/her to commit white-collar offenses. Additionally, studies have shown that strain over time can have an affect on an individual and lead to criminal behavior (Langton, 2007). Specific to white-collar crime, strain is enhanced by an individual being pressured to meet unrealistic goals in an organization that may include long work hours, extremely difficult tasks and financial prosperity.

An experienced associate at a prominent insurance defense law firm, who will be referred to as Rob Brown, exhibited such conduct. Brown was a young man with a family who enjoyed his career but struggled developing a successful work/family

balance. Being in an extremely demanding position, he not only desired success, but he also wanted to be accepted by his colleagues. This was a struggle, considering Brown had extremely low self-esteem, felt like an underachiever and thought that he needed to produce more. Already feeling the pressure of long hours on the job, he was presented with an opportunity for promotion, provided that he increased his hours by "finding them" somehow in the midst of completing other responsibilities (Naso, 2011). Brown eventually began falsifying his timekeeping records with the practice becoming so habitual that he eventually justified his actions by developing a sense of entitlement and arrogance. Based on Merton's and Agnew's theories on strain, Brown's behavior coincides with strain and its affect on an individual leading to criminal behavior.

Based on research conducted and using the previous example, there was a relationship between strain and the behavior Brown exhibited. He felt as though the only way to escape the negative stimuli was to succumb to it. Some may question if the organization is to blame for the expectation(s) it required of Brown. Further research found that while others within the organization encouraged falsifying his time records, ultimately the decision was Brown's, and his actions were an individual effort (Langton, 2007). Whether Brown acted as a sole offender, or a group of people working together in an organization, the potential for an invasion of negative stimuli will always exist; it is ultimately the decision of the individual to surrender to such stress.

In the case of Brown he (initially) was an associate with the law firm, not an executive in the hierarchy of the organization. The Koss, Enron and Madoff cases involved people who were engrossed in the full operation of the company. While individuals in these situations may vary in their experience and educational backgrounds, studies discussed in the *Proceedings of the National Academy of Sciences*

journal believe people who are in the chain of command are not only in a better position to commit white-collar offenses, but are more likely to do so (Wells, 2012). Furthermore, explanations for participating in white-collar crime differ amongst executives and those who are lower in the organizational structure. For instance, someone employed by a small business owner or in a nonexecutive role may feel under-compensated, therefore leading them to criminal behavior. Top executives often feel entitled to more considering their contribution(s) to the company, even though they are compensated appropriately. It also does not help that chain of command personnel often approves significant transactions for the company, as witnessed in Koss Corporation and countless organizations worldwide. As stated in Occupational Fraud magazine, "elevated company rank does not necessarily equate to honesty; business leaders are no more honest than anyone else" (Wells, 2012). Lastly, there are people (both executive and non-executive) who feel as though it is always the company's fault for allowing opportunities of criminal behavior to transpire. Lack of proper auditing procedures, few employees available to accomplish tasks, and executives instructing their employees to falsify documents all contribute to this justification.

Another concept to consider in an executive/non-executive realm is the fear of falling, a concept in which an individual feels that losing everything would become a traumatic event (Piquero, 2011). This contradicts the notion that white-collar criminals are avaricious and desire more of what they already possess. Fear of falling also provides that financial loss is more detrimental than financial gain, regardless of the criminal act entailed to gain monetary stability (Piquero, 2011). For example, one might revel in attaining financial prosperity but the weight of losing this financial status, potentially losing a home or automobile and children being forced out of private school,

would send a white-collar offender's world crashing down. From the perspective of a nonexecutive or executive, the aforementioned elements may apply, proving the irrelevance of status within an organization.

A survey was recently conducted inquiring about matters related to corporate crime. Contributors to the survey were provided information related to decision making and ethics; questions disguised in the form of rational choices and scenarios associated with white-collar crime were presented to yield a more accurate response to fear of falling. Based on participant responses, overall, many were less likely to engage in criminal behavior when strong morals were present (Piquero, 2011). Additionally, there were respondents whose moral compass heightened at the immoral actions that coincide with white-collar crime, but the benefits of committing the crime eventually outweighed morals. Ultimately, fear of falling is a concept that does not discriminate and is yet another contributing factor to white-collar crime.

