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## A Challenge to the Rationale for General Economic Crime Sentence Increases Following Sarbanes-Oxley

Frank O. Bowman III

*University of Missouri School of Law*, [bowmanf@missouri.edu](mailto:bowmanf@missouri.edu)

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# A Challenge to the Rationale for General Economic Crime Sentence Increases Following Sarbanes-Oxley:

Letter of Frank Bowman to U.S. Sentencing Commission

February 10, 2003



Frank O. Bowman III is the M. Dale Palmer Professor of Law at Indiana University School of Law—Indianapolis.

Hon. Diana E. Murphy, Chair  
United States Sentencing Commission  
Washington, D.C.

Dear Judge Murphy:

I am writing in response to the Commission's request for comment published in the Federal Register on January 17, 2003. I will address the question of whether the base offense level and/or the loss table of U.S.S.G. § 2B1.1 should be further modified to provide across-the-board sentence increases for economic crime offenders at virtually all loss levels. In my view, no case for doing so has yet been made.

## The Sarbanes-Oxley Act and the Department of Justice

The Sarbanes-Oxley Act (the "Act") was passed in the summer of 2002 in response to a spate of corporate scandals involving mismanagement, questionable accounting practices, and a variety of allegedly criminal behavior by senior officers of some of America's largest corporations. In January 2003, the Commission passed a set of emergency amendments in response to directives in the Act. Prior to the passage of the January 2003 amendments, the Department of Justice argued that Sarbanes-Oxley contained an express or implied directive that sentences should be increased for virtually all economic crimes, regardless of loss amount or other indicia of seriousness. The Commission reviewed the language and legislative history of the Act and wisely rejected the view that it mandated across-the-board sentence increases. Instead, the Commission enacted a number of amendments targeting sentence increases at those serious corporate offenders whose misdeeds were the focus of the language and legislative history of the Act.

The Department of Justice has nonetheless persisted in its campaign to secure sentence increases for all classes of economic crime. Its Commission representative has proposed modifications to the loss table of § 2B1.1, and I am given to understand that the Department is drafting legislation for congressional consideration that would mandate sentence increases.

Should legislation be enacted, the Commission would, of course, be obliged to comply with its dictates.

In the absence of such legislation, however, the Commission's charge is to make new law only when there is a sound, compelling case for doing so. Particularly where the proposed course of action is a significant increase in the length of prison sentences to be served by literally thousands of defendants, the burden of proving the advisability of acting is very high.

Thus far, the Justice Department's argument in favor of raising economic crime sentences across the board has rested entirely on the contention that the Commission was *required* to raise all sentences by the Sarbanes-Oxley Act. Entirely absent has been any effort to explain why the Commission *should* enact a general sentence increase. To date, the Department has failed to support its proposals with arguments grounded in experience, statistical evidence, penological theory, reason, or common sense.

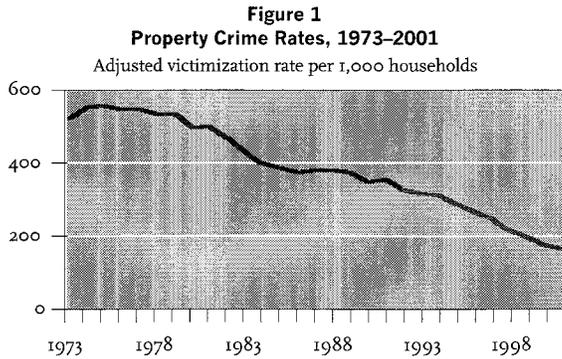
The Justice Department's approach has the rhetorical advantage of making a response difficult. One cannot rationally analyze an argument that has not been made. However, the Department's abstention from substantive argument leaves even a potentially sympathetic observer like myself—a former federal and state white collar prosecutor with no affinity for thieves and swindlers—at something of a loss. Therefore, in composing the following comments, I have been compelled to consider the arguments one can only presume the Department would make if it were to engage in a debate on the merits.

## Response to a Crime Wave?

It occurred to me that the Department might be proposing sentence increases in response to a rising tide of economic crime. Therefore, I examined available statistics on the prevalence of economic offenses over the past several decades. I first considered the broad category of property crimes. Figures published by the Justice Department's Bureau of Justice Statistics show that the rate of property crime has been dropping steadily since 1974. As the BJS chart on the next page (Figure 1) illustrates, the victimization rate for property crimes fell from 551 incidents per 1,000 households in 1974 to 167 per 1,000 households in 2001, a decline of 69%.' This long-term trend continued throughout the

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1990s. The Bureau of Justice statistics reports that the percentage of households experiencing a property crime of property theft, motor vehicle theft, or household burglary declined from about 21% in 1994 to about 14% in 2000.<sup>3</sup>



Of course, these national statistics are primarily for offenses prosecuted at the local level. Therefore, in order to determine if the national downward trend in property crime is mirrored in economic crimes prosecuted in federal court, I examined Justice Department statistics on referrals by federal investigative agencies to U.S. Attorney's Offices. As Figure 2 below illustrates, in recent years referrals to U.S. Attorney's Offices for economic offenses have declined steadily, dropping by 5,166 or 15% between 1994 and 2000.

