Deterring White Collar Crime

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On the one hand, it was hard not to feel sorry for him: an older man with white hair, sitting in the courtroom and weeping as Judge Barbara Jones sentenced him to 25 years in prison. She recommended Yazoo City, Miss., since it was close to home, but that was poor consolation to the 63-year-old man with heart trouble.

Yet it is easy to feel outraged at former WorldCom chief Bernard Ebbers, too. After all, the greatest bankruptcy in American history happened on his watch: $11 billion dollars of shareholder value disappeared, eclipsing even Enron in the annals of corporate fraud. When the news broke, investors, regulators and ordinary citizens were calling for his head. As a friend from Ebbers’ home state of Mississippi said, “His name is trash now”—no small rebuke.

The Ebbers sentencing comes as white-collar crime is returning to the front pages. HealthSouth CEO Richard Scrushy, the first prosecution under the 2002 Sarbanes-Oxley Act, was recently acquitted on 36 charges. Timothy and John Rigas of Adelphia were found guilty of fraud and sentenced to 15 and 20 years, respectively.

Is prosecuting executives effective at curbing fraud, insider trading, and other white-collar crimes? One argument says no; to those who have spent their entire lives making money, taking away that money is the best punishment. Indeed, Ebbers was required to forfeit much of his fortune, leaving only a modest house and $50,000 for his wife.

The converse is that deterrence is more important and effective in white-collar cases. To a CEO contemplating committing or even sanctioning fraud, the calculus is simple: cost versus benefit. The “costs” are heavily discounted when risk of conviction is low. This means the only way to deter white-collar crime is to increase penalties, prosecution, or both.

When it comes to drugs, urban crime and school violence, politicians and citizens are eager to be “hard on crime” and push for “tough sentences.” But many of those people are loath to impose “tough sentences” on the likes of Ebbers, Scrushy and Rigas. They call for “victim’s rights” in the case of assault or robbery, but not when $7.5 trillion in shareholder value is lost in just a couple of years.

Law enforcement needs to be both tough and smart. Instead of setting as enemies, business leaders and law enforcement must work as partners in a long-term project: creating an ethical, competitive and productive corporate culture. An ethical dilemma is not deciding whether to break the law. An ethical dilemma arises when principles collide within the bounds of the law. Having the right to do something doesn’t make it right.

The puzzle of CEO sentencing is only part of a larger problem: the lack of strong leadership across our institutions. From corrections departments to Major League Baseball, we are witnessing a decline in institutional integrity. Corporations are just one piece of this puzzle, but they may be the first to start putting the pieces in the right place.

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