Rational choice theory is an additional concept closely related to white-collar crime. Rational choice theory suggests that an offender calculates the risks, factors and costs associated with the act of offending (Piquero, 2011). Low self-control of an individual's actions, the desire to be in control and the compulsiveness to fulfill his/her own needs are characteristics of white-collar criminals when discussing rational choice theory. Factors applicable to white-collar criminals with rational choice theory are: the severity of consequences of their actions; likelihood of informal consequences; respect potentially lost for committing such acts; cost of compliance; benefit of compliance; moral standing; sense of legitimacy; a history of criminal activity; and characteristics involved in the white-collar act (Piquero, 2011).

Rational choice theory crafts the argument that white-collar criminals, as previously mentioned, lack self-control. Originally developed by Michael Gottfredson and Travis Hirschi, low self-control suggests white-collar criminals are impulsive, insensitive and have diminutive fear in taking risks (Simpson & Piquero, 2002). White-collar criminals, in effect, are interested in self-gratification for themselves and their family, if applicable. Additionally, because of white-collar offenders lack of self-control initially, it is believed it is easier for them to reoffend. Low self-control is not applied without controversy related to specifics in its theoretical model.

IV. CHARACTERISTICS OF WHITE-COLLAR CRIMINALS

Similar to other types of criminal offenses, white-collar criminals possess certain characteristics typical of these offenders. First, white-collar offenders lack morals (or completely disregard morals if they do possess them) and are extremely self-centered, aggressive and narcissistic: traits that are often required to manipulate others, especially from a large perspective (Naso, 2012). Additionally, these individuals love being admired by others, leading to power, success and wealth. Because of a white-collar criminal's arrogant nature, anyone who cannot be used for their own benefit is completely dismissed.

Family life of a white-collar criminal is often contrary to street offenders. As children and adolescents, white-collar criminals are well-mannered with a stable household, whereas other offenders may lack stability in a family unit and experience criminal behavior early in life (Ragatz, Fremouw, Baker 2012). Equally important in a white-collar criminal's background is his/her educational attainment. Considering attaining status is his/her goal, a strong background in education is often required; if a

white-collar offender is provided a great education, this possibly continues in his/her life as an adult.

Adult white-collar criminals are often family oriented, just as they are as children. In the case of Brown, he was raised in a two-parent household and had a family of his own later in life; he was married and the father of two young children (Naso, 2012). Many white-collar offenders have a family of their own. While having a family is not a precursor to becoming a white-collar criminal, many who do participate in such behavior use their family life as an excuse. Family life can be overwhelming and, coupled with the stress of work, this may intensify the need to rectify situations with inappropriate behavior. Additionally, stress and the feeling of being overwhelmed often lead to anxiety and depression. According to Listwan, et al., these characteristics are a correlation to white-collar offenders and his/her role of recidivism (Ragatz, et. al., 2012; Listwan, et al., 2010). Because of their personalities and greed, white-collar criminals will go to great lengths to accomplish their goals; reoffending being the last thought on their minds. Prior to involvement in white-collar crime, these individuals rarely have arrest records or any negative encounters with law enforcement. This is attributed to his/her family life and educational background (Ragatz, et al., 2012).

White-collar criminals, as mentioned earlier in this literature, are most often Caucasian men. It is believed women are more reverent and caring, therefore lacking the characteristics of a conventional white-collar criminal (Ragatz, et al., 2012). Caucasian men are less likely to be unemployed and due to their educational background and work experience, are more likely to be exposed to matters related to white-collar crime (finance, accounting, management, and executive roles). Another common trait amongst white-collar offenders is their community service and sociability

with others. While this might seem magnanimous, white-collar criminals sometimes create this façade to mask their true identities.

