Department of Justice

STATEMENT

OF

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BEFORE

THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

PROSECUTION OF WHITE COLLAR CRIME

ON

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PROSECUTION OF WHITE COLLAR CRIME

Mr. Chairman:

It has been over 35 years since the term "white collar crime" was first introduced into the criminological literature. The concept of the categorization was new; the offenses it covered were not. The Department of Justice then prosecuted many kinds of crime we would today label "white collar" offenses, and over a period of time the Department began to accept the categorization, finding it a useful means of referring to a serious form of criminality particularly deserving of federal attention.

The Department of Justice, over the span of several Administrations, increasingly has devoted attention to this category of offenses. In 1974, the term "white collar crime" appeared for the first time in the Annual Report of the Attorney General. Shortly thereafter, 15 percent of the manpower of the FBI was reallocated to the investigation of "white collar crime," the Public Integrity Section was established in the Criminal Division, and the Fraud Section was expanded. In the late 1970s the Criminal Division experimented with placing white collar crime specialists in various U. S. Attorneys' offices around the country; in 1979 the Division began training senior Assistant

U. S. Attorneys in more sophisticated white collar prosecutions; and in 1980 the Division announced a White Collar Crime Priority Program. In 1981 the Department started a special tracking system to help manage white collar prosecutions. In 1982 the Department established a Defense Procurement Fraud Unit, and later the same year created an Environmental Crimes Unit. In 1983 the Department established an Economic Crime Council. In 1984 it developed an inter-agency task force to improve the handling of bank fraud cases. In 1985 it developed a program to reach collusive bidding practices, and later that year it established the National Environmental Enforcement Conference.

Through these, and other, administrative developments, the Department focused its investigative and prosecutorial attention more sharply on white collar crimes. It began prosecuting greater numbers of such cases, and cases of greater importance. The Department's progress in both respects has accelerated. We today are achieving more significant results than ever before.

We in the Department are proud of that record, yet we recognize that we have more to do. With that recognition, we welcome your advice and we expect your help. A thoughtful consideration of how we might improve upon our past achievements requires a clear understanding of our existing priorities, initiatives, and results. It is for that reason that we are pleased by the opportunity for a public review of these matters, as the facts and relevant considerations may not be as well

understood as we would hope they might be. With a better common understanding, and with a constructive review of existing practices and future possibilities, we should be able to build upon our past progress.

Congress plays a critical role in this regard by the supply of legal tools by which we may improve our effectiveness against white collar crime. A major advance in effective legal tools was provided by the Congress in enacting the Comprehensive Crime Control Act of 1984 -- an effort that owed its success in large measure to the members of this Committee, and that achieved an almost unprecedented degree of bipartisan support. But, while this was a legislative step of major significance, our investigators and our prosecutors can still be significantly aided by stronger statutes. We urge the members of this Committee to assist us -- with the same bipartisan, constructive spirit that they have exhibited in the past -- in achieving the passage of the legislation we have submitted to the Congress over the past year.

We thus look forward to our joint consideration of this important subject, and also look forward to the Congress, in fulfilling its legislative role, helping us to fulfill ours.

Since you will be hearing from the individual Assistant Attorneys General directly responsible for our enforcement efforts regarding particular areas of white collar crime, I will confine my remarks today to a general discussion of five broad topics: first, the nature and seriousness of the problem we face; second, the general principles that guide our efforts; third, the management practices we have adopted to facilitate our work; fourth, the enforcement results we have achieved; and finally, the measures we believe are necessary for continued success. Later Departmental witnesses can supplement this overview with more detailed information concerning these matters, and any others the Committee may wish to hear more about.

I. THE PROBLEM OF WHITE COLLAR CRIME

A. The Nature of White Collar Crime

White collar crime is an insidious form of criminality, and so serious and pervasive a threat to the Nation's well-being that it requires a high degree of attention at the federal level. By "white collar crime," we generally mean to denote a broad range of non-violent criminal activity that either injures or threatens important governmental, economic, or social interests. Those interests include: the integrity and effectiveness of government institutions, processes, and programs; the economic well-being of business enterprises, consumers, investors, and employees; and the physical health and safety of the general public. Thus, we

use the term "white collar crime" to encompass such offenses as bribery and corruption of officials at all levels of government; procurement fraud; tax fraud and fraud against government programs; bank fraud and embezzlement; consumer fraud and antitrust violations; securities, commodities, and other investment fraud; misuse of union funds and labor bribery; and environmental crimes and food and drug law violations.

Invariably, white collar offenses are motivated by a desire for economic gain or advantage. They are usually carefully calculated. They are also commonly carried out surreptitiously -- by deceit, concealment, or breach of trust -- beneath a veneer of legitimacy and respectability. That veneer may be furnished by membership in a generally reputable profession, or by operation through an otherwise legitimate corporation or other organizational entity.

These and other aspects of white collar offenses make them extraordinarily difficult to investigate successfully. Unlike so-called "street crimes" and other violent offenses, white collar crimes frequently are not self-evident. Due to the use of subterfuge and concealment -- usually involving deception, record manipulation, and cover-up -- often not even the victims realize that they have been defrauded until long after the event. Even then, investigators must painstakingly work their way through complex "paper trails" before they can determine whether the law

was violated, whether the violation was criminal, and who was responsible.

In addition, the perpetrators of white collar crime are frequently sophisticated in business matters, and able to exploit the complexities of modern accounting and banking techniques to obfuscate their actions and to confuse those who might attempt to uncover them. They are quick to employ the latest advances in supporting technology, particularly the use of computers. Moreover, they often design their enterprises to take advantage of limited jurisdictional boundaries by which law enforcement agencies are necessarily constrained, thus working, for example, in one location, while their victims may be in another city, another state, or even another nation. Convicted offenders in fact have acknowledged that they deliberately set up operations in areas distant from their victims in order to disrupt the normal investigative process that operates most effectively when the offender and the victim are within the same jurisdiction.

Another serious impediment to successful investigation relates to the fact that these are usually "paper" cases -- cases requiring access to, and painstaking analysis of, voluminous documentary materials. Frequently, the evidence necessary to obtain convictions is buried within reams of financial and tax records, to which law enforcement authorities have only limited access as a result of laws which focus on concepts of privacy rather than specific criminal conduct.

