

Relationships Between the Media's Rhetoric and the Sentencing of White-Collar Criminals

by
Victoria Houdeshell

A THESIS

submitted to
Oregon State University
Honors College

in partial fulfillment of
the requirements for the
degree of

Honors Baccalaureate of Science in Accountancy
(Honors Scholar)

Honors Baccalaureate of Science in Sustainability
(Honors Scholar)

Presented May 27, 2020
Commencement June 2020

AN ABSTRACT OF THE THESIS OF

Victoria Houdeshell for the degree of Honors Baccalaureate of Science in Accountancy and Honors Baccalaureate of Science in Sustainability presented on May 27, 2020. Title: Relationships Between the Media's Rhetoric and the Sentencing of White-Collar Criminals.

Abstract approved: _____

Kara Obermire

The legal landscape surrounding the prosecution of white-collar criminals has changed drastically over time, as has the media's rhetoric, but the resulting sentence lengths have been inconsistent. This study utilizes historical newspaper articles to review the changes in media rhetoric over time and how this relates to the sentencing of white-collar criminals. The results of this study show that reporting on white-collar crime has increased significantly since the term was first coined in 1939. There has been a sharp increase in the use of aggressive rhetoric and a decrease in sympathy for white-collar criminals. Total loss amounts affect how criminals are perceived by the public, as increasing loss amounts are related to articles with a more aggressive tone.

Key Words: White-Collar Crime, Fraud, Sentencing, Rhetoric, Media Coverage, Perception

Corresponding e-mail address: vhoudeshell181@gmail.com

©Copyright by Victoria Houdeshell
May 27, 2020

Relationships Between the Media's Rhetoric and the Sentencing of White-Collar Criminals

by
Victoria Houdeshell

A THESIS

submitted to
Oregon State University
Honors College

in partial fulfillment of
the requirements for the
degree of

Honors Baccalaureate of Science in Accountancy
(Honors Scholar)

Honors Baccalaureate of Science in Sustainability
(Honors Scholar)

Presented May 27, 2020
Commencement June 2020

Honors Baccalaureate of Science in Accountancy and Honors Baccalaureate of Science in Sustainability project of Victoria Houdeshell presented on May 27, 2020.

APPROVED:

Kara Obermire, Mentor, representing the Department of Accounting

Chris Akroyd, Committee Member, representing the Department of Accounting

Inara Scott, Committee Member, representing the School of MAD

Toni Doolen, Dean, Oregon State University Honors College

I understand that my project will become part of the permanent collection of Oregon State University, Honors College. My signature below authorizes release of my project to any reader upon request.

Victoria Houdeshell, Author

TABLE OF CONTENTS

INTRODUCTION	1
LITERATURE REVIEW	2
Background of White-Collar Sentencing.....	3
Pre 1984 Sentencing Reform Act (SRA)	4
1987 SRA Guidelines Implementation	6
White-Collar Crime Penalty Enhancement Act (WCCPA)	7
US v. Booker.....	8
Sentencing Disparity	9
Discretion.....	9
Leniency for White-Collar Criminals	10
Defendant Portrayal in Court	11
Changes in Rhetoric.....	12
Public Perception of White-Collar Criminals Pre SRA	13
Public Perception of White-Collar Criminals Post SRA.....	14
Reform	14
Specific to White-Collar Crime	14
Deterrence Issues	15
Link to Data Collection.....	16
METHODOLOGY	17
DATA ANALYSIS.....	20
Search Results.....	21
Tone	22
Relationships.....	23
Summary of Results.....	31
DISCUSSION, LIMITATIONS, AND CONCLUSION	31
Increase in Reporting	32
How Reporting Changed.....	32
Why Reporting Changed.....	33
Increase in Loss Amounts.....	33

Lack of Consistent Sentencing.....	33
Link to Wealth Inequality	34
Opinions on Reform.....	35
Alternatives	35
Connections to Privilege	37
Topics for further Study.....	38
Limitations	39
Conclusion	39
REFERENCES	41
APPENDIX.....	43

INTRODUCTION

The term white-collar crime was coined by Edwin Hardin Sutherland in 1939. The need for this descriptive term arose from the differences in crimes perpetrated by the different social classes, and how these social classes were treated when it came to prosecution (Soltes, 2016: 17). White-collar crimes include bankruptcy fraud, securities fraud, embezzlement, insider trading, money laundering, and other financial based crimes.

The media's address of white-collar criminals has shifted over the years. While once regarded as upstanding members of their community who had no place in jail, over time we have seen more public calls for long prison terms. Alternatively, many still see no place for white-collar criminals in prison and call for alternate punishments for these specific, "non-violent" criminals. In addition to changes in how the media perceives white-collar criminals, the legal landscape surrounding the prosecution of these criminals has also changed drastically over time. White-collar criminals were historically treated better than other criminals – they were given shorter sentences, probation over jail time, or simple warnings, in addition to the empathy they received from judges due to a shared socioeconomic class. However, in recent years there have been new laws and regulations implemented to address inadequacies in the sentencing of white-collar criminals.

The changes to the legal landscape and the media's rhetoric have made navigating the path of the white-collar criminal more difficult. Has there been a significant change in how the media has presented white-collar crime over time? Does the media, as a reflection of the general public, react with more sympathy or aggression towards white-collar criminals and how has this fluctuated over time? How has sentencing changed with the implementation of new laws and regulations for white-collar crime? And does this change, if any, reflect the

feelings of the public? In this thesis, I investigate how the media’s rhetoric is related to the punishment of white-collar criminals.

LITERATURE REVIEW

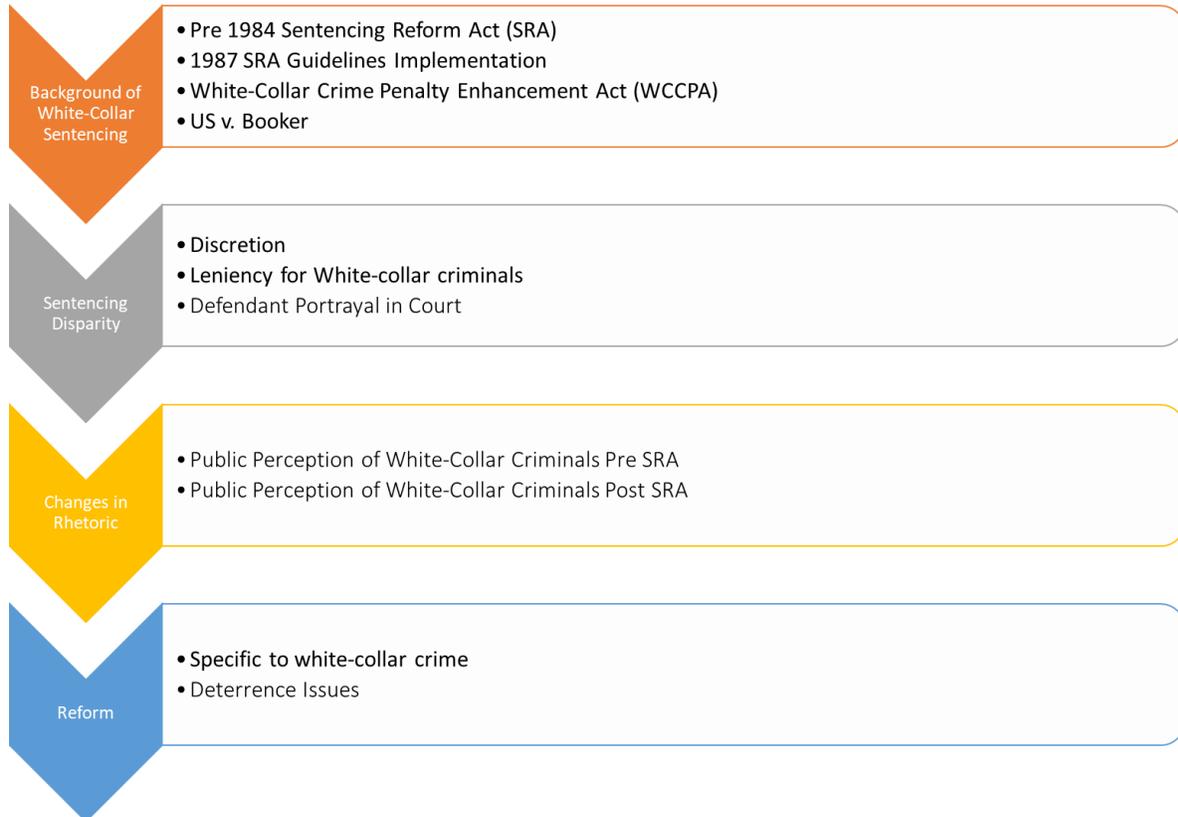


Exhibit 1 Conceptual Model for Literature Review

In this section I summarize the legal changes, judicial impacts, and societal perceptions surrounding white-collar crime. Refer to Exhibit 1 for a model of the topics covered in this review. I first go over the background of white-collar sentencing, including the various legislative pieces that have impacted sentencing. I then discuss the disparity apparent in the sentencing of white-collar criminals, which has been divided into judicial discretion, leniency, and the portrayal of defendants. Next, I focus on the changes in the

rhetoric of reporting entities and how this is related to the public's perception of white-collar crime. Finally, I analyze the need for reform.

Background of White-Collar Sentencing

The term white-collar was coined by Edwin Hardin Sutherland in 1939. The need for this descriptive term arose from the differences in crimes perpetrated by the different social classes, and how these social classes were treated when it came to prosecution (Soltes, 2016: 17). Throughout history, the treatment of these white-collar criminals has varied widely from those who are charged with other crimes. More often than not, white-collar offenders are given the benefit of the doubt, receive shorter to nonexistent punishments, and receive simple slaps on the wrist as their crimes are considered to be nonviolent and judges empathize with these criminals that share a similar socioeconomic class. Despite the typical treatment these criminals receive, there have been major efforts to change the prosecution of, sentencing, and discretion used for punishing white-collar crime.

The landscape of sentencing for white-collar crime has quickly and drastically changed since the 1980s. The Sentencing Reform Act (SRA) of 1984 was the first major piece of legislation that had a sizeable component directed towards white-collar crime. The Sarbanes-Oxley Act of 2002 made changes to the environment in which white-collar crime was committed. The White-Collar Crime Penalty Enhancement Act of 2002 increased penalties for fraud. Finally, the Booker case in 2005 made further changes to the discretion that judges held while sentencing white-collar crime. Refer to Exhibit 2 for a timeline of these events.