A survey previously conducted evaluating the mindframe of white-collar criminals produced interesting results. When criminal thinking styles are considered, white-collar offenders identity with mollification, cutoff, entitlement, sentimentality, super optimism, and discontinuity (Ragatz, et al., 2012). Based on these findings, it is believed that white-collar criminals are extremely analytical and critical thinkers. This survey was conducted to distinguish the white-collar offenders' thought process, while imprisoned in a minimum-security prison. Based on the results, white-collar offenders were more critical thinkers than non-white-collar offenders who scored higher in overall criminal thinking (Ragatz, et al., 2012).

V. RECOMMENDATIONS

Federal Sentencing Guidelines

Chapter Eight of the Federal U.S. Sentencing Guidelines was created to effectively punish white-collar offenders for their actions. Specifically, the intent includes "adequate deterrence and incentives for organizations to maintain internal mechanisms for preventing, detecting and reporting criminal conduct" (Office of General Counsel U.S. Sentencing Commission, 2012). There are three general guidelines the Sentencing Commission will adhere to when reviewing an organization and how they should be sentenced and include: remedy the harm cause (restitution, community service, order of probation), determine the appropriate fine (set significantly high to potentially cripple companies and remove their assets), and order probation (deter future behavior) (Office of General Counsel U.S. Sentencing Commission, 2012).

With regards to determining the appropriate fine for an organization, the Sentencing Commission considers the company and their goal for purpose(s) for operation. One aspect reviewed is if the company was created for the sole purpose of conducting criminal actions (Office of General Counsel U.S. Sentencing Commission, 2012). An example of an organization operating as such would be an entity arranged to perform a specific objective (a cleaning service) but instead uses it as a disguise for white-collar criminal activity. Once allegations of white-collar are confirmed, the company is fined based on its net assets after legitimate creditors have been reimbursed.

Circumstances vary for businesses that do not operate with the intent of conducting operations in a criminal manner. Surprisingly, fine do not exist for offenses related to environmental pollution, food, drugs, agriculture and consumer products, civil/industrial rights, administration of justice and national defense (Office of General Counsel U.S. Sentencing Commission, 2012). Alternatively, if an organization is presumed guilty of aiding and abetting fraud, theft and tax offenses, a fine will be applied according to §8C2.1 and §8C2.9 (Office of General Counsel U.S. Sentencing Commission, 2012). Considerations in these sections include: determining if the establishment is unable to pay a fine, the status level of the offense, determine if a base fine is applicable, review the company's culpability score (to establish the parties involved), review maximum and minimal multipliers, review the fine range and finally, disgorgement (profits earned from white-collar crime combined with fines) (Office of General Counsel U.S. Sentencing Commission, 2012).

Sentencing: Processes, Enforcement and Discrepancies

Many white-collar offenders are sentenced properly in the initial stages, but in the end may receive a stayed or reduced sentenced. One example of this is in former

Enron executive Jeffrey Skilling's case. Mr. Skilling was sentenced to 24 years in prison for his role in the Enron scandal. Several years after conviction, his attorneys are attempting to have his sentence reduced citing errors on behalf of the trial judge who initially presided over the case (Lattman & De La Merced, 2013). While all criminals have the right to appeal their cases, it is important for prosecutors to ensure white-collar offenders are not afforded an escape from their wrongdoing. Many of Skilling's victims are still due restitution (an estimated $50 million). A decision is currently pending as the Department of Justice is reviewing the appeal (Lattman & De La Merced, 2013). Whether or not their allegations have merit is debatable, but reducing a sentence for Mr. Skilling or any other white-collar offender, sends a message that white-collar offenders prevail and the victim loses, yet again. This further validates the importance of prosecuting white-collar offenders.