The difficulty of conducting white collar crime investigations is not limited simply to establishing what happened. Even when the overt facts can be proved -- for example, the making of false statements or the occurrence of questionable financial transactions -- those facts alone rarely provide sufficient evidence of the specific intent required -- fraudulent or corrupt -- to obtain a conviction. In such cases, it is often essential to secure the testimony of another participant in the offense, but cooperation ordinarily is not forthcoming without some concession by the government, such as a reduction in the number of the charges, a reduction in the gravity of the charges, or a favorable recommendation at the time of sentencing, or without a compulsion of testimony through a court order which by law precludes use of the testimony against the testifying witness.

For all of these reasons, white collar crimes are often difficult to detect and, when detected, are often difficult to prove beyond a reasonable doubt. As a result, white collar crime poses special challenges to successful investigation and prosecution.

B. The Costs of White Collar Crime

Another important aspect of white collar crime, and one that is particularly disturbing, is the ambivalent attitude it seems to generate in some quarters of our society. We often confront a

tendency to dismiss economic and other white collar offenses as some lesser form of criminality. When the subject is treated in our fiction, we commonly find the perpetrator portrayed as an inventive, glamorous figure who steals only from the dishonest, the rich, or the greedy. When the subject is touched upon in more serious discussions, it tends to be approached from the opposite direction -- in terms of abstract concepts and statistics only distantly related to the lives of individual citizens.

The reality is, of course, quite different. White collar crime affects innocent people who frequently can ill afford to bear the loss, and whose lives are sometimes altered very directly and very tragically. Among the true victims are:

- the 100 elderly citizens in Florida who lost their life savings through a retirement village real estate scheme, half of whom also lost their self- sufficiency as a consequence and were made destitute;

- farmers in the Midwest who, unable to obtain loans from local sources, sold their few remaining possessions to pay an advance fee to an out-of-town confidence man in a last ditch effort to save their farms;

- the hospital patient who, thanks to a diploma mill that sold phony medical degrees, was left "brain dead" by a degree-buyer posing as an anesthesiologist;

- the 200 young married couples in California who, having struggled to save enough from their earnings to make the down payment on a home, saw their savings disappear in a fraudulent scheme perpetrated by a state assistant attorney general.

- the patients whose proper treatment for cancer and other diseases was delayed for a protracted period while they pinned their hopes on the efficacy of a "wonder machine" touted by a medical "quack."

It is only by keeping in mind the effects on individual victims that we can begin to appreciate the real extent of the losses caused by white collar crime -- losses that frequently defy measurement in simple economic terms.

Even when viewed in abstract economic terms -- dollar amounts -- the direct loss caused by white collar crime is staggering. While we have no fully satisfactory estimates on the extent of white collar crime, and while statistical reports vary, all estimates indicate a tremendous loss. For example, in 1974, the National Chamber of Commerce estimated the annual loss

through white collar crime at $40 billion. In 1982, a study funded by the accounting firm of Peat, Marwick, and Mitchell suggested that the loss had ballooned to $200 billion. Dollar losses from federal tax frauds are estimated by the Department of the Treasury to exceed 90 billion a year. Over $100 million is lost annually through "boiler room" operations selling commodities such as precious metals by telephone. Over $100 million per year, in each of the last five years, has been lost in real estate investment schemes in California alone. Hundreds of millions of dollars have been lost by tens of thousands of investors who have been victimized by fraudulent financial service brokers operating in Florida, California, Utah, Ohio, and New Hampshire. About $80 million was lost in a single investment fraud scheme on the West Coast. the perpetrator of which we prosecuted successfully last year. Almost $700 million in losses to investors, and ultimately to the federal government and thus to all taxpayers, resulted from a Tennessee bank fraud scheme that led to a banker's entry of a plea of guilty, and 20-year prison sentence, in 1985.

This latter case illustrates one of the more pernicious and widespread consequences of white collar crime -- it causes failures of businesses, of savings and loan institutions, of banks. Fraud or other criminal conduct in fact was a factor in about half of the bank failures that occurred during the past five years.

White collar crime, therefore, carries unusually serious economic consequences for the well-being of our Nation. In addition to personal victimization, in the aggregate it siphons billions of dollars a year from our economy. It adds to the costs of goods and services, and substracts from the revenues otherwise available to the federal and state treasuries, thereby aggravating the financial burdens of all Americans.

As noted earlier, though, the financial losses caused by white collar offenses reveal only the surface of the problem. The deeper effects are often severe. When a corrupt physician systematically falsifies treatment records he erodes public confidence in the integrity of the entire Medicare program. When a pharmacological distributor repackages and delivers outdated medications he endangers the health of innocent citizens. When a defense contractor substitutes substandard materials for parachutes he risks the lives of our servicemen.

To summarize, white collar crime affects our economy and our lives. It is a particularly pernicious form of crime. It warrants the concentrated attention of our investigators and our prosecutors.

II. GUIDING PRINCIPLES

A. General Considerations

I will discuss in a moment some of the specific principles that guide our white collar crime law enforcement efforts, but I want to be sure that one point is clearly understood at the outset. It is our policy to prosecute significant white collar crime cases to the utmost of our ability in accordance with existing law and available evidence, and to seek appropriate sanctions in all cases. We deviate from this policy only when we conclude, in the exercise of our professional judgment, that doing so will enable us to achieve important law enforcement goals that might otherwise be unattainable.

In this connection, it is important to recognize that traditional responses to crime are not the only responses available in cases of white collar crime, nor are they always the best responses. Let me explain.

The most effective way of dealing with the majority of white collar offenses is through the criminal justice process. Even so, there are a number of approaches to a successful criminal enforcement effort. Certainly the dominant one is the prosecution, conviction, and imprisonment of all responsible individuals. But that traditional solution, in many instances, does not go far enough. It does not directly take into account

enhancing our ability to prevent crimes before they occur, or to bring cases that by their scope, and the swiftness by which they become final, provide clear, dramatic warning that specific conduct will be prosecuted. It also ignores the need, in the special setting of offenses committed to benefit corporations, to impose direct and substantial sanctions upon the corporation, in addition to those imposed on the individuals, and to force the corporation to adopt internal control mechanisms to prevent future criminal conduct and substantially to alter the ways in which the corporation conducts its affairs.