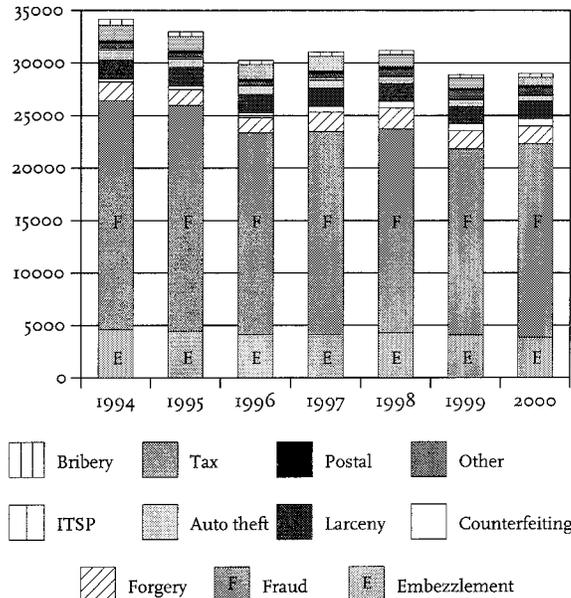
This decline is rendered even more striking when one considers that between 1994 and 2000, the U.S. population grew by 20 million people.<sup>3</sup> Thus, while the absolute number of economic crime referrals to U.S. Attorney's Offices fell by 15% during 1994–2000, in the same period the rate of economic crime referrals to federal agencies per 1,000 population fell by 21%.

Interestingly, as shown in Figure 3 below, while federal economic crime referrals dropped from 1994–2000, the number of economic crime defendants sentenced in federal court held roughly steady between 1994 and 2001. The number of defendants sentenced for economic crimes peaked in 1997 at 13,571, but was virtually identical in 1994 (12,631) and 2001 (12,887).

As one would expect, maintaining a roughly constant number of economic crime defendants from a decreasing supply of economic crime referrals has meant U.S. Attorney's Offices must decline fewer economic crime cases. Figure 4 illustrates the decreasing declination rates for fraud and other property offenses between 1994 and 2000.

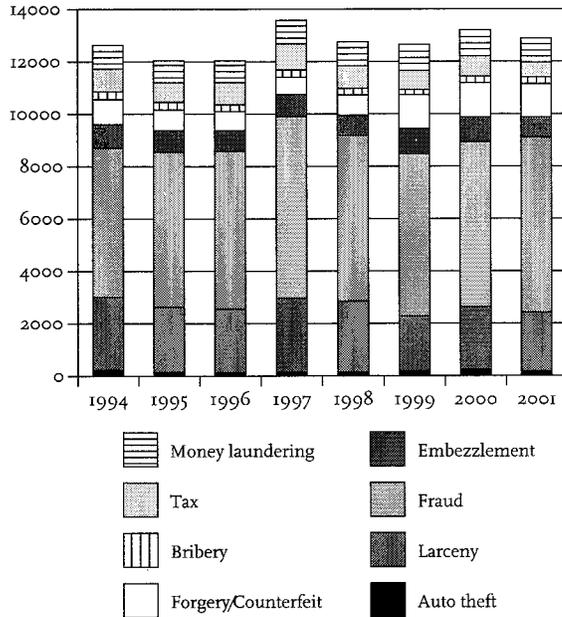
In sum, the available evidence suggests that, far from confronting a rising tide of economic crime, the Department of Justice has been obliged to dip ever deeper into a shrinking pool of offenders to hold roughly constant the flow of economic crime defendants through the federal courts. There are doubtless many explanations for this phenomenon. But whatever else these statistics may show, they do not make out a case for a general increase in economic crime penalties.

**Figure 2**  
**Referrals to U.S. Attorney Offices, 1994–2000\***



\* The data in Figure 2 is drawn from the 1994–2000 editions of the BJS Compendium of Federal Criminal Justice Statistics, Chapt. 1, Tbl. 1.1.