Many studies have been performed to analyze sentencing amongst white-collar criminals and the relationship between preferential treatment during this phase (Slyke & Bales, 2012; Shapiro, 1990; Levi, 1987). Another perspective is that the general public and criminal justice system do not view white-collar crime as a serious threat in comparison to street level offenses and therefore should not result in harsh penalties (Slyke & Bales, 2012; Blumstein & Cohen, 1980; Blum-West, 1985; Gibbons, 1968-1969; Graber, 1980; Holtfreter et al., 2008; McCleary et al.; 1981; Meier & Short, 1985; Rossi et al., 1974; Warr, 1989).

This contradicts literature by Hagan and Nagel, which states white-collar offenders do receive preferential treatment, but in a limited expanse (Slyke & Bales, 2012; Hagan & Nagel, 1982; Hagan et al., 1980, 1982; Nagel & Hagan, 1982). For example, Hagan and Nagel indicated when instances of white-collar crime were closely

related to price fixing, identity theft and bribery, sentencing was less severe than that of a white-collar offender who has engaged in mail fraud, tax fraud and crimes against the government and corporations (Slyke & Bales, 2012; Hagan & Nagel, 1982). Specifically, these studies suggest white-collar offenders were 33% less likely to receive a sentence that mandated incarceration (Slyke & Bales, 2012). Hagan and Nagel also reviewed status shield and discovered that it has an impact on the rate of incarceration. White-collar offenders convicted of high status white-collar offenses were 98% less likely to be sentenced to prison in comparison to low status white-collar offenders (Slyke & Bales, 2012).

A contributing factor to the disparity in sentencing of low status white-collar offenders and high-level status offenders is legal responsibility. When a consumer's credit card is compromised, the victim, by law, is not responsible for the loss associated with the crime (Slyke & Bales, 2012). As a result, victims suffer from damaged credit, which, ultimately, can take years to repair. With regard to high status white-collar crime, the media has a role in its perception, further contributing to sentencing disparity. The media is very well-known for its controversial reporting and the selection of information presented in articles. Because of the individuals who are affected by high status white-collar crime and the offenders and their status, the media possibly deviates from these stories. There are few instances where high status white-collar offenses receive the same media attention as low status white-collar offenses. When a high status white-collar offense does occur, typically matters have become extreme and the SEC has filed charges. Even once these stories receive proper attention by the media, as Hagan and Nagel determined in their study, the rate of incarceration is low (Slyke & Bales, 2012; Hagan & Nagel, 1982).

The media throughout the years has established its perception of white-collar offenses, while federal and state laws were adopted to combat such malfeasances. Depending on the white-collar crime, dual sovereignty (where the offender is prosecuted by both state and federal agencies) may occur (Strader, 2002). Although there are federal and state statutes to prosecute white-collar offenses, the question remains as to the effectiveness of these laws. As previously mentioned, the SEC only prosecutes civil cases, whereas the Department of Justice prosecutes criminal cases. One possible explanation for civil charges occurring more frequently than criminal charges is the cost associated with such litigation (Hiltzik, 2013). University of California-Irvine criminologist Henry Pontell argues there is no significance in civil and white-collar fraud cases, with the exception of cost. In his opinion, prosecutors will "spend less because the burden of proof is lower" (Hiltzik, 2013). Additionally, if costs associated with white-collar offenses are low, fines and penalties are low, and white-collar offenders receive preferential treatment, thus the criminal justice system loses its influence in deterring these offenses. Regardless of their civil or criminal status, only the most severe white-collar offenses are prosecuted on the federal level.

In order to enhance practices established during the time in which state and federal laws were implemented for white-collar crimes, the United States Congress enacted the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley) (Huynh, 2010). Sarbanes-Oxley provides compensation to individuals who have become the victims of corporate fraud. Also included in Sarbanes-Oxley is a provision that allows the government to retrieve bonuses and other performance-based compensation gained by high-ranking executives during white-collar offenses. Further, in order to regulate Sarbanes-Oxley, the Public Company Accounting Oversight Board ("PCAOB") was established to ensure

accounting firms audit public companies appropriately (Huynh, 2010). Operating independently from government agencies, PCAOB provides a neutral perspective in overseeing the operation of an organization.

