Why do senior business executives engage in misconduct that ends with prison? Eight years ago, Jakurski Family associate professor of business administration Eugene Soltes began to wonder what led wealthy, successful corporate leaders, many with families and sterling reputations in the business community, to commit white-collar crimes. “These are people we celebrate, invite to speak at commencements,” he says. One night, after watching an episode of the MSNBC show Lockup, he decided to ask some of them why, staying up into the morning hours writing letters to inmates who had been leaders at Tyco, Computer Associates, and Enron. A few months later, responses began to trickle back.

What he learned became, first, a case study—“A Letter from Prison,” taught at Harvard Business School (HBS) in the traditional first-year M.B.A. class on financial reporting—and then expanded into a book, Why They Do It: Inside the Mind of the White-Collar Criminal, published in October.

Soltes has spent years corresponding with his subjects, meeting them and their families before, during, and after prison. The result is a complex account of the individual perpetrators, the shifting backdrop of cultural and legal norms governing ethical business conduct, and the competitive corporate contexts that can lead to ethical lapses ultimately deemed illegal.

Few of Soltes’s subjects express remorse; some never saw prison coming, and still don’t understand why they are there. Soltes clearly empathizes with their plight—but not, he says, as the result of any inclination to write a hagiography. These guys are no saints. He deliberately avoids judgment, he explains, because he wants to convey their perspective: that business conduct is not always black and white. Take the CEO of a bank faced with a liquidity crisis who reads an internal report showing that customers are hurriedly withdrawing money. “We could say that an entirely forthright leader would tell investors, ‘We are deeply concerned that we are experiencing a run on the bank, and if this continues, we’ll go bankrupt,’” says Soltes, but that could easily become a self-fulfilling prophecy. On the other hand, if the executive tries to reassure investors that everything is okay, and the bank later fails, those reassurances could be seen as deceptive and perhaps even fraudulent. Knowing how to navigate such situations, he argues, not the inclination to see the situation as right or wrong, is the mark of successful executive.

This is what he tries to teach at HBS, where ethics is now a component of many courses (see “An Education in Ethics,” September-October 2006, page 42). In his classes, “There is always a cohort of students who confidently say, ‘I would never manipulate earnings.’” Backdating contracts to inflate a prior quarter’s earnings is a clear violation and can lead to jail—but what about hold...
within the bounds of the law.” (A few years there’s no way that this practice is strictly him, ‘I’ve gone over the law six times and whereas Horowitz and their auditors had designed the process 1990s. Her previous employer’s legal counsel ought to backdate options as part of execu- suggested that, to be more competitive, the firm gested, Horowitz hired a talented CFO who sug- from jail. For a software company he’d found- routinely consulted an outside legal adviser volves venture capitalist Ben Horowitz, who ing such mistakes. His favorite example in- the students he sees every day. But Soltes does identify patterns of mis- conduct that could help his students avoid similar mistakes. In many of these crimes, the perpetrators don’t perceive the harm. Operating on intuition, often under pressure to make quick decisions, with no apparent victim in view; they miss the significance of signing a document or approving a strategy that on reflection might seem questionable. He also advocates strategies for avoiding such mistakes. His favorite example involves venture capitalist Ben Horowitz, who routinely consulted an outside legal adviser whom he trusted—a practice that saved him from jail. For a software company he’d founded, Horowitz hired a talented CFO who suggested that, to be more competitive, the firm ought to backdate options as part of executive compensation, a practice that had become common among technology companies in the 1990s. Her previous employer’s legal counsel and their auditors had designed the process and said it was acceptable, whereas Horowitz’s adviser from outside Silicon Valley told him, “I’ve gone over the law six times and there’s no way that this practice is strictly within the bounds of the law.” (A few years