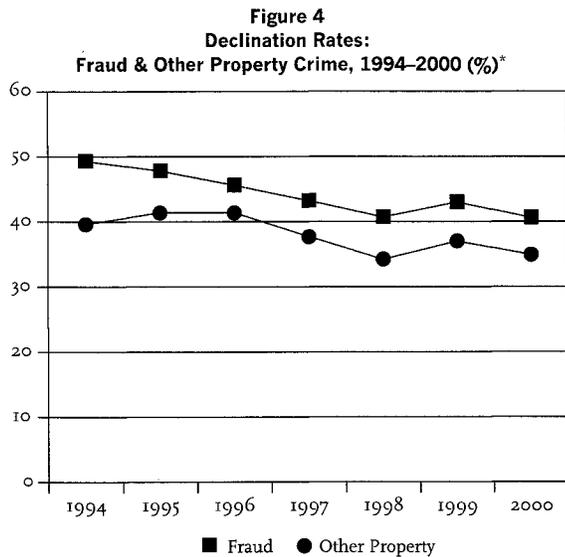
**Figure 3**  
**Defendants Sentenced Federal Court: Economic Crime, 1994–2001**



\* Data in Figure 3 from U.S. Sentencing Commission, SOURCEBOOK OF FEDERAL SENTENCING STATISTICS (1994–2001). Crime categories in Figs. 3 and 4 are different because BJS and the Sentencing Commission code data differently. Nonetheless, the offenses covered by the two graphs are roughly congruent.

#### A Reaction to Declining Sentences?

I also wondered whether the Justice Department might be reacting to some trend in economic crime sentences



\* Data in Fig. 4 from seven volumes of BJS, Compendium of Federal Justice Statistics (1994–2000); 1998–2000 data from Table 2.2; 1994–1997 data from Table 1.2. BJS counts fraud, embezzlement, forgery and counterfeiting as “fraud,” and burglary, larceny, auto theft, arson, ITSP, and miscellaneous as “other.”

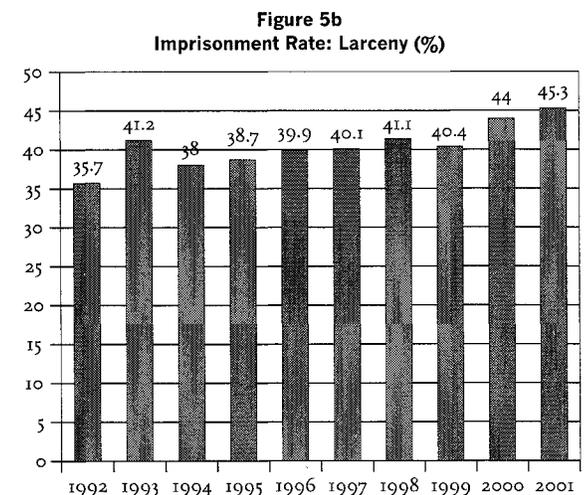
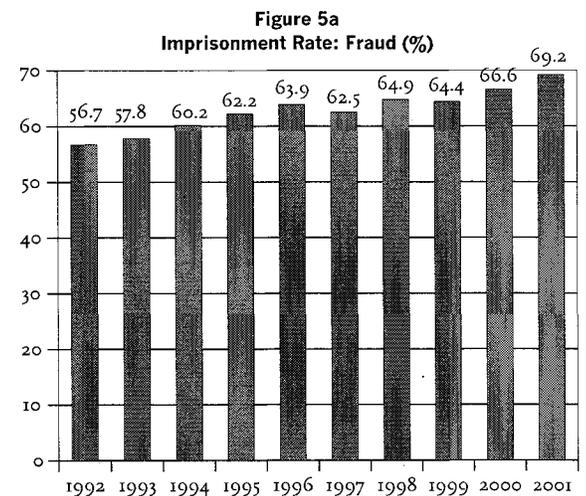
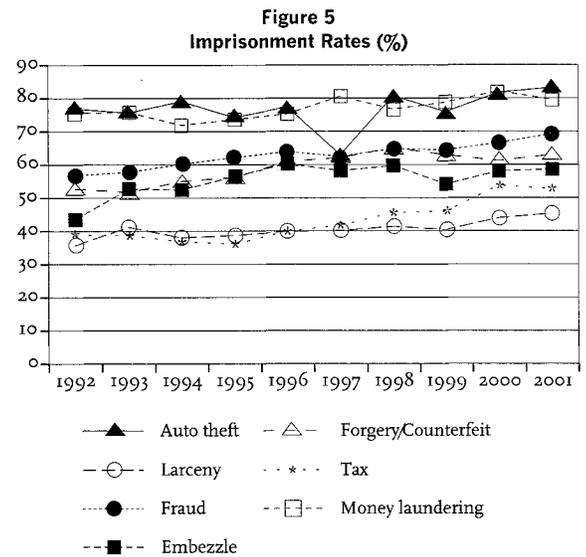
actually imposed. The average sentence imposed by federal judges in a number of major crime categories declined during the 1990s. The average (mean) length of sentences imposed on drug defendants decreased from 87.6 months to 71.7 months between 1994 and 2001, while the average length of sentences for violent offenders declined from 101.6 months to 89.5 months.<sup>4</sup> If a similar trend existed in economic crime sentencing, the Justice Department’s current position might be explainable as an effort to reverse it. However, Sentencing Commission statistics establish that during the same period drug and violent crime sentences were dropping, the average (mean) sentence of white collar defendants actually increased slightly, from 19 months in 1994 to 20.8 months in 2001. The median sentence increased still more, from 12 months in 1994 to 15 months in 2001.<sup>5</sup>

