WHITE-COLLAR CRIME

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

WHITE-COLLAR CRIME

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WHITE-COLLAR CRIME

WEDNESDAY, JUNE 21, 1978

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CRIME,
Washington, D.C.

The subcommittee met at 9:15 a.m. in room 2226 of the Raybuurn House Office Building; Hon. John Conyers, Jr. (chairman of the subcommittee), presiding.

Present: Representatives Conyers, Gudger, and Ertel.

Staff present: Hayden Gregory, counsel; Steven G. Raikin, assistant counsel; and Roscoe Stovall, associate counsel.

Mr. CONYERS. Good morning. The subcommittee will come to order.

OPENING STATEMENT BY HON. JOHN CONYERS, JR.

Today, we begin a lengthy and comprehensive series of general oversight hearings on the subject of "White-Collar Crime: the Problem and the Federal Response." For the past 10 months, the subcommittee staff has been hard at work preparing a long-range scenario for white-collar crime hearings which will last for at least the next 18 months.

As Chairman of the Subcommittee on Crime, I have decided that we should take on this awesome task because it has become glaringly clear to me that white-collar is the most serious, all-pervasive, insidious crime problem in America today. In terms of the cynicism and disrespect for the law which the present general tolerance of white-collar crime engenders, white-collar crime destroys the moral fabric of our cultural values. Such losses cannot really be measured in terms of dollars and cents.

But what few statistics are available are staggering. The U.S. Chamber of Commerce and the Joint Economic Committee of Congress have conservatively estimated that the price to the American public of white-collar crime—not including antitrust violations such as price-fixing and not including fraud against Government programs—is roughly $44 billion per year. This compares with a figure of $4 billion per year for all street crimes against property.

Forty-four billion dollars per year. That is more money than the U.S. Government's fiscal year 1977 total actual outlays for the Departments of Energy, HUD, State, Transportation, Commerce, Interior, Justice, NASA, and Civil Defense, and for the Executive Offices of the President—combined.

And when we consider the late Senator Phil Hart's estimate that when corporate antitrust violations such as price-fixing (which is a felony) are added in that the total approaches or even exceeds $200

billion per year, then the magnitude of this societal disease almost exceeds our comprehension.

And yet, in this day and age of "zero-based budgeting," when expenditures are supposed to bear some rational relationship to the relative severity of social needs and problems, we were terribly disappointed to find that the Carter administration recently asked in its fiscal year 1979 budget request that the U.S. Department of Justice spend a meager and unambitious 5.5 percent or less of its budget on activities related to this most staggering of our Nation's crime problems.

In the first phase of our hearings, we will set about to answer the question, "What is white-collar crime?" In doing so, we will attempt to establish for the public record the definition, nature, cause, extent and social and economic costs of white-collar crime. As an inevitable part of this initial phase of our hearings, we will try to ascertain the relationship between white-collar crime and street crime, organized crime, inflation, fluctuations in the Consumer Price Index and unemployment. We will then move into an assessment of the major types of white-collar crime in order to educate ourselves and the public on the modus operandi of major white-collar crimes and the manner in which the public and Federal, State, and local governments, as well as business, are victimized by white-collar crime.

Inevitably, we will address such issues as the following:

To what extent does white-collar crime impact on the price of goods and services, resulting in a regressive tax which hits the poor and middle-incomed and unemployed hardest of all?

To what extent does the law enforcement establishment's traditional equating of the "crime" problem with "street crime" reflect a race and class bias while diverting attention away from criminality which goes much more directly to the root of economic injustice in our society?

To what extent does the prevailing double standard of "bail for the rich and jail for the poor" erode public confidence in the Government in general and in the criminal justice system in particular?

What are the major white-collar crimes which the Congress, the Justice Department, the FBI and the regulatory agencies should be paying special attention to?

What motivates white-collar criminals and what would a composite sketch of an "average" white-collar criminal look like?

What do current "victimization surveys" and public opinion polls reveal about relative public indignation over white-collar crime vis-a-vis "street" crime?

In the second phase of our hearings, we will set about to assess—via a methodical systems analysis—charges heard from many quarters that the Federal response to the problem of white-collar crime is inadequate; or, in the words of the American Bar Association's Committee on Economic Offenses, that it is underfunded, undirected, uncoordinated and is in need of the development of a national strategy and national priorities.

It should also be noted that in my capacity as Chairman of the Subcommittee on Crime, I have recently authorized the General Accounting Office (GAO) to do two major studies related to our interest in white-collar crime. The first GAO investigation will be a systems analysis of the manner in which the Federal Government conducts

political corruption investigations and prosecutions. The second will be an analysis of current Justice Department outlays for white-collar crime-related activity.

The long series of hearings which the Subcommittee on Crime begins today are unique. Various congressional committees have, in the past, held "after-the-fact" hearings in reaction to exposure of various white-collar crimes and political corruption scandals: the I. T. & T., Lockheed and Gulf Oil hearings and the Watergate hearings are cases in point. But no congressional committee has ever attempted to do a proactive, long-range systems analysis of white-collar crime. The McLellan organized crime hearings of the fifties and sixties, the Temporary National Economic Committee investigation hearings on concentration of economic power held between 1939 and 1941, and Senator Phil Hart's antitrust hearings in the 1960's and 1970's were analogous attempts to do such far-sighted oversight hearings, but neither focused on white-collar crime per se, partly because so little was known about the subject at the time.

We begin without any particularly defined notions of what legislative reforms are necessary. It is my hope that at the completion of these hearings, concrete ideas for legislative reforms will have emerged and that we will have succeeded in taking an unprecedented, soul-searching look at our society, our values, and our notions of "equality of justice" for all our citizens.

We have asked the three distinguished gentlemen seated before us to join us for our very first hearing: Mr. Herbert Edelhertz, Prof. Donald R. Cressey, and Prof. Gilbert Geis, all of whom have studied this and related subjects on criminology and law enforcement, and more than amply do this subcommittee honor in opening these discussions.

Before we begin, there is a request to cover these hearings, in whole or in part, by television broadcast, radio broadcast, still photography, or by similar methods, and, in accordance with committee rule 5(a), permission will be granted, unless there is objection.

Let us begin with Mr. Edelhertz, director of the Battelle Law & Justice Study Center in Seattle, Wash., noted as the past chief of the Fraud Section of the Criminal Division of the Department of Justice, who was at that time supervising the national prosecution of Federal white-collar crimes. Mr. Edelhertz was instrumental in the development of the National District Attorney Association's Economic Crime Project. He has written extensively on this subject, including a very recent and intriguing study entitled "The White-Collar Challenge to Nuclear Safeguards."

We welcome all of you gentlemen, and we note that Mr. Edelhertz has a prepared statement, which will be incorporated in its entirety, as all prepared statements, and that will allow you to make your presentation in any way that you choose. Welcome to the subcommittee.

[The prepared statement of Mr. Edelhertz follows:]

PREPARED STATEMENT OF HERBERT EDELHERTZ, DIRECTOR, BATTELLE LAW & JUSTICE STUDY CENTER, SEATTLE, WASH.

Mr. Chairman, members of the subcommittee, my name is Herbert Edelhertz, and I am the director of the Battelle Law & Justice Study Center in Seattle, Wash. I appear here today at the invitation of the Subcommittee as one who has been involved in containment of white-collar crime and in research on this sub-

ject for approximately 20 years. During this period I have had an opportunity to view the problem of white-collar crime from many perspectives—as defense counsel, as a legislative special counsel, as supervisor of nationwide programs of white-collar crime prosecution in the U.S. Department of Justice, as director of Federal intergovernmental task forces to review the integrity of Government agency programs, and finally in managing research and policy planning efforts dealing with the investigation and prosecution of white-collar crime.

From my discussions with your counsel it is clear that this Subcommittee is embarking on the development of a long-range examination of white-collar crime issues which will address the character of white-collar crime, the actors (offenders and enforcement agencies) in this arena, the harm inflicted on our society by such crime, and the character and efficacy of public and private remedies designed to cope with this illegal activity. It is clear that the ultimate objectives of these hearings, which must be to protect our society from white-collar crime and provide meaningful recourse for victims, can only be achieved through adoption of this broad perspective. Such a larger view is particularly important to your task because white-collar crime is difficult to define and, in operation, is often indistinguishable from legitimate activity. The harm inflicted by it can sometimes be exposed only by a painstaking and time-consuming removal of layers of cover.

This Subcommittee faces the same challenge encountered by enforcement agencies. To understand and to deal with these crimes and related abuses will involve an exercise which can only be compared to an archeological excavation—the tombs are carefully hidden and constructed with fake passages and antechambers to divert the search. The search itself is so laborious and complex an effort that it can easily destroy the trail it seeks to follow. I respectfully suggest, therefore, that as you cast a broad net of inquiry through the coming months you examine the witnesses and the information coming before you with respect to a common series of issues or questions. Preliminarily, you might consider such questions as:

To what extent does the white-collar criminal behavior described to your Subcommittee affect confidence in the integrity of our society, both in the private and public sectors?

What are the impacts of behavior being described, measured not only in dollar terms, but in terms of human suffering such as the subversion or destruction of social benefit programs and frustration of individual aspirations?

To what extent do our laws, and the agencies established to enforce our laws, offer incentives to behave lawfully and disincentives to unlawful behavior?

With respect to each offense area described to your Subcommittee, are the resources dedicated to prevention and enforcement reasonably proportionate to the harm inflicted or losses suffered?

Are there white-collar crimes and related abuses which "fall between the cracks" because of jurisdictional lines (local, state, federal), or because of lack of coordination along functional lines (police, investigative, regulatory, prosecutive, judicial, etc.)?

Is responsibility for containment of white-collar crime now appropriately divided between the federal, state, local and private sectors?

Is the business world currently meeting its legal and ethical responsibility to deal with internal corruption? If not, why not? If not, how can it be encouraged to do so?

Is the public well served by the current legal system in which identical white-collar criminal behavior may optionally be dealt with through civil, regulatory, and criminal processes?

Are government programs which involve procurement of goods and services, or the delivery of benefits, carefully scrutinized at the design stage to maximize compliance and also to maximize the likelihood that frauds will be surfaced and dealt with?

Is adequate information about white-collar crime currently being collected in the public and private sectors to support assessments of the problems posed and the adequacy of preventive, detection and enforcement efforts?

The formulation of such a series of questions will, I believe, help to develop a forcus which will contribute to the legislative objectives of this Subcommittee, to the education of the public whose understanding and support is essential to any white-collar crime containment program—and in addition will assist law enforcement agencies by providing them with added perspectives on their own efforts.

White-collar crime has been with us for a long time. It can certainly compete for the title of the "oldest profession." Ancient tablets unearthed in the Middle East make reference to fraud; there are biblical references to frauds involving weights and measures; commodity futures frauds were noted in 16th Century Europe; and manipulation of shares of stock goes back at least to the 17th Century. Our own history is replete with instances of fraud and commercial bribery—resulting in much current legislation as well as the establishing of regulatory agencies at local and state, as well as at the federal level. Nevertheless, it has only been in the last two or three years that the white-collar crime issue has been raised to a high place in our list of national priorities. This new priority undoubtedly responds to a public mood evidenced by such surveys as the February 1978 Harris Poll, in which 89 percent of the public responded that what they wanted the Congress to do more than anything else was to do something about corruption in government.

One might conclude that this new priority status reflects some greater incidence of white-collar crime. More likely the explanation is that a series of highly publicized events—Watergate, corporate bribery of foreign government officials, the demonstrated fraud potential of computers—have created a new public awareness of what has always been with us.

I respectfully suggest that this new public awareness may not have long range staying power, but that it nevertheless does now provide a great opportunity to make a meaningful and lasting contribution to containment of white-collar crime. Such containment can only be realized through legislative and structural changes in the ways in which our institutions, public and private, deal with white-collar criminal behavior, and from the development of on-going processes for gathering relevant information which will support budget justifications for resources to support containment activities.

What is called for, quite obviously, is the development of a national strategy for coping with white-collar crime and related abuses, a strategy which will incorporate the activities of private and public agencies active in this field. There are steps currently underway to explore how such a national strategy can be developed and implemented, and I hope and expect that these hearings will make a contribution to this effort.

Having made these preliminary remarks, I would like to make some general observations about white-collar crime. It may be helpful to do this in the form of answers to this series of questions: What is white-collar crime? Who commits white-collar crime? What harm is done by white-collar crime? What is being done about white-collar crime? What is an appropriate and effective role for the federal government in combatting white-collar crime?

WHAT IS WHITE-COLLAR CRIME?

White-collar crime is a widespread pattern of anti-social behavior which is financially or materially motivated and affects personal, business, and governmental transactions at local, national, and international levels. It is observable in socialist countries, no less than in those which operate under the free enterprise system. It may be a uniquely difficult form of deviant behavior to deal with because our social and legal structure provides a framework in which white-collar offenders can rationalize and justify their acts.

The search for a definition of white-collar crime has been a fertile area for academic, almost theological disputation. I have suggested a definition which I believe is best oriented to the planning and design of measures to deter, investigate, and prosecute white-collar offenses:

> An illegal act or series of illegal acts committed by non-physical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage.

These crimes fall into four general categories:

1. Ad Hoc Violations, committed for one's personal benefit on an episodic basis. Examples would be tax fraud or welfare frauds. The usual victim is local, state, or federal government.

2. Abuses of Trust, committeed by a fiduciary, or trusted agent or employee. Examples would be embezzlement, or the receipt of a bribe or favor to confer a benefit. Individuals, businesses, or governments are all victims of such crimes.

3. Collateral Business Crimes, committed by businesses to further their primary (legitimate) purposes. Examples would be anti-trust violations, bribery of cus-

tomers' agents, use of false weights and measures, sales misrepresentations, etc. Victims would be the public and governments.

4. Con Games, committed for the sole purpose of cheating customers. Examples would be charity frauds, land sale frauds, and sale of worthless securities or business opportunities. Victims are the general public, particularly those least in a position to afford losses, for example, the elderly.

WHO COMMITS WHITE-COLLAR CRIMES?

These crimes are committed at every level of society and in every area of activity. Since the purpose of white-collar crime is to obtain money or some personal advantage to which one would not otherwise be entitled, we are addressing basic human motives, the more insidious because they can be rationalized as:

Not being crimes, because the acts involved do not resemble street crimes, e.g., bank officer lending his bank's assets on favorable terms to a business which he secretly owns or in which he has an interest, or padding of Medicare/Medicaid bills by physicians.

Justified, since government doesn't "understand" the marketplace and the needs of business, e.g., prohibiting monopolies or restraints of trade.

Need, e.g., unlawfully deferring tax payments as a source of operating capital for a business, or making fraudulent claims for welfare payments to supplement an inadequate income.

Everyone is doing it, e.g., shading on taxes, commercial bribery (corruption in public or private procurement of goods or services).

Thus we will find white-collar crime violations committed by the wealthy and by the poor, by large and small business, in the private sector and by government employees.

Before we too harshly indict our society, however, we should keep in mind that over the years we have blurred distinctions between illicit and legal behavior in the area of white-collar crime. This blurring has developed gradually over time. Illicit behavior can be perceived to be less so when society looks on it tolerantly by:

(*a*) Lack of adequate enforcement of existing laws;

(*b*) making the same act the subject of optional criminal or civil action;

(*c*) Treating white-collar offenders more leniently even after criminal prosecution and conviction; and

(*d*) inadequate concern to provide remedies for the victims of white-collar crimes.

WHAT HARM IS BEING DONE BY WHITE-COLLAR CRIME?

White-collar crimes have impacts which fall into two categories:

Losses which can be characterized in dollar terms; and

Secondary impacts, e.g., on people, quality of life, business operations, and on the effectiveness, efficiency, and fairness of government programs, and on public trust in our government and private institutions.

Many estimates of dollar losses are made, none of which are more than rough guesses. These estimates range from $3 to $60 billion per year in the United States alone, depending upon what crimes are included in the estimates and how analysts project actual losses from the comparatively small number of instances which are detected. If one includes, for example, guesses about the costs to consumers and business competitors from price-fixing and other anti-trust violations, and losses to government revenues from possible tax frauds (many of which are in gray areas of law enforcement), it is easy to make projections (guesses) at or even above the upper limits of current estimates. If one confines estimates to criminal cases successfully prosecuted, measurements of monetary losses are likely to be only a small proportion of the higher figures. Whatever the basis used, it can be confidently stated that monetary losses from business frauds, frauds on government programs, consumer frauds, and procurement frauds dwarf into insignificance direct monetary losses stemming from common crimes. However, one should be cautioned against such comparisons between common crimes and white-collar crimes; in both cases secondary or human impacts may be far more important. For example, the impact of a mugging is far greater than the few dollars taken from the victim, when one considers the victim's personal trauma, his loss of confidence in the community, and the destruction of inner cities through fear of crime. In exactly the same way the more significant losses from white-collar crime are probably to be found in its secondary impacts which cannot be calculated in dollar terms.

For example, how does one measure the loss to an elderly retired widow, on a fixed income, who is defrauded of her "nest egg"—which means the difference between a modest, independent life style, and dependence on welfare or being a burden on her children?

The secondary impacts of white-collar crime are far more significant than mere dollar losses—no matter how great—because they go to the very heart of the issue of the integrity of our society, and to that confidence in our private and public institutions which is essential to their usefulness and effectiveness in serving the public.

Patterns of misinformation, deception, and exploitation found in white-collar offenses can cause severe public anxieties and resentments. The aged are a population specially and cruelly affected. Minorities, too, are disproportionately vulnerable to such offenses. In its investigation of the Watts riot, the McCone Commission "heard recurring testimony of alleged consumer exploitation in south central Los Angeles . . ." Not just these particular segments of society feel themselves abused; middle-class persons increasingly seem to feel victimized by consumer fraud and other forms of economic exploitation.

There are other indirect consequences which flow from white-collar offenses. Examples include negative effects on economic development, and loss of public trust in established processes and institutions. Banking abuses may dry up the flow of credit to small businessmen and minority groups. Credit abuses divert funds from legitimate outlets. Failure to regulate financial markets effectively has an impact on economic growth and on the stability of private, local, and state government pension structures.

Many social and economic programs are disproportionately vulnerable to white-collar crime because they lack the powerful constituencies and internal protections of more established public enterprises. Thus welfare programs and "poverty programs" are often judged by the public and in legislatures more on the basis of relatively small (though not to be tolerated) instances of fraud than on the basis of benefits delivered. Housing for the poor, Medicaid, Medicare, agricultural subsidies, financial support to small and minority businesses, urban renewal—this is but a short list of programs which have been made more costly, have been less effective, and have been deprived of public support because of white-collar crimes.

Other indirect impacts of business crimes require your consideration. Violation of anti-trust laws raise prices and distort the shape and direction of our national policies in support of the kind of free-enterprise system we choose to operate under—denying entry to the market for some and rigorously confining the competitive roles of others. Tax violations shift tax burdens. Commercial bribery (e.g., payoffs to buyers) not only injures the competitor who seeks to operate ethically, but also promotes similar unethical behavior and creates national and international problems, as in the Lockheed case. Enforcement practices, which result in relatively stern prosecutive and sentencing action against the crimes of the poor as compared to enforcement patterns against white-collar crime, create a heightened sense of unfair discrimination in law enforcement which may in fact promote lawlessness and violence. Last but not least, the drive for advantage through the commission of white-collar crime corrupts our public institutions, not only through direct subversion of public processes but also through more subtle activity such as concealed donations of unlawful political contributions. The corruption of government and its functions is a major white-collar crime impact.

The integrity issue is and will remain the most important one posed by white-collar crime. Unless such crime is more effectively curbed it will continue to erode the moral tone of our society. If it is believed that large numbers of taxpayers are able to successfully cheat on their income tax, those who would not otherwise do so may themselves cheat. If cheating is perceived to be "the real world of business," it is easier to rationalize inflation of an insurance claim or give a favor to a procurement official. If our people believe that there is broad-scale corruption and cost inflation in government procurement, it becomes easier to rationalize false claims submitted to government programs, such as those involving welfare or agricultural price supports. If the rewards of cheating in business, or violating anti-trust or tax laws, are greater than the perceived combination of detection/prosecution/punishment, then no amount of rhetoric will very long abate continuation of practices which in the past consistently retarded and undercut our national policies addressing economic, social, and international issues.

One impact area which cuts across the dollar/secondary impact issue is that of government procurement, on local, state, and federal levels. Abuses in this area present not only an integrity issue, but a dollar issue of substantial importance. Bid-rigging, false claims, discriminatory awards of contracts which are not justified by some specified government benefit, conflicts of interest which may cause totally unnecessary procurements—all these are of major importance in a period of relatively infinites needs but clearly finite public resources.

WHAT IS BEING DONE ABOUT WHITE COLLAR CRIME?

There is much talk about white-collar crime, but less action in proportion to the scope of the problem.

Our society is currently preoccupied with street crime and organized crime. Fear of crimes such as robbery, burglary, and rape is easily understood. Organized crime, dramatice sinister, more so because it is largely invisible, seems especially threatening and ominous to the public. These crimes have aroused strong legislative response, epitomized by the Omnibus Crime and Safe Streets Act of 1968 and the Organized Crime Control Act of 1970.

While some L.E.A.A. funds have been directed against white-collar crime since 1973 (after the Watergate scandal surfaced and raised our sensitivity to the issue), it has been a relatively small but growing part of that agency's overall anti-crime effort.

Local investigation and prosecution have been impeded by two basic problems: (1) lack of resources; and (2) the externalities problem, e.g., many crimes victimize people in a number of jurisdictions, and no one jurisdiction can assume the burden on behalf of all those affected.

On the federal level there is a great deal of activity directed against white-collar crime, but this effort is impeded by structural and resource problems.

White-collar crime enforcement on the federal level is structured as follows:

Detection of white-collar crime is, with some exceptions, in the hands of administrative departments and agencies. Thus prima facie evidence of any crime must be reported by federal agencies to the U.S. Department of Justice, or to the Justice Department's Federal Bureau of Investigation for investigation. In some instances, however, e.g., the S.E.C. or the Postal Service, agencies have their own investigative branches which refer cases directly to the prosecutive arms of the U.S. Department of Justice in Washington, D.C. or to U.S. Attorneys in the field.

Most detection is reactive, in response to complaints. Some is proactive, as in the case of those S.E.C. activities which involve monitoring market activity or corporate filings for signs of violations. Other government personnel conduct audits, e.g., of defense contractors, taxpayers, etc., but except in a few rare instances (usually to be found in I.R.S. or the S.E.C.) agency enforcement officials are prone to avoid considering cases for criminal prosecution. Agents or auditors alert to criminal issues lose their zeal in a climate of discouragement and delay, or in the course of administrative and civil settlement negotiation.

Investigation is conducted administratively within federal agencies and departments, and by the Federal Bureau of Investigation. While levels of capability vary, they are often quite high but nevertheless have potential for improvement. It should be kept in mind that the arena for investigation is limited by lack of funds, parameters of investigative authorizations, red tape, and concerns about whether and how invesgators' work products will be received by prosecutors who have discretion to prosecute or to decline prosecution.

Prosecution (criminal) is invariably conducted by U.S. Attorneys and U.S. Department of Justice attorneys from the Criminal, Tax, Anti-Trust and Civil Rights Divisions. Where a case is not strong enough, or where discretion has been exercised against criminal prosecution for a valid or less justified reason, the same kind of case may be prosecuted civilly or administratively by other U.S. departments agencies.