Another element of Sarbanes-Oxley is the White Collar Crime Penalty Enhancement Act. This section of the act explicitly increases penalties associated with the following white-collar offenses: conspiracy to commit fraud, mail and wire fraud, tax offenses, antitrust and the destruction of records (Huynh, 2010; Desio, 2012). The White Collar Crime Penalty Enhancement Act also provides a maximum penalty for white-collar criminals and increases liability for corporations' financial statements. However, questions remain regarding enforcement of this act, as with other legislation related to white-collar crime.

Sarbanes-Oxley and associated acts are only applicable to publicly-traded companies; information concerning private companies and their financial information is not easily assessable. One major responsibility of a public company's CEO is to ensure the accuracy of the company's financial statements. However, as we have learned from Enron and many other institutions, the accuracy of such documents is often not of utmost importance to the executives involved, especially when the chances of being audited and prosecuted are low. Another argument against Sarbanes-Oxley is the financial aspect of operating the program and the [auditing] fees companies are forced to pay to ensure compliance. A survey conducted by Financial Executives International concluded companies pay over $1.7 million in fees annually associated with compliance (Huynh, 2010).

Unrelated to Sarbanes-Oxley but problematic nonetheless, is the matter of how to prosecute white-collar offenses. A prosecutor must have sufficient evidence of criminal

wrongdoing if he/she intends to prosecute. Equally challenging is determining if criminal punishment is applicable in such white-collar criminal cases. A successful conviction of a white-collar offender will include: mens rea, actus reus, and the result of the crime committed (Strader, 2002). Once this is determined, the prosecutor must review details related to the case and decide if criminal and civil charges apply. This occasionally occurs in the event status shield is applied and varies depending on circumstances surrounding the crime.

Despite implementation of Sarbanes-Oxley and other legal protections, white-collar crime continues to be a problem. Brad Plumer of the Washington Post stated, "companies are more likely to break the law if the upsides of doing so outweigh the risks" (Plumer, paragraph 1, 2012). This coincides with many of the white-collar offenders mentioned in this composition, particularly CEO's. When an organizations' profits are millions, sometimes billions of dollars, a fine of a few million dollars is worth the risk to some CEOs. Additionally, white-collar offenders feel, amongst other things, the chance of being caught and sentenced is low; status shield and many studies prove this theory to be correct.

The SEC and Department of Justice are often hesitant to prosecute many white-collar cases because of their ability, or lack thereof, to prove their case. Proving their case will require three aspects. The first, mens rea, is the mental component and thought process of the white-collar offender. Actus reus refers to the behavior of the white-collar criminal, and determines his/her actions leading to misconduct. Finally, results of misconduct related to white-collar crime are reviewed to determine the probability of prosecution (Strader, 2002). It is argued that the SEC and Department of Justice can be more aggressive to combat white-collar crime – even in circumstances

where evidence is not strong enough to prosecute an offender. There are, though, instances where the government does not prosecute a white-collar offender even though the company/individuals involved in the crime cooperate with authorities during an investigation (Carlin, Wachtell, Lipton, Rosen & Katz, 2013). If this were another type of crime, for instance a burglary, an individual cooperating with authorities is considered an attempt to bargain and set forth a plea agreement.

Based on the ratio of cases reviewed by the SEC and Department of Justice compared to those prosecuted, it presents the argument that the SEC is overwhelmed in the fight against white-collar crime. Admittedly, the SEC witnessed an increase in cases in 2010, during the Koss Corporation era (Sidley Austin, 2012). For every white-collar case presented to the SEC, there is increased pressure to prosecute, convict and sentence white-collar offenders. Overall, the SEC has an 84% success rate in trials related to white-collar crime, but this is often overshadowed by high-profile cases that are less successful (Sidley Austin, 2012). Specifically, in a case against mid-level Citigroup manager, Brian Stoker, the SEC unsuccessfully argued that he was negligent to investors, misleading them with "collateralized debt obligations" (Sidley Austin, 2012). Ultimately, the court rejected the SEC's claim on the grounds that Stoker was not solely responsible, considering his status within Citigroup, and his superiors are accountable as well. The SEC and Citigroup settled the matter in court in 2012, but the presiding judge rejected the financial agreement ($285 million) on the grounds that Citigroup can afford the fine and this settlement would send a message that white-collar crime is an offense that simply can be "paid off."