Moreover, the figures just cited apply only to those defendants actually sentenced to a term of imprisonment. Sentencing Commission figures also show that the percentage of economic crime defendants who received terms of imprisonment increased markedly throughout the 1990s. Figure 5 below illustrates the upward movement in imprisonment rates for auto theft, larceny, fraud, embezzlement, forgery/counterfeiting, and tax offenders. Figures 5a, 5b, and 5c break out the numbers for the major categories of fraud, larceny, embezzlement.

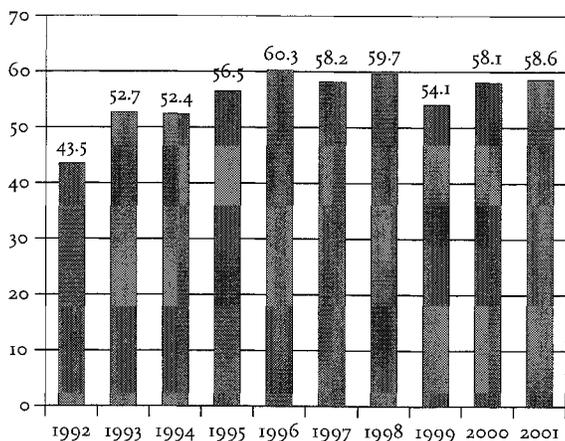
In short, during the 1990s, an ever-increasing percentage of economic offenders were sentenced to prison and those who received prison sentences received higher average sentences.

Still more importantly for present purposes, the

upward trend will accelerate over the next few years as the sentence increases built into the 2001 Economic Crime Package begin to take effect. With regard to the 2001 amendments, three points should be noted. First, the 2001 amendments are only the latest in a series of



**Figure 5c**  
Imprisonment Rate: Embezzlement (%)



sentence increases for economic crime that have been enacted at intervals since the advent of the Guidelines in 1987. Second, these amendments embody very significant sentence increases for virtually all economic crime defendants whose offenses are even moderately serious. And third, because the 2001 amendments affect only defendants whose crimes occurred after November 1, 2001, relatively few defendants have been sentenced under the new law and we have no meaningful data on its effects.

In order to illustrate the first two of these points, I have assembled an illustrative group of hypothetical defendants with varying loss amounts and offense characteristics. Figures 6a and 6b below describe these defendants and the sentences they would probably have been subject to in 1987, 1989, 1991, 1998, November 2001, and presently.

Figures 6a and 6b illustrate visually several points of central importance:

First, Guideline sentences for economic crime have been raised repeatedly since 1987. For some classes of offenders, the Commission has raised sentences four times since 1987, and three times within the last five years.

Second, the increases are very substantial, in both absolute and percentage terms. The Guideline sentence of all but one defendant in Figure 6b whose loss level exceeds \$10,000 has at least doubled since 1987 (and that defendant [E] would now receive a sentence 60% higher than in 1987). For the five most serious offenders, sentences rose between 160% and 330%. In absolute terms, Guideline sentences for the same conduct rose by as little as four months (Defendant B) to as much as *fourteen additional years* (Defendant I). And in the case of Defendant J, whose circumstances mirror those of the leading figures in last summer's corporate scandals, the minimum guideline sentence has skyrocketed from less than five years in 1987 to mandatory life imprisonment.