Detection, investigation, and prosecution operate under very real constraints which derive from problems of legal jurisdiction, lack of resources, and enforcement policies. For example, consumer protection is relatively uncoordinated on the federal level, with responsibilities placed in a long list of agencies and departments. Many of these agencies and departments have simultaneous responsibility for policing and also assuring the economic health and public confidence in the enterprises being monitored—with all the conflicts posed by such

dual responsibility. Anti-trust enforcement is divided between the U.S. Department of Justice and the F.T.C., with each alternately assuming the lead. Sheer chance may determine whether a merchandising fraud operator will be dealt with by the F.T.C., where a cease and desist order is likely after many years, or will be criminally indicted and exposed to a possible prison sentence as a result of action by the U.S. Department of Justice. It should be noted that the F.T.C. has shown great ingenuity in using tools at its disposal, and this comment should not be taken as a criticism of the F.T.C. Rather, it is the nature of the uncoordinated response to the white-collar crime problem which must give us concern.

Policies are of key importance. Not enough is done by the federal government in contract renegotiation procedures to recapture excessive profits, or to utilize renegotiation audit procedures to unearth indications of procurement fraud. Audit and compliance activities within government programs unfortunately often require that numerous review and administrative hurdles be overcome before a case is referred for criminal prosecution or civil recovery.

How we make resources available will often determine whether we mean what we say about fighting white-collar crime. Audit operations of I.R.S. and the Enforcement Division of the S.E.C., as well as the Anti-Trust Division of Justice are customarily strapped for funds, a situation which must convey unintended and undesirable messages not only to taxpayers, the securities industry, and potential anti-trust violators—but also to the attorneys and accountants who represent and advise them.

It is not unusual to hear the judiciary criticized for applying different punishment yardsticks to white-collar offenders, as compared to those who commit common crimes. This criticism is valid, but the responsibility must be shared. The courts do no more than reflect the existing overall climate of tolerance toward white-collar crime, as evidenced by legislative, executive, and private policies in this area.

The issue of private enforcement is rarely addressed in considering white-collar crime. Large corporations and smaller businesses spend hundreds of millions of dollars each year on internal audits which could do more (as our courts have recognized) to deter and unearth white-collar crimes. The U.S. Chamber of Commerce, the insurance industry, and other sectors of the business community have mounted investigative and educational programs directed against white-collar crime. The enforcement value of all this is limited by the reluctance of business to refer cases for criminal prosecution, except in instances where no insider is culpably or negligently involved. Corporate officers and their auditors are concerned about their images as competent managers (in the eyes of public and stockholders) if they are seen to have allowed their companies to be defrauded; they worry about liability in lawsuits brought by stockholders on the grounds of their negligence. In more than one instance the fault can be placed at high levels, where corporate officials are involved in conflicts of interest, taking of commercial bribes, and dealing in corporate stock on the basis of inside information. With respect to these crimes enforcement is limited to detection by happenstance or the vigilance of a particular agency.

Internal corporate corruption is a desert area of enforcement—and if there are doubts about this statement, consider how much less we would know today about "laundering of funds" and major secret offshore bank accounts if it were not for the vigilance of a guard at the Watergate Building. It should be kept in mind that a program in which government and private industry find common ground in cooperating against white-collar crime can only benefit both large and small business.

What is an Effective and Appropriate Role for the Federal Government in Combating White-Collar Crime?

Most white-collar crimes are carefully planned and executed. They are not committed on the spur of the moment, or in the heat of passion. Therefore they are a far more appropriate subject for deterrence than are common crimes.

An effective federal policy against white-collar crime should involve these components:

Setting and enforcing standards of integrity in the operation and conduct of federal business, internally, and externally in dealing with the private sector (i.e., in procurement of goods and services).

Analysis and reorganization of federal efforts to detect, investigate, and prosecute white-collar crime—and provision of resources needed.

Legislative changes to make white-collar crime unprofitable for businesses which are collaterally but not primarily involved in such activities.

Provision of supplementary services and facilities to local and state law enforcement agencies.

These elements are stated generally, and will have to be implemented by specific policies. As a "cafeteria line" of possible items in implementation of these elements, the following should be considered:

1. Rationalization of the hodgepodge of compliance activities within the Federal Government.

Every federal department and agency polices itself and its programs, usually through its general counsel, compliance division, or an inspector general. Each such activity should be reviewed to determine whether it is operating (a) to achieve uniform federal integrity goals, and not merely internal agency objectives, and (b) whether investigations are efficiently initiated and their findings transmitted rapidly through unimpeded channels to prosecutive agencies.

2. Rationalization of functions within the Federal Government.

Consumer protection is the responsibility of innumerable departments and agencies, banking agencies, H.U.D., H.E.W., the Postal Service, Commerce, F.T.C., C.A.B., Consumer Product Safety Commission, Agriculture, etc. Consumer protection functions and other department and agency functions should be carefully reviewed to determine whether there are conflicts between duties to those being regulated on the one hand, and consumers on the other. The nature and character of the interaction of these departments and agencies with one another, and with the F.B.I. and the U.S. Department of Justice should similarly be examined. Comparable analyses can be made in other white-collar crime areas, such as tax and anti-trust enforcement, and with respect to federal procurement of goods and services.

3. Administrative and legislative changes.

Statements of public policy, followed by internal directives, can have major impact. Much of the federal bureaucracy dealing with enforcement matters has always been responsive to any signals that the Executive Branch really means business, and will act vigorously when called upon to do so.

Releasing such energies within the federal government will have salutory external effects. For example, a policy of stringent criminal (and civil) enforcement directed against those corporate expense accounts which are merely disguised compensation, and against internal corporate corruption, will help to change the "everybody's doing it" climate, and encourage integrity rather than cynicism within both the private and public sectors.

Statutory tools must also be re-examined. A start has been made on increasing penalties for anti-trust violations, for example, but there is much distance to travel along this same route. Victims of white-collar crime should be given greater access to evidence collected by federal investigators. The frequent use of *nolo contendere* pleas by large corporations should no longer be permitted to operate as a barrier to such assistance by sealing information in government files. Statutory remedies should be reviewed to ensure that criminal enforcement is not sidetracked by the availability of alternate civil or administrative remedies which give enforcement officers an "easy way out"—and thus tell offenders that penalties are just a cost of doing business.

Material resources, as recognized in federal budgets, must be increased. It has frequently been demonstrated that every dollar spent in enforcement pays for itself many times over. The commitment of more resources to these tasks will convey the message that white-collar crimes will no longer be tolerated in either the private or the public sector.

4. State and local law enforcement agencies dealing with white-collar crime should be supported through the provision of services and expertise.

The federal government copes with a broad compass of white-collar crime problems, both geographically and in terms of kinds of crimes. Local jurisdictions will rarely be able to support needed banks of expertise, e.g., accountants, technical experts, health care program analysts, and investigative specialists required for the broad range of violations which nevertheless affect them locally. They

will rarely have the investigative or prosecutive manpower to devote to complex cases without injuring their capability to cope with common crimes which are of first priority to their citizens.

It should therefore be federal policy in all areas to develop criteria for provision of more support services to local law enforcement agencies dealing with white-collar crime. Provision of services is less likely to be wasteful of dollars than are general financial subsidies. There are ample precedents for this in the F.B.I.'s crime laboratories, in Postal Inspection Service assistance to local fraud prosecutors, and in the broad range of investigative, analytic, and advisory services provided by the S.E.C. to local agencies enforcing state securities laws. Heretofore such policies have been a matter of federal agency policy option, implemented by paring already limited resources for this purpose. Such policies should be clearly stated and made applicable to all federal agencies. They should be institutionalized as line items in department and agency budgets. The benefits will be many. At relatively low cost, broad and overlapping state and federal policy objectives will be advanced, coordination of effort will minimize the impact of escapes from one jurisdiction to another to victimize the public, and it will meaningfully convey the message that the integrity of our dealings with one another is a common federal-state-local problem.

I have sought in this testimony to make the point that the test of our nation's commitment to a climate of integrity is what we will do about the harm that is done to our people and our community by lies, fraud, deception, and concealment of the truth in the private and public sectors. There are major and important subissues, such as discrimination in law enforcement, and dollar costs levied on the public and private sector by white-collar crimes—but these are reflections or consequences, not causes. Analysis and rationalization of our legal and enforcement structure, disincentives to successful execution and concealment of white-collar crime, and remedies for victims of such crime, should be the major areas of concern for this Subcommittee.

TESTIMONY OF HERBERT EDELHERTZ, DIRECTOR, LAW & JUSTICE STUDY CENTER OF THE BATTELLE HUMAN AFFAIRS RESEARCH CENTERS, SEATTLE, WASH.

Mr. EDELHERTZ. Thank you, Mr. Chairman.

During the past 20 years, I have had an opportunity to view the problem of white-collar crime from many perspectives: as defense counsel, as a legislative special counsel, as a supervisor of programs of prosecution in the U.S. Department of Justice, and as director of Federal intergovernmental task forces to review the integrity of Government agency programs, and, finally, in managing research and policy planning efforts dealing with the investigation and prosecution of white-collar crime.

From my discussions with your counsel, it is clear that this subcommittee is embarking on the development of a long-range examination of white-collar crime issues which will address the character of white-collar crime, the actors—that is, the offenders and enforcement agencies in this arena—and the harm inflicted on our society by such crimes; also, the character and efficacy of public and private remedies designed to cope with this kind of activity. It's clear that the ultimate objectives of this hearing, which must be to protect our society from white-collar crime and, no less important, to provide meaningful recourse to victims, can only be achieved through the adoption of such a broad perspective.

This larger view is particularly important to your task because white-collar crime is difficult to define and, in operation, is often indistinguishable from legitimate activity. The harm inflicted by it can

sometimes be exposed only by a painstaking and time-consuming removal of layers of covers.

This subcommittee faces the same challenge encountered by enforcement agencies themselves. To understand and to deal with these crimes and related abuses—and I stress related abuses, because of the shadings between criminal and noncriminal activities in this area—to deal with these will involve an exercise which can only be compared to an archeological excavation: the tombs are carefully hidden and constructed with fake passages and antechambers to divert the search. The search itself is so laborious and complex an effort that it can easily destroy the trail it seeks to follow.

I respectfully suggest, therefore, that as you cast a broad net of inquiry through the coming months, you examine all the witnesses and the information coming before you with respect to a common series of issues or questions.

Some of the kinds of questions which should be addressed to your witnesses are outlined in your opening statement, Mr. Chairman; other questions which might be considered—and I just give these as suggestions—are the following:

To what extent does white-collar crime behavior described to your subcommittee affect confidence in the integrity of our society, both in the private and the public sectors? I stress the private sector because that is very often overlooked when we talk about white-collar crimes.

What are the impacts of the behavior being described, measured not only in dollar terms, but in terms of human suffering such as the subversion of destruction of social benefit programs and frustration of individual human aspirations? This issue of loss of confidence in programs, is extraordinarily important with respect to such matters as the impact on health programs, and medical frauds with respect to victims such as the elderly who, when once defrauded, cannot recoup by going back into the marketplace.

Another question might be: To what extent do our laws, and the agencies established to enforce our laws, offer incentives to behave lawfully and disincentives to unlawful behavior? In other words, are sanctions often just a cost of doing business?

With respect to each offense area described to your subcommittee, are the resources dedicated to prevention and enforcement reasonably proportionate to the harm inflicted or losses suffered?

Are there white-collar crimes and related abuses which fall between the cracks because of jurisdictional lines—State, Federal, local—or because of lack of coordination along functional lines—police, investigative, regulatory, prosecutive, judicial?

I think it's important to note here that, while local enforcement may be closest to the problems, on the local level the agencies are hindered—very seriously hindered—by lack of resources to deal with them. We know that the Federal Government to a very large extent focuses on these problems because they seem to very often emerge as nationwide impacts. And yet the Federal Government may operate with a response which can only be analogous to a zone defense in sports, without coverage in between its chosen areas of response.

With respect to functional problems—between kinds of agencies, you will find that different agencies have different objectives and are

evaluated differently. For example, regulatory agencies may be involved in monitoring and protection, and yet may be very much concerned and protection, and yet may be very much concerned about the health of industries rather than prosecuting or enforcement. The police, for example, when they get into the white-collar crime area—or investigative agencies—may be evaluated on the basis of the arrests they make, rather than the ultimate outcome of the work they do.

You will find that there is often a very serious conflict between helping victims, and initiating prosecutions for the purpose of achieving deterrence. Every prosecutor in this field knows that he may very well be able to achieve restitution for the victims of a particular offense; but that the cost of helping particular victims may be forgoing a criminal prosecution which may protect future victims. This is a most serious dilemma for a prosecutor.

Another question would be: Is responsibility for containment of white-collar crime now appropriately divided between the Federal, State, local, and private sectors?

Is the business world currently meeting its legal and ethical responsibility to deal with internal corruption—an extraordinarily serious problem? If it is not meeting those responsibilities, why isn't it? If it is not meeting those responsibilities, how can it be encouraged to do so?

Is the public well served by the current legal system, in which identical white-collar criminal behavior may optionally be dealt with through civil, regulatory, and criminal processes? We have created a whole network of alternative operations. For example, the Federal Trade Commission deals on a noncriminal level with the same kinds of fraud in the marketplace which is the subject of Federal and State prosecutions. Sometimes it may seem almost inappropriate to take the long, hard criminal route if there is a regulatory route available.

Are Government programs which involve procurement of goods and services, or the delivery of benefits, carefully scrutinized at the design stage, when they're being put together, to maximize compliance and also to maximize the likelihood that frauds will be surfaced and dealt with?

When a social benefit program is put together, there is a very laudable stress put on the delivery of benefits. The managers, the people who put these programs together, want to deliver those benefits. Compliance is very often wrongfully regarded as policing rather than as part of planning to achieve objectives. Even though the best policing may be good management planning, the net result may be inadequate control, cheating beneficiaries and the taxpayer.

With decent planning there may be no need of a large-scale Gestapo to watch everything that's going on.

Another kind of question: Is adequate information about white-collar crime currently being collected in the public and private sectors to support assessments of the problems posed and the adequacy of preventive, detection, and enforcement efforts?

There does not exist a decent body of information on the impact of white-collar crime or any decent statistics, notwithstanding the kinds of charts and the kinds of tables that have been presented to this subcommittee. There is no good data base to support policy planning and

enforcement for crime prevention and protection of the public, for setting of priorities, or for budget justifications for governmental agencies active in this enforcement area.

Mr. Chairman, if you can use a series of questions of the kind you have already prepared, and the kinds that I have tried to formulate for this committee, I believe it will help you to develop a focus which will contribute to the legislative objectives of this subcommittee, to the education of the public—whose understanding and support is essential to any white-collar crime containment program—and will also assist law enforcement agencies by providing them with added perspectives on their own efforts.

White-collar crime has been with us for a very, very long time. It can certainly compete for the title of the "oldest profession." Ancient tablets unearthed in the Middle East make reference to fraud; there are biblical references to frauds involving weights and measures; commodity futures frauds were noted in 16th century Europe, and manipulations of shares of stock goes back to at least the 17th century.

Our own history is replete with instances of fraud and commercial bribery, resulting in much current legislation as well as the establishing of regulatory agencies at local and State, as well as at the Federal level.

Nevertheless, it has only been in the last 2 or 3 years that the white-collar crime issue has been raised to a high place in our list of national priorities. This new priority undoubtedly responds to a public mood evidenced by such surveys as the February 1978 Harris poll in which 89 percent of the public responded that what they want the Congress to do more than anything else was to do something about corruption in government—and in large measure, that's commercial bribery.

One might conclude that this new priority status reflects some greater incidence of white-collar crime suddenly descending upon us. More likely, the explanation is that a series of highly publicized events—Watergate, corporate bribery of foreign government officials, the demonstrated fraud potential of computers—have created a new public awareness of what has always been with us.

I respectfully suggest that this new public awareness may not have long-range staying power but that it nevertheless does now provide a great opportunity to make a meaningful and lasting contribution to containment of white-collar crime.

Such containment can only be realized through legislative and structural changes in the ways in which our institutions, public and private, deal with white-collar criminal behavior, and from the development of ongoing processes for gathering relevant information which will support budget justification for resources to support containment activities.

I stress the need of information, Mr. Chairman, to support budget justifications. The Pentagon, for eaxmple, has a very well-organized system for showing its needs, but in an area such as white-collar crime enforcement, there is no comparable serious systematic way to pull together the kinds of information that are needed to structure the same kinds of budget justifications, to show alternatives, to show cost-benefit analyses.

These are areas which are very much overlooked.

I recognize that white-collar crime is a very complex field where there is much confusion, but I suggest there is as much confusion in other areas of our national life, as well, where attempts of this kind are being made.

What is called for, quite obviously, is the development of a national strategy for coping with—or perhaps I might say, for containing—white-collar crime and related abuses; a strategy which will incorporate the activities of private and public agencies active in this field.

There are steps currently under way to explore how such a national strategy can be developed and implemented, and I hope and expect that these hearings will make a contribution to this effort.

Having made these preliminary remarks I would like to make some general observations about white-collar crime. It may be helpful to do this in the form of answers to a series of questions.

What is white-collar crime? Who commits white-collar crime? What harm is done by white-collar crime? What is being done about white-collar crime? What is an appropriate and effective role for the Federal Government in combating or containing white-collar crime?

First, as to what it is: White-collar crime is a widespread pattern of antisocial behavior which is financially or materially motivated and affects personal, business, and governmental transactions at local, national, and international levels. It is observable in Socialist countries no less than in those that operate under the free enterprise system.

It may be a uniquely difficult form of deviant behavior to deal with because our social and legal structure provides a framework in which white-collar offenders can rationalize and justify their acts.

The search for a definition of white-collar crime has been a fertile area for academic, almost theological disputation. I respectfully suggest that to much effort in the definitional area may be a blind alley for this subcommittee to pursue. This is not to say that definitions should be ignored; they are important, but too much effort in this area can be a barrier to productive inquiry.

I have suggested a definition which I believe is best oriented to the planning and design of measures to deter, investigate, and prosecute this kind of crime.

I would call it: An illegal act or series of illegal acts committed by nonphysical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage.

These crimes fall into four general categories that I suggest can be tied to motivations:

The first is what I would call ad hoc violations—things that individuals do on an episodic or occasional basis to achieve some particular personal objective.

Example might be a tax fraud or welfare fraud. The usual victim is local, State, or Federal Government.

The second is a category that I call abuses of trust, which are committed by fiduciaries or people who have a trust of some kind: the receipt of a bribe or favor to confer a benefit would be example of violations of this type. Individuals, businesses, or governments are all victims of such crimes.

The third would be collateral business crimes committed by businesses to fulfill their primary and otherwise legitimate purposes. Examples would be antitrust violations, the use of false weights, and sales misrepresentation. The victims here would be the public and the Government—the public in the sense of individuals.

There is a fourth group which I believe is quite different from any of the others, which include a whole group of con games which are committed for the sole purpose of cheating victims. Examples would be charity frauds, land sale frauds, and the sale of worthless securities—and a whole range of business opportunity frauds.

Who commits these crimes?

They are committed at every level of society and in every area of activity.

Since the purpose of white-collar crime is to obtain money or some personal advantage to which one would not otherwise be entitled, we are really addressing some very basic human motives. These crimes are really more insidious because the people who commit these crimes have ways of rationalizing them.

One of the most difficult challenges in prosecuting white-collar-crime criminals is often the fact that they do not consider themselves criminals. In some sense, society may have told them they are not. They are doing things that are, in their own eyes, part of the regular course of business.

These rationalizations, by white-collar criminals, would fall into four general categories:

One would be that what is done is not a crime because the acts involved don't resemble street crimes, the kinds of crimes you read about in newspapers.

A second rationalization is that the wrongful behavior is justified because the Government doesn't really understand the marketplace and wouldn't really be passing these laws and making these things crimes if the Government really understood what was going on, or if the public really understood what was going on.

Mr. CONYERS. Counsel, we hear that rationalization in our oversight hearings in the Government Operations Committee on CETA programs. This week we were in Chicago, and the business representatives were complaining to us that if we really knew how business operates, we would put together manpower programs that would be more consonant with business aims and would give them less red-tape, would stay out of their affairs and give them more discretion. That's a more recent example forcefully brought to my attention.

Mr. EDELHERTZ. Mr. Chairman, sometimes those who advance those arguments may have a point, but I find those arguments are much more persuasive when they are inputs to the formulation of Government programs rather than when they are being used as an alibi or excuse by those who violate the laws and are charged with violations.

A third rationalization is that there is a need—for example, that the victim needs the money. Examples would be unlawfully deferring tax payments to get a source of operating capital for a business, or making a frudulent claim for welfare payments to supplement an inadequate income.

And last but not least is one of the most troublesome of the rationalizations, which is that "everyone is doing it"—"everyone else is do-

ing it." Examples would be commercial bribery and cheating on taxes. This last rationalization goes to the very issue of the integrity of our society. If these kinds of offenses are allowed to go forward unpunished, unsupervised, unwatched, there is a positive encouragement for violations.

We also find that white-collar crime violations are committed by the wealthy and by the poor, by large and small business, in the private sector and by Government employees.

Before we too harshly indict our society, we should keep in mind that over the years we have blurred distinctions between illicit and illegal behavior in this area. This blurring has developed gradually over time. Illicit behavior can often be perceived to be less so when society looks at it quite tolerantly by allowing a lack of adequate enforcement of existing laws; making the same act the subject of optional criminal or civil action; by treating white-collar offenders more leniently even after criminal prosecution and conviction; and by inadequate concern to provide remedies for the victims of white-collar crimes.

What harm is being done by white-collar crime?

The impact falls into two categories, in dollar terms and secondary impacts, that is, those which are not measured in dollar terms but which affect the way people live, their quality of life, the operation of businesses, the effectiveness, efficiency, and fairness of Government programs, and on public trust in our Government and private institutions.

Dollar losses are in many respects probably far greater than those which generally are shown when the numbers are put together. As I looked at the chart that has been prepared by this committee with respect to computer-related crimes, I see a figure in excess of $128 million a year. I don't know exactly how those figures are put together, but one of the very interesting things is that there have been almost no computer crimes of any significance that have come to light except when a scheme has become topheavy, which may only mean that the people who run them don't have adequate skills to run them as efficiently, perhaps, as someone else would; or they have been discovered when someone became sick or someone got frightened and blew the whistle. If, in fact, most of the convictions in this area are those which have been discovered only fortuitously, how much else is out there, perhaps being committed by people who are far more skilled than those who are being caught?

There are many estimates of white-collar-crime dollar losses being made, and I doubt that any of them are more than rough guesses. They range from a low of $3 million to $60 billion a year in United States alone, depending upon what crimes are included in the estimates and how analysts project actual losses from the comparatively small number of instances which are detected.

If one includes, for example, guesses about the costs to consumers and business competitors from price-fixing and other antitrust violations and losses to Government from possible tax fraud, many of which are in gray areas of law enforcement, it is easy to make projections—and I mean guesses by that word—at or even above the upper limits of current estimates.

If one confines estimates to criminal cases successfully prosecuted, the measurements of monetary loss are likely to be only a small proportion of the higher figures. Whatever the basis used, it can be confidently stated that monetary losses from these frauds dwarf into insignificance direct monetary losses stemming from common crimes.

Mr. Chairman, it may be a mistake to make these comparisons, because the impact of a mugging is far greater than the few dollars taken from the victim, when one considers the victim's personal trauma, for example. I think that the problem with respect to white-collar crime and its impact can stand on its own two feet. But if one wants to look at impact, one might consider the fact that if you are shot in the shoulder or if you are struck in the course of a mugging, you can recover; but the history of white-collar crime is replete, for example, with elderly people whose life's savings go down the drain, who cannot go back into the marketplace and reestablish themselves economically and then have to go on charity, become a burden on their children, or see the entire balance of their lives destroyed.

