Judges Have Sufficient Options Available to Punish White Collar Defendants

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On May 4, 2010, Sen. Patrick Leahy (D-Vt.) said the following in a Senate Judiciary subcommittee hearing on financial crime:

Despite the enormous losses in many securities fraud cases, *a preliminary analysis by the United States Sentencing Commission suggests that securities fraud offenders may often receive shorter sentences than other white collar offenders who cause similar harm.* Our amendment will direct the Sentencing Commission to review and amend the sentencing guidelines for these types of fraud, taking into account the importance of sending people to jail as a deterrent and the potential and actual harm to the public from these offenses. (emphasis added).

Sen. Leahy's bold statement, although it certainly sounds righteously indignant and focused on popular anger at Wall Street crooks, does not appear to have a sound factual basis. Except for a mysterious citation to a preliminary analysis by the Sentencing Commission, Sen. Leahy does not explain how it is that "securities fraud offenders may often receive shorter sentences than other white collar offenders who cause similar harm." A careful look at the facts shows that securities fraud offenders typically receive extremely lengthy sentences in federal court.

For example, Bernard Ebbers was sentenced to 25 years for false financial reporting at WorldCom. John Rigas was sentenced to 15 years and later resentenced to 12 years (after one count was reversed by Court of Appeals) for the fraud in Adelphia.

Timothy Rigas was sentenced to 20 years and later resentenced to 17 years.
Jeffrey Skilling was sentenced to 24 years and four months for his part in the collapse of Enron. (Skilling's pending Supreme Court appeal is unlikely to change his sentence on remand.)

Jamie Olis was originally sentenced to 24 years for his part in an accounting fraud that boosted cash flow at Dynergy Inc. by $300 million. (Olis' sentence was reversed on appeal, in light of *Booker,* and he was resentenced to six years.

It appears that these days, the most serious sentences for white collar offenders are reserved for those who violate securities laws. Senator Leahy wants to change sentencing rules to provide a greater deterrent. But in many cases, the only room to move upward is from 25 years to a life sentence. Is that where the senator and his team want to go? What greater deterrent is there, other than a life sentence, than the 15 to 25 years that are common in securities fraud cases?

This charade of a crackdown in Washington is reminiscent of what we saw in the 2001 Economic Crimes Package and in subsequent amendments to a variety of new tools Congress has provided our nation's prosecutors.

Hopefully the American people won't buy into this band-aid fix to a serious problem that needs serious analysis. The current sentencing guidelines contain sufficient deterrence, probably much more than necessary. Granted, that deterrence may not be working, but the answer is not adding on another 10 years to a 25-year sentence, which has questionable extra deterrence value.

If Congress is serious about fighting financial fraud, it should spend some serious time trying to understand its origins, addressing some fixes, and stop increasing sentences for lack of a better idea.

Crime in the Suites is authored by the Ifrah Law Firm, a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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