A related consideration -- one that also tends to be overlooked in discussions of white collar crime law enforcement -- is the general availability of non-criminal enforcement methods and the desirability in some cases of employing those methods instead of the criminal justice process. Many white collar cases arise out of activities subject to federal regulation and, consequently, to regulatory sanctions. Most such conduct is also subject to civil sanctions, such as damage awards, civil fines or penalties, and injunctions. These various non-criminal sanctions can be tailored to provide appropriate redress, to remove the economic benefit derived from illegal activity, to restore the Treasury's loss, and to prevent the continuation of unlawful practices. As a result, in certain instances their use can be as effective as resort to criminal penalties in achieving law enforcement goals.

In some cases, use of one or another of these non-criminal approaches may be the only course available, or may for valid reasons be considered preferable to reliance on the criminal process. Certainly we cannot proceed with a criminal prosecution when, for example, the conduct involved lacks sufficient proof of that culpability necessary for a criminal conviction, or when the likelihood of obtaining a conviction is seriously cast in doubt by the equivocal nature of the available evidence. Before proceeding with a white collar crime prosecution, the attorney for the government, as in any other kind of criminal case, must be satisfied that the threshold standards have been met to warrent initiation of the criminal process -- satisfied that the admissible evidence is sufficient to establish every element of the offense beyond a reasonable doubt. Even in some cases in which the threshold standards are met, however, non-criminal approaches may be preferable, as, for example, when resort to the criminal process would unduly delay an urgently needed determination that a particular practice is unlawful or would delay an injunction to provide immediate and critical protection to the public, or when criminal prosecution would not be considered as effective as a civil alternative in light of the sentence available to the court.

B. Prosecutorial Policies

Notwithstanding the broad range of options available for dealing with white collar cases, the fact is that most of these

cases deserve to be, and are, handled criminally. Thus, it is important to understand the principles of prosecution that we follow in those cases.

White collar crime cases are prosecuted in accordance with the same principles that govern prosecutions for other types of federal offenses. There is no "double standard" under which white collar offenses are prosecuted less vigorously than other crimes, nor do white collar offenders otherwise receive preferential treatment by federal prosecutors. The Department has articulated and adopted "Principles of Federal Prosecution" which apply equally to violent offenses and white collar offenses, and they are applied equally.

There is, however, one dimension of white collar crime that frequently complicates the prosecutorial decision-making process. I refer to the problem of determining who should be held responsible when the offense was committed by or through a corporation. In such cases, we must consider whether to charge only the individuals involved, both the individuals and the corporation, or only the corporation.

In all such cases, we start with the fundamental proposition that a corporation can act only through individuals. It follows that individuals who, with requisite criminal intent, cause or permit a corporation to act in a manner that violates the criminal law should themselves be charged as criminals and

subjected to criminal sanctions. Our policy, therefore, is to prosecute the responsible corporate agents -- particularly the senior officers but also the lower ranking employees -- to the extent permitted by the law and the available evidence. This policy is carried out except when, in rare and unusual cases, it is superseded by other, overriding law enforcement considerations.

We also believe that corporate prosecutions are necessary to an effective program of white collar crime law enforcement. Such prosecutions can serve most of the purposes sought to be achieved by prosecutions of individuals. Corporations can be made to suffer the stigma of criminal convictions, as well as being punished through the imposition of substantial criminal fines and -- as a collateral matter -- being subjected to regulatory sanctions that are in many cases even more severe; certainly the sanction of debarring a corporation from defense contract work frequently can have an impact that no combination of individual prosecutions can achieve. Corporate convictions can also help to ameliorate the losses of victims, either by furnishing a basis for orders of restitution against financially able defendants, or by facilitating civil actions for damages. Corporate convictions can also stimulate shareholder pressure on management to operate lawfully. The threat of these various consequences can act as an effective deterrent to corporate criminality. It is obvious that corporate officials, as others, have a natural desire to conduct their corporation's affairs within the bounds of the law, and

most tend to engage in rational, cost-benefit analyses before taking action that could result in financial liability for themselves or their corporations.

Criminal convictions of corporations can also serve as the vehicles by which rehabilitation can be induced. On many occasions, convicted corporations have retained outside attorneys or accountants to review corporate policies and internal control procedures to determine how criminal behavior was permitted to occur, and to recommend measures to avoid repetition of the criminal conduct in the future. Moreover, as the recent E. F. Hutton case demonstrated, prosecution of a single corporation can serve notice throughout an industry of the criminality of a suspect but previously unprosecuted business practice. In such a case, our prosecution can, in effect, lead to the reform of an entire segment of the corporate community. We believe we are beginning to see a similar change in the attitudes and conduct of major defense contractors as a result of recent procurement fraud prosecutions.

We approach the question whether a corporation should be indicted in the same manner as we do in cases involving only individuals. We reject any suggestion that a corporation should be treated leniently because of its artificial nature, or, conversely, that it should be subjected to increased exposure for that reason. Instead, we weigh all of the factors normally considered in the sound exercise of prosecutorial judgment,

including sufficiency of the evidence; likelihood of success at trial; probable deterrent, rehabilitative, and other consequences of conviction; and adequacy of non-criminal approaches. However, because of the unusual nature of crimes involving corporations, two additional factors must be considered before a decision is made to seek to indict a corporation.

First, there is the question whether the offense was committed for a corporate motive, usually an economic one, or whether the corporation, although technically in violation of the law, was merely a device for committing an offense designed to benefit the responsible officers and employees. The latter situation might arise, for example, in a stock manipulation case where a corporation issued false statements inducing investors to buy its securities, but where in fact the promotion was designed from the outset to enrich the corporate principals. By contrast, many instances of fraud against the government are committed for a corporate motive -- the responsible corporate officials create false records and make false claims primarily for the benefit of the corporation; any gains realized by the individuals are at best indirect.

The second factor is whether the corporation -- particularly a closely held corporation -- has an existence that is truly separate from the individuals who directed the offense. It is common in virtually every kind of white collar crime to find individual criminals who create and use corporate vehicles to

perpetrate their swindles. In numerous cases, the corporate entity simply stops doing business when the fraud is disclosed and the responsible individuals are charged. In such cases, the considerations that support corporate prosecution generally are not present, and there is, therefore, little reason to name the corporation as a defendant in the criminal case. Conversely, when the corporation involved in the offense is expected to continue its operations as a substantial member of the business community, it would ordinarily be appropriate, if the other pertinent factors are present, to include it as a defendant.