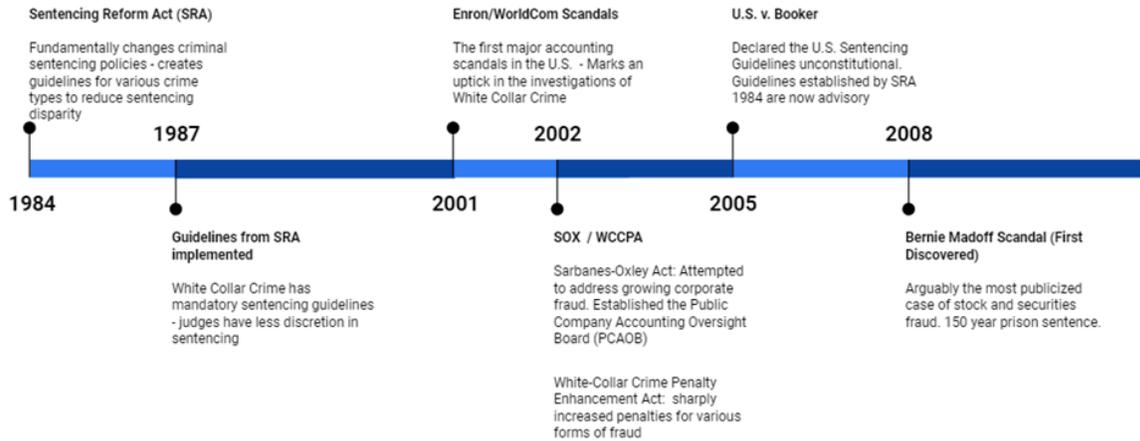


Exhibit 2 Timeline of Major White-Collar Crime Events

Pre 1984 Sentencing Reform Act (SRA)

Before the Sentencing Reform Act of 1984 was enacted, which established the Sentencing Commission¹, white-collar criminals were often disbarred from their profession or required to pay fines instead of serving prison sentences. Few were actually sentenced to time in prison (Balsmeier and Kelly, 1996: 144).

Without guidelines in place, when it came to the sentencing of white-collar criminals, Congress defined the statutory sentence range², the judge sentenced within that range, and the parole system of the Executive Branch determined the exact length of imprisonment. However, studies have noted the special empathy and lighter sentences received by those accused of white-collar crimes. The lighter sentences could be attributed to the lenient alternatives available to federal judges when it came to sentencing, such as community

¹ The Sentencing Commission was established by the Sentencing Reform Act in 1984. The Commission is an independent agency that was tasked with reducing sentencing disparities and promoting proportionality in sentencing. The Commission created the sentencing guidelines utilized by judges when sentencing federal offenders. The Commission is made up of seven voting members appointed by the President and two non-voting members, who are the Attorney General and the Chair of the U.S. Parole Commission (USSC).

² This fell under “indeterminate” sentencing. Congress had broad ranges of punishment that judges were left to apply with their own discretion (USSC, 2018).

service, probation, and fines. These alternatives were one reason Congress thought sentencing guidelines were needed (Bennett et al., 2017: 947-948).

In a Special Report from the Bureau of Justice, in 1985, the rate of convicted white-collar offenders that received some prison time for fraud was only 40 percent, compared to 54 percent for those convicted of other crime types. The average sentence length for white-collar criminals was 29 months, compared to 50 months for other crimes. White-Collar criminals were also more likely to receive probation or be fined than face jail time (Department of Justice, 1987). A governmental study tracking white-collar crime in a limited number of states reinforced these findings. In their review of cases disposed in 1983, the percentage of offenders incarcerated that were convicted of white-collar crimes was much smaller in comparison to property and violent offenders – 60 percent compared to 65 and 67 percent, respectively. In addition, those that committed white-collar crimes were less likely to be imprisoned for greater than one year compared to property and violent crimes – 18 percent compared to 26 and 39 percent, respectively (Manson, 1986).

As the number of white-collar cases investigated by the FBI significantly increased from the 1970s to the 1980s, with it came mistrust of business practices and actions from legislators to hopefully counteract this mistrust (Soltes, 2016). Alongside this increase in cases, Congress realized there was a need for higher penalties for white-collar crime as past sentences were inadequate. There were many discrepancies in white-collar crime penalties compared to other crime types and this was partially due to the class and race of those who committed the crimes. In Newton and Sidhus' (2017) review of the history of the Sentencing Commission, it was noted that, “people who were convicted of fraud, a white-collar crime, were treated less harshly than those convicted of theft, a blue-collar crime” (pg 1274).

The government realized a key issue in its treatment of white-collar criminals: without jail time as a clear deterrent for fraud, many treated the fines as a simple “cost of doing business” (Balsmeier and Kelly, 1996: 144). In addition, there was so much discretion involved in the sentencing of all types of criminals that there was an increasing level of sentencing disparity. The Sentencing Commission was created to rectify this issue.

1987 SRA Guidelines Implementation

The sentencing guidelines established by the Sentencing Commission were fairly straightforward, although they could become quite complex depending on the background of the case. Balsmeier and Kelly (1996) provide a summary of the guidelines in their discussion on the sentencing ethics of white-collar criminals. When using the guidelines for individuals, the crime would be ranked based on severity with a level of 1 to 43. Each level set off a pre-determined punishment. From here, the judge on the case would consider the extent of the damages, the amount of money involved, as well as the offender's cooperation, prior record and other variables. Each of these variables would add to, or subtract from, the punishment based on the guidelines (pg 146).

The guidelines were established to rectify the sentencing disparity and toughen the lighter sentences that were being handed down to white-collar criminals. As such, the guidelines encouraged jail time, limited probation, and increased fines. With the judges' discretion being a clear issue in the history of sentencing white-collar criminals, if a judge wished to depart from the guidelines, they were to explain the departure in writing in addition to detailing the sentence in a questionnaire that would be used as the basis for any appeals.

These guidelines also eliminated parole for white-collar criminals and limited time off for good behavior (Balsmeier and Kelly, 1996: 147).

The guidelines were crafted in a way that would lead to a higher proportion of white-collar offenders that would be sentenced with jail time (Bennett et al., 2017: 951). From the U.S. Sentencing Commission's 2013 Report on Sentencing Trends, in 2012, 70 percent of convicted fraud offenders received jail time, compared to the 40 percent in 1985. In addition, the average sentence length increased, depending on the level of severity of the fraud (Bourtin, 2017). After implementation of the SRA guidelines, incarceration rates and sentence lengths for white-collar criminals increased and judges supposedly had very little discretion in following the mandatory guidelines. As I discuss later, judges still found ways around these guidelines.

White-Collar Crime Penalty Enhancement Act (WCCPA)

In 2001, Enron, one of America's largest energy companies, collapsed. Stemming from various accounting rule violations and a lack of independence from auditors, Enron's financial statements were compromised. In 2002, WorldCom revealed they had improperly recorded profits for many years. Public trust in auditors was compromised and many called for Congress to take action.

Spurred by the Enron and WorldCom scandals and the many corporate fraud schemes that continued to crop up, the Sarbanes-Oxley (SOX) Act was introduced to increase investor confidence in the capital markets. The White-Collar Crime Penalty Enhancement Act (WCCPA) was passed as a companion to the SOX Act. This act sharply increased the penalties for various forms of fraud by extending the ranges in the SRA guidelines. However,

“judges have reacted to the harsher WCCPA sentences by increasingly departing from the Federal Sentencing Guidelines. For this reason, WCCPA-enhanced sentences have become at least as disparate and unreliable as white collar sentences were in the past. Instead of deterring crime, the WCCPA has made criminal punishment less of a fear for those who would commit fraud” (Anonymous A, 2009: 1728). In addition, it has been found that most criminals convicted of white-collar crime and sentenced to jail time pay no restitution (Burgess et al., 2002).

US v. Booker

The statute limitations to judicial discretion in sentencing white-collar criminals came to a halt in 2005. *United States v. Booker* upended the Sentencing Commission's guidelines – the U.S. Sentencing Guidelines were declared unconstitutional and were made advisory. The Sentencing Commission could not mandate the length of sentences (Bennett et al., 2017: 954). The sentencing guidelines were now just that – guidelines. They would assist in the judge’s decision on sentencing, but judges would have the discretion to alter the sentence as they saw fit.

After discretion was returned to judges, variances in white-collar sentences increased. Sentences have both dropped in length and life sentences have increased in occurrence. Sentences tend to sit on one side of a pendulum – either extremely light, or extremely harsh, with very little in between. The tougher sentences may stem from the “desire to send a message to the community that financial crimes are deserving of the same significant punishment more commonly given to drug dealers and violent offenders because the harm is

just as great” (Henning, 2010). With all the sweeping legislative changes, judges now have a generous amount of discretion with only advisory guidelines from the SRA.

Sentencing Disparity

Throughout the changing legal landscape, the sentencing disparity between white-collar crime and other crime types, as well as within white-collar crime itself, has remained. While the sentencing guidelines have moved from nonexistent to mandatory, to harsh and more complex, to advisory, the rate of white-collar crime being investigated has increased, convictions have increased, and loss amounts have risen. Despite this, “judges regularly sentence economic criminals well below the minimum guideline in all but the smallest of loss cases” (Bennett et al., 2017: 944). In addition, there is variation between judges on how to sentence in similar situations (Bennett et al., 2017: 943-960). Sentencing disparity can be attributed to many causes, but I discuss what I believe are the leading causes: discretion, leniency, and defendant portrayal.

Discretion

Despite judges appearing to only hold discretion before the SRA implementation in 1987 and after Booker in 2005, judges were still able to use a high level of discretion in between these two key events. In an empirical study on white-collar sentencing, Bennett et al. (2017), discovered that judges have consistently circumvented the guidelines, even while they were mandatory. The most telling aspect of the study is that almost three out of four of the federal district judges they tracked would sentence offenders to the exact minimum

sentence stipulated in the guidelines, even though there was a large range for sentencing (pg 972).

While many white-collar fraud cases are too small to gather much media attention when compared to the likes of Bernie Madoff, the sentencing in these cases is still beholden to judicial discretion. The empirical study also revealed that lower level frauds with loss amounts less than \$100,000, consistently received sentences that fell below what the guidelines would recommend (pg 964).

Many argue that the discretion used by judges became even more apparent after Booker. While judges are still required to determine the possible range of sentences using the SRA guidelines, they do not have to comply with these numbers or refer to the guidelines after this step. This wouldn't necessarily be a problem, except for the fact that judges continuously, yet between judges inconsistently, depart from the guidelines, whether that be due to subconscious biases, or skepticism towards the high sentences the WCCPA advises. (Anonymous A, 2009: 1735, 1740). The discretion that judges hold has led to drastic differences in how white-collar criminals are sentenced when compared to their peers.

Leniency for White-Collar Criminals

Much of the mercy judges show when sentencing white-collar offenders has been attributed to their ability to empathize with white-collar criminals and their disagreement with mandatory guidelines. Bennett et al. (2017) mentions that "individual judges have largely been perceived to be on the lenient side of white-collar federal sentencing, perhaps due to the likelihood that they empathize with white-collar defendants, and perhaps because many have frequently departed from or criticized the sentencing Guidelines" (pg 946). The

statistics from the Bennett et al. (2017) study also present an important linkage in this leniency: the older the judge, the shorter the sentence (pg 969).

Another aspect of leniency stems from the “non-violent” nature of white-collar crime. There are no weapons used, no physical altercations, and no resulting bodily harm. Judges tend to consider white-collar criminals to be less harmful to society, and even non-deserving of the moral condemnation other criminals face. “For these reasons, judges (and society as a whole) seem to systematically undervalue the social and moral harms caused by white collar criminals relative to other criminal actors” (Anonymous A, 2009: 1742)

Defendant Portrayal in Court

The disparity in sentencing may also stem from how white-collar criminals are able to portray themselves in court. A far cry from the typical blue-collar defendant, those accused of white-collar crimes have the ability to demonstrate their value to society. However, the reach of their crimes can be their downfall in court.

High level white-collar offenders have access to vast legal teams and lawyers that supply them with the knowledge necessary to exploit loopholes. These criminals are also much more aware of the legal ramifications of their actions and are able to craft their defenses in ways that help them avoid harsh sentences. White-collar offenders also have access to plea-bargaining systems, which they can use to their advantage to be granted lenient sentences – often seeking probation, when other offenders would get years in jail. (Anonymous A, 2009: 1733). It could be argued that this knowledge, combined with a smart defense, has led to large disparities in sentencing.