Now, which is the greater impact? I think these are the kinds of things we can look at.

These secondary impacts, I believe, are far more significant than mere dollar losses, no matter how great, because they go to the very heart of the issue of the integrity or our society, and to that confidence in our private and public institutions which is essential to their usefulness and effectiveness in serving the public.

Patterns of misinformation, deception, and exploitation found in white-collar offenses can cause severe public anxieties and resentments. The aged, as I have indicated, are a population especially and cruelly affected.

Minorities, too, are disproportionately vulnerable in this area. In its investigation of the Watts riot, the McCone Commission heard recurring testimony of alleged consumer exploitation in south central Los Angeles. Not just these particular segments of society feel themselves abused; middle-class persons increasingly seem to feel victimized by consumer fraud and other forms of economic exploitation.

There are other indirect consequences from which flow white-collar crime. There are substantial negative effects on economic development, and loss of public trust in established processes and institutions. Banking abuses may dry up the flow of credit to small businessmen and minority groups. Credit abuses divert funds from legitimate outlets. Failure to regulate financial markets effectively has an impact on economic growth and on the stability of private, local, and State government pension structures.

Many social and economic programs are disproportionately vulnerable to white-collar crime because the lack the powerful constituencies and internal protections of more established public enterprises. Very often, Mr. Chairman, a social benefit program is not terribly popular. There are few lobbyists coming to legislatures to press for them, and when there is a program fraud you will see a classic example, of "Any stick will do to beat a dog."

A $50,000 fraud in a billion-dollar program may very well serve either to gut such a program or to harrass it to the point where it has to adopt ways of operating which may very well be quite disfunctional and interfere very, very seriously with the delivery of benefits.

Other indirect impacts of business crime require your consideration. Violations of antitrust laws, as you have noted, raise prices; they also distort the shape and direction of our national policies in support of the kind of free enterprise system we choose to operate under—denying entry to the market for some and rigorously confining the competition role of others.

Tax violations shift tax burdens. Commercial bribery not only injures the competitor who seeks to operate ethically, but also promotes similar unethical behavior and creates national and international problems, as in the Lockheed case.

Enforcement practices which result in relatively stern prospective and sentencing action against the crimes of the poor, as compared to enforcement patterns against white-collar crime, create a heightened sense of unfair discrimination in law enforcement which may, in fact, promote lawlessness and violence.

Last but not least, the drive for advantage to the commission of white-collar crime corrupts our public institutions, not only through direct subversion of public processes but also through more subtle activity, such as concealed donations of unlawful political contributions. The corruption of government and its functions is a major white-collar crime issue.

One impact which cuts across the dollar—secondary impact issue is that of government procurement on local, State, and Federal levels. You not only have an integrity issue here, but a dollar issue of very, very substantial importance.

What is being done about white-collar crime? It's a very, very complex point. There is much talk about white-collar crime, but less real action in proportion to the magnitude of the problem. Local investigation and prosecution have been impeded by two basic problems: Lack of resources; and the externalities problem—that is, many crimes victimize people across a number of jurisdictions, but no one jurisdiction can assume the burden on behalf of all of those affected.

On the Federal level, there is a great deal of activity directed against white-collar crime; but quite clearly, this effort, too, is impeded by structural and resource problems.

Policies are of key importance. Not enough is done by the Federal Government in contract renegotiation procedures to recapture excessive profits or to utilize renegotiation audit procedures to unearth indications of procurement fraud. Audit and compliance activities within Government programs, unfortunately, often require that numerous review and administrative hurdles be overcome before a case is referred for criminal prosecution or civil recovery.

How we make resources available will often determine whether we mean what we say about fighting white-collar crime.

It is not unusual to hear the judiciary criticized for applying different punishment yardsticks to white-collar offenders, as compared to those who commit common crimes. I believe this criticism is valid. But the responsibility must be more broadly shared. The courts do no more than reflect the existing overall climate of tolerance toward white-collar crime, as evidenced by legislative, executive, and private policies in this area.

The issue of private enforcement is rarely addressed in considering white-collar crime. Large corporations and smaller businesses spend

hundreds of millions of dollars each year on internal audits which could do more—as our courts have recognized—to deter and unearth white-collar crimes. The U.S. Chamber of Commerce, the insurance industry, and other sectors of the business community have mounted investigative and educational programs directly against white-collar crime. The enforcement value of all this is limited by the very real reluctance of business to refer cases for criminal prosecution, except in cases where no insider is culpably or negligently involved.

Corporate officers and their auditors are concerned about their images as competent managers in the eyes of the public and stockholders. If they are seen to have allowed their companies to be defrauded, they worry about liability in lawsuits brought by stockholders on the grounds of their negligence. In more than one instance the fault can be placed at high levels, where corporate officials are involved in conflicts of interests, taking of commercial bribes, and dealing in corporate stock on the basis of insider information.

With respect to these crimes, enforcement is limited to detection by happenstance or the vigilance of a particular Government agency. I suggest that internal corporate corruption is a desert area of enforcement—and if there are any doubts about that statement, consider how much less we would know today about the laundering of funds and major secret offshore bank accounts if it were not for the vigilance of a guard at the Watergate building.

A Federal policy against white-collar crime should involve these components, in my view:

Setting and enforcing standards of integrity in the operation and conduct of Federal business, externally—that is, with others—and internally.

It should involve analysis and reorganization of Federal efforts to detect, investigate, and prosecute white-collar crime—and provision of resources as needed. It should involve legislative changes to make white-collar crime unprofitable for businesses which are only collaterally but not primarily involved in such activities.

Supplementary services and support facilities, analogous to that which the FBI crime laboratories offer should be provided to local and State governmental agencies.

I have stated these elements generally, and they have to be implemented by specific policies. As a "cafeteria line" of possible items in implementation of these elements, one might consider the following:

Rationalizing the hodgepodge of compliance activities within the Federal Government; rationalizing the various functions—prosecutive, investigative, regulatory—within the Federal Government, and the interactions between these functions; State and local enforcement agencies dealing with white-collar crime should be supported through the provision of services and expertise.

I have sought, in this testimony, Mr. Chairman, over and over again to make the point that the test of our Nation's commitment to a climate of integrity is what we will do about the harm that is done to our people and our community by lies, fraud, deception, and the concealment of truth in the private and also in the public sectors. There are major and important subissues, but I think these are the most important issues, together with that of affording remedies to the victims of white-collar crime.

Thank you, Mr. Chairman.

Mr. CONYERS. Thank you, Mr. Edelhertz, for a very seminal opening statement. We are grateful for the attention that you have given the committee and for your careful preparation.

We have questions, but we are going to ask all three of our witnesses to make presentations, and then we will have discussions with the subcommittee.

I would like, next, to call Prof. Gilbert Geis, professor in the program of social ecology at the University of California at Irvine, coeditor of "White-Collar Crime" and a leading authority on white-collar crime, one who has spent a great number of years in this area and published extensively on this subject. His expertise is well known.

We also appreciate your prepared statement, which will be incorporated in full at this point in the record, and we'll allow you to proceed in your own way.

[The prepared statement of Mr. Geis follows:]

STATEMENT OF GILBERT GEIS, PROFESSOR, PROGRAM IN SOCIAL ECOLOGY, UNIVERSITY OF CALIFORNIA, IRVINE

Speaking at the 100th anniversary meeting of the Los Angeles Bar Association last month, President Carter used the imprimatur of his office to signify white-collar crime as a paramount social and economic problem. There was unconscious, or perhaps deliberate, irony in the fact that the President's stress on white-collar crime appeared in a speech that primarily was a critique of the legal profession. "We are overlawyered and underrepresented," the President maintained. "No resource of talent and training in our society, not even medical care, is more wastefully or unfairly distributed than legal skills." Later, the President made his points about white-collar crime:

> Powerful white-collar criminals cheat consumers of millions of dollars. Public officials who abuse their high rank damage the integrity of our nation in profound and long-lasting ways. But too often these big-shot crooks escape the consequences of their acts. Justice must be blind to rank, power and position.

Had the President chosen to move deeper into delicate territory, at the risk of further aggravating attorneys, he might have pointed out that one of the surest guarantees of unmolested white-collar lawbreaking is the ability to command high-priced legal talent. Such talent can lobby partisan measures into law for corporate clients, can delay trial outcomes, obfuscate issues, and overwhelm government attorneys by pouring hugh sums into trials. Members of firms with corporate clients would counterattack, of course, by pointing out that in a democracy everybody, including corporations and professional persons, is entitled to adequate legal services. That the richest get the best is axiomatic. What else is new? Who had ever claimed that justice isn't in part a commodity, able to be purchased, like everything else, in the marketplace?

A tone of urgency was clear in Mr. Carter's Los Angeles speech. "The Justice Department," he announced, "is undertaking a major new effort on white-collar crime." Officials in the Department of Justice charged with prosecuting white-collar crime, however, at a meeting I was attending in Washington shortly after the President's speech, responded with wonderment to his message. They had received no mandate, much less any resources, to deal more effectively with white-collar crime. At the same meeting, officials from the Law Enforcement Assistance Administration announced that funds for research and action projects in the area of white-collar crime would be reduced in the coming fiscal year as part of an overall agency budget cut.

White-collar crime once again was making for fine political populist political rhetoric, but the words were not being translated into public policy. This is traditionally the manner that Americans deal with white-collar crime. It allows those of us who are doing well to castigate lawbreakers who are like us, without threatening them so seriously that it would make us nervous too.

Note, in this regard, the Department of Commerce's recent statement that $16.3 billion more was paid out by banks in interest and $2.9 billion more in divi-

dends than was reported by taxpayers to the Internal Revenue Service. The loss to the Government may be close to or exceed the take from those street crimes that arouse so much anger and concern. But the Treasury Department is complacent. It will not beef up enforcement efforts because that could, a Treasury press release observes, "generate taxpayer resentment so great as to jeopardize the very foundation of the entire system of voluntary compliance." The doublespeak involved in noting the huge amount of tax fraud, while describing the tax system as one of "voluntary compliance" is ludicrous, though its humor might be lost on burglars and shoplifters, among others. The moral of the Treasury statement is that if enough powerful persons are crooks their potential unhappiness at the polls if they are prosecuted will guarantee them immunity from enforcement efforts.

The difference in official responses to criminal acts of the "haves" in contrast to those of the "have-nots" produces further problems. I believe that the failure of the criminal justice system to mount an effective campaign agains street offenders is largely a function of the fact that prosecutors, judges, and the rest of us know too well that a vast amount of criminal activity by middle and upper-class persons is largely ignored. We cannot find the anger to allow us to say of lower-class, largely minority group offenders: "These are the real evil people; they deserve to be punished in order to protect the rest of us, the good people." Most of us are too smart not to know better than that.

We also have trouble really thinking of the successful as he malevolent. Federal prosecutors gathering evidence against Spiro Agnew, when he was Vice President, demonstrated the change in psychological set needed to cauterize deep-rooted feelings about who the "proper" criminals are. Newspaper reporters describing the Agnew investigation display their biases in the quotation below when they indicate that somehow it is worse to send a "respectable" crook than a lower-class crook to jail:

> Men under investigation [in the Agnew case] were called "bad men". . . . In a way, the prosecutors employed terms like these to condition themselves for the job at hand—mean, nasty work that often entailed sending a man to jail. It was one thing to dispose of a mugger in that fashion, but quite another thing when it came to men much like themselves—college-educated, middle class, articulate. These were not street people, but men with roots in the community. The humilitation of jail was total and absolute. It destroyed families, careers, and then men themselves.

The major difference between white-collar criminals and the traditional street offenders probably is that the burglar and the robber have more limited means at their disposal for law violation. Members of both groups are dishonest, but the white-collar crook can be more subtle (and more efficient) in his criminal self-aggrandizement. As Neil Shover has noted:

> The members of the underclass command so few resources that, when engaging in criminality, they must rely upon stealth, guile or frontal assaults on property to attain their objectives. Not so for elites, whose resources include the bureacratized labor power of others; elites can, therefore, use bureacracies as instruments for the perpetuation of their criminal ends. Control over organizations, as resources, thus becomes a kind of functional equivalent of the underclass bandit's pistol.

The use of indirection and manipulation common in white-collar crime can be far more dangerous to the country's integrity than direct forms of criminal activity. Muggings and other street crimes tend to unite a people in moral condemnation of an outsider. Emile Durkheim, a French sociologist, emphasized that such acts may make people behave better by dramatizing what we abhor and by showing what happens to people who behave in such ways. White-collar crime, on the contrary, breeds social malaise. It creates distrust, cynicism, and greed—if others are doing it, I'll get my share too. Street criminals cite self-righteously the derelictions of those in more fortunate positions than themselves. Such considerations led Jonathan Swift to set forth in the land visited by Gulliver a penal policy that punish white-collar offenses more harshly than common thefts:

> The Lilliputians look upon fraud as a greater crime than theft, and therefore seldom fail to punish it with death; for they allege that care and vigilance, with a very common understanding, may preserve a man's goods from theft, but honesty has no defense against superior cunning.

It is sometimes maintained that white-collar crime ought not to be regarded seriously because, at its worst, it involves only money, while street offenses can

threaten life and limb. Such a distinction is spurious. Smoggings and muggings are not that distinctive in their lethal consequences. It is quite possible that more people have died from corporate-conducted or corporate-condoned violence—involved in things such as the knowing manufacture of defective cars and private planes—than have been victims of more traditional kinds of murder.

The roster of unnecessary deaths of workers in the asbestos industry documents fatal consequences of white-collar crime. Epidemiological studies indicate that asbestos workers died from lung cancer at unconscionably higher rates than workers in other industries. A union official, fighting for enforcement of tougher industry standards, put the matter bluntly: "I wanted them to know that murder was being committed in the workplace." Paul Brodeur, investigating conditions in factories, often found them a mockery of the assumption that the government would force companies to abide by standards set to insure healthful working conditions. Brodeur has summarized pointedly the bias shown by responses to the heavy death toll among asbestos workers:

> I submit that if a million people in the so-called middle or professional class were dying each decade of preventable occupational disease, and if nearly four million were being disabled, there would long ago have been such a hue and cry for remedial action that if Congress had not heeded it vast numbers of its members would have been turned out of office.

For much corporate crime, however, a usual punishment is a consent order in which the accused in essence says: "I didn't do it, but I won't do it again." The Securities and Exchange Commission settles about 90 percent of the 160 or so cases it brings each year with consent decrees. Burglars might wish they had it so good.

There also is a process at work reminiscent of the compensation programs of medieval times. Victims often much prefer to pursue civil suits, where they can recover monetary damages, rather than to press criminal charges, where their gain will be no more than moral satisfaction. Prosecutors are not insensitive to such feelings. Thus, offending corporations can at times literally buy off their victims.

Failure to attend to white-collar crime adequately most certainly is partly rooted in the congruity between offenders and those charged with the crimes prosecution. But the basic explanation seems more complicated. Suzanne Weaver in a recent study of discretion in prosecuting federal antitrust violators found government attorneys intent upon nailing corporate violators. It was not political interference, she came to believe, that kept actual prosecutions low, but rather the inability to construct airtight cases that could go forward successfully.

It proved exceedingly difficult to place responsibility for white-collar crimes. Corporate officials have learned well to rely on verbal communications of nefarious plots rather than to keep written records. We are reluctant to hold a person criminally responsible for an act unless we can show the proper *mens rea*, or guilty intent. We will not accept a parallel to Thomas Aquinas' reasoning that heresy was a sin punishable by criminal action because such a degree of ignorance could only be the product of culpable negligence. I would enthusiastically support the provision of the proposed federal criminal code that organizational officials be regarded as having behaved "recklessly" if they did not put a stop to criminal activities in groups for which they were administratively responsible, when they ought to have known about such crimes if they had acted with reasonable and proper care.

Today, a legal structure largely erected to protect political dissidents and street offenders probably redounds more to the advantage of white-collar criminals than members of either of the two other groups.

Public concern with white-collar crime rarely proceeds beyond a few transient outbursts of indignation. The harm from white-collar offenses tends to be highly diffuse, with losses scattered among many persons, each of whom bears only a very small portion of the total. An orange juice manufacturer can water his product and cheat each of us out of only a few cents a year and reap millions of dollars in criminal profit. We also have become callous about marketplace deception. We expect to be cheated, and feel impotent about protecting ourselves. We know that some auto mechanics, television repairmen, and other tradespeople are routinely ripping us off. We are not surprised to learn from a recent newspaper headline that fraud in federal programs is estimated to be about $12 billion annually. We have become numbed and overwhelmed, and we don't know what to do about it—so we sometimes try not to seem to care.

We are also puzzled to understand the roots of white-collar crime in a manner that will allow us to control it. We know that it does not stem from broken homes, or Oedipal conflicts, or similar platitudinous explanations offered for traditional offenses.

We know, for instance, that the recent rise in the income of doctors has outpaced the rate for all professions; that the average net earnings of a doctor is now about $65,000. Yet medical law-breaking seems almost endemic. An early study by Howard Whitman described widespread medical fee-splitting, and newspapers document relentlessly, almost monotonously, criminal practices by doctors. These involve not only financial fraud, but also crimes against the person, such as unwarranted surgery, which reasonably might be defined as assault.

In addition, trepidation in government circles about medical fiscal venery likely has inhibited earlier establishment of a national health service, to the physical detriment of large segments of the population. The United States today lags behind more than a dozen countries in terms of life expectancy and infant mortality, two sensitive indices of national health.

The litany of medical crime—and doctors may well be among the more honest professionals in our midst—can be briefly sampled to make the case more specific. The American College of Surgeons has alleged that half of the operations performed in American hospitals are done by unqualified doctors. A Government lawsuit maintained that the 4,500 doctors who own and work in medical laboratories overcharged the public for tests and conspired illegally to keep everyone but themselves out of the medical laboratory business. In 1970, the IRS reported that about half of the 3,000 doctors who received $25,000 or more in Medicare or Medicaid payments failed to report a substantial amount of their income. A 1976 study by Cornell University investigators found that from 11 to 13 percent of all surgery in the U.S. is "unnecessary," a function of diagnostic incompetence or greed stemming from a lust for high surgical fees. The Cornell researchers believed that about two million or more operations each year were unwarranted.

A later survey reported that most unnecessary surgery was performed on Medicaid patients. The self-righteousness of violators is reflected in a statement by two New York doctors, who told investigators that government programs "encouraged" them to cheat, since they were not monitored properly. What are the roots of such behavior and such attitudes? Perhaps we dare not look too closely, lest we uncover conclusions too painful and unnerving.

Difficult issues arise in regard to the most effective manner of dealing with convicted white-collar criminals. They probably will not recidivate, in part because they will not be able to secure jobs requiring bonding and other tokens of status. It might be argued that white-collar criminals should not be imprisoned, that the shame they reap is punishment enough. Such an attitude underlies the recent bevy of "creative" sentences imposed by judges on white-collar offenders. Recently, for instance, the Olin Corporation pleaded *nolo contendere* (how many burglars are allowed to plead *nolo contendere*?) to a charge of illegally selling arms to South Africa. For punishment, the corporation was ordered to donate $510,000 to charity. Olin seemed enthusiastic about the outcome: it could deduct the contributions from its taxes (which it could not have done were it fined), and it would gather a bit of good will as it spread about its largesse.

An argument against imprisoning white-collar crooks is that often they are professional persons, and they may be barred from practicing their vocation, although professional groups, such as bar, medical, and accountants' associations, often seem much more concerned with protecting prerogatives than with disciplining offenders.

I believe that we need to make an example of white-collar criminals in order to deter others and to restore faith in the justice and fairness of the criminal justice system. "Crime in the suites" needs to be treated with the same severity or more severely than "crime in the streets."

I think there is a need for the government to launch a campaign designed to spotlight the horrors of white-collar crime and the inequities rampant in the manner in which we deal with such crime. Such a campaign demands thunder and lightning. The law is a powerful instrument to condition morality, at least within limits, but Solzhenitsyn is correct too when he notes that we in the United States tend to use the fact that we have stayed just within legal boundaries—or that we can make such a case—or that at least they can't prove a contrary case—as a justification for unacceptable behavior. We have got to tighten laws so that ulti-

mately they create a reflexive honesty and compassion, rather than having them represent no more than a catalogue of the most nefarious behavior that might, if uncovered, get their perpetrator into legal trouble.

Offenders must come to know that callous commercial explcitation of their fellow human beings beyond the pale. I appreciate that such a demand smacks of preaching, and that preaching is declasse these days: we are all cool and tolerant and cynical. We expect the worst and then cannot be disappointed. We recognize within ourselves those impulses which prompted the acts of the depredators. We see the reformer merely using issues for self-advancement. I think the time is overdue for some old fashioned anger and moralizing in regard to white-collar crime and criminals. They have got to learn that what they have done or are doing is wrong, that it threatens this country's survival in a very real way, and that we will not put up with it. Rationalizations—"everybody does it" is one of the more common—must be penetrated.

I think hearings such as those this committee is holding are essential, because arousal of public concern is a fundamental need if we are going to make inroads against white-collar crime. From this concern must come recommendations and support for remediation. We must create within the government an agency to spotlight and coordinate a campaign against white-collar crime. Centralized statistical reports ought to be issued to demonstrate the extent and nature of such offenses. The media ought to be encouraged to carry stories of white-collar crime where they carry all crime news, and not in the business pages adjacent to the stock reports. Extensive structural changes ought to be made to render corporations more responsible: a federal incorporation law ought to replace the indulgent Delaware code; public representatives ought to find their way onto Boards of Directors; and stockholders ought to be made more vigilant, or to suffer the consequences of heavy criminal penalties against the organization they presumptively partially own.

I believe that white-collar criminals are more culpable than their street counterparts. Having more advantages than other people, they bear more responsibility to establish a good example. This idea of *noblesse oblige* dictates that white-collar criminals do more prison time more often than street offenders for equivalent depredations. White-collar offenders are notably deterrable: guilt and shame (at being caught) are qualities that are part of their upbringing.

Whatever the proper approach to white-collar crime, nobody examining the facts can fail to be convinced that the phenomenon requires more attention than it currently receives from the public, the media, criminologists, legislators, and government officials. White-collar crime in every sense is real crime. It has been overlooked and underplayed for far too long.

TESTIMONY OF GILBERT GEIS, PROFESSOR, PROGRAM IN SOCIAL ECOLOGY, UNIVERSITY OF CALIFORNIA, IRVINE, CALIF.

Mr. GEIS. Thank you very much, Mr. Chairman.

I am going to abstract some of the material from the prepared statement, to try to highlight some things that I think may be of importance to the subcommittee.

I would like to start by noting that President Carter used the imprimatur of his office to signify white-collar crime as a paramount social and economic problem when he spoke at the 100th anniversay meeting of the Los Angeles Bar Association last month. There was an unconscious—or perhaps deliberate—irony in the fact that the President's stress on white-collar crime appeared in a speech that primarily was a critique of the legal profession: "We are overlawyered and underrepresented," the President maintained. No resource of talent and training in our society, not even medical care, is more wastefully or unfairly distributed than legal skills.

Later, the President was to make his point about white-collar crime, and again, I am quoting:

Powerful white-collar criminals cheat consumers of millions of dollars. Public officials who abuse their high rank damage the integrity of the nation in profound

and long-lasting ways. But too often these big-shot crooks escape the consequences of their acts. Justice must be blind to rank, power, and position.

