

2015

Collateral Consequences and the Piling on of the Utah White Collar Registry

Walter Pavlo
Forbes

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/clp>



Part of the [Criminal Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Pavlo, Walter (2015) "Collateral Consequences and the Piling on of the Utah White Collar Registry," *Criminal Law Practitioner*. Vol. 2 : Iss. 2 , Article 11.

Available at: <https://digitalcommons.wcl.american.edu/clp/vol2/iss2/11>

This Article is brought to you for free and open access by Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Criminal Law Practitioner by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.



COLLATERAL CONSEQUENCES AND THE PILING ON OF THE UTAH WHITE COLLAR REGISTRY

by *Walter Pavlo*

In a Manhattan federal courtroom on September 22, 2011, Winnie Jiau waited for sentencing after being previously convicted of insider trading at trial earlier that year.¹ The gallery was mostly made up of young and curious attorneys and journalists. The hearing took about an hour. Almost immediately after U.S. District Judge Jed Rakoff uttered, “I’m sentencing you to 48 months,” the courtroom emptied as journalists rushed to make their deadlines. Unfortunately, America typically measures justice in sentence duration, ignoring the other effects of incarceration a person may endure.

Jiau had already been in federal custody since the time of her arrest in December 2010. In that time, her furniture was moved to a friend’s basement, her apartment was rented, and her dog was given away to new owners. She endured being shackled and handcuffed through U.S. Bureau of Prison holding facilities across the United States as she traveled from her home in California to New York, the site of her trial. Upon sentencing, it would take her another two months to return her to a prison on the west coast. Despite Judge Rakoff’s official ruling, her sentence was significantly more than “48 months.”

The Federal Sentencing Guidelines contain long prison terms for economic crimes. Currently, economic crime convictions can result in decades in prison, even

for first time offenders. However, the prison term is just one of many consequences for convicted felons. The new Utah White Collar Offender Registry is yet another.

The Utah Legislature recently passed the nation’s first on-line registry to list the names of those convicted of a white collar crime. The site will include a photo, date of birth, height, weight, eye color, and hair color of every white collar offender in the state.² Politicians were quick to give their approval of the registry because on its surface, the registry appears to protect the public. The measure passed the Legislature by a vote of sixty-five to seven. Other states will likely adopt similar laws.

Utah’s law does little to further protect the public. Instead, the law only adds to the many burdens that former convicted felons face after serving time in prison. While the criminal justice system promotes the ideology of proportional punishment for specific crimes, individuals convicted of economic crimes in Utah face far more punishment than time spent in prison. For example, consider the federal crime of mortgage fraud. The majority of cases involving federal mortgage fraud require three to five years to litigate after the initial charges. That time may also include several years of discovery and trial preparation. Due to the time needed for prosecution, a defendant may be in prison for over seven

¹ Walter Pavlo, *Winifred Jiau Gets 4 Years In Prison, And What A Journey*, *Forbes* (Sept. 21, 2011), <http://www.forbes.com/sites/walterpavlo/2011/09/21/winifred-jiau-gets-4-years-in-prison-and-what-a-journey/>.

² Ben Protess, *Utah Passes White Collar Felon Registry*, *N. Y. Times*, (Mar. 11, 2015), http://www.nytimes.com/2015/03/12/business/dealbook/utah-passes-white-collar-felon-registry.html?_r=0.



years before they are even sentenced to a prison term. Additionally, after the prison term is served, a defendant may be sentenced to multiple years of supervised release and extensive reporting and interviewing with U.S. Probation Officers. From beginning to end, a prison term of four years can mean over a decade of investigation, incarceration, and probation.

In addition to costing a defendant years of his life, a defendant may face high legal defense costs. Defendants can expect to pay hundreds of thousands of dollars for legal representation, even when it involves a guilty plea. During a criminal investigation, a defendant may end up unemployed or under employed. Since they have often lost their ability to be gainfully employed, a defendant's savings and assets, such as a home and 401K, would be depleted by the time prison is a reality.