White-collar defendants are able to paint themselves as resources to their community – they are productive members of society, they bring revenue into the community, they are generous citizens and they perform good deeds. They can gather support for these claims and provide back-up evidence that they have never committed – or been convicted of, at least – a crime in the past. Teams of lawyers can argue that their client was pressured by their Board of Directors or were unaware of the impact of their actions. White-collar defendants can also point to the low rates of recidivism to argue that they don't deserve higher sentences. (Henning, 2010).

On the opposite side of this, extreme public outrage can occasionally trump these arguments. Highly public cases in which the financial impacts can be felt far and wide can lead to judges willing to impose the maximum sentence they are able to. There are times when judges can clearly see the harm white-collar criminals have imposed on their communities and they act on this (Anonymous A, 2009: 1744). This can be seen in Bernie Madoff's 150-year sentence, or the more extreme 845-year prison sentence handed to Sholam Weiss for the collapse of a life insurance company (Henning, 2010).

Changes in Rhetoric

Public reporting and opinion on white-collar criminals have shifted throughout the history of sentencing reform and does not necessarily follow the changes in policies – if anything, public sentiment is what drove Congress to take action and create policies to address white-collar criminals. Public perception of white-collar criminals, as seen through the media's reporting, changed rapidly through the years. For ease of understanding, I separate discussion of public sentiment into two time frames: pre and post the enactment of

the Sentencing Reform Act, although public discussion may have started shifting prior to this act.

Public Perception of White-Collar Criminals Pre SRA

Sentencing white-collar offenders to long jail terms was a foreign concept before the 1980s (Balsmeier and Kelly, 1996: 144). The rhetoric used in reporting was generally forgiving of white-collar criminals. It was considered a part of business to commit fraud and cheat your competitors – as long as no one was caught (pg 150). It was generally perceived that even if those that committed these actions were convicted, they would not receive any significant jail time and, in some cases, convicted white-collar criminals would be rehired (Soltes, 2016: 31).

By the 1980s, this sentiment had begun to shift. Major news outlets began to speak out about the corrupt and unacceptable behavior many businesses were engaging in, starting with bribery and extending to price-fixing. White-collar crime filled the news cycle and the media was anything but sympathetic (Soltes, 2016: 35). From here, the public was increasingly aware of white-collar crimes and how they were being handled. Many thought the sentences, if they were imposed, were too short when compared to other crimes and in terms of the harm they cause to society (Bennett et al., 2017: 951). New policies were proposed, and politicians enacted the SRA in response to the public dissension (Gustafson, 2007: 9).

Public Perception of White-Collar Criminals Post SRA

After the creation of the Sentencing Commission in 1984 and the overwhelmingly negative media coverage that erupted, public perception and attitude shifted even further (Balsmeier and Kelly, 1996: 150). Committing acts of fraud was now looked down upon and there were calls for more severe punishment.

Due to increased media coverage, the public's interest in white-collar crime, as well as their annoyance with the typical offender's use of wealth, increased. News outlets increasingly reported on the greed of businessmen as they showed off their multiple properties and recreational toys, all while "stealing from the pocket of hardworking citizens" (Gustafson, 2007: 9). The media's rhetoric now painted a picture in which the general public was tired of corporate greed and the effects it was having on communities (Gustafson, 2007: 16).

Reform

Despite the sweeping legislative changes made in the recent years to sentencing requirements, many argue that the current system and the way it treats white-collar criminals is inadequate. Reform proposals center around issues specific to white-collar crime, as well as overall deterrence of crime.

Specific to White-Collar Crime

One common theme to all of the reforms introduced to address the disparity and inconsistency issues with white-collar crime has been an increase in sentence lengths. However, many argue that this is not fitting of the crime. If the fraud crimes are economic in

nature, so too should be the punishments. Increasing fines to pay restitution to victims is more in line with the crime (Gustafson, 2007: 10).

Additionally, others argue that those who commit white-collar crimes are not deserving of the same sentences as murderers and rapists. They are not violent, and they are not physically harming community members, so there is no need to keep them off the street with time in prison (Gustafson, 2007: 16). Judges are also aware of the fact that those convicted of white-collar crimes are unlikely to be able to commit crimes of economic nature again (Anonymous A, 2009: 1742). Addressing the length of sentences, some discuss the price the community pays when financing the long-term prison stays of those incarcerated (Henning, 2010). If there is no benefit to having these criminals in jail, why should the community have to pay for it?

Deterrence Issues

The primary goal of any punishment is to deter the offender from committing the crime in the first place. A large argument against the SRA and subsequent reforms is that these reforms have failed to deter crime. However, part of this stems from the inconsistent application of the SRA.

As Anonymous (2009) states, despite the increased reporting surrounding white-collar crime and corporate fraud, it is clear that the fraudulent acts the reforms are meant to deter are still occurring, despite the harsher sentencing guidelines (pg 1734). In addition, these increased penalties have little to no effect on deterrence if those who commit the illegal acts are unaware of the severity of the punishment they may face. This presents a key issue, where those carrying out crimes of low loss amounts are unaware of the penalties, while

those committing the frauds of the highest dollar value have access to legal counsel that can both warn them away from fraud, and successfully argue for lighter sentences if they are caught. Because of this issue, the penalties fail to deter the topmost damaging level of fraud, “the individuals who most deserve punishment for a fraud are the ones who are most likely to escape it. The current system rewards those criminals who planned most effectively to avoid the consequences of their actions, and who had the most access to legal help in those plans, while punishing the least sophisticated actors at the top of the scale” (pg 1738-1739). How do we ensure a system that doles out punishment in a way that is both understandable, yet is equivalent in magnitude to that of the crime committed?

Compounding the foundational inadequacies of the SRA, the inconsistent application further challenges the deterrence capabilities of the legislation. Deterrence can only be achieved through systematic and consistent application of sentencing. Because of this inconsistency, criminals routinely expect low sentences, so they are not as fearful of the outcomes of their trials (pg 1734). There is no quick way to address the discretion issues present as departures from the guidelines have always been prevalent, so how do we ensure consistency while maintaining discretion? These reform questions are difficult to answer and are topics that need further research.

Link to Data Collection

While the public perceived white-collar criminals in an increasingly negative light, I ask whether there was a true change in how the media presented white-collar criminal cases. Did news outlets begin to change their rhetoric to reflect these feelings? Were they more

aggressive towards the criminals? Had they truly been sympathetic towards the defendants in the past? In addition, how did the rhetoric used change over time?

With the changes to sentencing guidelines and discretion, how did sentencing actually change over the time period in which the SRA was enacted and did these sentences have any relation to the tone with which the media portrayed the criminals? Do the total loss amounts have any bearing on how they are perceived by the public? Did penalties actually increase over time?

METHODOLOGY

To examine the trends of media perception and subsequent sentencing of white-collar criminals, I analyzed past accounts of white-collar criminals dating before and after 1980. This specific midpoint was chosen due to its relevance to white-collar criminals and their prevalence in society, as well as their perception in society. Most notably, public perception of these criminals began to change around the 1970s to the end of the 1980s.

As Soltes (2016) notes in *Why They Do It*, “By The close of the 1960s, the idea of branding senior executives as criminals and sending them to prison was still a foreign and uncomfortable idea,” (pg 31). This rapidly started to change:

The head of the American Bar Association’s Section on Litigation remarked that white-collar criminal defense was the fastest-growing legal specialty by the late 1970s....the Department of Justice officially made white-collar crime a top priority in 1978, as more federal prosecutors grew willing to take on these challenging cases. Emboldened by the growing mistrust of business practices, legislators passed new

regulations significantly restricting corporate behavior that the public felt was not just unethical, but criminal. (Soltes, 2016: 37)

Soltes (2016) goes on to describe the new aggressive approach attorneys took towards white-collar criminals. As more prosecutors followed this aggressive approach, there was, “an overall shift in sentiment toward white-collar crime in the United States,” (pg 40) by the end of the 1980s. Following this shift, the United States Sentencing Commission began developing sentencing guidelines for major crime types, including white-collar crime. The Sentencing Reform Act of 1984 indicated the belief that there was far too much leniency in the sentencing of white-collar offenders. With this, sentencing disparities arose and the Commission sought to end this by establishing the first set of Sentencing Guidelines in 1987 (Newton and Sidhu, 2017: 1167 - 1181).

In order to examine these past accounts, I obtained newspaper articles sourced from the New York Times archival search engine. I searched for these articles based on topic and with certain leading criteria. The articles needed to refer to accusations or charges against a white-collar criminal. I removed any articles that were part of SEC filings as the sentencing criteria for the SEC differs from federal and state cases, as well as any proceedings that were taken against corporations as a whole. I focused my samples on those including final court reports instead of early reporting on large cases. In short, my sample only included articles that detailed individual allegations in the mid to late stages of the legal process in the traditional legal system.

I gathered this sample by utilizing the New York Times Archival search and Timesmachine search engine to sift through past newspaper articles. I refined my search by utilizing two specific date ranges: 01/01/1950-12/31/1979 and 01/01/1980-12/31/2010. This

range provided a 30-year window on both ends with the relevant midpoint, as discussed above.

I did a few key word searches for “Financial Fraud,” “Sentenced for Financial Fraud,” “White Collar Crime,” “Accused of fraud,” and “Acquitted on fraud charges.” I then proceeded to sort through the roughly 8,000 results in the first time frame and 36,200 results in the second time frame to haphazardly³ select 30 articles from each time frame, using the sampling criteria discussed above. It should be noted, that the significant increase in the number of articles in the second time frame most likely stems from the increase in cases during 2002 and 2003 and the financial crisis of 2008, as well as an increase in reporting overall.

For each selection from my samples, I collected the date the article was published, the crimes the offender was accused of⁴ the monetary amounts stolen⁵, the resulting sentence length if publicly available⁶, as well as any fines accompanying jail time. Refer to Table 1 and Table 2 in the Appendix for a complete collection of data. In many cases, the defendants chose to settle out of court, leading to an incomplete collection of sentencing and fine data. One sample collection had to be thrown out because it was missing all three of the key criteria: monetary amounts stolen, sentence length, and fine information. In cases where the key criteria was not identified in the article, I searched for this information using sources

³The selection was haphazard instead of random due to a few factors. Because of selection bias, humans cannot perform a truly random selection without the help of say a random number generator. I was not able to utilize a random number generator in my selection due to the volume and format of my search results. I also had to filter out articles that did not meet my sampling criteria.

⁴ Refer to Exhibit 3 in the appendix for a consolidated list of the types of crimes listed in the articles.

⁵ These amounts could pertain to damages against clients, stockholders, etc., the physical amount of assets that were converted for the perpetrator’s gain, or the resulting financial decline of a company resulting from their actions.

⁶ Occasionally, the sentence length would be listed as a possible range (ex. 2 to 4 years). If this was the case, I took an average of the low and high end of the range (ex. 3 years).

beyond the New York Times search, such as the U.S. Department of Justice website, other local newspaper articles, the Case Law and Court Listener websites, and was occasionally able to gather the information.

In addition to the information I collected from each sample, I classified the tone of each. When classifying the tone of the articles, I looked for changes in rhetoric, emotionally charged language, and their utilization of ethos and pathos, to determine if the author was aggressive, neutral, or sympathetic in their depiction of the offender. For example, if the author used a mocking voice, or called the accused “vain” or that they “us[ed] the money instead to live lavishly and gamble compulsively,” I categorized the article as aggressive. On the other hand, if the author mentioned the accused’s good deeds in their community, their time in the military, or the tragic impacts the trial could have on their life, I categorized the article as sympathetic. If the articles used none of these descriptions, or conflicting descriptions, they were categorized as neutral. Refer to the appendix for examples of tone classification and the format used to collect data.