Third, the sentence increases shown in Figure 6b

**Figure 6a**  
Description of Representative Defendants

- Def. A Teller in federally insured bank. Steals \$2,000 from bank.
- Def. B Wife of social security recipient. Continues to cash checks after death of spouse. Loss = \$11,000
- Def. C Defendant is a postal worker who steals credit cards from the mail and uses them to purchase goods worth \$35,000, which he then sells to support a drug habit.
- Def. D Defendant commits online auction fraud from his home computer. Causes loss of \$50,000 to more than 50 victims.
- Def. E Doctor submits false billings to Medicare using complex system of double books. Loss = \$125,000
- Def. F Telemarketer runs boiler room with 8 employees. Defrauds more than 250 elderly victims of \$250,000.
- Def. G Computer expert constructs scheme for stealing credit card and other personal information online. Using this information, he obtains merchandise and phony car loans online totaling \$450,000 from 25 individual and institutional victims.
- Def. H President of small, publicly traded bank commits bank fraud causing loss of \$1.1 million and collapse of the bank. In the course of the offense, he causes false statements to be made in required SEC filings. Thirty employees lose their jobs.
- Def. I CEO of publicly traded corporation operating chain of hospitals and nursing homes, in collusion with 4 other members of his management team, defrauds Medicaid and Medicare of \$10.1 million and causes false statements to be made in required SEC filings.
- Def. J CEO of large conglomerate, in collusion with CFO and other members of management, engage in accounting fraud and stock manipulation causing bankruptcy of company and losses to shareholders and employee pension fund of \$110 million.

result in large measure from amendments adding or modifying Specific Offense Characteristics, as well as from the amendments to the loss table in 1989 and 2001. In 1987, the theft and fraud guidelines combined contained only nine sentence-enhancing Specific Offense Characteristics. By 2001, there were twenty-three. The January 2003 amendments added at least three more. Application of any one of these enhancements produces at least a 25% increase in a defendant's guideline sentence.<sup>6</sup> Where more than one enhancement applies, the cumulative effect begins to rival that

**Figure 6b**  
**Applicable Guideline Range**  
**of Representative Defendants**  
**(by month)\***

	1987	1989	1991	1998	Nov. 01	Jan. 03
Def. A	0-6 <sup>a</sup>	0-6 <sup>b</sup>	0-6	0-6	0-6	0-6
Def. B	2-8 <sup>c</sup>	4-10 <sup>d</sup>	4-10	4-10	6-12 <sup>e</sup>	6-12
Def. C	12-18 <sup>f</sup>	15-21 <sup>g</sup>	15-21	15-21	27-33 <sup>h</sup>	27-33
Def. D	10-16 <sup>i</sup>	12-18 <sup>j</sup>	12-18	12-18	27-33 <sup>k</sup>	27-33
Def. E	21-27 <sup>l</sup>	24-30 <sup>m</sup>	24-30	24-30	33-41 <sup>n</sup>	33-41
Def. F	37-46 <sup>o</sup>	41-51 <sup>p</sup>	41-51	51-63 <sup>q</sup>	78-97 <sup>r</sup>	97-121 <sup>s</sup>
Def. G	24-30 <sup>t</sup>	30-37 <sup>u</sup>	30-37	30-37	78-97 <sup>v</sup>	78-97
Def. H	27-33 <sup>w</sup>	37-46 <sup>x</sup>	57-71 <sup>y</sup>	57-71	121-151 <sup>z</sup>	188-235 <sup>aa</sup>
Def. I	57-71 <sup>bb</sup>	87-108 <sup>cc</sup>	87-108	87-108	151-188 <sup>dd</sup>	235-293 <sup>ee</sup>
Def. J	57-71 <sup>ff</sup>	121-151 <sup>gg</sup>	121-151	151-188 <sup>hh</sup>	LIFE <sup>ii</sup>	LIFE <sup>ii</sup>