As a matter of general policy, we expect that when an offense is discovered that leads to indictment of a corporation, the responsible individuals can and will be charged as well. The cases where only a corporation is charged are, and will continue to be, few and exceptional. There are, however, certain factors that can make it appropriate to name only the corporation, and not the responsible officials.

It may be appropriate to charge the corporation alone when the responsible corporate officials acted through mistake or ignorance of the law. This is more likely to be the case when the offense is in violation of a regulatory proscription. Under these circumstances, it may be possible to prove criminal intent on the part of the corporation by attributing to it the sum total of the knowledge of its agents, even though it could not be proved that any single agent had the state of mind necessary to

support a conviction. This was the situation in the prosecution of the Bank of Boston for violating the currency transactions reporting requirements.

Another circumstance supporting indictment of a corporation, without accompanying charges against responsible officials, occurs when there is a genuine legal question whether the underlying conduct violates the criminal law, or can be addressed only by civil or regulatory remedies. When the government is confronted by conduct that lies near an undefined edge of the criminal law, basic considerations of fairness counsel against imposing the severe consequences of conviction on individuals who may honestly have believed that their conduct, although perhaps a questionable business practice, was not criminal. These considerations may not weigh as heavily in cases of corporate wrongdoing, since imprisonment is not a possible consequence of conviction. A situation of this kind arose most recently in the E. F. Hutton prosecution, where existing case law created a genuine question whether the cash management practices utilized by Hutton could be reached by federal criminal law. It was also present in many of the overseas bribery cases. In such situations, prosecution of the corporation rather than its individual agents alerts the business community at large to the fact that the underlying conduct is, in fact, criminal, and clarifies the law for purposes of future prosecutions of individuals as well as corporations.

By stating that prosecution of a corporation can be used to clarify the reach of the criminal law, we do not mean to imply that prosecution of a corporation is somehow a lesser remedy than prosecution of individuals, or that the standards for indicting a corporation are less stringent. In effect, that would suggest that prosecution of corporations is in some way more civil than criminal in nature, a concept with which we would strongly disagree. We do not intend to use corporate prosecution as a substitute for civil or regulatory action. Corporate prosecution is an integral part of our arsenal of weapons against white collar crime. It is a serious matter with substantial consequences to the officers, directors, employees, and owners of the corporate defendant, and it is not an action that we undertake lightly.

Perhaps the most important aspect of our prosecution policy deserves special emphasis. Whenever we are considering any indictment, of an individual or a corporation, we are bound by the available evidence and by our duty to exercise prosecutorial judgment responsibly. As a matter of law, we may seek an indictment only when the evidence establishes the existence of each element of the offense and the necessary mental state to establish that a person has committed an offense. As a matter of Departmental policy, grounded in fundamental considerations of prosecution responsibility, we adhere to an additional standard: we go forward with a prosecution only when we believe that the admissible evidence is of such convincing weight that it will

our policies and practices regarding sentencing in white collar cases. Although sentencing in these cases -- as in all federal cases -- is primarily the function and responsibility of the courts, we believe that government attorneys have a critical role to play in the process, both in communicating relevant facts to the courts and in recommending appropriate sentences.

Because white collar crimes are calculated and are economically motivated, we strongly believe that sentences in these cases have a particularly high deterrent impact. However, to achieve this effect -- as well as to serve other purposes of criminal sanctions -- they must adequately reflect the seriousness of the conduct involved.

White collar offenses that involve traditional forms of criminality such as fraud, theft, or corruption, deserve to be treated severely, and the courts generally seem willing to impose appropriate prison sentences in such cases. However, when other types of white collar crimes occur, such as criminal violations of the antitrust or environmental laws, a different view sometimes prevails. In these cases, not only are there no grisly crime scene photographs, no battered victims, and no drugs or weapons, but often no direct taking of property. A defendant in such a case -- often a prominent member of the community -- may not seem on the surface to pose much of a danger to society. As a result, after defense argument that the loss of reputation, perhaps coupled with some economic deprivation and probationary

requirements, is punishment enough, we sometimes see courts engaging in the "creative" exercise of fashioning "alternative sentences" involving contributions to charities or so-called "community service." The imposition of such sentences on persons who deserve to go to prison -- if only for a short term -- does nothing to provide deterrence, and, repeated over time, diminishes the concept of justice. Responsibility for this situation does not rest with the judiciary alone, for in 1984 -- in Section 239 of the Comprehensive Crime Control Act -- Congress adopted a resolution expressing its view that imprisonment is generally inappropriate for a defendant who has not been convicted of "a crime of violence or otherwise serious offense." Absent a clear understanding of what is meant by "serious," this resolution, which we strongly opposed at the time it was under consideration in the Senate and strongly disagree with today, can only reinforce a tolerant criminal justice system attitude towards white collar crime.

To be sure, imprisonment is not the only appropriate sanction for white collar offenses. Punishment and deterrence can also be achieved through the imposition of substantial fines. As a result of amendments contained in the Comprehensive Crime Control Act of 1984, it is now possible to impose appropriately severe monetary penalties on white collar offenders, including fines of double the amount of gain or loss resulting from their crimes. These provisions can be especially useful in removing the economic incentive to engage in white collar crime, and they

are absolutely necessary in fashioning appropriate sentences for corporate offenders who, of course, are not subject to imprisonment. Accordingly, it is our policy to recommend the imposition of substantial fines on all convicted corporations, as well as on individuals who have the ability to pay, whether or not additional sanctions are urged.

From time to time, we also recommend or concur in the imposition of other kinds of sanctions in white collar crime cases. For example, pursuant to the provisions of the Victim and Witness Protection Act of 1982, restitution is often recommended -- ordinarily, in addition to other sanctions. In cases in which it appears that a prison term would not be appropriate, or could not be imposed because the defendant is a corporation, we review the potential value of various conditions of probation. We recognize that, in rare instances, the use of carefully selected alternatives to traditional criminal sanctions can help to vindicate the interests of the criminal justice system and of society as a whole. At the same time, however, we seriously doubt that any legitimate interest is served by such recent sentences as that which required an individual to organize a golf tournament as a fund-raiser for charity, and that which required a corporation to endow a chair of ethics at a state university. We have given considerable attention to this matter of "alternative sentencing" over the past several months, and we are now developing guidelines on the subject for use by attorneys for the government during the sentencing process.