DATA ANALYSIS

In this section I first discuss the trend in search results across time. I then discuss the different uses of tone between and within the two time periods, 1950-1980 and 1980-2010. Finally, I discuss the relationships between the tone of the article, the monetary amount defrauded, and the ultimate sentence length.

Search Results

As noted in the Methodology, I searched for a variety of phrases within the New York Times Archival search engine to gather my sample. The main phrase that I utilized was “Financial Fraud.” The following results can be seen in Figure 1.



Figure 1. Number of search results generated from a key word search of "Financial Fraud" in the New York Times Archival search engine.

Unsurprisingly, at the beginning of the time period, this search returned few articles, with only 31 results in 1950. This number steadily rose year by year, with few exceptions. This steady increase is indicative of the rising reporting and interest surrounding financial fraud. Additionally, there were more and more articles published detailing governmental efforts to address this specific crime type.

There were a few small spikes in the first time frame, notably in 1962 and 1973, both years of financial crisis and stock market fluctuations. The most dramatic increase in results occurred in 2002, the year many financial frauds and white-collar crime cases came to light and the stock market took a downturn. Between 2001 and 2002, results jumped from 404 to

989. From here, search results remained well above the 500 mark. There was also a drop in reporting in 2007. This could have been driven by the financial crisis of 2007 as more reporters devoted their time to other sectors of the economy rather than white-collar crime. From these results, it is clear that more and more journalists were reporting on white-collar crime, bringing it into the public sphere and addressing new opinions that the public previously had not addressed regarding white-collar criminals.

Tone

Using the process discussed in the Methodology section, each article in the sample was categorized into one of three categories: aggressive, neutral, or sympathetic. The total sample size was 30 articles in each time period. The following results can be seen in Figure 2.

While not in the timeline for sample collection, it should be noted that in the 20s there were many reports of fraud that were allocated one small paragraph – a few sentences at most - in the paper. These reports could be easily looked over and were neutrally reported on.

From 1950 to 1980, the distribution of tones across categories was fairly even. There were 9 aggressive, 11 neutral, and 10 sympathetic articles. It should be noted that the articles are skewed towards neutral primarily due to the shortness in length of the articles found in this timeframe.

From 1980 to 2010, the distribution leaned heavily towards aggressive and neutral. There were 14 aggressive, 14 neutral, and 2 sympathetic. Compared to the first time frame, this is a significant increase in the aggressive tone of articles and a significant decrease in sympathetic tones.

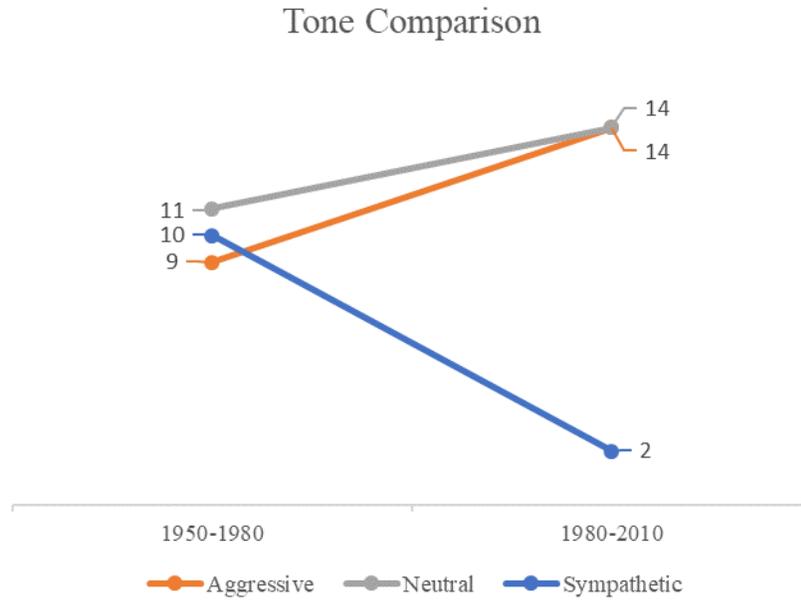


Figure 2. Comparison of article tones between time frames. Figure shows decrease in sympathetic articles and increase in aggressive articles.

These results follow the analysis that public opinion shifted in the 1980s. Before this time, journalists were sympathetic towards white-collar criminals for the majority of the time. After the 1980s, journalists wrote with more contempt towards white-collar offenders and generally called for higher sentence lengths. Those involved in financial fraud were no longer praised as upstanding members of society; instead, there were calls for these offenders to be prosecuted in a way that reflected the consequences of their actions. There was a clear shift in how the media presented white-collar criminals.

Relationships

Irrespective of time period, based on my sample there is seemingly no relationship between the amounts defrauded and the sentence lengths, as well as the resulting sentence

lengths and the tone of the articles. There is a correlation between the tone of the articles and the amounts defrauded. These relationships can be seen in Figures 3 through 8.

The tone of the articles had no relationship with the outcomes of the cases. This was to be expected as the judges' perceptions of white-collar criminals tend to vary from the public's, in addition to the discretion judges wield. In the second time frame, it appears that aggressive articles are related to a higher sentence, however with only two sympathetic samples as comparison this may not be an accurate picture. This indicates that although the media may direct negative attention towards white-collar criminals and the public calls for harsh punishments, the judges do not appear to be affected.

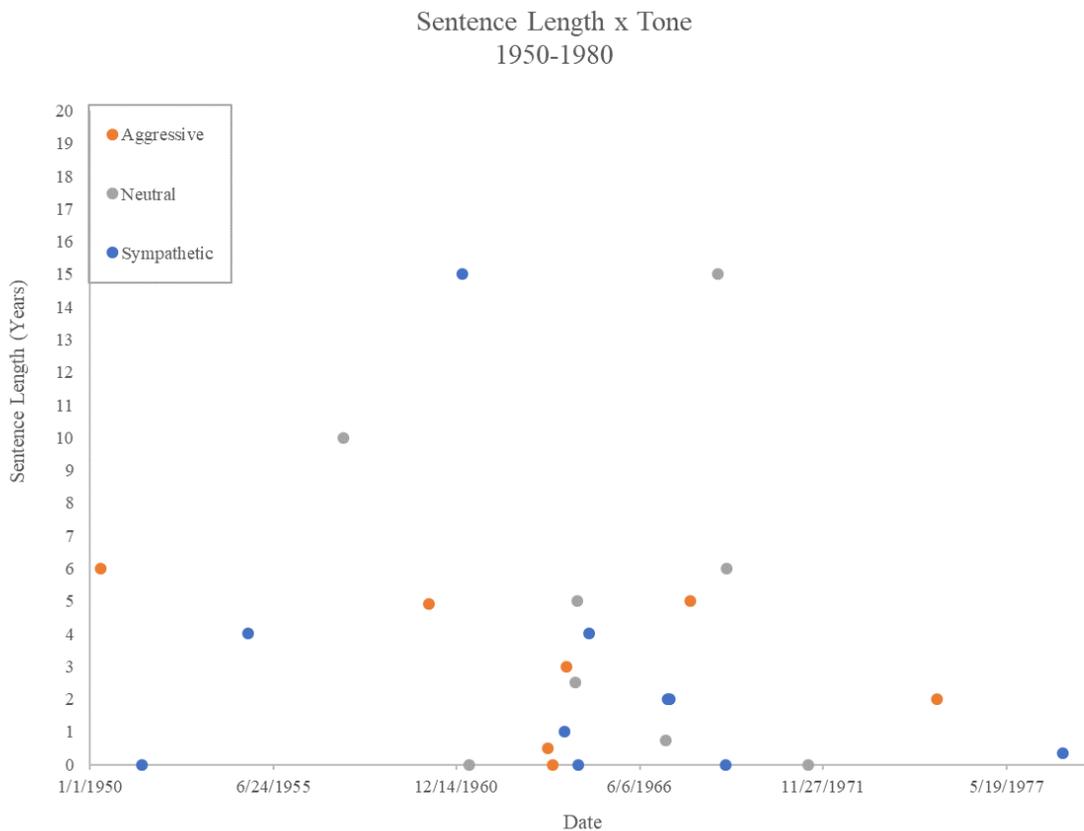


Figure 3. Sentence lengths over the first time period, 1950-1980, organized by tone. Please note the sentence range spans from 0 to 20. Five samples were not included in this graph as they were missing sentencing data.

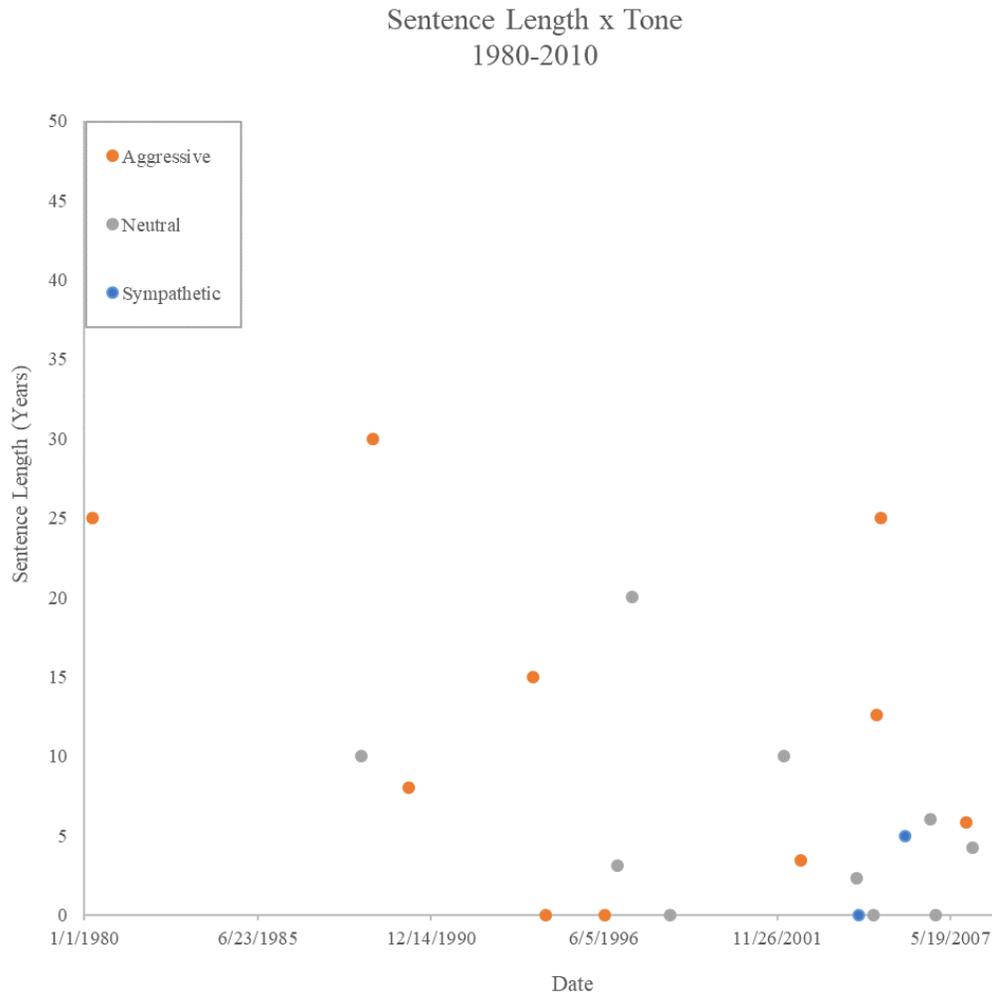


Figure 4. Sentence lengths over the second time period, 1980-2010, organized by tone. Please note the sentence range spans from 0 to 50, significantly higher than the first time frame. Additionally, one outlier was removed from this graph. The outlier was a neutral tone article with a sentence length of 110 years. Three samples were not included in this graph as they were missing sentencing data.