- \* Figure 6b assumes first-time offenders (Criminal History Category I) convicted after trial. Sentences for defendants pleading guilty would be slightly lower. Sentences for defendants with criminal records would be slightly (in some cases considerably) higher. Shaded boxes indicate increase due to guideline change.
- <sup>a</sup> Offense Level 6. Assumes no "More than minimal planning" (MMP)
- <sup>b</sup> Offense Level 6. Assumes no MMP.
- <sup>c</sup> Offense Level 8. Assumes no MMP.
- <sup>d</sup> Offense Level 9. Assumes no MMP.
- <sup>e</sup> Offense Level 10. Assumes no MMP.
- <sup>f</sup> Offense Level 13. Assumes fraud conviction, MMP, 2-level abuse of trust.
- <sup>g</sup> Offense Level 14. Assumes fraud conviction, MMP, 2-level abuse of trust.
- <sup>h</sup> Offense Level 18. Assumes fraud conviction, 4-level undelivered U.S. Mail (§2B1.1 app. note 3(B)).
- <sup>i</sup> Offense Level 12. Assumes MMP.
- <sup>j</sup> Offense Level 13. Assumes MMP.
- <sup>k</sup> Offense Level 18. Assumes 4-level > 50 victims, and 2-level sophisticated means.
- <sup>l</sup> Offense Level 16. Assumes MMP, 2-level abuse of trust.
- <sup>m</sup> Offense Level 17. Assumes MMP, 2-level abuse of trust.
- <sup>n</sup> Offense Level 20. Assumes 2-level sophisticated means, 2-level abuse of trust.
- <sup>o</sup> Offense Level 21. Assumes MMP, four-level aggravating role, two-level vulnerable victim.
- <sup>p</sup> Offense Level 22. Assumes MMP, four-level aggravating role, two-level vulnerable victim.
- <sup>q</sup> Offense Level 24. Assumes MMP, 4-level aggravating role, 2-level vulnerable victim, 2-level mass marketing.
- <sup>r</sup> Offense Level 28. Assumes 4-level > 50 victims, 4-level aggravating role, 2-level vulnerable victim.
- <sup>s</sup> Offense Level 30. Assumes 6-level > 250 victims, 4-level aggravating role, 2-level vulnerable victim.
- <sup>t</sup> Offense Level 17. Assumes MMP, 2-level use of special skill.
- <sup>u</sup> Offense Level 19. Assumes MMP, 2-level use of special skill.
- <sup>v</sup> Offense Level 26. Assumes 2-level sophisticated means, 2-level access device/means of identification, 2-level > 10 victims, 2-level use of special skill.
- <sup>w</sup> Offense Level 18. Assumes MMP, two-level abuse of trust.
- <sup>x</sup> Offense Level 21. Assumes MMP, two-level abuse of trust.
- <sup>y</sup> Offense Level 21. Assumes MMP, two-level abuse of trust, four-level endanger financial institution.
- <sup>z</sup> Offense Level 32. Assumes 2-level >10 victims, 2-level sophisticated means, 4-level jeopardize financial institution, 2-level abuse of trust.
- <sup>aa</sup> Offense Level 36. Assumes 2-level >10 victims, 2-level sophisticated means, 4-level jeopardize financial institution, 4-level officer of publicly traded corporation, 2-level abuse of trust.
- <sup>bb</sup> Offense Level 25. Assumes MMP, four-level aggravating role, two-level abuse of trust.
- <sup>cc</sup> Offense Level 29. Assumes MMP, four-level aggravating role, two-level abuse of trust.
- <sup>dd</sup> Offense Level 34. Assumes 2-level sophisticated means, 4-level aggravating role, 2-level abuse of trust.
- <sup>ee</sup> Offense Level 38. Assumes 2-level sophisticated means, 4-level violation of securities law by officer of publicly traded corporation, 4-level aggravating role, 2-level abuse of trust.
- <sup>ff</sup> Offense Level 25. Assumes MMP, four-level aggravating role, two-level abuse of trust.
- <sup>gg</sup> Offense Level 32. Assumes MMP, four-level aggravating role, two level abuse of trust.
- <sup>hh</sup> Offense Level 34. Assumes MMP, 2-level sophisticated means, 4-level aggravating role, 2 level abuse of trust.
- <sup>ii</sup> Offense Level 48. Assumes 4-level > 50 victims, 2-level sophisticated means, 4-level jeopardize soundness of financial institution (pension fund), 4-level aggravating role, 2-level abuse of trust.
- <sup>jj</sup> Offense Level 54. Assumes 6-level > 250 victims, 2-level sophisticated means, 4-level jeopardize soundness of financial institution (pension fund), 4-level violation of securities law by officer of publicly traded corporation, 4-level aggravating role, 2-level abuse of trust.

of the loss amount. This is a critical point because the Justice Department would have us focus purely on the loss table, as if no other factors affected a defendant's sentence. Particularly in serious economic crime cases

of the sorts which receive wide public attention—telemarketing fraud, complex schemes involving offshore concealment, fraud against the elderly, identity theft, bank fraud, bankruptcy fraud, and now high-level

corporate fraud – the Commission has added a plethora of sentence enhancements.

Fourth, Figure 6b does not capture an important component of the 2001 Economic Crime Package that will produce additional sentence increases beyond those immediately obvious from reading the Loss Table or Specific Offense Characteristics. The revised definition of loss, which focuses on pecuniary harms reasonably foreseeable to a defendant at the time of the offense will, in a good many cases, produce a higher loss figure and thus a higher sentence than the old definition.<sup>7</sup>

Fifth, it bears repeating that the impact of the 2001 sentence increases has not yet been felt because these increases are applicable only to offenses completed on or after November 1, 2001.