III. MANAGEMENT INITIATIVES

Since white collar crime is a particularly serious and widespread problem, and since its successful investigation and prosecution requires the commitment of a high level of resources, any considered federal program to reduce its impact must be more centrally developed and more closely governed than is common for most other kinds of federal cases. This is particularly true in light of the number of federal statutes covering white collar crime, and the high volume of cases under many of these statutes. A 1980 Report of the Attorney General entitled "National Priorities for the Investigation and Prosecution of White Collar Crime" included a "master list" of some 356 federal white collar offenses -- a list that today would certainly approach 400. Plainly, it is beyond the capacity of the federal government regularly to enforce all of these statutes against all violators. Just as plainly, any effort to do so would result in the expenditure of scarce resources on relatively less important offenses to the detriment of more significant cases. What is essential in this area, therefore, is a keen sense of priorities and maximum efficiency and productivity in the application of finite resources. Accordingly, we have adopted, and have sought to institutionalize, a number of management practices designed to focus our efforts more sharply; to develop close cooperation among the various federal and state agencies involved in law enforcement, and between those agencies and the private sector; and generally to ensure the most effective use of the tools and

resources available to us. As a result, we are addressing the problem of white collar crime from a strategic perspective.

A. The Economic Crime Council

In 1983, the Economic Crime Council was created by the Attorney General to serve as an advisory body on white collar crime law enforcement policy within the Department of Justice. The Council is chaired by the Deputy Attorney General. Its members include 22 United States Attorneys as well as officials from the Federal Bureau of Investigation and the Criminal, Antitrust, Civil, and Tax Divisions. The Council also includes a working group, chaired by the Assistant Attorney General for the Criminal Division, composed of experienced prosecutors from the member offices, that provides support for the Council's activities. Formal meetings of the Council are held at least twice a year, sometimes with the Attorney General's personal participation.

The primary mission of the Economic Crime Council is to help identify for prosecution, on a comprehensive basis, those kinds of economic crimes that are of national significance. Since, under our federal system, responsibility for prosecuting the majority of white collar offenses lies with the states, the federal government must concentrate on cases that, for one reason or another, can be addressed best at the national level.

One of the Council's principal roles, therefore, has been to aid in focusing our attention on the most significant types of white collar offenses within the federal jurisdiction. Any of a number of factors may make a case significant for such purposes, but we place particular emphasis on identifying "cutting edge" prosecutions -- those that can establish the illegality of a common practice and that will, therefore, have a multiplier effect far beyond the outcome of the individual case.

Working with the Fraud Section of the Criminal Division, the Council has defined our white collar crime law enforcement priorities. We are concentrating on offenses that affect our national defense, our banking system, the taxpayers, and the investing public. Thus, we presently define six areas of priority -- defense procurement frauds, frauds against banks and other financial institutions, money laundering, investment "boiler room" frauds, various types of securities frauds, and frauds by health care providers involving Medicare and Medicaid funds. When nationally significant cases arise in these areas, it is the responsibility of the Council to advise Departmental officials concerning the necessary allocation of investigative and prosecutorial resources to ensure an effective response.

B. The Defense Procurement Fraud Unit

Three years ago, the Department of Justice initiated a concentrated effort in partnership with the Department of Defense

to uncover and prosecute criminal activity associated with defense procurement. The setting in which that effort began posed a number of problems. Extensive and time consuming internal Department of Defense procedures slowed the referral of contract fraud allegations. Once referred, there was insufficient coordination between Defense Department investigators and Justice Department prosecutors, making it difficult to develop contract fraud prosecutions in a timely fashion. There was also a lack of enthusiasm; overworked United States Attorneys were reluctant to commit prosecutorial resources to defense procurement cases, since even experienced prosecutors perceived these cases to be very complex, time consuming, lacking in jury appeal, and likely to result in a sentence insufficient to serve the public interest and to justify the time and effort expended.

The Defense Procurement Fraud Unit was formed in the fall of 1982, as an integral part of the Criminal Division's Fraud Section, to help provide a solution to many of these problems. The Unit brings together prosecutors, attorneys from the Civil Division's Fraud Section, personnel from the FBI, and personnel from the Department of Defense, and frees them to concentrate solely on defense procurement fraud cases. The Unit has four major responsibilities. First, it establishes and coordinates

policy and enforcement priorities in the defense procurement fraud area. Second, it screens defense procurement fraud cases to identify and focus resources on those with important prosecutive potential. Third, it directly investigates and prosecutes some of the more nationally significant cases. Fourth, it provides advice, guidance, and staff support to United States Attorneys' offices and others in cases it does not undertake directly.

The Unit has made a significant difference in the handling of defense procurement fraud cases, particularly accounting fraud cases. It has also helped to encourage United States Attorneys throughout the country to focus on procurement fraud cases as high priority matters. In addition, it has been instrumental in training investigators and Assistant United States Attorneys, it has assisted materially in establishing lines of communication between United States Attorneys' offices and components of the Defense Department, and, by its regular provision of technical advice to prosecutors across the country, it has improved the quality and quantity of the cases prosecuted.

C. The Interagency Agreement on Bank Fraud Cases

The Department has also made significant improvements in the handling of bank fraud prosecutions. Fraud against banks is of major concern for one simple reason -- over half of the bank failures in the United States in recent years were either caused by, or were related to, criminal conduct. That connection is

deeply disturbing, for the Nation's economic health depends in large measure upon the stability of its banking institutions and the confidence with which the public views those institutions. With that in mind, the Attorney General and the heads of the bank regulating agencies created a task force in late 1984 to revise the referral mechanisms that bring bank fraud cases into the criminal justice system, and to develop better methods for handling the most significant of those cases. The result of that effort is an interagency agreement that has improved our processing of major bank fraud cases, and has strengthened the efficacy of enforcement mechanisms so that action can be taken to prevent bank failures.