There does appear to be a relationship between the amounts defrauded and the tone of the articles. In the first time frame, higher loss amounts were correlated with sympathetic and neutral tones, while aggressive tones held to lower loss amounts. This flips in the second time frame with the higher amounts defrauded being from aggressive-toned articles and the lower loss amounts coming from neutral-toned articles. The media tends to show more aggression towards those who cause more harm to their communities.

Amount Defrauded x Tone 1950-1980

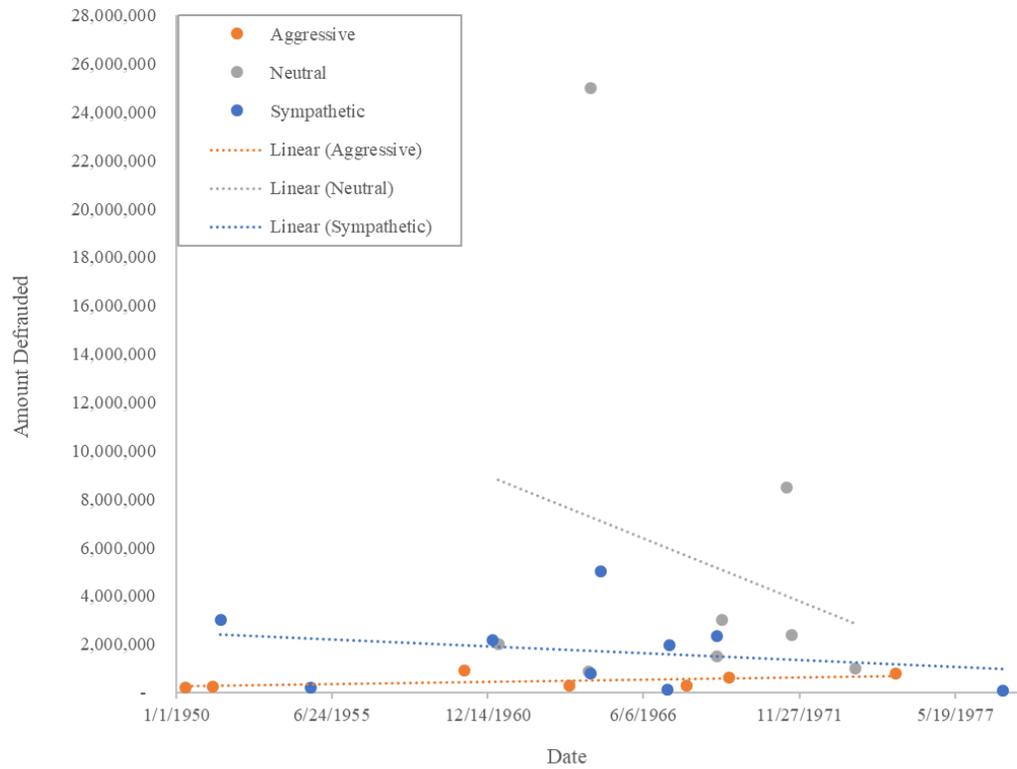


Figure 5. The comparison between the amounts defrauded and tone demonstrate the overwhelming sympathy towards white-collar criminals in the first time frame. Five samples were not included in this graph as they were missing amounts defrauded.

Amount Defrauded x Tone 1980-2010

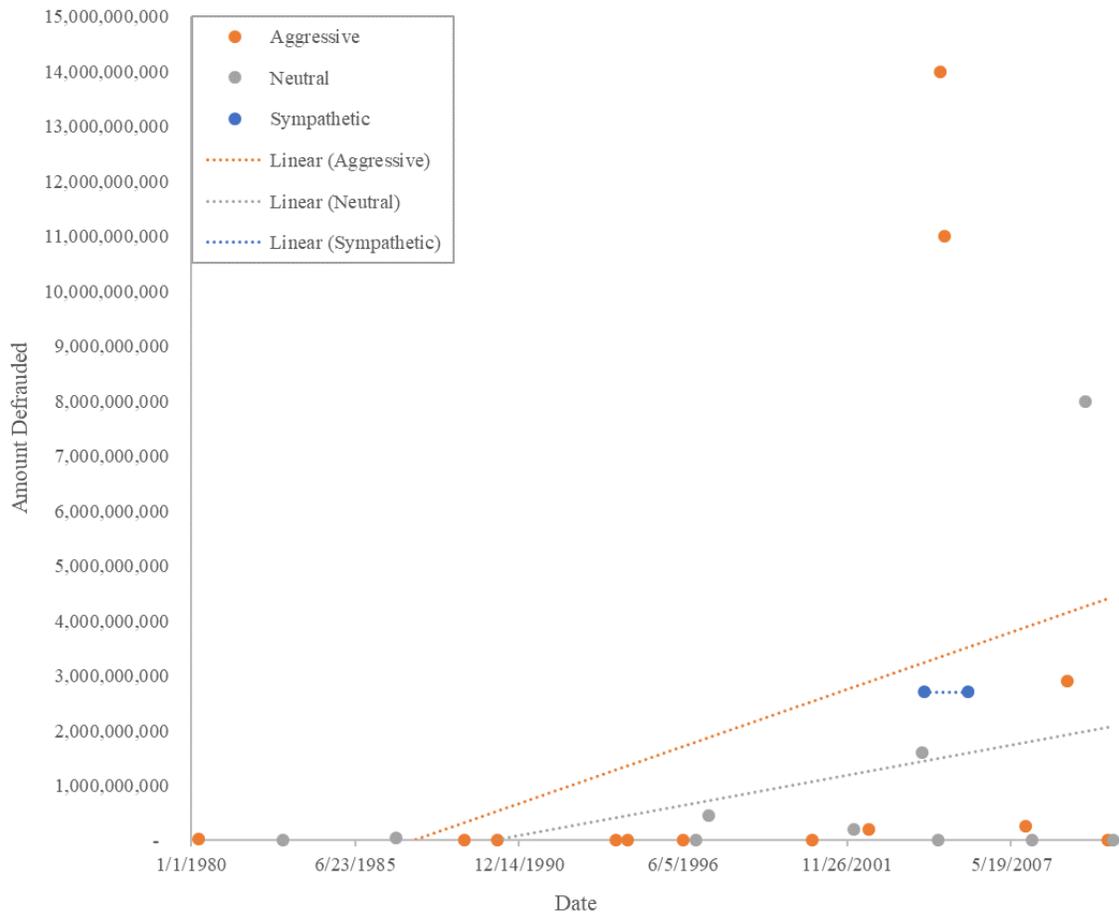


Figure 6. The comparison between the amounts defrauded and tone demonstrate the increasingly aggressive stance towards white-collar criminals in the second time frame. Five samples were not included in this graph as they were missing amounts defrauded.

The relationship between the amount defrauded and the resulting sentence length is nonexistent. Sentence lengths should have increased as loss amounts rose based on the SRA guidelines. At the very least, the articles between 1987 and 2005 should have some relationship between these factors as mandatory sentencing guidelines were in place, but this is not the case. The overall sentencing range increased between the two time periods, but there was still an inconsistent treatment of white-collar criminals. Despite the sentencing guidelines, judges still exerted discretion and found ways to circumvent the guidelines. In fact, in this time range, the highest amounts defrauded had sentences among the lowest of the samples.

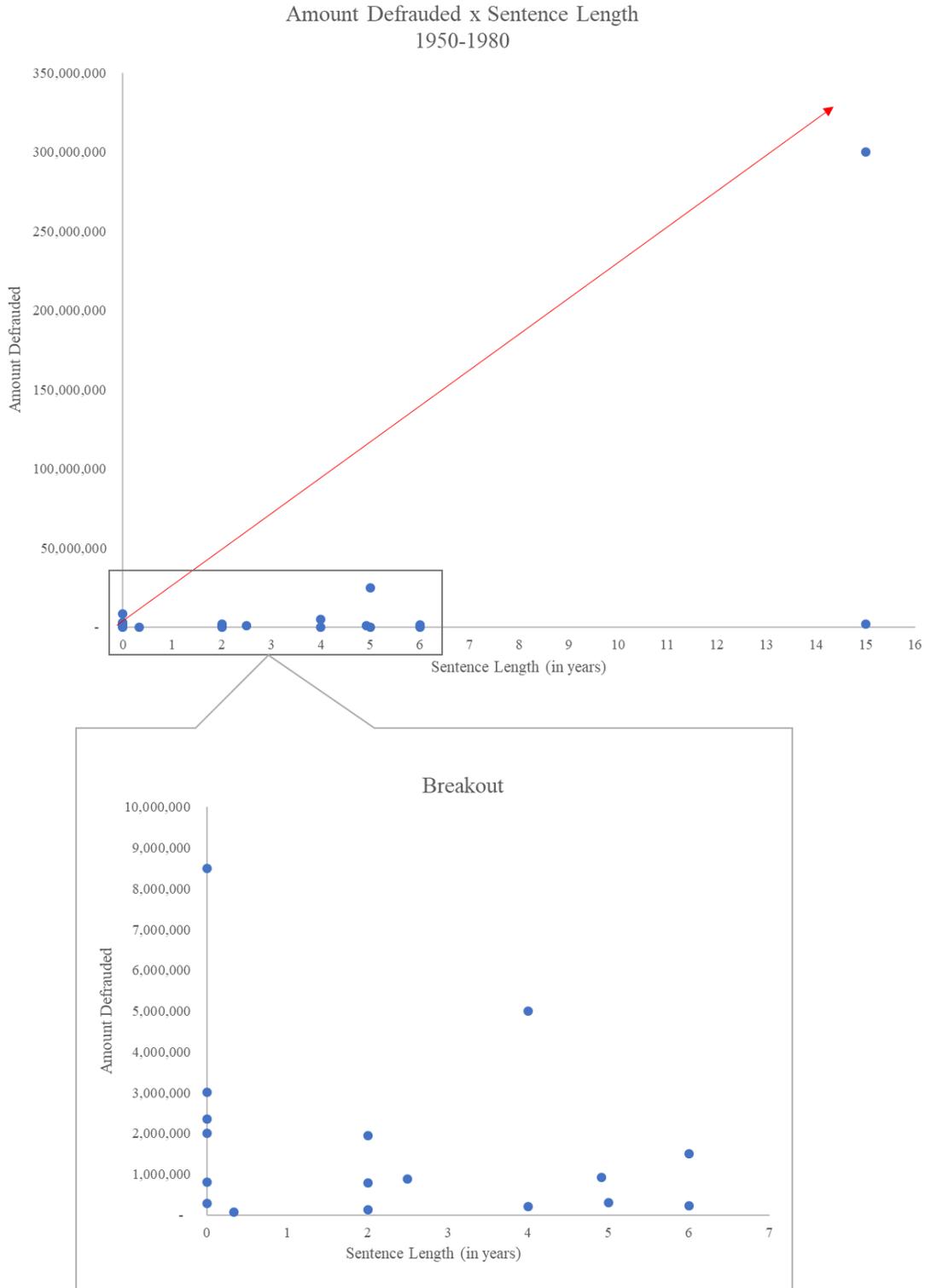


Figure 7. This graph displays the lack of relationship between the amounts defrauded and the sentence length received. The red arrow indicates what one would anticipate the graph would show – a positive correlation – sentence length increases as amount defrauded increases. A breakout is included to more clearly show majority of the samples which have sentences that range from 0 to 6 years. The 0 length sentences are due to probation (4), or acquittals (2). There are five samples in this time frame that lacked sentencing data and five that lacked information on the amounts defrauded.