#### Too low as compared to the states?

It occurred to me that perhaps the Department's argument is based on a comparison to sentences under state law, so I examined national statistics on economic crime sentences. Figure 7 compares state and federal economic crime sentences for 1998 using Justice Department figures for the most recent year for which BJS has published data. Precise state-federal comparisons are difficult given differences in offense definitions, sentencing practices, categorization of offense characteristics, the availability in states of parole, etc. Nonetheless, it appears that, on average, sentences served by federal economic offenders are markedly more severe than those served by state economic crime defendants. And the 1998 figures I have cited here do not account for the federal sentence increases in November 1998, 2001, and 2003. Therefore, the Justice Department's position cannot be explained as an effort to achieve parity with state sentences.

#### Too low as compared to other federal crimes?

Perhaps the Justice Department is of the view that economic crime sentences are too low in comparison with sentences for other types of federal crime. A superficially plausible case for this view might be made by comparing the 2001 average white-collar sentence of just over 20 months with the average drug sentence (71.7 mos.) or violent crime sentence (89.5 mos.).<sup>8</sup> However, any such comparison of averages would be inherently flawed. First, no serious observer would argue that crimes against property are as serious as violent crimes against persons. Second, it would be surprising, to say the least, if this Administration were to contend that garden variety thefts and frauds are as serious as drug trafficking, an activity the Administration has publicly linked to terrorism and cited as a threat to national security.

In any event, focusing on the relatively low average prison sentence for the entire class of white collar offenders is profoundly misleading because the vast majority of federal economic crime defendants are low-

**Figure 7**  
**Comparison of State and Federal Economic Crime Sentences (1998)\***

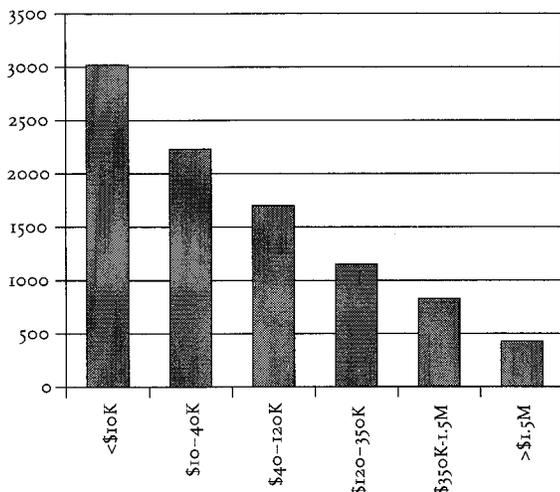
	Average (Mean) Sentence Imposed (Months)		Average (Mean) Actual Sentence Imposed (Months) <sup>†</sup>	
	State	Federal	State	Federal
Larceny	25	32	12	29
Fraud	27	22	13	2
Burglary	39	27	18	25

- \* Matthew R. Durose, David J. Levin, and Patrick A. Langan, *BJS Bulletin: Felony Sentences in State Courts, 1998*, NCJ 190103, at 3 (Oct. 2001).
- † Although the average nominal sentences imposed by state court judges for economic offenses are comparable to, or sometimes higher than, average imposed federal sentences, in 1998 state court defendants served only 47% of their imposed sentences, as compared to 91% for federal defendants. *Id.* Therefore, the average actual sentences served by federal economic crime defendants are higher than those served by state defendants.

level offenders whose crimes caused only modest losses. For example, in 1999, 55% of all federal defendants sentenced for economic crime offenses caused losses less than \$40,000. More than 30% were responsible for losses less than \$10,000. And fully 15% of all federal economic defendants, or one out of seven, took less than \$2,000 (See Figure 8).<sup>9</sup> In short, the average federal economic crime sentence is relatively low, not because the sentencing structure is unduly lenient, but because U.S. Attorney's Offices are prosecuting thousands of small cases in which little or no prison time would be called for under any rational sentencing scheme.

If, rather than focusing on the average sentence, one looks instead at the sentences now required for even moderately serious white collar offenders – the defendants who were the real concern of Congress in enacting Sarbanes-Oxley – the comparative picture is very different. For example, the current sentencing range of Defendant C in Figure 6b above (the postal worker who committed a \$35,000 credit card fraud) is 27–33 months; the low end of this range is eight months longer than the average bribery sentence in 2001 and three months longer than the average sentence for burglary.<sup>10</sup> Defendant E (the doctor who overbilled Medicare for \$125,000) has a sentencing range of 33–41 months; the low end of this range is nine months longer than the average sentence imposed on burglars in 2001 and almost exactly equivalent to the 34.3 month average sentence for manslaughter. The range for Defendant F (the telemarketer who bilked elderly victims of \$250,000) is 97–121 months, or 8–10 years. This is eight months longer than the average sentence imposed for violent crimes in 2001, and 25 months longer than the average drug sentence.