D. The Environmental Crimes Unit

Violations of environmental laws not only risk severe harm to our national resources, they frequently threaten the health and safety of the public. Accordingly, they warrant swift and certain prosecution. To that end, the Department's Land and Natural Resources Division has developed a coordinated program to investigate and prosecute environmental crimes, particularly those involving intentional, clear, and harmful violations of the environmental statutes. In 1982, the Division established an Environmental Crimes Unit to focus the government's prosecutorial resources on this specialized field. This initiative was complemented by the simultaneous creation, within the Environmental Protection Agency, of a Criminal Enforcement

Division, and the hiring by that agency of criminal investigators to prepare cases for referral to the Department. About 200 individuals at the EPA have since been trained in the fundamentals of criminal law at the Federal Law Enforcement Training Center, and a similar number of Assistant U. S. Attorneys has been trained in the complexities of the environmental statutes.

Since its inception, the Environmental Crimes Unit has concentrated on cases involving a clear, knowing disregard of the law that causes actual or imminent harm to individuals. These cases include those involving conduct that takes place outside the regulatory scheme -- as in the situation of a generator of hazardous wastes who, having never applied for a permit to dispose of toxic materials, dumps them along roadsides or near residential areas, thereby endangering the public -- and those involving conduct that takes place within the regulatory scheme -- for example, the filing of false reports to conceal unlawful activity. In all such cases, as in other corporate prosecutions, a central goal is to establish the accountability of the highest ranking corporate official responsible for the offense.

E. Other Initiatives

There are several other administrative steps we have taken to improve our ability to respond to white collar crime. Among them are the following.

Since 1979, the Department has held 13 semi-annual Economic Crime Enforcement Conferences at which senior Assistant United States Attorneys are provided with three days of concentrated instruction on effective white collar crime prosecution techniques. The conferences are now sponsored by the Economic Crime Council and the Attorney General's Advocacy Institute. They bring together experienced federal prosecutors from around the country, permitting them to exchange information on approaches and problems, both practical and legal, as they relate to economic crime enforcement. As another form of continuing legal education in the area of white collar crime, the Council now publishes the Bulletin on Economic Crime Enforcement that covers current developments both in the law and in investigative techniques; it is distributed six times a year to over 1,000 federal, state, and local prosecutors and investigators.

In 1981, the Department's Criminal Division designed, and later implemented, a Fraud and Corruption Tracking (FACT) system to collect important statistical information on fraud against the government, official corruption, and theft of government property, as reported by the statutory Inspectors General to the

Department. The reported information is automatically matched with the information in the U. S. Attorneys' case reporting system. This matching of investigations with prosecutions provides the agencies with current status reports on the matters they forward to the Department. It also enables the Department to see which of the agencies' programs are regularly the subject of fraudulent activity, by whom, and to what degree of loss. The FACT system is proving to be a valuable tool in enhancing our efforts to combat fraud and corruption in government programs.

Also in 1981, the Department encouraged all U. S. Attorneys to form Law Enforcement Coordinating Councils with state and local law enforcement agencies in order to encourage mutual assistance and cooperation. White collar crime was promptly identified as one of their two highest priorities, second only to narcotics cases. This has lead to unprecedented cooperation in establishing complementary objectives and efforts, and in achieving an efficient division of responsibilities. Through one highly successful LECC program -- the cross-designation of federal, state, and local prosecutors to act temporarily as prosecutors outside their customary jurisdiction -- for example, state prosecutors presenting cases to federal grand juries -- we have been able to staff and charge many white collar crime cases that we otherwise might not have been able to process. In the last year alone, there have been 239 such cross-designations in white collar crime cases.

Over the past few years, we have begun to bring a variety of white collar crime issues to the attention of the Executive Working Group for Prosecutorial Relations. This is an organization of representatives from the National District Attorneys Association, the National Association of Attorneys General, and the Department of Justice. The Working Group provides a regular forum for furthering the various federal, state, and local interests in important criminal law areas, and is proving to be an effective means of coordinating, at a national policy level, effective approaches to white collar crime problems.

In 1985, the Antitrust Division -- in collaboration with the Defense Department, the Criminal Division's Defense Procurement Fraud Unit, and the Civil Division -- undertook a new program to root out collusive bidding schemes in connection with the military's procurement of billions of dollars worth of "off-the-shelf" goods and services. Among other initiatives, the effort involves educating defense procurement personnel to detect bid rigging more effectively, and to marshal evidence of collusion.

Also in 1985, the Land and Natural Resources Division prompted the creation of the National Environmental Enforcement Council, a group of federal, state, and local environmental law enforcement officials. This Council, which has already held two meetings, serves as a forum for the exchange of ideas, and as a mechanism for providing support for, and better coordination

with, state and local environmental law enforcement activities.

IV. ENFORCEMENT RESULTS

As a result of these various management initiatives, over the past several years we have been able to prosecute more white collar offenses, and to do so more successfully than we have before. Our progress can be documented in part by statistics, but more clearly in terms of the significance of the convictions.

A. Statistical Summary

The available data in the Department's Docket and Reporting System (which does not include data on environmental, tax, or antitrust cases) indicates that the included white collar crime prosecutions rose as a percentage of total federal prosecutions from about 10 percent in the early 1970s, to about 20 percent in 1980 and thereafter. The average number of white collar crime cases brought annually for the past five years is approximately 5500, up slightly from about 5300 during the previous five-year period.

In the area of environmental offenses, there has been a 200 percent increase in the number of criminal prosecutions since the creation of the Environmental Crimes Unit in late 1982. More than 180 indictments have been obtained, charging about 130

individuals and 50 corporations. Well over half of the individuals charged have been owners, directors, or high-ranking officers of the corporations involved. So far, more than 150 convictions have been obtained.

In the criminal tax enforcement area, the Department has emphasized enforcement programs involving illegal tax shelters, tax protests, and narcotics money laundering schemes. Even with the emphasis on significant cases, the general statistics concerning prosecutions and convictions have been steadily increasing. Since 1981, the number of criminal tax cases brought annually increased from about 1850 to over 2450, and the annual average number of cases brought during the past five years was close to 2000 as compared with about 1600 for the previous five years. Total convictions also increased -- from approximately 1600 in 1981 to over 2000 in 1985 -- with the average annual number of convictions obtained during this period reaching close to 1700 as compared to about 1400 during the prior five-year period.