Decreased prosecution, particularly successful prosecution, also leads to a decrease in white-collar cases. Jean Eaglesham of the Wall Street Journal recently

reported that the SEC has decreased civil fraud cases related to white-collar crime (Eaglesham, 2013). The SEC argues that the cause of this decrease is related to our current economic status – we are no longer in an era of major financial fraud in comparison to 2008, when the market crashed and trillions of dollars in business was compromised and banks became inoperative (Eaglesham, 2013). In 2002, the federal government reviewed fewer than one in twenty federal criminal cases (Strader, 2002). In the past two years, white-collar cases initiated by the SEC have decreased 15%. Considering this decline and the SEC's admission to a possible decrease in reviewing cases in the future, this percentage will rise. In January and February of 2012, the SEC filed thirty civil actions related to white-collar crime; this January and February, only twenty-four civil suits have been filed (Eaglesham, 2013).

Fines and Other Penalties

There are mixed opinions and arguments regarding the ability of corporations to afford an increase in fines and other penalties associated with white-collar crime and its deterrent effect. While increasing penalties might appear reasonable in the initial stages, it might create more turmoil between business and the government. Plumer argues that penalties for companies in white-collar crime are too low in comparison to their profits. He argues that the maximum penalties for illegal behavior should be set at sixty percent of the company's revenue in order to deter criminal behavior (Plumer, 2012). This might appear to be a sufficient deterrent, but can ultimately affect the number of publicly-traded companies registered with the SEC. There are organizations that object to current legislation requiring public companies to disclose their financial and other pertinent information. Increased fines and penalties will cause more companies to change their status to "private" so that they can forgo reporting company

information or avoid audit fees they may incur when their financial documents do not meet SEC standards. This will not achieve the government's objectives. Therefore the proposal to approve a 60% penalty is unlikely to succeed.

The government also tends to tread lightly with the prosecution of white-collar offenders and corporations because of the need to work together when contracting goods and/or services (Murphy, 2002). Prosecutors can choose to tread lightly or use it as an opportunity to punish white-collar offenders. Based on regulatory policies, an organization can be barred or suspended from government contracts. Furthermore, the Federal Acquisition Regulations Council proposed government entities review corporations and their ability to comply with laws prior to the distribution of a government contract. This is to ensure the "trustworthiness, integrity and honesty" of an organization (Murphy, 2002). If this were enforced universally, it could be a deterrent to white-collar crime.

Studies performed by the Iowa Law Review measured fines imposed on organizations in relation to white-collar crime and its effect. Beginning in 1988 with 328 cases reviewed, an average fine of $155,916 was handed down to corporations who were in violation of SEC legislation (Murphy, 2002). As of 2000, average fines drastically increased to almost $1.6 million and fewer cases, 219, reviewed (Murphy, 2002). This coincides with previous statements that fewer cases are being reviewed and imposing higher fines is not necessarily a deterrent. The Iowa Law Review also examined rates of restitution and probation over a ten-year timeframe. Of the 423 cases studied, the average restitution paid by an organization was $658,780 (Murphy, 2002). With regard to probation as a measure for sentencing corporate offenders, 940 cases

were analyzed with 36 months probation as the average timeframe white-collar offenders received in relation to their actions.