**Figure 8**  
**Number of Economic Crime**  
**Defendants Sentenced, 1999**



Defendant H, the crooked small bank president who stole \$1.1 million, now faces 188–235 months, or roughly 15–20 years. This sentence is higher than the 2001 average sentence for kidnapping, robbery, sexual abuse, assault, arson, drug trafficking, and racketeering. And a sentence in the midpoint of the 188–235 month range would equal the average sentence for murder.

#### Still not high enough?

In sum, federal economic crime penalties have been repeatedly increased in the last fifteen years. The rate of imprisonment of economic crime defendants, the severity of sentences called for by the Guidelines, and the length of sentences of imprisonment actually imposed are now at all-time highs. Federal economic crime sentences are, on average, higher than economic crime sentences in the states. The misleadingly low average federal white-collar crime sentence is attributable primarily to the predominance of low-level, low-loss cases in the federal system. Penalties for moderate-to-serious white collar offenses are now quite high, on parity with or in excess of sentences imposed for narcotics crimes and crimes of violence. Nonetheless, the Justice Department insists that economic crime penalties are not high enough.

Now it may be that the Justice Department is right. I, for one, stand ready to be persuaded. But the Department bears the burden of proving its case on the merits. So far, it has abstained from arguments on the merits, apparently being of the view that it could harness the prevailing political winds to achieve victory without seriously engaging the concerns of those who have reservations about the government's proposals. Before the Commission or Congress gives serious consideration to the Department's position, the Department should be required to answer at least six questions:

- First, why are economic crime penalties at their current levels insufficient?
- Second, what legitimate sentencing purpose(s) would be advanced by an across-the-board increase in economic crime sentences?
- Third, why would higher sentences advance the identified purpose(s) more than sentences at their current levels?
- Fourth, what evidence is there in support of the position that higher sentences would advance the identified purpose(s)?
- Fifth, in a period of declining budgets and ballooning budget deficits, how much would DOJ proposals cost?
- Sixth, are the benefits of raising sentences worth the cost?

Once answers to these questions are proffered, a serious and dispassionate debate about the desirability of the proposed sentence increases will be possible.

Respectfully,

Frank O. Bowman, III

#### Notes

- <sup>1</sup> See, <http://www.ojp.usdoj.gov/bjs/glance/house2.htm>.
- <sup>2</sup> Patsy A. Klaus, *BJS Bulletin: Crime and the Nation's Households, 2000*, NCJ 194107 (Sept. 2002).
- <sup>3</sup> U.S. Census Bureau, *Statistical Abstract of the United States 2001*, at 8, Tbls. 1 and 2 (2002) (U.S. population grew from approximately 260,000,000 in 1994 to 281,421,906 in 2000).
- <sup>4</sup> U.S. Sentencing Commission, *SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, 2001*, at 32 Fig. E (2002); U.S. Sentencing Commission, *SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, 1998*, at 32 Fig. E (1999). For an analysis of the causes of the decline in drug sentence length, see Frank O. Bowman, III and Michael Heise, *Quiet Rebellion II: An Empirical Analysis of Declining Federal Drug Sentences Including Data from the District Level*, 87 IOWA L.R. 477 (2002).
- <sup>5</sup> See, 2001 *SOURCEBOOK*, *supra* note 4, at 32, Fig. E; 1998 *SOURCEBOOK*, *supra* note 4, at 32 Fig. E.
- <sup>6</sup> This is so because all SOC's carry at least a 2-offense level increase, and, beginning at Offense Level 8, every two-level upward adjustment on the Sentencing Table carries at least a 25% increase in the minimum guideline sentence.
- <sup>7</sup> The field test of the revised loss definition found that the new definition produced a higher loss amount in about 15% of randomly selected cases. *A Field Test of Proposed Revisions to the Definition of Loss in the Theft and Fraud Guidelines: A Report to the Commission*, available at <http://www.usssc.gov/research>.
- <sup>8</sup> See, 2001 *SOURCEBOOK*, *supra* note 4, at 32, Fig. E.
- <sup>9</sup> See, *Proceedings of the Third Symposium on Crime and Punishment in the United States: Symposium on Federal Sentencing Policy for Economic Crimes and New Technology Offenses, October 12–13, 2000*, Fig. Semisch-2: Number of Offenders in Each Loss Amount Category (2001).
- <sup>10</sup> See, 2001 *SOURCEBOOK OF FEDERAL SENTENCING STATISTICS*, *supra* note 4, at 30, tbl. 14.