In the antitrust field, we have initiated more than 400 criminal prosecutions in the past five years -- more than double the number during the preceding five-year period -- and have won close to 90 percent. The great majority of those cases, including over three-quarters of those brought in 1985, have been against the primary target of the antitrust laws -- horizontal restraints of trade such as price fixing and market allocation.

We have been particularly successful over the past several years in prosecuting bid-rigging conspiracies in the fields of public highway and airport construction, electrical contracting, and utility construction; over 60 percent of our 1985 criminal antitrust cases involved those industries. We have also brought many successful prosecutions affecting a wide variety of other goods and services.

The success of these endeavors is reflected in the number of white collar offenders incarcerated in federal prisons. Since 1980, that number has risen by 68 percent, and the number of fraud and tax offenders who have been imprisoned has doubled. These figures should be viewed with the understanding, however, that there continue to be areas of white collar crime in which prison sentences are not imposed with sufficient frequency to serve legitimate punative and deterrent needs. This is particularly true with respect to defense procurement fraud cases and antitrust cases. In the former category, prison terms have been imposed on only about 33 percent of the defendants convicted; in the latter cases, our recommendations of incarceration have been followed by the courts only about 40 percent of the time.

B. Significant Recent Prosecutions

The numbers recited above do not begin to tell the full story. Certainly, they do not reveal the nature of the cases we

have been bringing. That fact can best be grasped by referring to the compendium of recent cases that today has been filed with this Committee. Included therein are brief summaries of over 300 representative white collar crime prosecutions handled by the Department last year. This compendium documents the nature, the extent, and the results of some of our most recent efforts.

Some of these cases merit special mention. Within a period of only 70 days last year, our national efforts produced the following results:

- General Electric Company was indicted and convicted in Philadelphia on charges of defrauding the Defense Department, and was simultaneously suspended from doing business with the United States Government. Two individual employees of General Electric were also indicted for perjury and obstruction of justice with respect to the grand jury investigation in the case, but were later acquitted at trial. $1.9 million was recovered.

- Jake Butcher entered guilty pleas to several indictments and was sentenced to 20 years in prison for looting a series of banks in Tennessee and Kentucky. Two of his accomplices were also convicted and sentenced to prison.

- Paul Thayer, former Deputy Secretary of Defense, and Dallas stockbroker Billy Bob Harris were sentenced in Washington, D.C., to four years in prison for obstruction of justice in connection with their roles in a million dollar insider stock trading scheme.

- A 35-year prison term was imposed on Fred Soudan in Houston, Texas, for his role in devising the largest maritime fraud in history -- the sinking of the supertanker "Salem" off the west coast of Africa.

- Six defendants were convicted in Texas of Foreign Corrupt Practices Act violations in the $10 million Pemex-Crawford foreign bribery scheme.

- J. David Dominelli was convicted in San Diego on mail fraud charges in connection with the J. David Company investment scheme that defrauded 1,500 people out of $200 million.

- LeBlanc Brothers was convicted in Detroit for an investment scheme in which 800 investors lost $10.5 million.

- Convicted confidence man and boiler-room operator Jack Rose was indicted in Florida for perpetrating a precious metals scheme in which he defrauded 1,200 investors of $12 million.

- E. F. Hutton and Company was convicted on a plea of guilty to 2,000 counts of mail and wire fraud, was enjoined from abusive cash management practices, and was compelled to set aside a minimum of $8,000,000 for restitution in a complex "float" scheme.

I doubt whether there was ever a collection of more significant white collar crime developments in such a short period of time.

While the above cases fell under the general jurisdiction of the Criminal Division and the United States Attorneys, the other Divisions with criminal law enforcement responsibilities had several achievements last year as well. To mention only a few:

- In cases against Eli Lilly and Company and SmithKline Beckman Corporation, the Civil Division obtained convictions of two of the Nation's largest drug companies, and their four most clearly responsible executives or employees, for criminal violations of a section of the Federal Food, Drug, and Cosmetics Act that makes it unlawful for a pharmaceutical company to fail to report to the Food and Drug Administration adverse reactions associated with its drug products. These were the first prosecutions under this 23-year-old law, and they have put all drug manufacturers on notice of the serious consequences of non-compliance.

- In December, the Land and Natural Resources Division obtained the indictment of Arthur J. Greer, the owner of companies handling hazardous wastes in Florida, on a variety of charges including mail fraud and six counts of knowingly placing employees in imminent danger of death or serious bodily injury. This is the first major case in which the government has brought criminal changes under the knowing endangerment provisions of the Resource Conservation and Recovery Act.

- Following a three-year grand jury investigation, the Tax Division obtained a plea of guilty from Charles J. Walsh, a certified public accountant, to mail fraud and false pretense changes in connection with two fraudulent tax shelter schemes involving more than $17.5 million in equipment container leases and government securities. The defendant was sentenced to 7 years imprisonment.

We believe that there is a momentum of progress reflected in the above cases, and in those appearing in the compendium filed with the Committee.

V. MEASURES NECESSARY TO CONTINUED SUCCESS

The continuation of a successful law enforcement effort requires a number of steps to maintain and accelerate the momentum we have built up over the past several years. There is much we can do alone, but we cannot be fully successful without the support of the Congress and the judiciary.

A. Priorities

Initially, it is essential to have a common understanding of the appropriate direction and intensity of future federal law enforcement efforts against white collar crime. These hearings provide an ideal opportunity for reaching such an understanding -- and indeed for reaching a consensus. What is required is clear thinking -- unencumbered by myths and misassumptions -- on the part of all concerned, a fair assessment of the record to date, and a crediting of mutual good intentions.

We recognize, of course, that law enforcement efforts must keep pace with developments in white collar criminal activity.

White collar criminals are inventive, and their schemes are constantly changing. We must be prepared, therefore, to shift priorities or resources as the occasion requires. The administrative mechanisms we have set in place should facilitate the necessary flexibility.

B. Resources

White collar crime law enforcement is, as we have noted, an inherently resource-intensive undertaking. In fact, this area of law enforcement could easily consume a much larger portion of the Department's investigative and prosecutorial resources were it not for our obligation to give appropriate emphasis to organized crime, drug trafficking, national security offenses, and other serious forms of criminality. It was this broader obligation that prompted the enlistment of the Federal Bureau of Investigation in the drug law enforcement effort a few years ago -- an event that caused the Bureau's investigative resources for white collar crime to decline somewhat. We have worked in subsequent budgets to restore agent strength in this regard to its former level. Although this situation was of concern, we think that we have properly focused and increased total resources, and we do not believe that, on balance, it has adversely affected our performance in this area.