Association of Certified Fraud Examiners

The Association of Certified Fraud Examiners ("ACFE") is one of many organizations formed to arm auditor professionals with the necessary tools and information to detect fraud. Founded in 1988, its mission specifies reducing instances of white-collar crime from a business perspective (ACFE, 2013). Based on its expertise, the ACFE provides several practices organizations should implement to reduce instances of white-collar crime. These practices include: establishing and adhering to a code of ethics; implementing and enforcing tone at the top mentality; providing and encouraging an open-door policy for employees to voice their concerns; regular quality control testing/audits; ensuring roles of employees are separate (discouraging all eggs in one basket); routinely monitoring employees and their practices within the organization; performing background checks; and paying attention to red flags that may exist (a controlling demeanor with work duties, employees that live beyond their means, and financial concerns) (Shutkin & Hecht, 2012). As noted in the cases of Koss Corporation, Bernard Madoff, etc., many organizations operated with as few as two people approving expenses and other documentation, which is not conducive to an effective auditing practice. Studies have shown that cases of fraud are initiated more frequently with tips and complaints to the SEC from employees of organizations than any other method (Wells, 2012). In addition, auditors within an organization can perform outside the scope of their recurring duties and learn more about white-collar offenders so they can better detect offenses early, and identify questionable conduct. As in many other criminal justice professions, in order to understand how and why white-

collar criminals operate, it is best to place yourself in their mindframe. Internal auditors, particularly those with specialized fraud training, are best suited and serve as the most effective watchdog and deterrent.

Board of Directors

In addition to the aforementioned practices, the board of directors in an organization can implement practices to prevent or minimize occurrences of white-collar crime. First, the board should meet regularly and inquire about the company and its current performance and/or operation(s). This will keep board members apprised of activities within the organization they might not be aware of since they are not physically involved in its daily business. Additionally, board members should meet regularly without executives present, even if the executives are board members themselves. This will allow board members to candidly raise concerns and dialogue without company executives slanting discussions. Next, as with many other elements of an effective organization, documenting meetings, activities, corporate resolutions, and minutes is imperative. Proper documentation from meetings and other board functions will ensure intricate details of the company are captured in the event this paperwork is ever requested from authorities (Shutkin & Hecht, 2012). As witnessed with Enron, annual reports are extremely important, so this information should be well-documented and maintained for accuracy. The audit committee of the board is particularly important, since it reviews financial reports. Audit committee members should have financial experience and take an active role in reviewing company information.

Another important factor board of director members in a corporation should consider is ensuring state requirements are fulfilled accurately and timely regarding the registration of annual reports, Articles of Incorporation, etc. The board will not

necessarily process said documents, but members should inspect them to ensure the company remains compliant with SEC requirements. Finally, the board should ensure corporate finances are separate from other functions within the organization. Keeping designated accounts will keep the flow of funds apparent and less likely to be commingled with other accounts. Adhering to the previously mentioned suggestions, in addition to organizations teaching auditors how to think like a white-collar criminal, will aid organizations in decreasing their occurrences of fraud due to white-collar crime.

Compliance Programs

In addition to the SEC increasing its caseload, companies can strengthen their compliance programs to decrease white-collar criminal activity in their organizations. Specifically, the Office of Inspector General proposes the following for effective compliance programs: strong written polices and procedures, designating a compliance office and compliance committee, conducting effective training and education, effective lines of communication, regularly conducting internal monitoring and auditing, enforce standards through well-publicized disciplinary guidelines, and respond promptly to problems and/or allegations (Dickerson & Rybarczyk, 2012). The cornerstone of an effective compliance program is consistency. An individual can set forth rules and regulations, but if organizations and the government are inconsistent with regulation, it deems the program as ineffective or too relaxed.

Companies can also safeguard against corruption by changing their exit procedures when employees, specifically executives, depart the company. During exit interviews, employees are often asked questions concerning their tenure with the organization, provided financial information (final paycheck, etc.) and asked about their relationships with co-workers, but rarely interviewed about possible corruption within

the company. This is the perfect opportunity to inquire about such information. An employee departing the business might respond in a more candid manner and will be courageous against retaliation versus someone currently employed within the corporation (Carlin, Wachtell, Lipton, Rosen & Katz, 2013). Additionally, this process aids in an investigation the company may potentially pursue and provides an initial starting point. Any allegations should be reviewed, as necessary, with action taken, if warranted. It is also important to document such information in personnel files for future reference.

