

White-collar offenders shop the system for a prison

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Call it the post-**Enron** bump.

Since the high-flying energy firm's spectacular bankruptcy and ensuing scandal in 2001, the public has been shocked and titillated by a parade of disgraced CEOs and politicians marching off to federal prison.

In past years, white-collar offenders often got off with probation and a warning. No longer - thanks to harsher sentencing guidelines, tough prosecutors and stern judges.

Now, it's less a question of *whether* you'll be sentenced to prison, but how long you'll serve and *where*, with defense lawyers taking nearly a consumer advocacy role helping clients get the lightest sentence possible in the least restrictive prison environment. Usually that means a minimum-security camp close to home.

Consider a sampling of miscreants who've had to face prison time: Martha Stewart, **WorldCom's** Bernie Ebbers and U.S. Rep. Randy "Duke" Cunningham. Enron honchos Kenneth Lay and Jeffrey Skilling are now on trial in the biggest fraud case of them all.

Closer to home, once political rising star Adam Taff, former **Westar Energy** chief David Wittig and **Gold Bank** founder Michael Gullion face prison time for misusing money.

Department of Justice statistics show that 90 percent of all cases brought against federal defendants in 2002, a year after Enron's collapse, resulted in convictions. Guilty pleas hit a high of 95.75 percent in 2003.

"We spend as much time trying to be advisers and counselors, as being lawyers," said white-collar defense attorney Jim Eisenbrandt, who represented Taff. The politician pleaded guilty in February to misusing campaign funds to buy a \$1.2 million house. Sentenced to 15 months, Taff is expected to serve his time at the Leavenworth prison camp, which looks a bit like a high school and offers educational opportunities.

Alan Ellis, a defense attorney and a consultant on sentencing tactics, said many savvy attorneys now spend more time preparing their white-collar crime clients for sentencing instead of gambling on a trial.

"If you are indicted by a federal grand jury the likelihood of your winding up before a sentencing judge is now 95 to 98 percent," he said. Ellis is the author of the popular *Federal Prison Handbook 2005*, which, if not exactly a **Fodor's** guide to prisons, is the next best thing for white-collar offenders.

The book offers snapshots of the 178 federal prisons. It lists the four security levels - high, low, medium and minimum, recreational facilities, vocational programs, drug and alcohol therapies, libraries and provides a list of hotels and motels nearby where relatives can stay.

It offers tips for lawyers on how to get a lighter sentence, including have your client pay back the money, show remorse and surrender to show a low security risk.

A chapter on "Securing a favorable federal prison placement" provides advice on, among other things, how to approach a federal judge about recommending a prison designation. It also recommends bringing up a client's substance abuse, which can get a defendant into a drug treatment program, which can result in a reduced sentence.

The goal, Ellis said, "is to obtain for our clients the lowest possible sentence" and if there is time to serve, to serve it "in the best place possible." Even so, Ellis said, the old image of country-club prisons is largely overblown, if it was ever true.

For most white-collar crime offenders, their time in court is their first brush with the law. "There is a feeling of total disbelief that they can be facing jail time," Eisenbrandt said.

There can be publicity and often a photo of them hiding their handcuffed-hands under a sport coat. Most federal prosecutors will only take to trial a case in which the evidence is weighted to their side - which often means they have cooperating witnesses who are also trying to get a reduced sentence.

For a defendant, gambling on a trial carries a heavy consequence. Losing a verdict usually means a much harsher sentence.

Since 1987 courts have followed sentencing guidelines set by a national sentencing commission. In part, they resulted from arguments that white-collar offenders weren't held to the same accountability as other criminals, said Frank Bowman, an expert on the guidelines and a professor at the **University of Missouri** law school.

"There was a lot of concern among many people this wasn't appropriate - that this kind of economic crime was as serious as any other crime," Bowman said.

The guidelines are almost formulaic. They take into account variables, including the seriousness and type of crime, and the history of the defendant. But the guidelines, already strict, became even more harsh as Congress added additional restrictions, especially in the wake of Enron and other scandals.

Critics said that the growing inflexibility of the guidelines, which took away discretion on the part of judges, was unconstitutional. Last year the U.S. Supreme Court agreed and struck them down. The court said the guidelines still have an advisory role but judges can use their discretion.

A former prosecutor, Bowman said tougher sentences for white-collar offenders made the system more fair, but he says in some cases the guidelines "have gone too far."

One way to take the sting out of a tough sentence is to influence positively the pre-sentence report, which is used to determine the sentence and prison placement. It is like a credit report of a person's life, and it can veer far beyond the facts of the crime itself. Probation officers say it is common now for a defense attorney to accompany a white-collar client to meetings with the probation officer writing the report.

Defense attorney Jim Wyrsh recalled one client with special medical needs. The client was assigned to a prison near Rochester, Minn., where he was treated by doctors at the **Mayo Clinic**. The government even paid for a heart operation. "On a 10-month sentence he spent most of the time getting the operation and being rehabilitated," Wyrsh said.

Final placement is the responsibility of the **Bureau of Prisons**, which looks at, among other things, whether an offender is a security or flight risk. Cooperative defendants who agree to surrender to a facility win extra security points. That's why you often see a big-name offender surrendering at a prison camp.

One strategy is to ask a judge to recommend a placement for the defendant. Charlie German, attorney for former banker Gullion, said prison bureau officials often give weight to a judge's recommendation, particularly if it centers on a request to let the defendant serve time near family members. That's why, he said, a lot of white-collar offenders from Missouri and Kansas request the Leavenworth prison camp or the camp at Yankton, S.D., a former college and one of the nicest camps in the system.

Judges say they are not opposed to making recommendations, within reason. U.S. District Judge John W. Lungstrum, who sentenced Taff, said, "The most frequent request is that they can be located near their families."

He said he had noted a growing trend of lawyers doing more research on prisons, hoping to get clients placed into "the least unpleasant place to spend their time."

The worst he received was one from a lawyer who merely said of a prison camp, " 'We heard it's a nice place to go.' That's not going to be very influential," he said.

The top five

Alan Ellis' pick of the five best prisons for white-collar criminals:

? **Yankton, S.D.** A stand-alone federal prison camp that is a converted college campus.

? **Englewood, Colo.** Just outside Denver, it is a satellite camp to the federal correctional institution there.

? **Texarkana, Texas.** Has drug and alcohol treatment and offers adult continuing education and correspondence courses.

? **Sheridan, Ore.** In the heart of the south Yamhill River Valley near Portland. Offers college programs.

? **Pensacola, Fla.** Inmates can work during the day at a nearby naval base.

Source: Alan Ellis, author of *The Federal Prison Handbook 2005*

Federal prison facts

??**Total population:** 189,087

Selected types of offenses:

? Drug offenders: 92,342

? Weapons, explosives, arson: 23,706

? Immigration: 18,924

? Robbery: 9,951

? Extortion, fraud, bribery: 7,261

? Homicide, assault, kidnapping: 5,415

? Banking, insurance, embezzlement, counterfeit: 1,001

? National security: 104

Inmates by security level:

? Minimum: 18.7 percent

? Low: 39.4 percent

? Medium: 26.1 percent

? High: 10.2 percent

? Unclassified: 5.4 percent

Source: Bureau of Prisons