The important point is that we must maintain at least the current general level of resources devoted to this aspect of

federal law enforcement. Doing so -- even in a time of unusual budget constraints -- should not be unduly burdensome. Investment in white collar law enforcement is certainly a cost-effective method of preventing and redressing the enormous drain on the federal treasury -- and on the Nation's economy generally -- that would otherwise occur at the hands of white collar criminals.

C. More Effective Tools

Attention to priorities and resources must be matched by efforts to fashion up-to-date tools for responding effectively to the increasing sophistication and ingenuity of white collar offenders. Congress has already done much in recent years in this regard. As already noted, we are particularly pleased by, and have been materially assisted by, the enactment of the Comprehensive Crime Control Act of 1984. That legislation included a number of measures we had long sought to assist in detecting, prosecuting, and punishing white collar crime. Particularly useful are the Act's provisions relating to currency and foreign transaction reporting, program fraud and bribery, bank fraud, bank bribery, trademark counterfeiting, credit card fraud, computer access offenses, and sentencing -- including substantially enhanced fine levels and creation of a future guidelines sentencing system.

But the role of Congress did not end with passage of the

Comprehensive Crime Control Act. There remains an urgent need to enact additional measures in this area, as well as to guard against unwarranted weakening of those already adopted, such as the bank bribery statute.

We have proposed to the Congress a number of legislative initiatives that, if taken, would significantly enhance our ability to stem white collar crime. These include a comprehensive money laundering bill that would impose stiff civil and criminal penalties on individuals and institutions that launder the cash proceeds of criminal activities. That bill was submitted to the Congress on June 13, 1985, and was introduced on our behalf as S. 1335. It would substantially strengthen our ability to investigate and prosecute the widespread money laundering associated with drug trafficking, organized crime, white collar crime, and tax evasion. Since its introduction, court decisions have seriously undermined our limited existing ability to strike effectively at the "washing" of illegal monies. The need for action on S. 1335, therefore, is even greater than it was when the bill was introduced eight months ago. Yet, while there have been hearings in the Senate and House on money laundering legislation, we are disappointed that no action has yet been taken in either chamber to report a money laundering bill from committee.

In addition, the Department submitted to the Congress an important eight-bill Anti-Fraud Enforcement Initiative last

September. While three of these eight bills have been reported by committee in the Senate, none of the bills has been taken up by the full Senate. In the House, only one hearing has been held, and it encompassed only two of the eight bills.

One of these bills submitted in the Initiative is particularly important to the ability of the government to combat fraud, waste, and corruption. I am referring to the proposal to amend Rule 6(e) of the Federal Rules of Criminal Procedure to permit more ready sharing, both with other government agencies and with civil attorneys within the Department of Justice, of information developed by federal grand juries. Frequently, a federal grand jury investigation of white collar criminal activities, whether or not it results in an indictment, will reveal substantial evidence of significant illegal activities that could, if known to an affected agency, be pursued through civil or administrative sanctions. Yet as a consequence of recent Supreme Court decisions interpreting Rule 6(e), disclosure of such information -- even to attorneys in the Civil Division of the Department -- is impossible or at least extremely difficult, requiring a court order based upon a showing of "particularized need". The legislation we have proposed would maintain appropriate safeguards against needless or cavalier revelation of grand jury information, while allowing the government to pursue fraud and misconduct through other remedies enacted by Congress.

We urgently need these new statutory tools if we are to be

more effective against the most serious forms of white collar crime. We need the help of the members of this Committee in obtaining them. We strongly encourage speedy and favorable floor consideration of both the money laundering and the anti-fraud measures.

For our part, we do not intend to rest on the administrative achievements of the past few years. We will continue to seek new methods of making our white collar crime law enforcement efforts more efficient and effective. As an example, we are determined to implement an Economic Crime Index designed to facilitate the exchange of information on white collar criminals among concerned law enforcement agencies. This Index, the development of which was proposed by the Economic Crime Council and the necessity for which we have studied carefully, will provide a mechanism whereby various federal, state, and local law enforcement agencies can ascertain quickly whether they are conducting investigations of the same suspected offenders or schemes. If it appears that they have a common interest, the agencies can then proceed in the normal manner, through existing legal and administrative procedures, to exchange information concerning their two investigations. It is our view that such a system is practical, lawful, and reasonable. It will materially enhance the effectiveness of federal and state efforts against white collar crime, without in any way infringing upon other legitimate private or governmental interests.

D. Sentencing

In creating the United States Sentencing Commission, Congress recognized the necessity for reform of federal sentencing practices and procedures. We are hopeful that the Commission's work will provide the specific sentencing guidance that is needed, particularly in the white collar crime area. To help make that hope a reality, we have assigned various components of the Department the specific task of assisting the Commission in its efforts to develop white collar crime sentencing policies and guidelines.

While the Commission's work is proceeding, we suggest that Congress should rescind the Sense of the Senate Resolution it adopted as Section 239 of the Comprehensive Crime Control Act of 1984. That Resolution, which purports to provide guidance to sentencing judges concerning the appropriateness of imposing prison terms during the interim period before the Sentencing Commission's guidelines become law, is confusing at best, and is far more likely to benefit white collar criminals than to serve the needs of society.

Finally, as a general matter, all of us must realize that there are limits to what the criminal process can do. We must recognize the potential contribution to effective enforcement of other mechanisms for securing compliance with the law, particularly civil and regulatory sanctions. We must also encourage

the business community to be alert to behavior that borders on illegality, since often what is needed is a heightened sense of moral responsibility and sensitivity in the conduct of economic affairs.

As I mentioned at the outset of this statement, we welcome the opportunity these hearings provide to inform members of the Committee and others in Congress of our philosophical and practical approaches to the challenge of white collar crime. We think that there has been solid achievement. Yet we realize that there is more to be accomplished. We invite the constructive participation of the Congress, in the exercise of its legislative and oversight responsibilities, in forging an even more effective program to protect the Nation, and its citizens, from the consequences of serious white collar crime.

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