Defendants heading to prison may experience depression, anxiety, and fear. Dealing with these emotions may lead to the misuse of drugs and alcohol, which can take a toll on the defendant's health and gravely affect the family unit. A recent study by Florida State University indicated that divorce rates are higher for couples with a spouse in prison.³ Divorce leads to additional financial and emotional strains on the entire family.

After finishing a prison sentence, a convict typically has difficulty finding employment. President Obama's Equal Employment Opportunity Commission determined that the use of background checks in hiring qualifies as racial discrimination.⁴ The Commission's determination illustrates the hardship that those with a criminal record face when looking for employ-

ment, especially racial minorities. Although employers have the right to hire who they want to, a criminal record may hinder some individuals. It is difficult for ex-felons to gain employment at a level commensurate with their education and skill level after they leave prison.

Financial institutions have the right to refuse service to someone who has been con-



victed of a federal crime. Inmates released from prison often return home to find a letter in the mail informing them that their bank accounts have been cancelled. One such letter from Fidelity Investments concerning an IRA account of a released inmate read, "We have recently been notified by an industry reporting service of a public record involving you and your activities. In light of this report, we find it necessary at this time to discontinue service to your account(s) below." That letter was signed by Fidelity's Vice President of Risk Management.

Reputational risk is also a factor working against those who are trying to get back on their feet after incarceration. In the past there were numerous news outlets that produced articles about white collar crime that were fact-checked and edited. Today, cutbacks at nearly every newsroom have led to the reliance on press releases from prosecutors' offices that are printed in the news as if they were

3 Dara Lind, *Every Year of a Prison Term Makes a Couple 32 Percent More Likely to Divorce*, Vox, (May 29, 2014) <http://www.vox.com/2014/5/29/5756646/every-year-of-a-prison-term-makes-a-couple-32-percent-more-likely-to>.

4 Bryon York, *Should Government Force Businesses to Hire Felons?*, Wash. Examiner, (Mar. 3, 2014) <http://www.washingtonexaminer.com/should-government-force-businesses-to-hire-felons-obama-nominee-debo-adegbile-says-yes/article/2545006>.



fact. Those articles, even if retracted later, have an infinite shelf life on the Internet and can damage a person's reputation for decades following a prison sentence. Victims of certain frauds have even created websites named after the defendant, publicly advertising the defendant's information and other corroborated information. The task of removing such information is insurmountable. Social media can be used to bully and intimidate a person for years.

I have firsthand experience of the collateral damages resulting from white collar crime. I served over two years in federal prison (2001-2003) and returned to the free world with many challenges in front of me. Divorced, no income, and no savings, I moved in with my parents at age forty. Now, twelve years removed from prison, the effects of my actions from years ago haunt me personally and professionally. I am not looking for any sympathy for the punishment I received, nor do I believe that defendants deserve light punishment in the first place. However, I do want everyone to know that the consequences of a criminal act extend far beyond time served in prison.

I interview people who go in and out of prison. From learning about their experiences, they know the road ahead will be difficult, and they hope to blend back into society and go back to being the person they were before their criminal act. It is a constant struggle for them.

Legislation, like the Utah registry, is unnecessary and dangerous. It is difficult on those who are already broken, and it further diminishes a person's chances of success in the future. Even more sinister, the citizens of Utah will be given a false sense of security by believing that all the "bad-guys" in the state must be on that registry. Obviously, this will not be the case.

Populist legislation, like this Utah White Collar Registry, is disingenuous to Utah's constituents and unfair to those who have served their debt to society. It seeks to define a person as a felon for life and further limits their ability to contribute to society.

About the AUTHOR



Walt Pavlo is a contributor to Forbes.com where he writes about white-collar crime. He is the co-author of *Stolen Without A Gun*, which he co-wrote with Neil Weinberg (Reporter at Bloomberg LP). Walt Pavlo is the founder and current President of the software company, Prisonology, which provides an exclusively licensed program to law firms to educate defendants on the federal prison experience. Pavlo earned his B.S. in Industrial Engineering from West Virginia University and his MBA in Finance from Mercer University.