Had the President chosen to move deeper into delicate territory, at the risk of further aggravating attorneys, he might have pointed out that one of the surest guarantees of unmolested white-collar lawbreaking is the ability to command high-priced legal talent. Such talent can lobby partisan measures into law for corporate clients, can delay trial outcomes, obfuscate issues, and overwhelm government attorneys by pouring huge sums into trials.

Members of firms with corporate clients would counterattack, of course, by pointing out that: "In a democracy, everybody, including corporations and professional persons, is entitled to adequate legal services. That the richest get the best is axiomatic. What else is new? Who had ever claimed that justice isn't, in part, a commodity able to be purchased, like everything else, in the marketplace?"

And I presume the key line is that if white-collar crime is going to be fought effectively, the resources that are committed to that particular combat have got to be equivalent to the resources available to the white-collar criminals.

There was a tone of urgency that came through in Mr. Carter's Los Angeles speech. "The Justice Department," he announced, "is undertaking a major new effort on white-collar crime." Officials in the Department of Justice charged with prosecuting white-collar crime, however, at a meeting we were attending in Washington shortly after the President's speech, responded with wonderment to his message. They had received no mandate, much less any resources, to deal more effectively with white-collar crime.

At the same meeting, officials from the Law Enforcement Assistance Administration announced that funds for research and action projects in the area of white-collar crime would be reduced in the coming fiscal year as part of an overall budget cut. The result is that you will have to conclude that white-collar crime, once again, was making for political populist rhetoric but the words were not being translated into public policy.

This is traditionally the manner that Americans deal with white-collar crime. It allows those of us who are doing well to castigate lawbreakers who are like us without threatening them so seriously that it would make us nervous, too.

Note in this regard the Department of Commerce's recent statement that $16.3 billion more was paid out by banks in interest and $2.9 billion more in dividends than was reported by taxpayers to the Internal Revenue Service. The loss to the Government may be close to or exceed the take from those street crimes that arouse so much anger and concern. But the Treasury Department is complacent. It will not beef up enforcement efforts because that could, according to a Treasury press release—and again I'm quoting—"generate taxpayer resentment so great as to jeopardize the very foundation of the entire system of voluntary compliance."

The doublespeak involved in noting the huge amount of tax fraud while describing the tax system as one of "voluntary compliance" is ludicrous, though its humor might be lost on burglars and shoplifters, among others.

The moral of the Treasury statement is that if enough powerful persons are crooks, their potential unhappiness at the polls if they are prosecuted will guarantee them immunity from enforcement efforts.

The difference in official responses to criminal acts of the "haves" in contrast to the those of the "have-nots" produces further problems. I believe that the failure of the criminal justice system to mount an effective campaign against street offenders is, in some part, a function of the fact that prosecutors, judges, and the rest of us know too well that a vast amount of criminal activity by middle class and upper class persons is largely ignored.

We cannot find the anger to allow us to say of lower class, largely minority-group offenders. "These are the real evil people; they deserve to be punished in order to protect the rest of us, the good people." Most of us are too smart not to know better than that.

The major difference between white-collar criminals and the traditional street offenders probably is that the burglar and the robber have more limited means at their disposal for law violations. Members of both groups are dishonest, but the white-collar crook can be more subtle and more efficient in his criminal self-aggrandizement.

As one commenator has noted—and I'm quoting:

> The members of the underclass command so few resources that, when engaging in criminality, they must rely upon stealth, guile, or frontal assault in order to attain their objectives. No so for elites, whose resources include the bureaucratized labor power of others; elites can, therefore, use bureaucracies as instruments for the perpetration of their criminal ends. Control over organizations thus becomes a kind of functional equivalent of the underclass bandit's pistol.

The use of indirection and manipulation in white-collar crime can be far more dangerous to the country's integrity than direct forms of criminal activity. Muggings and other street crimes tend to unite a people in moral condemnation of an outsider.

A French sociologist sometime ago emphasized that such acts may make people behave better by dramatizing what we abhor and by showing what happens to people who behave in such ways. White-collar crime, on the contrary, breeds social malaise. It creates distrust, cynicism, and greed: "If others are doing it, I'll get my share."

Street criminals cite self-righteously the derelictions of those in more fortunate positions than themselves.

It is sometimes maintained that white-collar crime ought not to be regarded seriously because, at its worst, it involves only money, while street offenses can threaten life and limb. Such a distinction, I think, is spurious. Muggings are not that distinctive in their lethal consequences. It is quite possible that more people have died from corporate-conducted and corporate-condoned violence involved in things such as the knowing manufacture of defective cars and planes than have been victims of more traditional kinds of murder.

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There also is a process at work reminiscent of the compensation pogram of medieval times. Victims often much prefer to pursue civil suits where they can recover monetary damages, rather than to press criminal charges, where their gain will be no more than moral satisfaction.

Prosecurtors are not insensitive to such feelings. Thus, offending corporations can, at times, literally buy off their victims.

It also proves exceedingly difficult to place responsibility for white-collar crimes. Corporate officials have learned well to rely on verbal communications of nefarious plots, rather than to keep written records. We are reluctant to hold a person criminally responsible for an act unless we can show the proper *mens rea*, or guilty intent.

In this regard, I would enthusiastically support the provision of the proposed Federal Criminal Code that organizational officials be regarded as having behaved "recklessly" if they did not put a stop to criminal activities in groups for which they were administratively responsible, when they ought to have known about such crimes if they had acted with reasonable and proper care.

I am perfectly aware of the pitfalls of that, but I am more sensitive to the need for legislation that moves in that direction.

Today, a legal structure largely erected to protect political dissidents and street offenders probably redounds more to the advantage of white-collar criminals than members of either of the two other groups.

Public concern with white-collar crime rarely proceeds beyond a few transient outburts of indignation. The harm from white-collar offenses tends to be highly diffuse, with losses scattered among many persons, each of whom bears only a very small portion of the total. An orange juice manufacturer can water his product down and cheat each of us out of only a few nickels a year and reap millions of dollars in criminal profit.

We also have become callous about marketplace deception. We expect to be cheated, and feel impotent about protecting ourselves. We know that some auto mechanics, television repairmen, and other tradespeople are routinely ripping us off.

We are not surprised to learn, from a recent newspaper headline that fraud in Federal programs is estimated to be about $12 billion annually. We have become numbed and overwhelmed, and we don't

know what to do about it—so we sometimes try not to seem to care.

We are also puzzled to understand the roots of white-collar crime in a manner that will allow us to control it. We know that it does not stem from broken homes, or Oedipal conflicts, or similar platitudinous explanations offered for traditional offenses.

We know, for instance, that the recent rise in the income of doctors has outpaced the rate for all professions; that the average net earnings of a doctor is now about $65,000. Yet medical lawbreaking seems almost endemic. An early study by Howard Whitman described widespread medical fee splitting, and newspapers document relentlessly—almost monotonously—criminal practices by some doctors.

Of course, you have to be careful to stress the "some." These involve not only financial fraud, but also crimes against the person such as unwarranted surgery, which reasonably might be defined as assault.

In addition, I suspect that trepidation in Government circles about medical fiscal venality likely has inhibited earlier establishment of a national health service, to the detriment of large segments of the population.

The United States today lags behind more than a dozen countries in terms of life expectancy and infant mortality, two sensitive indexes of national health.

The litany of medical crime—and I suspect doctors may well be among the more honest professionals in our midst—can be taken on at some length, and I have done so in the statement, but shan't go further here.

Difficult issues arise in regard to the most effective manner of dealing with convicted white-collar criminals. They probably will not recidivate, in part because they will not be able to secure jobs requiring bonding and other tokens of status.

It might be argued that white-collar criminals should not be imprisoned, that the shame they reap is punishment enough. Such an attitude underlies the recent bevy of so-called creative sentences imposed by judges on white-collar offenders.

Recently, for instance, the Olin Corp. pleaded nolo contendere—and one might ask, how many burglars are allowed to plead nolo contendere?—to a charge of illegally selling arms to South Africa.

For punishment, the corporation was ordered to donate $510,000 to charity. Olin seemed enthusiastic about the outcome: It could deduct the contributions from its taxes—which it could not have done were it fined—and it would gather a bit of good will as it spread about its largesse.

I believe that we need to make an example of white-collar criminals in order to deter others and to restore faith in the justice and fairness of the criminal justice system.

I think that "crime in the suites" needs to be treated with the same severity, or more severely, than "crime in the streets."

I think there is a need for the Government to launch a campaign designed to spotlight the horrors of white-collar crime and the inequities rampant in the manner in which we deal with such crime. Such a campaign demands thunder and lightning. The law is a powerful instrument to condition morality, at least within limits.

We have got to tighten laws so that ultimately they create a reflexive honesty and compassion, rather than having them represent no more

than a catalog of the most nefarious behavior that might, if uncovered, get their perpetrator into legal trouble.

Offenders, I think, must come to know that callous commercial exploitation of their fellow human beings is beyond the pale. I appreciate that such a demand smacks of preaching and that preaching is dé classé these days—we are all cool, and tolerant, and cynical. We recognize within ourselves those impulses which prompted the acts of the depredators.

We see the reformer, at times, merely using issues for self-advancement. I think the time is overdue for some old-fashioned anger and moralizing in regard to white-collar crime and criminals. They have got to learn that what they have done or are doing is wrong, that it threatens this country's survival in very real ways, and that we will not put up with it.

I think hearings such as this committee is holding are essential, because arousal of public concern is a fundamental need if we are going to make inroads against white-collar crime.

From this concern must come recommendations and support for remediation. We must create within the Government, I believe, an agency to spotlight and coordinate a campaign against white-collar crime. Centralized statistical reports ought to be issued to demonstrate the extent and the nature of such offenses.

The media ought to be encouraged to carry stories of white-collar crime where they carry all crime news, and not in the business pages adjacent to the stock reports.

Extensive structural changes ought to be made to render corporations more responsible: A Federal incorporation law ought to replace the indulgent Delaware Code; public representatives ought to find their way onto boards of directors; and stockholders ought to be made more vigilant, or to suffer the consequences of heavy criminal penalties against the organization they presumptively partially own.

I believe that white-collar criminals are more culpable than their street counterparts. Having more advantages than other people, they bear more responsibility to set a good example. This idea of noblesse oblige dictates that white-collar criminals get heavier penalties than street offenders for equivalent depredations. White-collar offenders are notably deterrable: guilt and shame—at being caught, at least—are qualities that are part of their upbringing. Unfortunately, honesty is not.

Whatever the proper approach to white-collar crime, nobody who is examining the facts—as this subcommittee is beginning to do—will fail to be convinced that the phenomenon requires more attention than it currently receives from the public, the media, criminologists, legislators, and government officials.

White-collar crime in every sense is very real crime, and I think it has been overlooked and underplayed for far too long.

Mr. CONYERS. Thank you, Prof. Gilbert Geis, for a very informative addition to our opening day's hearings. Our next witness, Prof. Donald Cressey, was a research assistant to the late Professor Sutherland, who coined the phrase "white-collar crime" and did the seminal research in this area. Dr. Cressey was the late President Johnson's organized crime adviser, the author of a massive textbook on crimi-

nology which is now in its 10th edition (coauthored by Professor Sutherland) and has been an expert in the area of "white-collar crime" for a number of years. He is now a professor of sociology at the University of California at Santa Barbara.

We are very glad that you could join us from the University of California, and we welcome any remarks or comments that you may have.

TESTIMONY OF DR. DONALD R. CRESSEY, PROFESSOR OF SOCIOLOGY, UNIVERSITY OF CALIFORNIA, SANTA BARBARA

Professor CRESSEY. Thank you, Mr. Chairman.

The invitation came late. I came to Washington on short notice and did not have time to prepare a well-reasoned statement.

I would like to make four preliminary remarks, all of which are rather obvious to anyone who has thought seriously about our Nation's white-collar crime problem.

First, there is not a shadow of doubt that so-called white-collar crime is by far the most important crime problem in the United States. White-collar crime results in inflation, unemployment, international political scandals, bankruptcies, and even ill health. So far as costs to the Nation are concerned, income-tax evasion alone dwarfs all other crimes put together. All our social problems, including problems of the young, the old, the poor, and the black, are somehow related to white-collar crime.

Second, it should be emphasized, over and over again, that white-collar crime is not a legal category. What is white-collar crime depends upon your politics. During the 25 years I have been involved with white-collar crime, I have observed the politics of defining the subject matter. An early study followed Edwin H. Sutherland's pioneering work by noting the political implications of calling white-collar criminals "criminals." The study was done in Norway. Soon after World War II, Wilhelm Aubert, a professor at Oslo University, published "White-Collar Crime and Social Structure." This was a summary statement about his lengthy study of Norway's price control and rationing laws and the enforcement thereof. His paper showed for the first time that the subject-matter of white-collar crime investigations—like this one—is the politics of defining just what white-collar crime is. Those Norwegians who favored price control and rationing laws called the violations "crimes," which indeed they were. Businessmen, who didn't like the laws, objected. Enacting the laws satisfied some political groups. Not enforcing the laws satisfied other political groups. Peace reigned.

It seems to me that we now are witnessing the "politics of definition" in the United States. What you call it makes a difference. If the Nation defines white-collar crime as consumer fraud and crimes against business, we will be in trouble. We will root out and punish credit-card schemes, short bunko games—where the person sells you a furnace or some roofing you don't need for your house—shoplifting, embezzlement, and so on. This, it seems to me, will direct our attention to the wrong crimes. It means that we will ignore the crimes of businessmen themselves—antitrust violations, misrepresentation in advertising, commercial bribery, political bribery, political corruption.

Three or four years ago the U.S. Chamber of Commerce put out a little pamphlet about white-collar crime. The pamphlet made it appear that white-collar crime is primarily that which is perpetrated against the members of the U.S. Chamber of Commerce, not the crimes committed by members. The pamphlet distracted attention from the fact that some members of the chamber are engaged in white-collar crime. As we are sitting here, right now, corporations are violating antitrust laws. I hope this subcommittee will recognize these violations for what they are—white-collar crimes.

My own efforts to define white-collar crime have not been any more fruitful than anyone else's. But I want to call attention to the fact that white-collar crime is committed by business as well as against business. I therefore define it as crime which is policed by officers wearing white collars. If you look at all the agencies enforcing the criminal law, you can get a good idea of what white-collar crime is. You can see blue-collar police officers dealing with street crime, and you can see white-collar policemen dealing with crime of businessmen. I think it's significant politically that we have appointed special gentlemen officers to police, detect, prosecute, and regulate white-collar crime. We don't ordinarily think of some members of the Securities and Exchange Commission, the Interstate Commerce Commission, the Food and Drug Administration, the Environmental Pollution Agency, and so on, as police officers. But they are cops, even though they are more gentlemanly than street cops.

The political question, it seems to me, is this: Why do we have special kinds of police officers to deal with businessmen who violate the law?

My third point concerns resources, which also is a political issue. When Franklin D. Roosevelt became President, he almost immediately increased the number of lawyers in the Antitrust Division of the Department of Justice by 30-fold. When John Kennedy became President, he increased the number of lawyers in the Organized Crime and Racketeering Section of the Department of Justice by a factor of seven or eight. Priorities make a difference. There will never be enough money to fight all crime with equal vigor. It's a question of priorities. Are we against white-collar crime or not?

Fourth, politics are involved in the procedures used in dealing with white-collar criminals—the cease and desist order, the injunction, the consent decree. Using such devices is part of the politics of white-collar crime. The procedures obscure the fact that some practices which are extraordinarily harmful to the Nation are indeed crimes. Do we really believe that an antitrust case, a price-fixing case, is a crime? If we did, it seems to me, we would enforce the law and talk about price fixing in the same way we talk about burglary, robbery, and other street crimes. But we don't do that. And the reason we don't is rather simple: In our society we always invent alternative procedures, softer procedures, for favored groups.

The best example is juvenile delinquency. Children were—maybe still are—a favored group. Seventy-five years ago we decided to stop stigmatizing members of this favored group as "crooks." We started calling them "juvenile delinquents." And we softened the criminal-law procedures in children's cases. We give kids a trial that is called

a "hearing"; there's a finding of guilt that's called an "adjudication." The name of arrest was changed to "citation." And we stopped sending kids to prisons. We send them to "boys schools." In short, we changed and softened the procedures because children are a favored group.

And in the last 75 years we have, similarly, been softening the criminal procedures for handling another favored group, businessmen, corporation executives. I happen to believe, as a matter of fact, that children and businessmen should be favored groups. But this does not mean that we should overlook the fact that crime is crime, even if committed by members of a favored group. The Supreme Court said as much—in the *Kent* decision and the *Gault* decision—about children. I hope this subcommittee, Mr. Chairman, will similarly decide that a crime is a crime, even if it is committed by a high-status businessman or a corporation. Doing so will get you embroiled in the politics of controlling the definition of white-collar crime. I hope you will get embroiled. American businessmen lose billions to crime every year. They also bilk American citizens out of billions each year.

Mr. CONYERS. Thank you all. The two lights above the clock indicate that our presence is required on the floor for a recorded vote. In pursuance of that, we will take a 15-minute recess and return for questions from the subcommittee.

[Recess.]

Mr. CONYERS. We have, gentlemen, pages of questions to put to you, but we don't have the time, so we'll submit them.

Here is the all-engrossing hypothetical. Suppose you were—and in a sense, you are—indirectly advising the President of the United States, who, after hearing the observations about his remarks last month, was aware of the fact that these hearings are being undertaken with a long-range exploratory purpose in mind. Suppose the Chief Executive and the Attorney General of the United States were to ask you to discuss an approach to the all-pervasive white-collar crime problem that the Nation might take? What kind of directions, what kind of strategy would each of you propose?

Professor CRESSEY. I don't mind going first because I had essentially the same experience in the organized crime field 10 or 12 years ago. We advised President Johnson, and in doing so we got the Nation to realize that it had an organized crime problem. Now, we've got to get the Nation to realize that it has a white-collar crime problem.

My first piece of advice to the President is negative—do not spend time and money trying to arouse the public. The McClellan Committee tried to arouse the public. Three or four Presidents in a row gave impassioned speeches about organized crime, trying to get people to stop buying the things organized criminals have for sale. Bobby Kennedy devoted his life to the idea that if the public just knew how dangerous organized crime is to democracy, they would stop playing the numbers, stop betting with bookmakers, stop taking usurious loans, stop working with corrupt labor unions.

It didn't work. "The public" never got indignant about organized crime. So the first thing I'd tell the President is that "public education" doesn't work. In the organized crime area, we gave the country

a problem by arousing opinionmakers, particularly Congress, key businessmen, the legal profession. What we tried to educate these people about—and I think we succeeded—was the definition of organized crime. The problem was comparable, it seems to me, to the problem we have now with regard to white-collar crime.

My second message to the President and other opinion leaders would be that an organization can commit a crime. Controlling crime isn't just a matter of arresting and prosecuting and jailing individuals. There are systemic problems. Attorney General Mitchell gave speeches in which he said we ought to be using, in the organized crime area, a law comparable to antitrust law. The Sherman Antitrust Law and its aftermath, I think, is the only set of criminal law recognizing that an organization, a corporation, can commit a crime. Now we must get opinion leaders to understand that some white-collar crime is organized crime, in the sense that it is committed by organizations, not individuals. You can't control organized crime simply by putting individual crooks in jail. That was the principal message of my book, "Theft of the Nation," published 10 years ago.

So my second message to the President would be that white-collar crime, too, is committed by organizations as well as by individuals. Mr. Mitchell seemed to understand this. So did Judge Tyler, Deputy Attorney General under President Ford. Attorney General Bell doesn't seem to have grasped this point. He is opposed to crimes against business, not corporation crime.

My third piece of advice would have to do with something I said earlier, namely that a lot of regulatory agencies are now dealing with criminals and enforcing criminal laws. We have introduced some options that are not available to ghetto dwellers who violate other criminal laws. When Congress passed the Sherman Antitrust law, it invented the treble-damage suit as a remedy for crime. It also invented the procedure whereby an injunction—a cease and desist order—can be used to enjoin a criminal who is violating a law. Before that, injunctions were used when there was doubt about whether an act was crime or not. Now, we say to white-collar criminals, "Kindly stop violating the law."

I guess my fourth point of advice would be this: I would tell the President to beware of people who advise him to take the easy way out. The temptation in the white-collar crime area is to define as "white-collar crime" that which is easy to arrest, easy to prosecute, easy to deal with. For instance, the Fraud Section of the Department of Justice that Herb Edelhertz once headed seems to have a tendency to define as "white-collar crime" that which it prosecutes. "Give us more money and we'll take care of the Federal effort against white-collar crime." That won't work. The Fraud Section deals with only minor kinds of white-collar crime. If you give that Section more money, Mr. Chairman, its prosecution rate will go up and it's conviction rate will go up, but the Antitrust Division upstairs, and the enforcement divisions of the IRS, the SEC, and a zillion other agencies will continue to be impotent. So my practical message to the President, and to you, Mr. Chairman, is this: We don't need new laws. We need to coordinate the existing agencies which employ white-collar police officers.

Mr. CONYERS. Thank you, Professor Cressey.

Mr. Edelhertz?

Mr. EDELHERTZ. Thank you. Professor Cressey commented about the fact that an agency does that which is its business. I'm afraid that in our system that's all it can do. It cannot do those things which it is not authorized to do.

But there is a related point which should be considered. If you could give more resources, more money to a particular office, for example, the Fraud Section of the Justice Department's Criminal Division which I directed at one time, the outcome might not be more prosecutions and more convictions. The outcome might be a better selection of prosecutions, and better selection of areas in which to move one's enforcement efforts.

When you evaluate enforcement efforts—more convictions, for example, or more prosecutions—may only mean taking on the easier cases. Fewer convictions may mean that you're taking on the tougher cases, and the more significant cases that have greater deterrence implications.

To try to specifically respond to your question, I would recommend starting with some key questions and action in response to the answers, if I were talking to the President, because white-collar crime is a challenge that confronts a broad range of social and political institutions of which the criminal justice system is only one, and it is a challenge with which the criminal justice system alone cannot expect to cope.

Therefore, if I were the President I would ask, "What are the most significant noncriminal justice institutions, or institutions which have noncriminal justice responsibilities, and what are the things that go on in these institutions which affect whether they will move criminally or whether they will not move criminally?"

Mr. CONYERS. For example?

Mr. EDELHERTZ. Well, for example, in the securities fraud area, with respect to issuance of a security—sale of securities without a registration is unlawful, and the SEC may refer such behavior for criminal prosecution; it may not. Criminal referral to the U.S. Department of Justice is a matter of option for the SEC. But it is exactly the same unlawful activity—perhaps in one case it's worse, in another case there is less culpability—but it's the same proscribed activity, whether it's the subject of a civil or administrative action, and whether or not it is the subject of a criminal action.

Another question which should be asked as a basis for action on the answers, is: What are the implications of social and economic policies, that is, Government benefit programs, the tax formulas, protection of privacy, which affect participation of noncriminal justice institutions in white collar crime control efforts?

Another question to be acted on: How and in what ways can or should noncriminal justice institutions be redirected in their responsibilities toward effective participation in a national white-collar crime containment effort?

I know I'm seeming to move toward Professor Cressey's statement that what is white-collar crime is a matter of political definition. There is much to be said for that view. Yet, one is more likely to politically

define what is going to be done about white-collar crime, rather than politically define what is a white-collar crime.

I believe there are many white-collar crimes to which our system does not respond with criminal enforcement efforts.