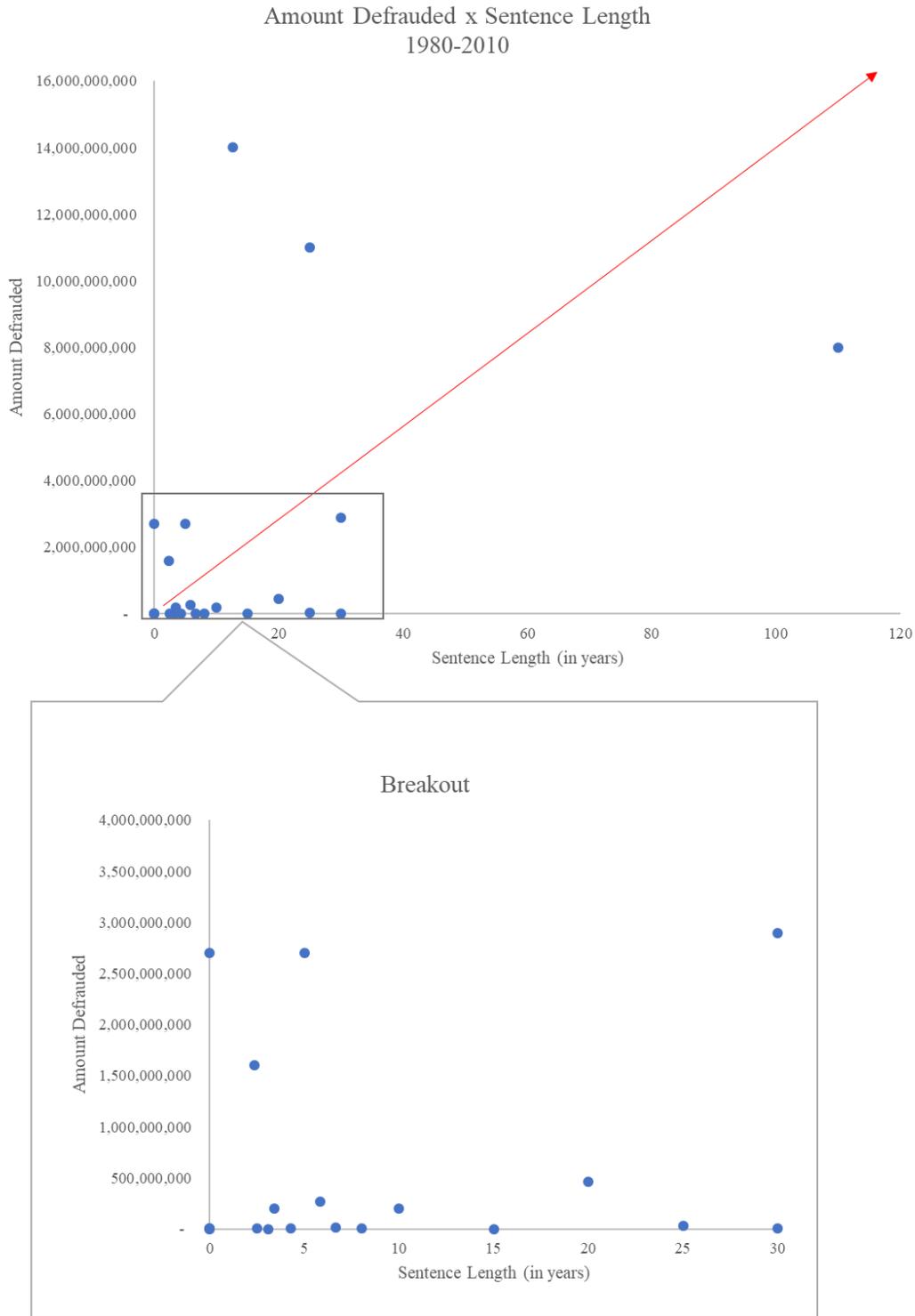


Figure 8. This graph displays the lack of relationship between the amounts defrauded and the sentence length receive in the second time frame. The red arrow indicates what one would anticipate the graph would show – a positive correlation – sentence length increases as amount defrauded increases. A breakout is included to more clearly show majority of the samples which have sentences that range from 0 to 30 years. In all but one case, the 0 sentence lengths resulted from fines or probation. There are three samples in this time frame that lacked sentencing data and five that lacked information on the amounts defrauded.

Summary of Results

From the data collected, there are a few key takeaways. Reporting on white-collar crime significantly increased over time, with notable increases during years with increased financial fraud, such as 2002 and during the end of the financial crisis in 2008. From the sample, there was a clear change in how reporters wrote about white-collar criminals. From the first time frame to the second, there was a significant increase in the number of articles with an aggressive tone and a significant decrease in articles that were sympathetic. In terms of sentencing data for the first time frame, articles with sympathetic rhetoric were related to higher loss amounts. In the second time frame, articles with aggressive rhetoric were related to higher sentences and loss amounts. There is not a clear answer on which variable is the driving force behind this relationship; however, we can conclude that total loss amounts do affect how criminals are perceived by the public. When comparing sentencing data to the amounts defrauded, there was no relationship. While sentencing increased over time, it did not do so consistently. The overall increase in sentence lengths could be due to the limited sample, or the broad guidelines introduced by the SRA.

DISCUSSION, LIMITATIONS, AND CONCLUSION

The results of this study prompt a further analysis of the increase in reporting on white-collar crime, how this reporting changed, and why the reporting changed, in addition to the relationship between reporting and sentencing. I end this discussion with topics for further study, limitations of this study, and a conclusion.

Increase in Reporting

Starting in the 1980s and with the establishment of the SRA, reporting on white-collar criminals has steadily increased (Figure 1). Legal changes rapidly occurred to address the growing concern of white-collar criminals, but the number of cases being prosecuted continued to increase, despite the claims of deterrence these policies held. The media continued to report on white-collar fraud as a crime that was only increasing and not being properly addressed by the government. With every major financial fraud came a spike in reporting. More and more articles popped up about the state of the sentencing of these criminals, opinion pieces on the treatment of white-collar criminals, and more articles exploring legislative changes that could occur.

How Reporting Changed

Reporting has radically shifted over the years. Before the white-collar term was officially coined, many held those who committed financial fraud in high regard - they were upstanding members of society who made a committed crime in the effort to bring wealth to their communities. Yet the reporting on these criminals started to shift and there was a clear change by the 1980s. Instead of referencing the families these criminals cared for, the good deeds they performed in society, or the top education these criminals received, reporters were citing the extravagant lifestyles led by these criminals, the lies they told to the public, and referenced how the judicial system has failed in addressing white-collar crime. Often times, reporters mocked how defendants acted in court and lamented on the gross ways the money stolen was used.

Why Reporting Changed

There are many theories on the cause for the change in reporting. One such theory is that as loss amounts have increased over time, so too have public calls for action. Another theory is that the lack of consistent sentencing has caused feelings of inadequacy to erupt among the public as they do not see appropriate sentencing. A third theory is that increasing wealth inequality has caused growing animosity towards white-collar criminals. I discuss these three theories below.

Increase in Loss Amounts

The monetary amounts white-collar criminals have stolen has continued to increase over time. Frauds are becoming more complex, and thus the dollar amounts are rising. The results of this study show that journalists take on a more aggressive tone when reporting on frauds that involve a higher loss amount (Figure 6). This indicates that as the consequences of the fraud increase, so too does the call for adequate punishment. As we witness more damage being done to societies and innocent community members, we are naturally less sympathetic towards those who are in the wrong.

Lack of Consistent Sentencing

As evidenced by the continuing legal changes, the sentencing of white-collar criminals has been anything but consistent. While guidelines may be in place, judges rarely adhere to them. The results of this study further indicate the failure of white-collar sentencing when it comes to distributing fair and adequate punishment (Figures 7 and 8). Loss amount is

the primary determining factor for the sentencing guidelines, yet it appears to have no impact on the final sentence.

These inconsistencies may aggravate the public as they do not see appropriate action being taken to rectify the wrongs of these criminals. As the criminals continue to skate by with probation or relatively small prison sentences for the majority of the time, the public can become frustrated with the special treatment given to these offenders. If the punishment does not fit the crime as deemed appropriate by the public, the media's cries for justice become louder and more desperate. After all, if no one goes to jail for the financial ruin of one community, there is nothing to stop the next person from taking advantage.

Link to Wealth Inequality

In my opinion, the theory that holds the most weight is the concept of wealth inequality. As a nation, the U.S. has faced dramatic increases in wealth inequality through the 20th and 21st centuries. As the gap between the ultra-wealthy and the average citizen increases, so too does the contempt felt towards those that exploit their position and take advantage of their communities. In addition, with increasing technology we are more exposed than ever to the extravagant lifestyles of the top one percent.

Media coverage has revealed the possessions and way of life of corporate officers, including “million dollar homes, private planes, golf courses[,] and art collections” (Gustafson, 2007: 2). A lot of the working class regard these lifestyles as grossly unnecessary and gluttonous. “Public outrage increased when they learned that executives' lavish lifestyles continued even after the collapse of their companies, while average citizens suffered the harsh consequences” (Gustafson, 2007: 5). Bearing witness to the continuation of these

lifestyles can certainly cause those who lost their livelihoods to become jaded. This is reflected in how the reporters assigned to white-collar cases increasingly detailed the lifestyles led by the defendants who were part of multi-million-dollar frauds. The growing wealth inequality paired with increased exposure to the lifestyles of the rich has certainly impacted how the public reacts to and reports on white-collar crime.

Opinions on Reform

While the Sentencing Reform Act has had many changes and iterations over the years, there is still not a consensus of satisfaction in regard to the sentencing of white-collar criminals. Many scholars have proposed alternate reformatory measures, such as non-prison punishments. However, many of these reform proposals come from a place of privilege and/or fail to address the privilege white-collar criminals possess.

Alternatives

There are many alternatives that have been proposed to rectify sentencing issues. From eliminating prison sentences, to making them even harsher, to relying on restitution alone, alternatives seem to center around the issue of prison time for white-collar criminals.

Non-prison punishments have been recommended as an alternative option for white-collar criminals. Options for non-prison punishments include community services requirements, a “scarlet letter” approach that identifies criminals to the public, or presentations on the effects of their crimes to students to reinforce the message that fraud isn’t worth it (Balsmeier and Kelly, 1996: 145). The alternative of non-prison punishments has been criticized but also presents a good point about current sentencing. If sentences

already trend towards the absolute minimum, what difference is there for these criminals to not have any prison time at all? In addition, the non-violent nature of white-collar crime causes many to question whether prison time is actually necessary. However, this raises an important question surrounding the actual goal of prison time – is it deterrence, like many claim, or something else?