In the Department of Justice's Resource Guide to the U.S. Foreign Corrupt Practices Act, it discusses important factors of an effective compliance program. There are nine components to an effective program (U.S. Department of Justice, 2012). First, senior management should ensure an effective policy exists to combat corruption. This will include a tone at the top mentality, also mentioned by the ACFE , and an ethical culture suggesting that misconduct will not be tolerated. Separate from policies against corruption, a code of conduct is necessary to establish guidelines of acceptable behavior from everyone within the establishment. The Code of Conduct should be clear and concise so that employees are aware of what the company requires of them. Risk assessment is performed when a compliance program is reviewed to determine its efficiency. This should be done periodically to remain informed of the current policy and changes that may be required in the future.

Training and incentives/disciplinary measures are also important for a compliance program. These two factors are important to executives in an organization, but also important to employees because it equips them with the necessary tools to aid the organization in minimizing white-collar crime. Furthermore, incentives to

cooperate and adequate discipline drive employees to reconsider their thoughts, in the event he/she is tempted to commit a white-collar offense. Conclusively, confidential reporting, internal investigations and periodic testing are useful resources as well when considering an operational compliance program. Periodic testing should be completed consistently as it will display weaknesses that may exist within the program. It will also aid in reducing instances of white-collar crime that are otherwise unnoticed; internal investigations can accomplish the same tasks. Confidential reporting can be implemented to ensure employees feel safe against retaliation or other backlash they may receive in the event they voice their concerns regarding allegations of white-collar crime.

VI. SUMMARY AND CONCLUSION

As witnessed in this composition, white-collar crime has and will continue to be a problem in the criminal justice world and society overall. The impact white-collar crime has is detrimental from a financial perspective and potentially affects everyone whether directly or indirectly. Based on research found during this composition, it is difficult to identify a deterrent because current methods (fines, probation, etc.) have been unsuccessful. Moreover, the SEC is proposing to review fewer white-collar crime cases, which can, potentially, have an effect on deterrence.

Also revealed during this writing were sentencing methods specifically related to white-collar crime. The guidelines outlined do not appear to be unreasonable, with the exception of federal guidelines and fines being nonexistent for offenses related to environmental pollution, food, drugs, agriculture and consumer products, civil/industrial rights, administration of justice and national defense. This is unacceptable and should be modified to include white-collar offenses as a whole – a

more nondiscriminatory approach to sentencing. Fines associated with white-collar crime do not appear to be problematic. In fact, considering how the SEC proposes to liquidate a company's assets once white-collar crime has occurred, it leads back to sentencing being a major culprit. If prosecutors will not bring charges against white-collar criminals due to status shield or the SEC will not initially review the cases to send prosecutors to trial, these are contributing factors to the sentencing issue. Once the SEC strengthens their stance on reviewing white-collar offenses, sentencing will prevail.

Finally, in order to decrease white-collar crime offenses, deterrence must begin with the company. The ACFE, Office of Inspector General and Department of Justice's Resource Guide to the U.S. Foreign Corrupt Practices Act provide great suggestions on different procedures an organization can implement to protect itself from becoming involved in white-collar crime. Public companies pay the ultimate price, literally and figuratively, when they do not have operations in place to protect themselves from white-collar crime. Implementing programs and procedures will cost in the initial stages, but without these processes, they will pay more in the long run both financially and physically with reputations and careers on the line.

There is no foolproof way to completely prevent white-collar crime and regardless of policies and procedures employed, there will be individuals who find a way to infiltrate the system. It is important for the SEC to have effective measures in place to handle those instances when they do occur and enforce them accordingly. Once this occurs, the SEC will have accomplished their goal of combating white-collar crime and validated the existence of Sarbanes-Oxley and other acts implemented to control this issue.

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