Mr. CONYERS. Don't we have an attitudinal problem within Government at the highest level that has to be almost preliminarily addressed before we can deal with that?

First, the political nature of the subject matter?

Mr. EDELHERTZ. Well, I wonder exactly where that is, whether it's at the highest levels, whether it's at the middle levels, whether it's in the executive branch or the legislative branch or out in the general public.

Mr. CONYERS. Well, simplistically, the President of the United States can set the tone like nobody else in the world.

I mean, if the President said, "Gentlemen, come immediately to the White House this afternoon after you leave this subcommittee hearing. We believe that almost everything that we predicate this administration upon in terms of its approval by the American people is based upon the notion of "equal justice under law", and we have to equalize the justice process; we have to reorganize the Department of Justice; we have to look at the "regulatory" verse "criminal justice system" approach to criminality. We want a new beginning in the way the Federal Government defines the "crime problem" and allocates its crime-fighting resources.

That would require the executive branch having the political honesty to say that our Federal law enforcement expenditures bear no rational relationship to the relative severity of the "white-collar crime" problem on the one hand and the "street crime" problem on the other. That would require the President having the political honesty to say that there's no way we're going to do anything more than very nominally improve the Federal response to white-collar crime in terms of the Government resources addressing it unless there is a corresponding acceptance of the notion that our whole way of thinking about what constitutes "criminal" behavior must be drastically altered.

I get the feeling that this thing is like an octopus. It's out there. The Department of Justice is spread over hell's half acre. The FBI is out there, and everybody is overburdened. We're all reactive. But we have utterly failed to develop a proactive strategy for dealing with white-collar crime. We've done almost no long-range thinking and planning on this subject. In the past, we have defined our "major" crime problem only in terms of the FBI "index crimes" and regarded "criminality" as primarily antisocial behavior committed in the streets by those persons at the lower rungs of our socio-economic system: "Crime in the suites" has received remarkably little attention or study.

Then President Carter campaigned partly on the theme that for far too long, "big shot crooks," as he called them, had received preferential treatment in our criminal justice system, and that he was going to change all of that. Well, where is the national strategy to deal with white-collar crime? Where is the plan? To what extent does the rhetoric about "equal justice under law" match the reality?

Mr. EDELHERTZ. Mr. Chairman, I think that the real problem is that nobody knows quite what to do about this.

Let's assume one has the best will in the world and a great desire to do something about it. One could suddenly move out and put a veritable Gestapo out there on top of our whole society and say, nobody can do this or that or the other thing. It becomes an impossibility.

I think what does have to be done is to figure out how one rationalizes this hodge-podge of activities that you referred to. There is a need for putting steam behind the search for answers and for reorganization.

There is also the question, which is extraordinarily important, of how does one properly integrate Federal, local, and State operations in an area like this, because as long as individuals have to come to the Federal Government rather than to someplace in their own communities for redress with respect to many of these kinds of crimes, you're not going to be able, basically, to take care of people's needs. There are some steps that are being taken toward development of a national strategy, as I mentioned earlier.

For example, the National District Attorneys Association has actually been in contact with and involved in rather extensive discussions with the U.S. Department of Justice about this. How this is going to come out, I don't know. But this is the kind of effort behind which there has to be substantial steam.

I notice, for example, in at least the statements of the Antitrust Division of the Department of Justice that they are exploring ways to get local prosecutors, local law enforcement agencies, into the antitrust area and, in fact, are decentralizing and trying to go out to the U.S. attorneys' offices and get them to act rather than to have everything centralized within the Department.

From the point of view of achieving substantial improvement in the enforcement of the antitrust legislation, we have to get away from some of the kinds of illegalisms that Professor Geis last referred to, which very greatly hamper forward movement.

I know when I worked in the area of white-collar crime prosecution I noticed this very interesting phenomenon that Professor Geis referred to, that every time you got what you might call a civil liberties decision in the criminal justice area, the most use of it was made by wealthy defendants and large corporate defendants, rather than by the street criminals.

So I think——

Mr. CONYERS. Talking about the 14th amendment.

Mr. EDELHERTZ. Yes.

These are the kinds of problems that seriously need addressing. We have to ask what are the strategic alternatives. Perhaps we ought to look a great deal more at the kinds of remedies that are available to victims in order to make white-collar crime far more costly. A system, for example, of victim restitution, in a sense, that is not hampered by the fact there are nole contendere pleas as opposed to criminal convictions.

Mr. CONYERS. Do any of you take the position that there is a national strategy?

Mr. EDELHERTZ. No; I don't think anybody feels there is a national strategy right now. What I think has been recognized is that there is

a need for some kind of national strategy. For example, the National District Attorneys Association in its economic crime project which originally had as its objective increasing the amount of white-collar crime prosecution and investigation on local levels, and improving the efficiency and effectiveness of local prosecutions in this area. Now they have gone a long way toward that, are at a point where they can ask the next series of questions: What exactly should we be doing? How should we be doing it? And then they look at this hodgepodge of activities we have been talking about.

On the Federal level I believe the Department of Justice is probably looking at it in exactly the same way. They have been concentrating on efficiency, effectiveness, and greater skills; but they have to set their priorities, too.

It's part of this question that I raised. And prosecutor could probably investigate and get convictions in probably 20 cases for every case he actually decides to prosecute. The difference between really an effective law enforcement, really good law enforcement, whether you are talking about street crime or whether you are talking about white-collar crime, is how do you select the cases that you're going to try, to investigate and go forward on, and how are you going to integrate what you are doing with what other agencies are doing.

For example, you're starting to see some glimmerings of orientation to a broader view of coping with white-collar crime. I notice in the newspapers that in New York you have cases—you have overall cases, parts of which are being handled by the district attorney in New York County, Mr. Morganthau, and parts of which are being handled by the U.S. attorney, Mr. Fiske. You have two different facets of the same case; I think that kind of thing has to be encouraged.

Mr. CONYERS. Professor Cressey, did you have anything?

Professor CRESSEY. Well, I think I must warn you, Mr. Chairman, that you have been listening to a prosecutor. Now that we're going pell-mell into white-collar crime, we ought not to make the same kind of mistake we have been making as we have tried to deal with street crime.

Our policy regarding street crime is prosecutorial policy. This policy stresses two things. One is defense. The prosecutorial position is that if we put better locks on our doors, install street lights, everybody buys a Doberman Pinscher, we will successfully defend ourselves from those criminals out there. The other stress is on deterrence, punishment: If we punish crooks severely, they will stop committing crimes. And, moreover, if we punish more criminals, the citizenry will be so terrorized that they will commit no crimes. That seems to be the American way, but it is a mistake. It is a prosecutorial policy that does nothing to understand what produces crime in the first place.

Now, it seems to me we should not repeat that policy as we deal with white-collar crime. It is is a loser's policy. We defend and try to deter only because we do not know how to cut crime off at the roots. We have to do what we have to do. But we also must give more attention to why the criminals are out there to be defended against, to be deterred, or to be used as examples for others. Concern for our white-collar crime problem must be concern for something more than mere defense, and something more than mere punishment. There must be concern for what makes businessmen and corporations violate the law.

Is the Adam Smith economic philosophy working? Is it dead? Is it reasonable in this age to believe that if each person tries to acquire as much individual wealth as possible, that everyone will profit? Is it reasonable to believe that there is a divine hand which transforms individual selfishness into a collective benefit? These beliefs seem to be the foundation stones of American business. The idea is to make profits, and the more profits I make, the more the whole society presumably benefits. Is it reasonable to try to modify this economic ideology by passing laws against those who practice it and then calling the law violators white-collar criminals? This is what we do when we outlaw monopoly, price fixing, stock rigging, bribery of government officials, false advertising, income tax evasion, and so on.

Mr. CONYERS. Suppose the highest officer in the government said:

Professor, I agree with you. Nothing could be more sympathetic to my view. What do I do? I have inherited the situation, and in the real world, the administration isn't overly popular. If I were to come out with some substantive national strategy to combat white-collar crime, the loss of business confidence might go from astronomical to whatever is the next highest level of recording. I can't do that. Suppose I start prosecuting the "big people?" It would be looked at as an un-American act. I mean, why are we coming down on the people who have "succeeded" in our society?

Is that what you are suggesting as a strategy?

Professor CRESSEY. No; I would suggest the opposite. I don't think defense and deterrence are enough. I can't name any specific corporations, but I think that of the 10,000 public corporations in the United States I easily could find a few that make profits, that pay their stockholders nice dividends, but which are free, or relatively free, of fraud, corruption, and other white-collar crimes. I don't want to mention any corporation names here—I have a few in mind, but I am not sure of myself. My strategy is to find such corporations and advertise them as heroes rather than simply designating some other corporations as devils. Some businessmen, and some corporations, demonstrate that one need not be a crook in order to make a decent living in the United States.

Mr. CONYERS. Mr. Geis, did you want to add anything to the discussion?

Mr. GEIS. It seems to me that some of the issues that we have moved onto are perhaps secondary issues, however important. I am totally in agreement with you, Mr. Chairman, that there will not be any movement of any significant nature in the white-collar crime area until the national administration, for whatever reasons, recommend themselves to it, defines it as a very high national priority——

Mr. CONYERS. Excuse me, sir. I want to ask Mr. Gudger to assume the chair.

Please continue.

Mr. GEIS. If I could just continue very briefly, the quotation that I gave from Mr. Carter's speech in Los Angeles really duplicates a similar statement he made when the administration began, I think, in his speech to Congress, and it seems to me reasonably obvious that the President does define, for whatever reasons, white-collar crime as a matter of consumate importance to him, and I suspect that one of the tactics that would probably be reasonably useful is to call him on

those particular statements, that is, what in fact does the administration plan to do to buttress the President's position?

I think, after that, if the commitment is made, then some of the issues that Professor Cressey has raised, which I think are excruciatingly important issues, then have to be addressed.

I think the absence—the most important absence at the moment is a coordination and centralization of concern with white-collar crime.

Now, I grant that has implications, once it's done. But if you accept the premise that the problem is important and that it demands attention, then it seems to me the corollary of that particular premise, or the other part of it, is that the efforts to deal with it are going to have to be located in some place and with some person who assumes the responsibility for liaison on the particular issue.

That would be my overwhelming priority issue.

Mr. GUDGER [presiding]. Thank you, gentlemen.

My apologies that I was unable to be here because of some House floor action and other commitments. I was not able to be here throughout Mr. Edelhertz' comments. However, there are several points that I think we might want him to go into beyond those which he has addressed, and the comments which you gentlemen contributed at the conclusion of his remarks.

What is your concept of the term "national strategy" for white collar crime?

The word "strategy" has such broad significance. Could you comment on this as you see a likely development of program and politics?

Mr. EDELHERTZ. Well, in some of the parenthetical remarks I made in departing from my original statement, I gave some examples of that which I will just advert to very, very briefly.

It seems to me that you have a broad response to white-collar crime, however you define it, fractionalized or split up along or aligned along several dimensions.

One is the jurisdictional dimension, that is, Federal, State, local, private, and what all of these sectors are doing.

The second is what I would call a functional dimension: that is, investigative, preventive (for example, in the area of public education) prosecutive, and adjudicative.

Within all of these groups you have different objectives. You have different funding relationships. It may be in an area that is extraordinarily serious by everyone's measurement. There may be very few resources to deal with a white-collar crime area which is extraordinarily important, or many resources in an unimportant area. The level of system response may be a function of accident, historical but no longer relevant factors, or political skills of program manager or proponents.

The Federal Government can only deal with a certain proportion of these cases. They cannot get down into every area of the country and they cannot be quite that close to the people. I would use the analogy of zone defense in sports, for example, where the Federal Government selects certain sectors, but all the other sectors in between that have to be taken care of in some other way.

With respect to any individual problem—consumer protection, for example—there may be 1,000 or 2,000 or 5,000 Federal, State, and local agencies, ranging from the Federal Trade Commission and the Inter-

state Commerce Commission, for example, on the Federal level, down to local municipal bureaus of weights and measures, and they're all in the same area.

The resources are split up in ways that may or may not be rational.

I sense there is very real consciousness at this point in enforcement agencies, to determine what everyone is doing, where there are overlaps, where there are duplicative services.

What are the kinds of offenses that are falling between the cracks? With respect to offenses "falling between the cracks," one should not look only at the existing body of legislation or the so-called political definitions that Professor Cressey has talked about. We ought to think about what areas of enforcement we should be in, and then try to develop a response based on our conclusions.

Now, as I indicated, I believe that there is more and more interest and concern about this. For example, I mentioned the National District Attorneys Association. They are holding a conference in Seattle next month in which they are bring together some people from the Federal, State, and local levels to try to look at this issue, not to develop a national strategy, but just to try to get a handle on it, to try to see what the priorities are in charting a national strategy.

Mr. ERTEL. Will the Chairman yield on that?

Mr. GUDGER. Yes.

Mr. ERTEL. I'm interested in your comment, and I'm also interested in the comments by Dr. Gressey that white-collar crime is defined in political terms. I happen to agree with that. But when you talk about national strategy, it seems to me we have to have a definition of where we're going, and that's primary, before we get anywhere else. And obviously, in this country, with the political—changes in political philosophy, many of what we call white-collar crimes, even though you find the statutes on the books, because of obsolescence, by selective prosecution, by many other methods, we have eliminated those as actually prosecutable crimes, and I wonder if we ought not to start somewhere with a basic definition, like a criminal code revision, or somewhere else, to try and define what we think are, in today's context, political, business, and social crimes that fall within the white-collar area.

And I wonder if maybe you would comment on that. How would you start doing that? How would you set up a definition of a pattern so we can go back and analyze the statutes that are on the books, and the standards, because I think it was Dr. Cressey that mentioned a lot of these things have no standards. You said we should be doing this, but how do we define those standards and how do we define those standards which will last for a substantial period of time with a complete evolution of our society and our Government and our business relationships?

Mr. EDELHERTZ. I think ultimately you are going to be defining those standards based upon some determination of the impact of different kinds of white-collar crime, which means that we are going to have to get a great deal more information than we have at this time. If we wait for that and—with all due respect to the Congress and everyone else—on an issue such as the revision of the Federal Criminal Code which could take quite a bit of time—it would only take care of the Federal sector. A big part of the job is found in State and local areas

where there would be a multiplicity of definitions, consistent and inconsistent among themselves and between themselves and the Federal Government.

But I do respectfully suggest that there are many things we can all agree on that something has to be done about. People are being cheated in the marketplace. I think——

Mr. ERTEL. Pardon me, if I may interrupt you. You used the word "cheated." That's a conclusion. Now, how do we determine whether they're cheated? On what standard do we determine that? That's the problem. Cheated is, you know, there's something moral about it—reprehensible. But many times there are disagreements. People don't feel a moral compulsion about it. We feel a moral compulsion about crime in the streets. Somebody gets hit over the head and we can understand that. That's pretty explicit.

But when you say "cheated," in a business sense, what is a reasonable profit? Maybe we would say in this country, or in some other country, getting an exorbitant profit off the market is cheating. Is that how you're defining it? How do we define that?

Mr. EDELHERTZ. I think there are some basic things that we can agree on. Let's take a furnace fraud, for example. If a furnace salesman puffs his product and says, this is an extraordinarily good product and it will do A and B and C, there may be much room for argument. But if he comes in claiming to be a city inspector and takes apart the furnace of some elderly person, and then leaves it disassembled on the floor, and then has a partner posing as a government inspector coming in to say that the furnace is out of compliance with city codes, then he as a backup salesman coming in to sell the furnace at a price which I may think is inflated—you may not—I think we can all agree that that is the kind of thing we have to do something about.

If you have stock sold in the market by false representations about assets owned by the corporation, or about profits, I think those are the things we can do something about.

Mr. ERTEL. Those are the clear issues. Those are the easy ones.

Mr. EDELHERTZ. Right. And I'm saying there are an awful lot of "easy issues," about which not enough is being done, and with respect to which we are falling all over each other in our preventive and enforcement efforts. I think it would be a very bad mistake, while we are figuring out the enforcement aspects of a national strategy, to ignore the broader issues that you have raised and that Professor Cressey and Professor Geis have raised. It would be a very bad mistake to ignore them. I believe the best way to get a handle on that is to get a handle on the harm that is done. That's something that I think we have only a very light handle on. We sometimes see the issue of harm very dramatically with respect to a drug that hits the market with falsified test results to back up its certification for sale. We see harm in a number of areas. It is sometimes very, very dramatic, but we must recognize that it is the very nature of white-collar crime that it is concealed, and that there is much we don't know about.

Mr. ERTEL. But how many—I'm sorry. I don't want to infringe upon my colleagues' time. But how many of these clearcut cases are there, as compared to those which are in what we might call the peripheral area, which causes just as much harm in the ultimate result? And is

there a greater bulk of these—the unwarranted use of drugs—prescription drugs by doctors, the shaded claims, the shaded operation, which is needed or allegedly needed—the shaded business deal?

How much more actually is the harm from these than the very clearcut cases you're talking about?

Mr. EDELHERTZ. I don't know what the answer to that is.

Mr. ERTEL. Will we ever be able to get an answer?

Mr. EDELHERTZ. You'll never be able to get the answer because views will differ in the medical area. If you're looking at a provision of medical services, what is overutilization and what is fraud? I don't know what the answer is and I don't think anybody will ever really zero in on an answer to that.

What I am suggesting is that there are some needs right now that can be answered, that can be dealt with by trying to rationalize our response to these crimes, to these kinds of crimes. If we wait to get final answers to many of these things, I think that would really paralyze action. I believe we have to get our own house in order from an enforcement point of view with respect to those things we can agree on, while working and working very seriously on what may be the far more significant issues that you are raising.

Mr. ERTEL. If I may follow with one more question. Then comes the question of priority. How much money do we put in and what kind of resources do we commit, and how are we going to commit these resources? I appreciate you're a professor and I appreciate you're speaking in philosophical terms, but we have a very practical aspect of, how do we get these resources? What will be the benefit of committing those resources?

Have you any idea?

Mr. EDELHERTZ. That is going to depend on your assessment of the harm being done. For example, in any area like that of program frauds—I don't know how much is stolen in the delivery of social benefit programs or subsidy programs of one kind or another, such as agricultural programs and support of building of ships. I don't know what the losses are in such areas due to white-collar crimes.

I do have the very strong feeling that in the design of these programs not enough attention is given to their compliance aspects. One should look at the kinds of money that is going out on these programs, whether we're talking about a medicaid program or support of our national shipping program, and consider how much effort was put into designing their compliance aspects when the programs were being formulated—at the design stage. I believe this would be worth considerable investigation.

But I think you have to look ultimately at the question of harm both in dollar terms and in nondollar terms.

Mr. ERTEL. I understand what you're saying with relation to Government programs, but I think what it comes down to is ultimately trying to obtain information about white-collar crime and what we are going to eventually define as white-collar crime. You're saying we need additional information for defining it. How do we eventually get the information basis? Obviously, most of the things we're talking about are crimes which, by their very nature, are secretive. And so it's very difficult to develop an informational base.

How do you suggest we go about doing this? How do we even get a handle on the problem to start with?

Mr. EDELHERTZ. There are a number of ways you can identify problem areas. In some of the work that Professor Cressey and, before him, Professor Sutherland, did, they started looking at corporate recidivists, for example: Where are the areas in which you have most of the crimes which you do know about? Just as a starter, one could try to develop a great deal more information in areas of that kind.

We are not pulling together criminal justice and investigative statistics information that exist right now. There is no one place where we now can, for example, get a handle on all agency actions with respect to home improvement frauds in this country. There's no one place where we can get a handle on all of the investigations that are being conducted in the antitrust area on a State and local level. There's no place where we could pull together all the information on bid rigging with respect to contracts for procurement of goods and services.

There is a great deal of information out there. The question is: How is it all going to be pulled together? And no great efforts are being made in those directions.

Mr. ERTEL. You're saying the Federal Government has not made any efforts to pull that together. And the second question that comes to mind, if we come up with a national data bank, are we going to have complaints by civil libertarians?

Mr. EDELHERTZ. I think you will have such complaints; there are such problems faced by law enforcement agencies right now. You may have a particular kind of business opportunities scheme which is starting somewhere in the east coast and is spreading out toward the West, and one of the really serious problems faced by investigative and prosecutorial agencies right now, is how they can share in formation in order to protect their constituents.

I happen to be quite troubled by the fact that many of these privacy considerations are actually depriving the public of the protections they should have. It's very much like what I said earlier about the fact that I found that every time you got a major case involving the protection of rights of indigent defendants, you found that it was a large corporation and wealthy defendants who were taking advantage of that, rather than the poor indigent defendants.

Mr. ERTEL. I think I yield back my chairman's time.

Mr. GUDGER. I would like to ask a question—two or three questions. As you are perhaps aware, the Criminal Justice Subcommittee is considering the Criminal Code and, of course, the Senate, in its consideration of this code, have both come up with a proposition of increasing fines substantially and, particularly, of authorizing a fine of perhaps 200 percent of the benefit realized from a fraudulent practice engaged in by an institution or corporation. The amount of the fine would be measured either according to the violator's gross benefit or according to the benefit or loss experienced by the victim of that particular institution's crime.

Then, of course, we have the current thrust to try to bring about further prosecution of Sherman antitrust violations, price-rigging and price-fixing and this sort of thing, generally being carried out under the 1975–76 parens patriae actions brought by attorneys general.

Do you see these provisions as offering some relief from these types of white-collar crime for such as fraud which are being carried on by the corporate entities for profit in violation of law of basic principles.

Mr. EDELHERTZ. Yes, I do, Mr. Chairman, and I would think this area of parens patriae statutes is potentially a very, very profitable one, and not only if implemented in terms of bringing benefits to victims. I would draw the analogy with the situation in local prosecutors' offices where, by going after runaway fathers who are avoiding their support payments, (is a part of the recovery goes to their own offices). It actually is an incentive for action.

I would very much rather see incentives for action in the white-collar crime field, frankly, than to see them confied to an area like that.

Mr. GUDGER. Now, this is a reciprocal enforcement support agency?

Mr. EDELHERTZ. Yes.

Mr. GUDGER. This is a cooperative structure, operating between the State where the district attorney's office is located and the woman and the children have been left destitute, and the district attorney's office of the State, or asylum where the husband is perhaps gainfully employed, but is not discharging his duties. But do you see, as I perhaps do, that the attorney general's offices of several States are addressing some of those white-collar crime problems by making their offices available to the person who has been defrauded by just such a course of conduct as you described when you used the instance of the tearing down of an elderly woman's furnace and then having someone come along and repair it for her and up the price, and, of course, the house siding, the house roofing, and all of these extortionate ventures that are carried out, in many instances, under promises that are never expected to be fulfilled—collateral promises?

Do you see the attorney general of the State as having a heavy responsibility here, and do you think it desirable that the Federal Attorney General expand the Federal participation into these areas?

Mr. EDELHERTZ. I don't know really how to draw the line between Federal and non-Federal responsibilities in such areas, because what you are really talking about are areas of concurrent jurisdiction. Many of the kinds of things that the attorneys general are doing could be done, for example, by the Federal Trade Commission, and vice versa. Many local prosecutions in local prosecutors' offices could be conducted by U.S. attorneys, and vice versa.

I think that the attorneys general—some of the attorneys general—are doing extraordinarily good work in this area. I think some local prosecutors are doing extraordinarily good work here, including an area like antitrust, more and more. The National District Attorney's Association is, for example supporting explorations of how computers can be used to detect patterns of bid rigging. They crank into a computer, for example, all of the bids within a State on roads and every other kind of construction over a 3- or 4-year period, to look to try to determine whether there is a pattern of bidding arrangements which are essentially a matter of "today it's your contract and the next day it's mine."