Another approach to sentencing is to alter the guidelines so that judges do not feel the need to depart in the first place. Essentially, this calls to make “the Guidelines more accurately reflect what judges find to be a reasonable level of punishment” (Anonymous A, 2009: 1744). However, this brings into question the judges initial biases towards white-collar criminals and their tendency to sentence at the minimum, which may not be the most just result. Although this could allow for more consistency in sentencing, which would possibly increase deterrence.

The current fines that are imposed on white-collar criminals are abysmal when the total wealth of the criminal is considered. However, increased fines could be the strongest deterrent of all when it comes to white-collar criminals. For a crime type that is rooted in increasing wealth, increasing fines could be the key to stopping it altogether. As one study put it, “greed may be the biggest motivator behind white collar crime. Perhaps the best way to counter greed is the knowledge that, if caught, the offender will be required to disgorge all profits and be fined a substantial additional amount of money” (Anonymous A, 2009: 1748). However, we must be careful to do so in a way that executives do not see these fines as just another cost of doing business.

Connections to Privilege

Many of these alternatives treat white-collar criminals as better than low-level criminals. The argument that white-collar criminals have families that depend on them falls on deaf ears. So too do the criminals who break and enter, sell drugs, or commit robbery. In fact, most of the time, these criminals are committing these acts in order to provide for their families, while white-collar criminals commit fraud in order to increase profits and maintain extravagant lifestyles. I think there is a clear difference in priorities here that makes the argument for non-prison punishments even more insulting. In addition, what makes other crime types more deserving of having their lives upended to serve prison time than the white-collar criminal?

The basis of this argument is rooted in privilege. Many see white-collar criminals as not deserving of the harsh conditions imposed by prison. One author noted the “less pleasant state facilities” as an aggravating condition of prison terms (Gustafson, 2007: 11). The lack of relevance of this specific point speaks volumes to what some deem acceptable forms of punishment for criminals of a specific economic class.

This brings me to the point of white-collar crime being non-violent. Many white-collar crimes harm the financial wellbeing of others and can ruin the lives of many. Stealing someone’s retirement seems more personally violent to me than robbing someone’s home of their TV. This perception of non-violence stems from a sense of privilege in which well-off judges and other sympathizers have never had to experience financial uncertainty or know what financial despair looks like. In addition, why should those that are seen as better educated and non-violent be entitled to softer punishments? If anything, shouldn’t these offenders have known better?

Topics for further Study

This study motivates many topics for future research. Topics include the privilege experienced by white-collar criminals and how this factors into their treatment, as well as how gender and race play a role in these crimes. Additionally, actual time served is another point of inconsistency. The underlying reasons behind the shift in reporting could also be researched further. I discuss these topics in more detail below.

How exactly privilege ties into sentencing and the approach to sentencing reform is one such area of study. As this becomes a more familiar concept, we see how privilege affects biases and the resulting actions of everyone in society. It would be interesting to perform a study that examines the relationship between privilege, white-collar criminals, and the treatment they receive, possibly as a result of this privilege.

Another topic of study is how gender plays into sentencing. This study was not performed with gender limitations, but there were only a few samples that included women due to the proportion of men to women who commit white-collar crimes. However, it would be interesting to analyze whether women are treated different than their male counterparts for this specific crime type.

Race may also play into the sentencing of white-collar criminals. A study looking into the number of non-white white-collar crime offenders could present some interesting findings. It would be important to compare any sentences people of color receive with sentences received by Caucasian offenders for a similar crime.

A study on actual time served for the samples obtained in this study could yield interesting results. It has been a long-standing rumor that white-collar criminals often skirt

their jail time because of their “good-behavior”. Using the samples in this study could indicate whether there is any truth to these claims.

Finally, a study focused on the reason for why public opinion on white-collar crime shifted is necessary. While we may postulate regarding the change in opinion, an in-depth analysis could reveal the relevant societal changes and possibly how we can better address sentencing reform as we can better understand the driving forces behind the public’s discontentment with the current system.

Limitations

While this study was able to generate meaningful results, there are limitations due to its design. The sample size of the study was small – only 30 selections for a time frame of 30 years. In addition, the selections were restricted to only articles from the New York Times. This limited the cases reported on and concentrated the cases to the East Coast. The sample selections also tended to be clustered around certain years where there were spikes in reporting. I also encountered difficulties when it came to obtain all the data points. For some selections, sentencing data or total loss amounts were not available as the cases were settled out of court or not available to the public. My personal judgement was also crucial in categorizing the tone of the articles.

Conclusion

The purpose of this study was to understand how the media, as a reflection of the general public, reported on white-collar criminals and how this related to the sentencing of these criminals. While the relationship between the rhetoric of articles and the sentencing of

white-collar criminals was difficult to discern, the results highlighted the clear change in perception of white-collar criminals and the need for further reform. While the general public experiences growing frustration towards white-collar criminals, there is an overall increase in the sentence lengths for these criminals, but a lack of consistency in how the cases are handled. I hope further studies build on these findings to provide more insights on the underlying factors in the shift in public opinion and how the overall time served for white-collar crime compares to other crime types.

REFERENCES

- Anonymous, A. (2009). Go Directly to Jail: White Collar Sentencing After the Sarbanes-Oxley Act. *Harvard Law Review*, 122, 22.
- Balsmeier, P., & Kelly, J. (1996). The Ethics of Sentencing White-Collar Criminals. *Journal of Business Ethics*, 15(2), 143–152. JSTOR.
- Bennett*, M. W., Levinson**, J. D., & Rev. 939, K. H. 102 I. L. (2017). *Judging Federal White-Collar Fraud Sentencing: An Empirical Study Revealing the Need for Further Reform*. Iowa Law Review. <https://ilr.law.uiowa.edu/print/volume-102-issue-3/judging-federal-white-collar-fraud-sentencing-an-empirical-study-revealing-the-need-for-further-reform/>
- Burgess, D. O., & Volkan, A. G. (2002). *Impact of Sarbanes-Oxley and White-Collar Crime Penalty Enhancement Acts of 2002 on Corporate Fraud Sentencing*. 14.
- USSC (2018). *Federal Sentencing: The Basics.*, 51.
- Gustafson, J. (2009). *Cracking Down on White-Collar Crime: An Analysis of the Recent Trend of Severe Sentences for Corporate Officers* | *Suffolk Law Review*. <https://sites.suffolk.edu/lawreview/2007/04/17/gustafson-white-collar/>
- Bourtin, N. (2017). *Five myths about white collar crime*. The Washington Post. Retrieved March 30, 2020, from <https://www.washingtonpost.com/>
- Henning, P. J. (2010). *Sentences Get Harsher in White-Collar Cases*. DealBook. Retrieved March 30, 2020, from <https://dealbook.nytimes.com/2010/04/12/sentences-get-harsher-in-white-collar-cases/>
- Manson, D. A. (1986). *Tracking Offenders: White-Collar Crime*. 8. Retrieved April 28, 2020, from <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=3630>

Newton, B. E., & Sidhu, D. S. (2017). The History of the Original United States Sentencing Commission, 1985–1987. *Hofstra Law Review*, 45, 142.

Organization. (n.d.). United States Sentencing Commission. Retrieved May 1, 2020, from <https://www.ussc.gov/about/who-we-are/organization>

Schmitt, G. R., & Jones, E. (2015). *Overview of Federal Criminal Cases*. 15.

Soltes, E. (2016). *Why They Do It: Inside the Mind of the White-Collar Criminal* (First). PublicAffairs.

Department of Justice. (1987). White Collar Crime. *Bureau of Justice Statistics* 8.

White-collar crime. (n.d.). LII / Legal Information Institute. Retrieved May 12, 2020, from https://www.law.cornell.edu/wex/white-collar_crime

APPENDIX

A few examples of tone classification.

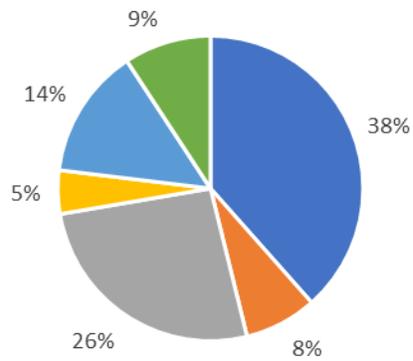
1. Article: NEWARK LAWYER GETS JAIL TERM IN FRAUD
 - Date: April 28, 1950
 - Tone: Aggressive
 - “vain”
 - Crimes: Embezzlement and Misappropriation
 - Amounts: involved ranged from \$40,000 to \$400,000
 - Sentence: 4 to 8 years in prison for 4 separate charges to be served back to back
 - Source: <https://www.nytimes.com/1950/04/29/archives/newark-lawyer-gets-jail-term-in-fraud.html?searchResultPosition=1>
2. Article: \$750,000 Swindle by Check 'Kiting' Laid to 49-Year-Old Insurance Man
 - Date: April 6, 1951
 - Tone: Aggressive
 - Quoted perpetrator as saying “I can’t live on that”
 - Mocks barber tending on him daily
 - Crimes: Grand Larceny, Swindling and frauds
 - Amounts: totaled to \$250,000 since 1948
 - “Had practiced the same form of swindle back in 1942, but managed to “get back into the black” by the end of 1944”
 - Freed on \$25,000 bail
 - Sentence: unknown
 - Source: <https://www.nytimes.com/1951/04/06/archives/750000-swindle-by-check-kiting-laid-to-49yearold-insurance-man.html?searchResultPosition=3>
3. Article: VALDMANIS GETS 4 YEARS IN FRAUD, Newfoundland Jails Ex-Aide in \$200,000 Swindle — 2d Charge Still Stands
 - Date: September 18, 1954
 - Tone: Sympathetic
 - “WWII Refugee”, surprised that he pleaded guilty, “Newfoundland will one day erect a statue to Dr. Valdmanis,” “This is the most unpleasant duty I have ever had to perform” Depicted perpetrator sadly, forgiving for crimes
 - Crimes: Swindling, extortion
 - Amounts: \$200,000 for the first account
 - Second count involved \$270,000, charge will be dropped
 - Sentence: 4 years hard labor

- Source: <https://www.nytimes.com/1954/09/18/archives/valdmanis-gets-4-years-in-fraud-newfoundland-jails-exaide-in-200000.html?searchResultPosition=13>
4. Article: Gilbert Sentenced To 2 Years in Theft Of Company Funds
- Date: April 28, 1967
 - Tone: Sympathetic
 - “Defendant had won a Silver Star for saving a soldier’s life...since his return...had almost paid off all his small creditors”
 - Article notes an emotional divorce from his wife
 - The finances of which caused his inability to obtain a loan and pay off other debts
 - Quoted defendant” I’ll pay back every cent I owe no matter how long it takes”
 - Crimes: Embezzlement, grand larceny
 - Amounts: \$1,950,000
 - Sentence: 2 years + \$21,000 fine
 - Max was 17 years
 - Eligible for parole after 1/3 of sentence is served
 - On probation for 5 years
 - Source: <https://www.nytimes.com/1967/04/28/archives/gilbert-sentenced-to-2-years-in-theft-of-company-funds-gilbert.html?searchResultPosition=73>
5. Article: Ex-Financial Planner Pleads Guilty
- Date: February 9, 1989
 - Tone: Aggressive
 - Invested retirement money and “was using the money instead to live lavishly and gamble compulsively”
 - Details how the criminal fled the country
 - Crimes: Embezzlement, mail fraud
 - Amounts: \$9,800,000
 - Sentence: 30 years
 - Source: <https://www.nytimes.com/1989/02/09/business/ex-financial-planner-pleads-guilty.html?searchResultPosition=21>
 - Sentencing
 - source: <https://www.nytimes.com/1988/09/05/business/company-news-fraud-case-suspect-was-a-gambler-fbi-says.html>
 - <https://www.sun-sentinel.com/news/fl-xpm-1989-05-11-8901240479-story.html>
6. Article: Ex-Executive Convicted of Fraud
- Date: August 16, 2002