I think that anything that can be done to encourage that is highly desirable. And, when we talk about a national strategy, what I'm

really thinking about is how we can determine seeing if there is not some way to maximize such activities.

One of the very serious problems in white-collar crime enforcement, for example, is knowing what is going on. Most people who are victimized don't know they have been victimized. Or, if they do know they have been victimized, they don't have a clue as to where to go. And one of the things that I think attorneys general have been doing very, very well, and which local prosecutors have been doing very, very well, is to try to get the word out that they have facilities to hear and take action on such complaints.

I remember that as recently as 4 or 5 years ago,—white-collar crime was not generally recognized as a major responsibility of local prosecutors. There was a great deal of local prosecution in this field, but generally it was with respect to crimes such as embezzlement. Today local prosecutors are looking at antitrust and bid rigging. It's quite a change, and there has been quite a change on the level of attorneys general as well.

Mr. GUDGER. One final question from me.

You referred to the problem of defining jurisdiction and the problem of what the U.S. Attorney General's responsibility is vis-a-vis the State attorney general's responsibility. Now, State attorneys general, by act of Congress, are given the parens patriae opportunity, we'll say, but now the Federal Attorney General, it seems, would be the one who would exercise any additional function with respect to any crime that involves the misapplication, misappropriation, or the gaining by fraud by otherwise of Federal funds in welfare-type structures and that sort of thing, either through the district attorney at the local level, or through the patterns which perhaps might be developed at the Federal level.

But would you comment more particularly in line with your own special study and work on the white-collar challenge to nuclear safeguards? Clearly, this would be a Federal commitment, would it not?

Mr. EDELHERTZ. Yes; I would think so, Mr. Chairman.

In that study, we were looking at the possibility of an imbalance of the approach to nuclear safeguards. There had been, and there was, a tremendous amount of attention being given to the issue of theft of sensitive nuclear materials by physical violence, armed force, and pilferage. What we were examining was a potential theft of nuclear materials by more sophisticated means, through insider activities. This is an area, of course, where you can't afford even one slip-up, and it's quite different from other areas where you're concerned about white-collar crime, where you build on a great deal of experience of actual things that are going on. Our recent study was more speculative than studies where one is actually looking at past events.

We saw a need to develop a heightened level of consciousness of the potential of white-collar crime, crime in the nuclear safeguards area. I believe there now is a clear increase in such a level of consciousness. The real question for the nuclear industry, and the U.S. Nuclear Regulatory Commission is how do you operationalize it; how do you define it.

Mr. GUDGER. Mr. Ertel, do you have any further questions?

Mr. ERTEL. I have a multitude of questions. I think I could sit here all day and listen to your comments in this area because I find it a

fascinating area and I think it is heavily ignored by law enforcement officials, and I think it will continue to be so, regardless of what the outcome of this hearing is, and I would like to have comments on a couple of things from law enforcement officials.

You think they have, first, the capability of even analyzing many of the alleged white-collar crimes; and second, if they do have the ability, do they have the capability to investigate; and third, is our court system adequate to even try the cases, if they do develop a case, in white-collar crime? Can a jury in a complicated business fraud case analyze and agree, based upon the evidence, or will they just be more or less used as rubber stamps and say, "Well, we better find this guy not guilty because we can't say it's beyond a reasonable doubt"?

Do you think there's any reasonable possibility we can even get to some very, very complicated business fraud cases? I think back to my years in the fruit oil vegetable—the vegetable oil cases. In some of these cases, do you really think a jury can comprehend or the prosecutor have the expertise to get the point across?

Mr. EDELHERTZ. I think, just taking the three areas——

Mr. ERTEL. I would be happy to have all three of you comment on the question, if you will.

Mr. EDELHERTZ. With respect to analysis and investigation and the handling of cases, I think it's a question of who you're talking about. There are specialized groups that can be quite competent in this kind of thing, and, quite obviously, you would not expect an extraordinarily complex investigation to be conducted in a small—in a one-man, part-time prosecutor's office. Now, you will have to look——

Mr. ERTEL. Even dealing with SEC, even given the highly sophisticated criminal fraud sections of many of the attorneys general offices.

Mr. EDELHERTZ. I think there is a very real ability to analyze in State and local offices. There is less of an ability—less ability, for lack of resources, to investigate. The ability problem has to be broken down into capability and availability of funds and time to go ahead with a case.

On the handling issue, I believe that there are not that many capable white-collar crime prosecutors around, but that they are readily trainable. And I have seen a tremendous expansion in the number of prosecutors on a local level who are capable of dealing with this, over the last 3 or 4 years, in the program of the National District Attorneys Association's economic crime project.

I would respectfully disagree with you about the capability of juries to follow these cases. From my experience on the Federal area, the juries that were not very well educated very often have shown an incredible ability to follow the intricacies of complex financial frauds.

One of the things that they are quite capable of doing is to make some fairly good judgments about who is lying. Some very unsophisticated juries have done quite well in some very, very complex cases. And I happen to have a great deal of faith in juries, given prosecutors who are capable of clearly laying out their cases. There are prosecutors who can try a case in a week that would take another prosecutor 6 months to try, and the one that is able to do that in a week by slicing it up properly and laying out the issues is quite capable of getting it across to any jury.

Mr. ERTEL. I wish I could agree with your conclusions. I'm not sure I do.

Mr. EDELHERTZ. I think there are a number of cases that would support what I say.

Mr. ERTEL. Because I have talked to many prosecutors who have taken a nolo contendre plea to lesser included offenses just because he's afraid the jury won't understand the case because it is so complicated.

Mr. EDELHERTZ. As I said, there are prosecutors and prosecutors.

Mr. ERTEL. I understand that, and I know that you can make that distinction. But these people are pretty competent—at least that I'm referring to.

I wonder if either of you gentlemen have a comment.

Mr. EDELHERTZ. I would just like to add one point on this issue of confidence, sir. In a particular case, I don't doubt that it's a very serious problem going to a jury and explaining the whole thing, and a prosecutor may very well know that it's going to take a long time. He can't do it in a week, and it's got to be in 2 or 3 months, and that may involve an issue of resources. He may be under court pressure with respect to tying up courtrooms for that time; he may have to balance what he is doing there against something else that is going on. So, it's not always just a case of not being able to get across a story.

Mr. ERTEL. I agree. There are many considerations, but you can't isolate one as just the crucial factor. There are a multitude of considerations that somebody answers in a judgment-making decision.

Do you have any comments?

Mr. GEIS. I have just been sitting here, kind of musing over the third sentence of your earlier comment, in which you kind of felt that white-collar crime is a very serious problem, and yet came to the conclusion that the chances are, despite our attention to it, that it's going to continue much unchanged, and I guess that's the idea that has preoccupied me during the discussion.

But I keep asking myself now why necessarily must it continue that way? You have raised a number of, it seems to me, very sophisticated questions. But I also think they're answerable questions: What kind of resources are necessary for more effective policing of white-collar crimes? Do we need to add accountants to police departments?

You know, the Federal Bureau of Investigation began, in its earliest period, not as a gangbuster unit, but essentially as an organization which was charged with looking into white-collar crime, and then found, for a variety of reasons, that it was a more efficacious tactic to go against street offenses.

The questions you raise, it seems to me, are resource questions I don't think it's going to necessarily have to continue the way it is. If the President and if the Congress conclude that the issue is as serious as I think you and the rest of us, at the moment, at least, seem to be concluding that it is, I think that these questions can be answered.

Mr. ERTEL. Well, there's something—I'm not sure which one of you gentlemen raised it—but you talked about the stockholder of the corporation being more responsible for the corporate——

Mr. GEIS. I raised it.

Mr. ERTEL. Also, putting liability on corporate officers on a personal basis. Are you also suggesting by that that when there's an in-

dependent audit certification, that if there's any possibility of fraud—any possibility of criminal activity, that the independent accounting firm would have responsibility—equal responsibility to report that to a proper law enforcement agency? Wouldn't that be the proper place to get at corporate crime, because quite often in a detailed certified audit of a corporation one can have a reasonable suspicion that something is amiss. You want to put criminal responsibility there?

Mr. GEIS. You have opened up an enormously wide area, that I could talk to, but I don't know how effectively.

The problem that the auditor is faced with is that he's involved in a very intimate kind of relationship with the company that he's auditing. That is to say, they're hired to do the audit. What they're selling is their good reputation and their skills. If they harass the company enormously, there's some likelihood, of course, that they will not be back next year to do the audit.

Now, there are provisions, if they are not rehired, they're supposed to file certain statements with the Securities and Exchange Commission, indicating, at least in a general way, why the company decided to change auditors.

But it seems to me that—again, off the top of my head—the simple answer to your question is: Yes, if I an audit uncovers fraud, it seems to me that an obligation to report that fraud should be incumbent upon the auditor and that there ought to be some way in which the auditor is not penalized the next year around when the company has to have its books audited again.

And there can be statutory ways in which that can be accomplished.

Mr. ERTEL. You put my question in black and white: Uncover fraud. How about reasonable suspicion? Indications?

And then, the second thing is, quite frankly, what you're doing, the corporation is not going to hire the competent auditors. They're not going to look for the Price Waterhouse type. They're going to look for a chap—let's put it this way—the dumber the auditor, the better off they are if they're involved in any kind of shenanigans, and it's not going to work against our ethic of having the best people.

Mr. GEIS. You're even more cynical than I am.

Mr. ERTEL. No, no. I'm just realistic.

But obviously, if I'm a criminal or involved in a criminal activity, I'm certainly not going to hire someone to uncover that. I mean, that's not cynical. That just seems to me to be a reasonable outgrowth of my criminal activity.

Mr. GEIS. Does somebody want to respond?

Mr. ERTEL. I'm curious about that.

And the second question, we're running into the old idea there's no requirement in this country to report a crime. You know the old misprison of felony under common law, as I recall, if you knew of a felony and failed to report it, I think that was a criminal violation, which sort of died out as a concept.

Mr. GEIS. It seems to me the auditor ought to be in a more antagonistic position, or more adversary position, with the company. You know, I'm really talking secondhand.

Peat, Marwick & Mitchell ran a conference several weeks ago at Glen Cove in which they were, I'd say, almost rather frantically

attempting to discover how they could protect themselves against precisely the kind of criminal liability that you are discussing.

So, I think the first conclusion that one might reach is that, if, in fact, auditors feel this kind of pressure, they will try to determine various kinds of structural tactics which might alleviate some of their concern.

Now, that's fairly vague. What I'm trying to say is that everything went along fine until the Government began to take precisely the position that you are enunciating: That auditors ought to attend more scrupulously to the potentiality of fraud within the company whose books they are examining. And if they did not do so, within reasonable kinds of limits, then they are going to be held criminally responsible for that kind of omission.

And now, the auditors are very strenuously questioning whether or not they ought to audit at all, whether it's cost effective, whether it's a useful tactic, or—audits for fraud—and what their role should be.

So, what I'm trying to say is it's a malleable kind of position.

Mr. ERTEL. Dr. Cressey, do you have any comments on that subject? I am informed by counsel you have some novel ideas.

Professor CRESSEY. I don't have any novel ideas. I am somewhat disturbed by the tendency for the Government to play the role of an oldtime county sheriff. The sheriff pinned a badge on any handy citizen and said, "You're now a public police officer and you must do your duty or we'll put you in jail." This, you can see, is analogous with what some Federal officials would do to accountants and auditors. They are suddenly saying, "You're a police officer."

You can see the ridiculousness of this policy by carrying it to its logical extreme. Ask yourself whether auditors should be held liable for all the crimes of a corporation. Suppose a corporation engages in misrepresentation in advertising—not merely puffing wares, but real, honest-to-God misrepresentation. That crime will increase the corporation's profits, which, of course, the auditor verifies at the end of the year. Is the auditor going to be liable if he does not report that *a* percent of the profits of the corporation came from advertising fraud? I don't think so. It would not be fair.

You can go even further. Suppose a trucking company collaborates with its drivers, or the drivers collaborate with the company, one way or the other, so the drivers sit under the wheel more hours than are permitted by safety laws. This is a tidy arrangement. The company likes it because it is profitable; the drivers like it because it is profitable. Now, suppose that a driver who is thus violating the law goes to sleep, has an accident, and somebody is killed. Neither the extra hours nor the death will show up on the corporation balance sheet. But the practice will have increased the company's profits for the year. Is the auditor going to be held liable for detecting, or at least for not reporting, such a practice? I don't think so. I think it's too extreme to deputize auditors and ask them to serve as unpaid public servants.

My advice to the corporations is this: Get the Government off your back and off your auditor's back by putting some accountants on your security force. Most big companies now have security crews—guards. About half the police officers in the United States are now

privately employed. They watch workers to see whether they're stealing tools. They watch outsiders to see whether they burglarize at night. But they don't watch corporation executives and managers to see if they are committing white-collar crimes. Clearly, corporations have not put accountants and lawyers on their private security forces and asked them to watch the big shots. I think they should, and will.

Doing so will require corporation boards to draw up codes of ethics. "The board holds that these things are prohibited in our corporation, and you, the accountant, are responsible for detecting and reporting violations to us." It would be a start. It would be a first step of the kind I'm always looking for—a nongovernmental, noncriminal law, solution to management fraud.

Mr. ERTEL. Maybe what you're suggesting is an inspector-general for each of the corporations in the United States, hired by the corporation, much like we're talking about inspector-generals in many of the administrative agencies of the Government.

Professor CRESSEY. There are some corporations now, following the scandals of 1975, that have actively set down corporate codes of ethics and are trying to enforce them. "These things you may not do as an officer or employee of this corporation." They then follow up in all the branches, here and abroad, trying to determine whether corporation managers are indeed living up to the code.

I have heard that Caterpillar Tractor and the Xerox Corps. have such programs. I don't know how effective they are. I know that the chairperson of Pitney-Bowes, Fred Allen, is indignant about the bad name that business is getting because of the bribery and kickback and white-collar-crime scandals. And I know that he is working hard to get corporations to clean out their own stables, so to speak. We need that as much as we need Government intervention. Perhaps more than we need Government intervention.

Mr. GUDGER. I would like to turn back, if I may, to an aspect of this same problem. You have defined the action of the responsible corporation to avoid, by proper security measures, simple frauds—the tool thefts by employees, and that sort of thing. Then you have suggested also the idea of the inspector general. That was a term used—or the auditor that tries to enforce the code of ethics of the responsible corporation, which would keep its hired personnel from engaging in any practices which would constitute a loss or a fraud against the company.

Now let's address another problem that I think you are qualified to address, Professor Cressey, and that is this concern that I believe has been expressed in your remarks—or one of the remarks here today—about the delinquent neighborhood, the corporate business which is in a field where there is likely, because of competitive pressure or for any particular reason, to be in fraudulent practices such as bid rigging, perhaps, in highway construction; or it could be bid rigging in any sort of governmental contract.

Could you comment on this area? Whether this is an area that there is a likelihood of criminal conduct? And how do we compare that?

Professor CRESSEY. Thank you Mr. Chairman.

I don't want to be too preachy, but it seems to me that, when it comes down to it, what we're talking about when we discuss man-

agement fraud and white-collar crime is morality. We're talking about the morality of our business community, of our Nation, for that matter.

I am quite confident, from small studies, that corporation executives violate regulatory criminal laws because they don't believe in them. Marshall Clinard and others found that to be true in the days of price control and rationing during and shortly after World War II. The attitude was something like this: "We meat and poultry dealers know about our business, and we landlords know about our business, but what do those bureaucrats in Washington know about our business? They have made it a crime to make a profit, and I won't listen to them." The involved businessmen didn't believe in the law and it was for that reason, it seems to me, that they violated it with impunity. I have some records of hearings just like this in which the late Senator Robert Taft wondered whether Office of Price Administration officials were presuming businessmen to be crooks. Now if a corporation board sincerely draws up a code of ethics and asks all personnel to adhere to it, the board members are saying that they are moral, that they believe in the law and want others to believe in it too.

A study of the New England shoe manufacturing industry 15 or 20 years ago also showed the importance of believing or not believing in the law and the Government behind it. The study counted violations of only one law, the National Labor Relations Act. Some of the shoe manufacturers violated this law 50 times in the first year, and some none. And Robert Lane, a Yale professor who did the study, found essentially what I just said about violators of other laws: Those who frequently violated the law didn't believe in it. They thought those birds down in Washington were a bunch of Communists who were forever passing laws and telling them how to run their businesses. To them, obeying the law was almost un-American.

A code of ethics makes clear whether a business leader believes in the law or not. It seems to me that we could, with some studies, quite rapidly get evidence on patterns of belief or disbelief in the law.

In the 1930's, sociologists divided neighborhoods into those having high, medium, or low delinquency rates. They then found that kids coming into a neighborhood take on the neighborhood's rate. It is still true. If 10 new boys come into a neighborhood having a high delinquency rate, the probability is extraordinary high that these 10 boys soon will have a high delinquency rate. The reverse also takes place. Ten boys moving into a low-delinquency area will soon have a low rate of delinquency.

It seems to me that this patterning also occurs among corporations. We can't get biographies or autobiographies telling about the criminal histories of corporations. But a few years ago I analyzed some old statistics on the recidivism of corporations. The analysis showed that the recidivism rates of corporations in the same industry cluster together, like the recidivism rates of boys living in the same neighborhood. I was concerned only with repetition of one crime—restraint of trade, as measured by adverse decisions in administrative hearings or by criminal conviction. The little study was a reanalysis of old data that Sutherland collected in the 1930's and early 1940's.

Sutherland's classic study considered violations of a number of laws, so was concerned with more than restraint of trade. But he had two

mail order corporations in his sample. One of them had no violations of the law outlawing restraint of trade, and the other mail order house had only one violation. At the other end of the recidivism scale were a number of moving picture companies—I can't remember the exact number. Every one of the companies in the motion picture industry had 20 or 21 violations. In the middle was the dairy products industry. Each of the large dairy food-food corporations violated restraint of trade laws six or seven times.

The question is: Why the patterning? Is it possible that the executives working in some industries believe in the law and that executives in other industries don't believe in the law? Is it possible that corporations take on the crime rates of the industries they are in, just as boys take on the crime rates of the neighborhoods they are in?

Let me use a term which isn't very popular these days, but which I like—"morality." Maybe in some industries the executives, the boards, the whole works, have a single-minded, dumb, old-fashioned morality which says "honesty is the best policy," "Thou shalt not steal," and so on. And maybe in other industries the prevailing morality is indicated by a slogan many of us learned at our mother's knee: "Honesty is the best policy, but business is business." These industries, and the corporations in them, have compromised old-fashioned morality. I don't think the Congress can do much to improve the morality of the American business community, but I wish it would try.

Mr. GUDGER. One final question, presumably, and then I'm going to ask counsel to take over.

I wanted to address this to Mr. Geis. Let's assume the corporate management has engaged in price-fixing activities, or has engaged in bid-rigging, or has engaged in a course of conduct which has enriched the corporation by violation of some clear legal mandate.

Let's conclude that audit, following a prosecution, has revealed that this happened more than one time. Should there be a corporate "death penalty"?

[Laughter.]

Mr. GEIS. My general personal feeling on that—I have heard the arguments for it, and I know the arguments against it. My general feeling is: No.

I think a corporation is an inanimate object, staffed by animate objects. My general feeling is that the animate objects are the ones who committed bid-rigging, and fraud, and the penalty—certainly, the corporation ought to be made to give up as much as its proven to have defrauded the public, and probably a penalty on top of that—and I think that the people who are culpable of the offense ought to be suitably penalized—but I don't think the corporation itself ought to be strapped into the, figuratively, "electric chair."

I don't see that that accomplishes a good deal.

Mr. GUDGER. Thank you.

And I'd like to address the same question to Professor Cressey and amplify it to this extent: Clearly, if a corporation were required to dissolve, go out of business and forfeit its franchise and its right to do business because of repeated acts of corporate misconduct, violating the Sherman Antitrust Act, Clayton Act, or any other clear mandate of the law, why would this not be a proper disposition if

the repetitive misconduct clearly indicated that the board was aware of this and was tolerating that systematic misconduct?

Finally, let me put it another way: How else do you, in a sense, "punish" these corporate officers, unless there has been a corporate collapse as a result of this type of conduct?

Mr. ERTEL. If the gentleman will yield for a moment, I'm kind of curious.

You have defined the corporation as "corporate officers." Now that may be the proper concept of a corporation, but the corporation, if it's a multinational or widely held, you are penalizing the stockholders.

Mr. GUDGER. Would you read back my question?

[The reporter read from the record.]

Mr. GUDGER. Let me put it another way.

I'm assuming a course of conduct where the board obviously would be conscious of the corporate officials' misconduct, and where something other than specific punishment to these corporate officers or a fine might be justified.

Can you see a situation where that might be appropriate?

Professor CRESSEY. Yes; and as I said in my introductory remarks, the fact that crime is committed by organizations, not by individual executives, is part of the white-collar crime problem. The problem we had 10 years ago, when I was studying organized crime, was the problem of getting prosecutors, police officers, lawyers, attorneys general, Congress Members, and others to understand that if you have a criminal organization, then the personnel of the organization are fungible. When somebody gets whisked off to jail, there are 100 people waiting in line for his job. You merely recruit another person, and the organization keeps rolling along.

So, if one could prove that a corporation is indeed a criminal organization, a very difficult task, then it seems logical that capital punishment—putting a corporation out of business—would be a reasonable remedy.

However—and the "however" is extremely important—what would be the economic and political consequences of putting a large corporation out of business? To take a hypothetical example, would we execute General Motors if it repeatedly violated the law? Think of what would happen to our Nation economically if we did so. We couldn't afford to put General Motors or any other huge corporation out of business.

I raise, now, a question for the subcommittee: Is this the problem, or at least a part of the problem, of white-collar crime?

Mr. ERTEL. Will the gentleman yield?

Mr. GUDGER. Yes.

Mr. ERTEL. I'm just curious about this "corporate death penalty."

No. 1, assuming—incorrectly, probably that the stockholders are the ultimate residuaries of the powers of the corporation—that probably doesn't work anymore, and hasn't worked since the thirty's; there hasn't been the widespread stock ownership—but if we put a corporation out of existence, let's say A.T. & T., and let's assume that there is some truth in the allegations that happened in Texas where they were out on a conscious course of activity of bribery—and I think prob-

ably you remember some of the allegations that took place there—shall we put A.T. & T. out of business?

We destroy the entity and the corporate officers, but yet you have a very widespread-held stock, with a lot of innocent people, those widows, those children who have put their nestegg into it.

Now a corporation's value is not just in its assets; it's also valued as a corporate entity—the ongoing business potential of the corporation. Have we not penalized, possibly, the wrong people by putting that corporation out of business?

We have penalized, ultimately, the stockholder who, sure, was reaping a profit, probably as a result of some of those criminal activities that were going on, and probably has no knowledge of those activities. Quite frankly, if I own 100 shares of A.T. & T.—and I'll be frank with you, I probably don't look at their report; I look at the dividend check that comes in and hope like the devil it comes in the next quarter. Who are we penalizing now?

Isn't it better to have, instead of that, personal liability on the corporate officers who have knowledge of the activities? I'm just wondering if maybe the solution is not just too far-reaching.

Professor CRESSEY. I tried to say that. At least I thought I was trying to say that. It is a logical solution to destroy an organization if the organization is violating the law regularly. But I don't think it is a reasonable solution, in view of the economy.