- Tone: Aggressive
 - “This verdict comes at an important time in our efforts to hold corporate executives accountable for misleading investors about the financial performance of their companies”
 - Crimes: Wire fraud, securities fraud
 - Amounts: reported a \$20 million profit, restated to losses of >\$99 million. \$80 million difference. Loss to investors of \$200 million (business journal article)
 - Sentence: 41 months in prison
 - Max was 35 years + \$2,700,000 in fines
 - Source: <https://www.nytimes.com/2002/08/16/business/ex-executive-convicted-of-fraud.html?searchResultPosition=43>
 - Sentencing
source: <https://www.bizjournals.com/sanjose/stories/2003/04/14/daily12.html>
7. Article: Chief Executive Was Paid Millions, and He Never Noticed the Fraud?
- Date: January 7, 2005
 - Tone: Aggressive
 - “The dummy defense worked, and the era of the former chief executive who remembers doing virtually nothing to earn his millions is upon us.”
 - “presided over a company whose books told lies for more than a decade”
 - Crimes: conspiracy to commit securities fraud and two counts of making false statements
 - Amounts: \$14,000,000,000 loss in shareholder market value
 - Sentence: 12 years and seven months in prison + \$3.275 billion in restitution
 - Source: <https://www.nytimes.com/2005/01/07/business/chief-executive-was-paid-millions-and-he-never-noticed-the-fraud.html?searchResultPosition=76>
 - Source for sentence, amounts, crimes: https://www.forbes.com/2007/01/17/walter-forbes-cendant-cx_jl_0117autofacescan03.html#12ad0b070087
8. Article: Executive Gets 5-Year Term in Fraud Case
- Date: December 10, 2005
 - Tone: Sympathetic
 - “Despite his "unprecedented" cooperation, the judge said, the sentence had to be strict enough to deter other white-collar criminals”

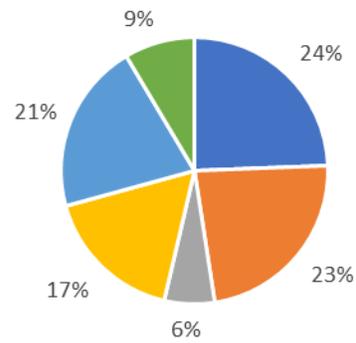
- “Mr. Owens said that he had lost everything, including his marriage, and he wept as he apologized”
 - “he had spent hundreds of hours in interviews with investigators and forensic accountants, and that he testified for more than 11 days in February during Mr. Scrushy's trial”
 - “During the sentencing, Judge Blackburn read from dozens of letters sent by family and friends, vouching for Mr. Owens's reputation and pleading for mercy”
 - Crimes: conspiracy to commit securities fraud, wire fraud and certifying a false financial statement
 - Amounts: overstated results by \$2,700,000,000
 - Sentence: 5 years in prison
 - Source: <https://www.nytimes.com/2005/12/10/business/executive-gets-5year-term-in-fraud-case.html?searchResultPosition=142>
9. Article: Ex-Financial Chief at Capital One to Pay Fine of \$1.8 Million
- Date: November 21, 2006
 - Tone: neutral
 - Crimes: insider trading, securities violations
 - Amounts: unlisted
 - Sentence: Fine of \$1,800,000 by the SEC
 - Source: <https://www.nytimes.com/2006/11/21/business/21trader.html?searchResultPosition=2>
10. Article: Four Receive Prison Sentences Over 1966 Collapse of Westec
- Date: October 3, 1968
 - Tone: Neutral
 - Crimes: Conspiracy, mail fraud, falsification of records, stock manipulation
 - Amounts: \$300,000,000
 - Sentence: 4 individuals sentenced: 15 years, 8 years, 18 months, 1 year
 - Source: <https://www.nytimes.com/1968/10/03/archives/four-receive-prison-sentences-over-1966-collapse-of-westec.html?searchResultPosition=81>

Crimes Listed in Articles 1950-1980



- Fraud
- Conspiracy
- Embezzlement
- Falsification of Records
- Securities Acts Violations
- Other

Crimes listed in Articles 1980-2010



- Fraud
- Conspiracy
- Embezzlement
- False/Misleading Statements
- Securities Acts Violations
- Other

Exhibit 3 Consolidation of types of crimes in sample

Table 1 Complete Data Collection for 1950-1980

Article #	Date	Tone	Crimes	Amounts	Sentence (in years)	Fine
1	4/28/1950	Aggressive	Embezzlement, Misappropriation	220,000	6	
2	4/6/1951	Aggressive	Grand Larceny, Swindling	250,000		
3	7/21/1951	Sympathetic	Mail Fraud, Securities Act Violations	3,000,000	0	
4	9/18/1954	Sympathetic	Swindling, Extortion	200,000	4	
5	7/31/1957	Neutral	Tax Fraud		10	20,000
6	2/18/1960	Aggressive	Fraud, Securities Act Violations	919,000	4.92	160,000
7	2/18/1961	Sympathetic	Embezzlement	2,155,000	15	
8	4/30/1961	Neutral	Aiding and Abetting in Embezzlement, Misappropriation, Stock Fraud, Securities Act Violations	2,000,000	0	
9	9/11/1963	Aggressive	Stock Swindle, Securities Act Violations		0.5	15,000
10	10/25/1963	Aggressive	Tax Evasion, Highway Fraud	280,000	0	5,000
11	3/11/1964	Sympathetic	Mail fraud, Savings and Insurance Fraud		1	
12	3/26/1964	Aggressive	Mail fraud, Savings and Insurance Fraud		3	1,000
13	7/1/1964	Neutral	Record falsification, Securities Act Violations	875,000	2.5	10,000
14	7/27/1964	Neutral	Mail Fraud, Wire Fraud, Conspiracy	25,000,000	5	
15	7/30/1964	Sympathetic	Stock Fraud, Securities Act Violations	800,000	0	15,000

16	12/2/1964	Sympathetic	Stock Fraud, Securities Act Violations	5,000,000	4	40,000
17	3/18/1967	Neutral	Manipulation of stock trading		0.75	10,000
18	4/8/1967	Sympathetic	Tax evasion, Theft, Fraud, Conspiracy	123,000	2	
19	4/28/1967	Sympathetic	Embezzlement, Grand Larceny	1,950,000	2	21,000
20	12/12/1967	Aggressive	Bankruptcy Fraud	300,000	5	10,000
21	10/3/1968	Neutral	Conspiracy, Mail Fraud, Falsification of Records, Stock Manipulation	300,000,000	15	
22	12/28/1968	Sympathetic	Falsifying Records, Fraud	2,350,000	0	20,150
23	1/4/1969	Neutral	Mail fraud, Larceny after Trust, Interstate Transportation of Stolen Property	1,500,000	6	
24	3/6/1969	Neutral	Grand larceny, Forgery, Possession of Stolen Securities	3,000,000		
25	6/3/1969	Aggressive	Forgery, Grand Larceny, Embezzlement	604,200		
26	6/15/1971	Neutral	Fraud and Stock Manipulation, Selling Unregistered Stock, Securities Act Violations	8,500,000	0	5,000
27	8/26/1971	Neutral	Conspiracy	2,400,000		
28	11/11/1973	Neutral	Embezzlement, Misappropriation	1,000,000		
29	4/24/1975	Aggressive	Conspiracy, Embezzlement	778,000	2	
30	1/24/1979	Sympathetic	Theft	70,000	0.33	

Table 2 Complete Data Collection for 1980-2010

Article #	Date	Tone	Crimes	Amounts	Sentence	Fine
1	3/28/1980	Aggressive	Conspiracy, Fraud, Falsifying Records, Perjury	30,000,000	25	
2	1/20/1983	Neutral	Filing False Claims	43,000		
3	11/6/1986	Neutral	Fraudulent Inducement	55,000,000		
4	10/1/1988	Neutral	Conspiracy, Bank Fraud, Wire Fraud, Receiving Stolen Money, Forgery		10	
5	2/9/1989	Aggressive	Embezzlement, Mail Fraud	9,800,000	30	
6	3/27/1990	Aggressive	Fraud, Securities Act Violations	2,000,000	8	
7	3/8/1994	Aggressive	Securities Act Violations, Money Laundering, Wire Fraud, Making false statements to the SEC	600,000	15	
8	7/23/1994	Aggressive	Mail Fraud, Securities Act Violations, Making false and misleading statements to investors	6,500,000	0	40,000
9	6/5/1996	Aggressive	Securities Act Violations, Mail Fraud, Bribery	262,000	0	
10	11/5/1996	Neutral	Perjury, Mail Fraud	500,000	3.08	50,000
11	4/17/1997	Neutral	Conspiracy to commit perjury, Conspiracy to obstruct justice, Securities Act Violations	460,000,000	20	
12	7/6/1998	Neutral	Conspiracy to commit securities fraud, Securities Act Violations		0	150,000
13	9/29/2000	Aggressive	Making false and misleading	9,000,000		

			statements to investors, Securities Act Violations, Falsifying Records			
14	2/10/2002	Neutral	Conspiracy to commit racketeering, Making false statements to investigators	200,000,000	10	
15	8/16/2002	Aggressive	Wire Fraud, Securities Act Violations	200,000,000	3.42	
16	5/27/2004	Neutral	Conspiracy, Filing False Financial Statements	1,600,000,000	2.33	
17	6/20/2004	Sympathetic	Securities Act Violations, Conspiracy	2,700,000,000	0	50,000
18	12/10/2004	Neutral	Wire Fraud, Mail Fraud, Theft	4,800,000	0	
19	1/7/2005	Aggressive	Conspiracy to commit securities fraud, Making false statements to the SEC	14,000,000,000	12.58	
20	3/3/2005	Aggressive	Securities Act Violations, Conspiracy, Filing False Claims	11,000,000,000	25	
21	12/10/2005	Sympathetic	Conspiracy to commit securities fraud, Wire Fraud, Certifying a false financial statement	2,700,000,000	5	
22	9/26/2006	Neutral	Conspiracy to commit wire fraud, Securities Act Violations		6	
23	11/21/2006	Neutral	Insider Trading, Securities Act Violations		0	1,800,000
24	11/9/2007	Aggressive	Conspiracy to commit securities fraud, Making False statements to the SEC,	267,000,000	5.83	

			Falsifying Records, Bank Fraud			
25	1/23/2008	Neutral	Conspiracy, Investment Adviser Fraud	6,000,000	4.25	
26	3/27/2009	Aggressive	Conspiracy to commit securities fraud, Securities Act Violations, Wire Fraud, Money Laundering	2,900,000,000	30	
27	11/7/2009	Neutral	Conspiracy to commit wire fraud, mail fraud, money laundering; Wire Fraud, Mail Fraud, Conspiracy to obstruct and obstruction of a SEC investigation	8,000,000,000	110	
28	8/12/2010	Aggressive	Theft, Embezzlement	12,000,000	6.67	
29	10/8/2010	Neutral	Securities Fraud, Bribery, Embezzlement	7,300,000	2.5	11,250,000
30	10/15/2010	Aggressive	Securities Act Violations, Concealment		0	67,500,000