Mr. ERTEL. I can see your analysis in a Mafia, with a criminal organization, with only one motive—criminality—where the participants are the stockholders, as well. But when you're talking about a publicly held corporation, I think there's a different concept involved.

That's what I'm trying to point out. I think there may be a difference there.

Professor CRESSEY. Oh. Now I see your point, and I agree. Perhaps the analogy with organized crime should be a criminal organization within a corporation, not the entire apparatus.

Mr. GUDGER. What you're saying is, I believe, if you have one division within a corporation—one of the major corporations—and we have used the majors only by way of illustration, and I really would think that the problem would not exist very often at that level—but you might have a division within one of the majors which needed to be excised like a cancer. Maybe that corporation, taken out of that particular business, if it had been invaded with a criminal function.

May I address one final question within that same range? Where you have a clear violation of the monopoly law, you dismember it, don't you?

Mr. CRESSEY. Eventually.

Mr. GUDGER. Well, that's theoretically a form of relief that's available. Very frequently, it is possible for that corporation to spin off some aspect of its corporate existence thereby keeping intact some of its other corporate responsibilities.

So I don't think that either the death penalty, or the dismemberment penalty, in this field is quite as valid a concept as perhaps using capital punishment, as a phrase, may make it seem to be.

Thank you for addressing these remarks. I'm going to yield now to counsel for the majority.

Mr. GREGORY. The figures on cost of white-collar crime as compared to the so-called street crimes vary greatly in everybody's version. There's a great disparity, and yet some puzzlement about the relative resources applied to each.

However, I think, running through the testimony of all three of you today, there is the theme that the public gets what the public wants. And the public, for a lot of reasons, has not wanted this kind of enforcement.

And perhaps, Professor Geis, your opening remarks about the "new direction," the new efforts by the Justice Department which are unknown to the prosecutors responsible for this, is a reflection of that.

But I wonder if there's not a gap here between what the Government perceives the public wants, and what the public in fact wants?

The Harris poll you cited shows almost 90 percent of the public rates this as a very high priority. And if you agree with that, I wonder if you have any suggestions about what might be done to increase that gap between what is wanted and what is delivered?

Mr. GEIS. Well, I think certainly the thrust of the response through the morning and up till now has been the very significant need for some coordination of effort. And before that, of course, a very forceful identification of the problem, which presumably will lead to this response.

It's very common for professors, I'm afraid, and it's just irresistible to fall into the pattern to say there's a very real need for research. I thought the questions, as I said before, that Mr. Ertel raised, were significant researchable kinds of issues.

There are countries such as Germany, for example, in which there are different ways of approaching what they call economic crime.

There are penalties in which a corporation that is convicted of a certain offense must take a full-page advertisement. Now, I don't know whether that kind of humiliation, or corporate shame, is a very efficacious way of doing things, but these are issues that it seems to me ought to be looked at.

Again, Mr. Ertel raised, I thought, a very important question about shareholders. It is very clear that all they do—most of them—is to take the step between the mailbox and the bank with the dividend check.

Stockholders are perfectly willing to share in windfalls which are deemed illegal—at what point do they have to take the responsibility for losses because of some kind of illegal activity? That is, at what point are shareholders going to be impelled to insist on much more scrupulous monitoring of companies they presumptively own and, at least, manage by indirection?

You know, at some point where they start losing money, they are going to insist on that, and they are going to become forceful. So, I guess my response to your question is that if we identify white-collar crime as such a significant issue, both in terms of what Don Cressey called fundamental morality in the United States, and also as an economic issue, then I think the response necessarily has to be that there is a need to coordinate and to finance efforts to deal with this particular phenomenon.

Mr. GREGORY. I have just one other question, and that's on the subject of sentencing.

I think it's well established that the sentencing practice of courts in the area of white-collar crime is much more lenient than it is in street crime. But strictly from a deterrent view, in some of the fact that the street criminal's options to get economic gain are much more limited, isn't severe sentencing in this area much more effective, strictly from a deterrent point of view?

Mr. EDELHERTZ. I don't think we have any solid data on that, but I think we all have impressions on it.

If one leaves out the con-man group—who perform pigeon drops in the street, for example—if we look at corporate crime involving Government programs or crimes involving procurement of goods and services, the people who are involved in this kind of criminal activity operate with the advice of their lawyers and their accountants.

For example, if a case even gets close to a criminal area, there's a great deal of attenion given to it. Prosecution was declined years ago in the *Texas Gulf* case, which was a possible violation of the Securities Act. The Practicing Law Institute and bar associations and everyone else were running conferences all over the United States that thousands of lawyers went to, so that they could advise as to how close to the line on insider dealings they could get without being in trouble.

What I am suggesting is that where there are either prosecutions or very serious considerations of prosecution, or even serious investigations, in cases of these kinds we can see the lawyers getting into action and the accountants getting into action and corporate officers and controllers all coming down and meeting to find out what their exposure will be if they get too close to the line of what is not legally permissible.

My instinct tells me, based on experience with such instances, that enforcement action, even if there is no prosecution, will get word out and have impact. The question to enforcement agencies should be: How are you selecting your cases? That poses a very important issue. If you are selecting your cases carelessly, or the same kind of cases one after the other, or if you have sent out a negative message as in a case where quite clearly the corporate establishment felt that something was done which should have been criminally prosecuted, an agency may be broadcasting other, undesirable messages.

Mr. GEIS. I'd agree with Herb completely, that the final word on deterrence is not in. The only testimony that I can offer is that when heavy equipment antitrust conspiracy of 1961 was underway—there was very clear evidence that GE, Westinghouse, and all officials, stopped the price rigging for about 8 months, when the Government began to move very forcefully in the antitrust field, and then resumed it when they felt things were quiescent. That's the first point on that.

The second point was that by about 1965 or 1966, when I was working for the Crime Commission, the Department of Justice was convinced on its evidence that the GE prosecution alone had had a very significant impact on the decrease in antitrust violations.

And the third point that I'd make—again, on a very small and certainly almost anecdotal kind of sample, really—follows up on Professor Cressey's point. I have heard since then—and very nice to hear—how General Electric is probably one of the cleanest corporations in the United States in terms of its internal policing of law vio-

lations. And I'd like to believe that the prosecutions of 1961 had a very instrumental effect on the way General Electric conducts its business in antitrust and in other areas in which it might come in conflict with both civil and criminal law.

So, I guess my conclusion would be exactly the same: Intuitively, and with rather inadequate evidence, it seems to me there is a fairly good hypothesis that severe sentences against white-collar criminals, including imprisonment, do have a deterrent effect.

Professor CRESSEY. Could I respond? I give a certain speech quite often, and I feel obligated to give it here. It's a short speech.

When we talk about sentencing corporation executives, we must be sure that we aren't simply advocating discrimination against the rich. It is not just to discriminate against the poor, and it is not just to discriminate against the rich.

A corporation executive might get a lesser penalty than a black ghetto burglar because the two cases are not the same. When we say, "The poor guy goes to prison and the rich guy gets a small fine," we're slandering the criminal justice apparatus as it works in the street-crime kind of case. That apparatus, happily enough, only rarely sends a first-time burglar or mugger or even robber to prison. Nowadays, a criminal has to work his way into prison. He gets a few convictions and few probations as a juvenile. He gets a few convictions and a few probations as an adult. He plea bargains a few more felonies down to misdemeanors and gets some jail time. Finally, he comes into the courthouse on a new felony charge. Some teenaged prosecutor says he is sick of seeing him around, and he goes off to prison as a "first offender."

I like this system. We ought to do our best to keep our citizens out of prisons. The general principle is that government should interfere in citizens' lives as little as possible and, when it must interfere, should hurt them as little as possible. I think, therefore, that sending all white-collar criminals off to prison on their first conviction would be bad policy.

It is dangerous to use the concept "dangerousness," but I will do so nevertheless. In my view, we ought to send only dangerous criminals to prison, and dangerousness must be determined by track record. In my judgment, some white-collar criminals are clearly dangerous criminals, even if they are first offenders. They're undermining my heritage—a pretty good political and economic system—and I don't like it. They are engaged in a theft of the Nation, to use a phrase I used with reference to organized crime. A Nation stealer ought to go to prison. But other types of white-collar criminals are not so dangerous. Neither they nor nondangerous ghetto criminals ought to go to prison.

Mr. GREGORY. Thank you.

Mr. GUDGER. Mr. Stovall.

Mr. STOVALL. Mr. Chairman, thank you.

I realize the witnesses have been here a long time, and because of the time consideration, I have no questions to ask.

Thank you.

Mr. RAIKIN. Just one final question, and I'll address it to all three witnesses as perhaps an appropriate way to sum up and to give you

a chance to comment on what you think these subcommittee hearings on white-collar crime might hope to accomplish.

I'll base the question on something that you once said in another context, Professor Cressey. You once stated that "restraints of trade, price-fixing, and other major white-collar crimes are much more threatening to the national welfare than are burglaries and robberies and other so-called street crimes."

You have said, in another context, that what is really at stake is "democracy, not free enterprise, which long ago disappeared."

Would the three of you, starting with Professor Cressey, care to comment on these assertions?

Professor CRESSEY. Well, I hate to be held accountable for my wayward sayings. I tried earlier to comment on the free enterprise issue when I suggested that we might examine the question of whether or not the Sherman Antitrust law is hopelessly out of date. I happen to be very conservative in this respect. I believe in private enterprise, but I don't believe in crime. Antitrust laws try to preserve something we call free enterprise. They are consumer protection laws, designed to keep monopolies from gouging the hell out of me.

But, as the statement you quoted indicates, I am very pessimistic about whether we have much free enterprise left in the business world. Instead, we seem to have a kind of cooperative arrangement—call it socialism, if you will—in which corporations agree to rig prices and to share the ensuing wealth. It's in that context that I said I thought free enterprise has disappeared.

However, that's an exaggeration. We've got free enterprise. It is alive and well down in the central city. There, poor people compete with each other for bread. We've got it. But it's all but disappeared from the corporate world.

If we do have a system of socialism for the rich in the sense that I just talked about, then we have a profound political task ahead of us. The task is that of getting the people into the share-the-wealth plan that corporation executives participate in.

At a minimum, we need to examine the question of whether antitrust prosecutors are trying to save an economic system which might have disappeared long ago. Maybe we do not want antitrust laws enforced. Maybe Franklin Roosevelt was grasping at straws when he tried to save the free enterprise system by enlarging the Antitrust Division.

Mr. EDELHERTZ. I'm troubled by trying to equate white-collar crime and street crime, because I think that we have to look at the harm which each threatens on its own, and measure our responses based on how we see the harm that each does.

And going on from that, let me stress that most white-collar crime is a consequence, in our times, of the nature and business and public enterprises which have grown very, very large. Parties to transactions are much farther from each other. Europeans, for example, with the growth of the Common Market, instead of having national and trade boundaries every 250 or 300 miles, are suddenly starting to find that where a manufacturer or the issuer of stock in France might be very careful about wrongful activity within the borders of his own country, he may be far bolder if this fraud is going to be initiated in northern Europe and brought home at the bottom of the Italian boot.

We are also buying more and more, figuratively and literally in closed packages. Therefore, I don't have quite as much trouble, with this question of deputizing nonpaid public or private agencies, whether via the certified public accountant route or some other route.

I think the Securities and Exchange Commission has given us a fairly good model. They know they don't have the resources to monitor everything that is going on in this world, and, therefore, what they have done—sometimes with great success and sometimes with less success, but it seems to me it's a good model—of saying to the securities markets, through the stock exchanges or through the National Association of Securities Dealers, "You regulate along the lines of criteria A, B, and C," and then they monitor performance.

That is an enforcement nitty-gritty kind of approach, but I think there's a philosophical aspect to it. Because the enterprises have developed and are so complex and operate in so far flung a way, there are resulting costs to society. In a sense, what the SEC, and the Congress, and the executive may be saying is that these private enterprises ought to be picking up much in the way of these costs.

There are also social reasons for promoting self-regulation, or nonpublic deputies. Do we want police in every aspect of our society?

I think, also, with respect to issues such as the corporate death penalty, Mr. Chairman, that seem to come into this, one of the things that we get into is this problem of "drop the atom bomb, or don't we drop the atom bomb;" there sometimes is nothing in between. I'm wondering if we really have a good enough inventory of responses.

For example, we can criminally prosecute, but have we really explored the possibility of receiverships for part or all of an enterprise; if it's a rogue section or division of a corporation, or a rogue corporation, I think you have to recognize the stockholders can get caught in the line of fire and that the public can get caught in the line of fire.

So, when I talk about this national strategy—and I guess the phrase has some considerable appeal to me, as you no doubt noted—I'm saying: Why not take all of these things into account? Why not look at who is creating the costs of law enforcement, for example, and see where we shift the costs of response?

If you have a big carnival in a county, it's not at all unusual for the people running the carnival to have to pay the overtime or pay the expenses of the police who come out to direct the traffic. Maybe we ought to find more imaginative ways of handling problems like that.

But most of all, I think what we have to do is to get more of a handle than we have right now on the harm that is done by various classes of white-collar crimes. Those that are clear—in the clear areas, Mr. Ertel—and those that are in the vague areas, that are not so clear. I think we have to know a great deal more, but that should not be a reason for not moving forward right off the bat, because I think there are some things that can be done.

Mr. Gers. I'll be rather brief. I'm not quite sure—and I perhaps should be surer—of how one defines the mission of a congressional subcommittee.

My definition of a congressional subcommittee is a group that attempts to air a problematic topic and, through that airing, to arrive at some resolution of it in terms of remediation or in terms, perhaps,

of simply deciding that the problem is not as bad or does not need some necessary response.

As I see the work of this particular committee—which is a rather presumptuous position for me to take—it is to generate ideas, certainly; to look very carefully at some of the statutory concomitants of white-collar crime; to do what Mr. Edelhertz has very well said—to determine the harm as best it can of particular white-collar offenses; in a sense, to document some of the problems.

I would like to see the committee continue in terms of interviewing victims of white-collar crime, interviewing prosecutors, interviewing corporate officials, hitting a whole spectrum of individuals who have, presumably, some expertise on the issue.

I think, for example, one might very well talk to retired corporate officials who are not under constraints, in terms of indicating various kinds of practices and the resolution of those practices that were part of their work experience before they retired.

I, personally, am convinced that there is a necessity in this particular area to coordinate, at some central point in the Federal Government, efforts directed specifically at white-collar offenses, which would publish studies, which would finance further research, which would disseminate information about both the structure of offenses and the way to respond to those particular offenses.

And I would further debate the philosophical issues that arose today. I think one of the points that has always bothered me a good deal in white-collar crime is that the worst white-collar offense, certainly in my experience—the Watergate offense—was a problem that was not resolved by academics; it wasn't resolved really by the Congress or the courts, but essentially was almost an independent entrepreneurial effort. It was a good deal more than that, but fundamentally, it was an independent entrepreneurial effort of the media.

And I think that's another issue that has to be looked at. Why was this so? Having spent 25 years of a personal academic career doing work in the area of white-collar crime, as we all have at this table—and I think I certainly probably speak on behalf of us all, when I say you've got your hands on a very important issue, and I certainly want to wish you well with it.

Mr. GUDGER. Mr. Ertel.

Mr. ERTEL. On behalf of the subcommittee, I have been here during most of your testimony, but I missed a few comments in the beginning.

I appreciate your testimony. It was excellent, and it certainly gives us some insight as to where we are going, and we appreciate your coming. Thank you very much.

Mr. GUDGER. Gentlemen, on behalf of Mr. Conyers, as chairman, and the entire committee, we thank you for this testimony. Needless to say, it will be transcribed, and we will be giving serious thought to it hereafter as well, as we take away from this meeting already some very serious thoughts that you have prompted.

Thank you for being here.

[Whereupon, at 12:50 p.m., the hearing was adjourned.]

35-587—79——5

WHITE-COLLAR CRIME

WEDNESDAY, JULY 12, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:15 a.m. in room 2237, Rayburn House Office Building, Hon. John Conyers, Jr. (chairman of the subcommittee) presiding.

Present: Representative Conyers.

Also present: Hayden Gregory, counsel; Steven G. Raikin, assistant counsel; and Roscoe Stovall, associate counsel.

Mr. CONYERS. The subcommittee will come to order.

Good morning. We are very pleased to begin the second hearing in the series of hearings on white-collar crime, and it is our privilege to have with us today the Deputy Attorney General of the Department of Justice, Mr. Benjamin R. Civiletti. He has had a long and distinguished career.

Mr. Civiletti joined the Justice Department on March 10, 1977, first as Assistant Attorney General of the Criminal Division and now as Deputy Attorney General. Before joining Justice, he served as a litigating attorney for a law firm in Baltimore and also as a trial lawyer and as a U.S. attorney. Mr. Civiletti is accompanied by the chief of the Fraud Section of the Criminal Division, Mr. Mark Richard.

Mr. Civiletti and Mr. Richard have come before us this morning to give testimony about the nature, scope, and extent of America's ever-increasing white-collar crime problem. They have also been asked to shed some light on the nature and adequacy (or inadequacy) of the Federal response to that problem, and specifically the response of the U.S. Department of Justice.

On the first day of these hearings, gentlemen, we heard from Mr. Edelhertz, with whom you may have been associated when he was the chief of the Fraud Section of the Criminal Division; Prof. Gilbert Geis; and Prof. Donald Cressey.

The purpose of those three gentlemen leading off these hearings was to give us a general overview for future discussions of the categories, trends, and ramifications of white-collar crime, including considerations of how pervasive it might be; the problems that are engendered by the cynicism and disrespect for the law that the tolerance for white-collar crime creates; and its effect on the moral fabric of our cultural values, which goes far beyond the questions of the relative monetary impact of "white-collar" crime versus "street" crime.

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As you know, and we have been privileged to discuss these hearings and their objectives with both of you, together with the Attorney General, the FBI Director, and others, we view these long-range oversight hearings on "white-collar crime" as following logically from major hearings of the past on the concentration of economic power, organized crime, and antitrust law.

Of course, the key questions are "what is the nature of the white-collar crime problem," "what are our resources to deal with it," and "how are we going to greatly improve our approach to this problem by the end of this decade?" I think it is also important for this committee to try to ascertain the relationship that white-collar crime has with other crime problems in our society—such as street crime and organized crime—and the economic consequences that attend this phenomenon.

It seems to me there is one other notion that should inform these proceedings that was stated by Professor Geis quite succinctly at our first hearing. He said in closing out his remarks last month that he has tried over and over again to make the point that the test of our Nation's commitment to a climate of integrity is what we will do about the harm that is done to our people and our community by lies, fraud, deception, and the concealment of truth, in the private and also the public sector. I think that pretty well summarizes it.

The Federal Government, of course, has a number of potential criminal law enforcement mechanisms available for the prevention, detection, investigation, prosecution, and regulation of white-collar crime. I think none is more important than the division headed by the Deputy Attorney General.

The Chair notes that it has a request to cover this hearing by radio broadcast, photography, and other similar methods, and in accordance with committee rule 5, permission will be granted unless there is objection.

We will introduce into the record the prepared statement of the Deputy Attorney General, which will be incorporated in the record in full at this point. That frees you to make your most salient points.

[The prepared statement of Deputy Attorney General Civiletti follows:]

STATEMENT OF BENJAMIN R. CIVILETTI, DEPUTY ATTORNEY GENERAL

Thank you for the opportunity of appearing today to discuss with the Subcommittee the problem of white-collar illegality. At the outset of my remarks, I want to emphasize that the Department of Justice shares your concern with the problem of white-collar illegality and pledges its support in the months ahead in the Subcommittee's study of this difficult subject. We join in the hope expressed by the Chairman in his opening statement that what will emerge from these proceedings will be concrete ideas for legislative and executive reforms which will enhance society's understanding of white collar illegality and our ability to deal effectively with such illicit behavior.

Definition.—Although as a legal concept white-collar illegality has no significance and is not to be found anywhere in our legal codes or statutes, as a social abstraction it has great importance. Critical issues concerning public morality and society's commitment to a system of equal justice are raised as a result of these offenses and our response to them. It is therefore vital that we have the moral courage to examine and address these issues.

In 1976 the Justice Department adopted a working definition of white-collar illegality which focused on the main elements of those offenses. Under that definition, white-collar crime includes those classes of non-violent illegal activ-

ities which principally involve traditional notions of deceit, deception, concealment, manipulation, breach of trust, subterfuge or illegal circumvention.

Noteworthy of the fact that the definition is not limited to criminal offenses but is intentionally designed to encompass regulatory offenses which do not necessarily rise to the level of criminality. Although the Department's principal concern is with criminal offenses, it would be shortsighted to exclude from our concosideration the close association and frequent overlap between violations of regulatory mechanisms and criminal statutes. Moreover, in viewing white-collar enforcement alternatives, we must retain the flexibility to consider, where appropriate, regulatory sanctions as a possible means of control.

Our definition markedly departs from the traditional view held by many sociologists who have in the past stressed the social characteristics of the offender or the relationship between offenders and their occupations. That traditional academic approach does not accurately reflect the types of offenses and offenders encountered by the criminal justice system. Our experience has demonstrated that white-collar offenses are regularly committed by members of all social classes and are not the exclusive domain of the rich and powerful. Further, such offenses need not arise in the context of one's occupation, although admittedly they often do. The traditional approach was further rejected because it implicitly raises the spector of large enforcement agencies targeting whole segments of society for special enforcement emphasis—the innocent along with the guilty—a notion which is repugnant to our sense of fair play and equal protection under the law.

The reference in our definition to the non-violent nature of white collar offenses is intended to refer only to the method of commission of such offenses and not their actual impact on the community. Although the violence associated with street crimes is highly visible and immediate, white-collar offenses may inflict far more violence on their victims and the community at large. Consider for example the mining company official who bribes a federal inspector to ignore hazardous condition, thereby exposing countless miners to possible death and injury. Or the government contractor who knowingly supplies defective airplane parts to the Air Force, thereby exposing our pilots to unnecessary risks. Or the doctor who prescribes a panoply of risky and unnecessary medical tests for his Medicaid patients in order to inflate his claims to HEW. From this perspective, white-collar illegality cannot be equated directly to nonviolent behavior; the potential violence associated with such offenses is merely postponed and less visible.

For purposes of targeting our efforts to deter, detect, investigate and prosecute, our definition has proven useful and was adopted, with minor changes, by the Economic Crime Committee of the American Bar Association. We will concede, however, that it is open to challenge for being overly broad. For example, included in its literal reach would be some crimes that none of us would want to classify as white-collar illegality—such as phony narcotics transactions in which milk sugar is substituted and sold as hard drugs.

To complete our specific definition, we can further classify the white-collar crime field into four broad categories based on the identity of the victims: frauds against the government, including corruption; frauds against consumers; frauds against businesses; and corporate illegality. Combining these classifications with our focus on the elements of the offenses, we hope to be in a better position effectively to target those classes of offenses and schemes which warrant priority treatment.

Magnitude.—Current statistical data reflecting the extent and magnitude of the white-collar offense problem is unfortunately inadequate and open to serious challenge. A long-range solution to this data collection problem will be creation of a Bureau of Justice Statistics; we are currently working on an interim data collection system for white-collar offenses referred to the Department which, when in place, will enable us more accurately to assess the characteristics of all cases within the federal criminal justice system.

Notwithstanding the paucity of reliable data in the field, it is safe to conclude that the actual dollar loss suffered as a result of white-collar crime offenses exceeds the loss sustained as a result of so-called street crimes. We know for example that federally insured banks now lose three times as much from white-collar crime as from armed robberies. The Federal Government itself is by no means immune to white-collar crime; in fact, the Federal Government is often a prime target. The General Accounting Office has recently placed the estimate

of fraud and abuse against the government at several billion dollars annually. This estimate does not include anti-trust offenses or the vast area of procurement fraud in our Defense and related contracting areas.

Further, a fraudulent scheme often has indirect economic consequences that are more devastating than the direct loss. Consider for example the errant bookkeeper who defrauds his or her employer and forces the firm into bankruptcy. Coworkers are thrown out of work, while creditors may be forced into bankruptcy themselves as a result of their inability to secure payment.

Some in our society erroneously assume that white-collar offenses affect only the money or property rights of affluent individuals or the public or private institutions who can well afford the loss. Such offenses, however, have both a direct and indirect impact on all social classes and often inflict their greatest harm on the poor, the infirm and other segments of society that can least afford it. Further, the impact of white-collar illegality extends beyond simply pecuniary loss. Corruption of government officials can affect the quality of our food and the safety of our homes. Such illegality also has invidious effect on the public's perception of the integrity of our political, economic, social and governmental institutions. Official corruption invariably involves breaches of trust, either in the legal or moral sense, and such offenses generate in the public a deep sense of betrayal and disappointment. When an elected official accepts a bribe, a bank official abuses his position for personal gain, a corporate officer engages in illicit activity, or an employed worker fraudulently obtains unemployment insurance benefits, we as citizens feel cheated. Such public perceptions are fertile ground for the development of widespread public cynicism and a conviction that the entire economic and political system is corrupt and lacks integrity. It is precisely because white-collar offenses have the capacity to subvert the basic assumptions of our institutions and drain our national will that I consider white-collar illegality to be one of our most urgent law enforcement problems.

Finally, the reaction of the criminal justice system to white-collar offenses is often viewed by the public as a measurement of our sincerity in justly administering the law. When a ghetto youth is jailed for stealing a used car while a prominent securities advisor who misapplies hundreds of thousands of dollars in funds held in trust is placed on probation, the public cannot be faulted for wondering whether a dual system of justice is operative, one for the affluent and influential and another for the weak and disadvantaged.

In view of the volume of white-collar offenses, it is readily apparent that our enforcement commitment against them must be strong and constant. Historically, the response to such offenses at all levels of law enforcement—federal, state and local—has been inconsistent and sporadic. In the past, throughout the criminal justice system only minimum allocations of our scarce resources have been specifically earmarked for combatting white-collar offenses. Where administrative, civil or criminal sanctions are available, their utilization has been more often than not determined by individual choice and not in accord with any articulated, considered and well coordinated enforcement program.

The Administration has recognized the seriousness of white-collar illegality and is mobilizing the law enforcement system to confront the problem. We know that these offenses have no single cause and cannot be resolved by any single solution. What is needed in the enforcement area—and what the Department is seeking to develop and implement—is a national and comprehensive enforcement strategy focusing on the key elements of prevention, detection, investigation, prosecution and swift punishment. At this time I would like to review each of those elements with the Subcommittee.

1. PREVENTION OF WHITE-COLLAR ILLEGALITY

A large portion of white-collar illegality is probably preventable. In this regard all segments of society have a role to play—government, the business community and the private citizen. Public opinion must be mobilized and community perceptions changed so that the white-collar offender is no longer perceived as some clever, albeit misguided, David outwitting an impersonal and indifferent governmental or corporate Goliath.

One of the most important aspects of prevention involves public awareness of the indica or "badges" of fraud. The public and the business community must learn to recognize the tell-tale signs of white-collar crime schemes and to quickly report their existence to the appropriate authorities.

The tell-tale signs are many and include: promises of unusual and guaranteed returns; fancy company titles with only mail drops for offices; the bargain no-one-else-can-match; back-dating and post-dating of documents. All such badges of fraud should be repeatedly publicized to businesses and to the public. To be able to recognize the badges of fraud is the first step in preventing white-collar crime.

This situation is highlighted in the health industry where we encounter doctors properly rejecting solicitation by unscrupulous operators to participate in fraudulent schemes to manipulate the Medicare and Medicaid programs. Although the vast majority of doctors reject such offers, few report them to law enforcement authorities so as to enable us to identify and perhaps frustrate such schemes.

In a similar fashion corporations, professional groups and associations must recognize their community obligation to develop and enforce strict codes of conduct for their officials and members. A corporate official who suffers administrative civil or criminal sanctions as a result of lawless behavior should be routinely stripped of his position and face the strong condemnation of his peers, rather than be excused for having committed a mere "technical violation."

The government also can play a key role in preventing fraud and abuse in the first instance. For years we have routinely enacted sweeping social benefit legislation without adequate consideration of methods for minimizing the opportunities for fraud and abuse. The scenario is all too familiar—identification of a social problem, enactment of legislation to address the problem and an outpouring of funds, followed in several years by disclosures of widespread fraud and abuse permeating the program and finally, remedial legislation designed to prevent such illegal behavior. In the case of the Medicaid program, this entire process took some twelve years and no doubt cost the government untold billions of dollars. We can break this cycle if we address the enforcement issues at the inception of the program and build in mechanisms to guard against potential fraud.

In this regard, the Department of Justice proposes that an enforcement impact statement be prepared to accompany any social benefit legislation. The impact statement would address such critical questions as:

a. The opportunities for fraud and abuse created by the design of the program;

b. Available checks built into the program to minimize abuse;

c. Whether federal, state or local governments will be responsible for enforcement;

d. The capability of the law enforcement system, including investigative and prosecutive agencies as well as the courts and the prison system to handle the anticipated increase in workload;

e. The appropriateness of any administrative, civil and criminal sanctions created by the program.

Federal agencies responsible for administering such programs must also be sensitive to their obligation to minimize opportunities for fraud and abuse when they promulgate regulations. Even a well designed benefit program can be destroyed by ambiguous regulations which invite abuse and fraud. Program prevention does not have to mean simply "red tape" and need not necessarily "chill" the program.

It is precisely because of the pivotal role of the agencies in our efforts to control white-collar illegality that the Department of Justice has strongly supported the concept of an agency Inspector General. The essence of that concept is that the audit and investigative functions of each agency will be combined under one unit reporting directly to the highest level of the agency. We anticipate that the Inspector General will give a new thrust and impetus to agencies actively to seek out fraud and corruption, as well as abuse and waste. The Justice Department plans to work with the Inspectors General to help them establish standards and procedures to minimize program abuse.

2. DETECTION

The second area of white-collar enforcement that must be improved upon is detection. Program managers and agency officials must learn to view fraud and corruption detection as a positive aspect of their responsibilities rather than as a negative reflection on the program or agency.

It is erroneous to assume that crime detection techniques developed in response to so-called street crimes are or could be applicable to white-collar offenses. In

contrast to more "common" crimes, white-collar offenses are low visibility crimes. Victims may never be aware of their victimization, as in fraudulent charity solicitation schemes or antitrust and other consumer violations, or they may only learn of their victimization years after the commission of the actual offense.

Criminal investigative agencies, such as the FBI, the Postal Inspection Service or local police departments, historically have been reactive in their approach to crime. They respond only to specific allegations of wrongdoing and rarely embark on efforts to ferret out such offenses on their own initiative. Nevertheless, the covert nature of white-collar illegality requires us to move from a reactive enforcement posture in which we wait for a complaint to be filed by a "victim" to a proactive posture in which we affirmatively seek out and pursue the tell-tale signs of white-collar illegality even absent the filing of a formal complaint. I am pleased that law enforcement agencies throughout the country are readily adopting such a proactive approach.

To combat the white-collar criminal, the FBI has found it necessary to look for new investigative tools. Techniques new to these investigations are the use of the undercover agent and the undercover operation. Undercover techniques have been extremely successful and have been used in instances where it is believed considerable impact will result. An undercover operation is approved in the Department following a determination that the operation will meet necessary legal requirements, will be cost effective, and will have an impact on the white-collar criminal element.

As part of our effort to detect signs of possible fraud and abuse of our government programs as soon as possible, the Department of Justice, in conjunction with program agencies, has ongoing a series of pilot projects using computer screens to pinpoint areas of possible fraud and abuse. One such effort, called Project Integrity, is designed to identify medical providers who may be abusing the Medicaid and Medicare programs based on a computer assessment of their claim submissions. Another effort involves computer matching of the federal payroll records with the welfare rolls. The third project involves computer matches of federally funded unemployment insurance rolls to determine if employed individuals are receiving benefits to which they are not entitled.

What makes these programs unique is that for the first time federal program agencies are assuming a proactive posture and devising techniques for detecting instances of possible fraud and abuse rather than waiting to investigate complaints of suspected illegality. Although these projects are still in their early stages, preliminary indications are very encouraging.

Organization changes alone within the program agencies will not bring under control the problem of fraud on the government; skilled and well-trained investigators and auditors are also essential. During the House's consideration of the Inspector General Bill, the question of investigative and audit resources was thoroughly explored. By and large those hearings revealed that all of the agencies are lacking in investigative capability, although some agencies are better than others. We trust that in the immediate future this problem will be corrected.

Nor will merely increasing the numbers of agency investigators and auditors be sufficient. The Department of Defense, for example, has over 4,000 investigators and 6,000 auditors; yet it is still a prime victim of serious fraud and abuse. Perhaps of far more importance than the actual number of investigators available to the agencies is the investigators' skill and expertise. Experience has demonstrated that in order to handle sophisticated white-collar offense, investigators have to possess the ability to penetrate complex schemes, reconstruct intricate financial transactions and follow logical audit trails.

The Department of Justice recently devised and is currently making available to federal program agencies a "mini course" on criminal investigations. Intended to be incorporated in standard agency investigator training programs, the course is presented by experienced Criminal Division personnel and concentrates on investigative requirements necessary to support a successful criminal prosecution. I am glad to report that the course is being well-received by the agencies and that currently we are preparing a parallel course specifically keyed to government audit personnel which should be avilable in early fall of this year.

3. INVESTIGATIONS

Investigations of significant white-collar illegality are often difficult and time-consuming as a result of the need to reconstruct the questioned transactions and

establish the requisite criminal intent by the subjects when they performed the questioned acts. Often investigators must look at not merely a single discrete act constituting the offense, but an entire course of conduct spanning months and even years. Relevant evidence may be spread out across the nation or around the world. Unlike street crimes where the crime is evident and the investigation focuses on establishing the identity of the culprit, an investigation of white-collar illegality centers primarily on determining if a crime actually occurred.

Allocating investigative resources, whether in the FBI, Postal Inspection Service or Internal Revenue Service, therefore becomes critical. Many white-collar crime cases have little potential deterrent effects, but pose no unusual investigative obstacles. More significant cases require a commitment of appreciable investigative resources, with no assurances that a successful criminal prosecution can be developed. The Department of Justice has chosen as a matter of policy to focus our resources primarily on those cases which are perceived to have maximum impact and deterrent value. In furtherance of this approach, the FBI has adopted a "quality over quantity" program to ensure that major cases are afforded maximum investigative priority. At the same time the Bureau has been recruiting more accountants and is shifting a greater portion of its agent personnel into white-collar crime investigations. Convictions recorded in the FBI-White-Collar Crime program for fiscal years 1974 and 1975 totaled 2,925 and 3,543 respectively. In contrast, recorded convictions in this area in fiscal years 1976 and 1977 were 4,307 and 4,239 respectively, a significant increase, especially considering the "quality over quantity" approach. The increase is largely the result of increased FBI efforts in the white collar area.

Major investigations of suspected white-collar crimes frequently require that a multi-agency investigative team be created to draw upon the expertise of various agencies in unravelling a convoluted series of illegal financial transactions. It is not unusual for a special team to be created comprised of investigators from the FBI, Postal Inspection Service, the SEC and one or more program agencies, to focus on a single matter. Our efforts in this regard have been somewhat frustrated by the 1976 Tax Reform Act, which severely restricts our ability to utilize the expertise of the Internal Revenue Service on such team projects.

4. PROSECUTION

The overall success of our curent efforts to prosecute white-collar offenses will necessarily be affectel by the legal weapons at our disposal. At this time there are gaps in our arsenal which need to be filled by new legislation. Many such statutes have already been proposed and are awaiting Congressional action. These proposals would, among other things: a) specifically proscribe computer fraud and abuse; b) clarify internal corporate responsibility, thereby preventing high officials from escaping personal criminal liability by hiding within the corporate maze; c) provide prosecutors with an effective injunctive procedure for stopping criminal schemes as soon as they are detected, rather than waiting until sufficient evidence is gathered to institute criminal proceedings and; d) outlaw pyramid sales schemes.

Merely having appropriate statutes on the books will not, however, be sufficient to control the problem. Vigorous prosecution of significant cases is required to achieve maximum deterrence and impact. That is why one of the Attorney General's first actions after he asumed office was to announce that white-collar crime prosecutions were one of his top priorities and to direct all United States Attorneys to devise three-year enforcement programs for white-collar crime and public corruption, as well as for his other priorities of organized crime and illicit drug trafficking. Such an initial step was essential because the vast majority of white-collar prosecutions, excluding anti-trust prosecutions, are handled by the United States Attorneys. At the same time, we expanded the Fraud Section and Public Integrity Sections of the Criminal Division which provide overall policy direction and support, including supplemental litigating support, to United States Attorneys in the area of white-collar crime prosecutions. Further expansions of these Sections were projected for FY 1979 until the House of Representatives rejected our budget requests.

At the present time most of the larger United States Attorneys' offices have established specialized white-collar crime units to focus on these offenses. Utilizing the team approach I earlier mentioned, these Units have proven to be effective mechanisms for attacking specific white-collar crime problems within their district. To supplement this effort and to address multi-district problems,

we also use specialized task forces that draw upon resources from the Criminal Division, selected United States Attorneys offices and relevant investigative agencies. Prosecution task forces, for example, are already focusing on foreign corrupt practices, land fraud, naval procurement fraud, military meat procurement fraud and coal frauds. Additionally, we are considering creating a task force to focus exclusively on energy-related frauds and abuses throughout the country. We are also considering creation of a corruption task force for identified districts that have particular problems combatting corruption in their area.

We recognize, however, that a more comprehensive approach to the problem is required if we are to have a larger impact in this area. Accordingly, we have under active consideration a proposal designed to ensure that maximum available prosecutive and investigative resources are directed at significant white-collar crime cases. The basic outlines of the proposal include the following:

a. Specialized white-collar crime units are to be formed in 29 federal districts around the nation;

b. Each unit will consist of no less than three attorneys, at least one of whom will be a Criminal Division attorney;

c. Each non-unit district will be affiliated with one of the unit districts and will be serviced by the Criminal Division attorney(s) assigned to the Unit:

d. The Criminal Division component of each unit will perform several functions including:

1. Maintain liaison with all relevant investigative agencies and wth state and local prosecutors.

2. Discern emerging white-collar crime problems within the jurisdiction,

3. Provide training an dtechnical expertise for affiliated office personnel;

e. All relevant investigative agencies will designate a senior agent to maintain liaison with the Unit. On a pilot basis, agencies will be requested to assign full-time agents directly to the Units.

f. Each Unit will work exclusively on priority cases. National needs and the peculiar characteristics of the district will be taken into account in establishing unit priorities.

g. To ensure that only major cases are worked by the Units, case initiation reports will be filed which will discuss the potential impact of the case.

We are still in the process of evaluating the proposal to determine if it is the most effective approach to maximize our prosecutive efforts.

One remaining point concerning white-collar crime prosecutions relates to training of prosecutors. We have embarked on an aggressive training program specially designed for Assistant United States Attorneys. These programs vary from courses dealing with specific white-collar crime problems such as fraud in HUD program, to more general white-collar crime seminars which cover a broad range of issues. In an attempt furthe rto coordinate the work of the prosecutor with that of the FBI, we are also experimenting with joint training programs.

5. SENTENCING AND PUNISHMENT

Treatment of convicted white-collar offenders is a difficult and often emotionally charged public issue. As "rehabilitation" has little relevancy for many such offenders, questions can be raised about the efficacy and purpose of penal sanctions in white-collar crime cases. I submit that such sanctions can play a vital role in our attempts to control white-collar crime.

Whatever the deterrent effect of the criminal law, it may have its greatest impact on white-collar offenders. White-collar crime offenses generally involve careful planning by the offender and a conscious weighing of the costs and anticipated benefits. At present, the anticipated benefits of many white-collar crimes can be measured in the millions of dollars by some potential offenders. We must increase the cost of such crimes by ensuring punishment more severe than only the possible loss of reputation and community standing. Imposition of heavy prison terms joined with apropriate fines should be the rule, with probation and early parole reserved only for the most exceptional cases. Only by "recriminalizing" white-collar crime offenses can we hope to deter would-be offenders.

In the anti-trust area, in particular, we have decided aggressively to seek stronger sentences. In December 1974, Congress made violation of the Sherman Act a felony and substantially increased the maximum penalties. The Antitrust Division has been placing a greater emphasis on criminal investigations and prosecutions of price-fixing, and has adopted internal guideines for sentencing rec-

ommendations in felony cases. The guidelines provide for a base sentence of 18 months and set out certain aggravating and mitigating factors to be taken into consideration.

Imposition of severe punishments in white-collar crime cases would also serve to assure the public that justice is truly being administered equally in this country. It is hard to justify incarcerating the ghetto youth for theft of a car while simultaneously admitting to probation the corrupt government official or corporate official who has betrayed his trust and milked the public for millions of dollars.

Inconsistencies in jail terms must be eliminated. Toward that end, the proposed revision of the Federal Criminal Code contains sentencing guidelines and provides added protection for appellate review of sentences outside the guidelines.

We must deal with many complex problems in order to mount a more effective law enforcement effort against white-collar crime.

Thank you. I will be glad to answer any questions you may have to ask me.

Mr. CONYERS. With that, we will allow you to begin your remarks. Welcome to the subcommittee.

TESTIMONY OF BENJAMIN R. CIVILETTI, DEPUTY ATTORNEY GENERAL, ACCOMPANIED BY MARK RICHARD, CHIEF, FRAUD SECTION, CRIMINAL DIVISION

Mr. CIVILETTI. Thank you, Chairman Conyers, and thanks for the opportunity to appear today to discuss with the subcommittee the problem of white-collar crime or illegality.

At the outset of my remarks I want to emphasize that the Department shares your deep concern with the problem of white-collar illegality and pledges its support in the months ahead in the subcommittee's study of the difficult subject. We join in the hope expressed by you in your opening statement that what will emerge from these proceedings will be concrete ideas for legislative and executive reforms which will enhance society's understanding of white-collar illegality and our mutual ability to deal effectively or more effectively with such illicit behavior.

If agreeable to you, I would like to highlight parts of my written testimony rather than simply reading it in its entirety; I will skip those parts which need not be highlighted, and call particular parts to your attention.

Mr. CONYERS. That will be quite all right.

Mr. CIVILETTI. Thank you.

Definitionally, having read the first session of the committee's work and appearances, and also having reviewed the white-collar crime report or response developed by Miriam Saxon, an analyst in the Social Legislation, Education, and Public Welfare Division of the Congressional Research Service of the Library, for the subcommittee, I need not discuss in great detail the substantial number of different definitions and different viewpoints with regard to the white-collar crime. The differences are without great meaning. They are helpful, in their variety, they are helpful in understanding the multitudinous variety of white-collar crime offenses and to help understand that in devising solutions to white-collar crime those solutions differ, depending upon what type or types or categories of white-collar crime we may be addressing with any particular plan in mind.

With regard to the magnitude of the problem, the Department of Justice has no computer nor does it have any statistical genius which is

able to determine with precision the monetary impact of the general category of white-collar crime. We think and believe that it is enormous, substantial and terribly harmful. We think, also, that we now have underway a long-range solution to this data collection problem which is part of the LEAA reorganization in the Bureau of Justice Statistics which is proposed within that new authorization, and which the Congress hopefully will be considering, adding its wisdom to and its changes, over the next several months.

We hope and look forward to the time that such statistics, collection systems, and analyses will enable us to assess more accurately the characteristics of cases, including this most important area of white-collar crime, within the Federal criminal justice system. But notwithstanding the limited data in this field or limited reliable data, there is plenty of data floating around which are guesstimates of one kind or another, with huge figures attached to them; but as to reliable data, despite the lack of it, it is I think fair to conclude the actual dollar loss suffered as a result of white-collar crime offenses exceeds the loss sustained as a result of so-called street crimes.

We know, for example, in one area that federally insured banks now lose three times as much from white-collar crime as from armed robberies. And the Federal Government itself is often a prime target of white-collar crime schemes and devices.

The General Accounting Office has recently placed the estimate of fraud and abuse against the Government, itself, at several billion dollars annually, and this estimate does not include within its economic analyses those antitrust offenses which are committed annually or the vast area of procurement fraud in our defense and related contracting areas.

Further, aside from the direct dollar loss and estimates, one of the tragedies of white-collar crime is that it has a multitude or a multiplier effect on injury and loss to the public. A fraudulent scheme has indirect economic and human consequences that are often more devastating than simply the direct or immediate dollar loss. An errant bookeeper who defrauds his or her employer of x or y dollars is one thing, but then the consequences of that, in forcing the particular company into bankruptcy, the unemployment of dozens of individuals and the loss of a life's worth of effort, is not directly measurable, but certainly is proximately caused by the underlying white-collar crime offense.

Some in our society erroneously assume that white-collar offenses affect only the money or property rights of affluent individuals of the public or private institutions who can well afford the loss. But that is a misconception. Such offenses, white-collar crimes, have a direct and indirect impact on all social classes, and often inflict their greatest harm on the poor, the infirm, and other segments of society that can least afford it.

Further, the impact of white-collar illegality extends as I have mentioned beyond the pecuniary loss, be it immediate or even indirect. Corruption of government officials, State, local, or Federal, affects the quality of our food, the safety of our homes, and of our lives. Such illegality also has an invidious effect on the public's perception of the integrity of our political and economic and social and governmental institutions.

Official corruption invariably involves breaches of trust, either in the legal or moral sense.

Such offenses and the public perceptions of ineffectiveness in dealing with them are fertile ground for the development of widespread public cynicism and a conviction that the entire economic and political system is corrupt or lacks integrity. It is precisely because white-collar offenses have the capacity to subvert, as you mentioned this morning, the basic assumptions of our institutions and drain our national will, that we in Justice consider white-collar illegality to be one of our most urgent law enforcement problems.

Finally, the reaction of the criminal justice system to white-collar offenses is often viewed by the public as the measurement, as you have said, of our sincerity in justly administering the law. When a ghetto youth is jailed for stealing a used car while a prominent securities adviser who misapplies hundreds of thousands of dollars in funds held in trust is placed on probation, the public cannot be faulted for wondering whether a dual system of justice is operative, one for the affluent and influential and another for the weak and disadvantaged.

In view of the volume of white-collar offenses, it is readily apparent that our enforcement commitment against them must be strong and must be constant. Historically the response to such offenses at all levels of law enforcement—Federal, State, and local—has been inconsistent and sporadic. In the past throughout the criminal justice system only minimum allocations of our scarce resources have been specifically earmarked for combating white-collar offenses. Where administrative, civil, or criminal sanctions are available, their utilization has been more often than not determined by individual choice, vigorous or not, depending upon the individual at the head of a particular institution, and not in accordance with any articulated, considered, and well-coordinated, integrated enforcement program.

The administration has recognized the seriousness of white-collar illegality and is mobilizing the law enforcement system to confront the problem in better and more effective ways. We know that these offenses have no single cause and cannot be resolved by any single solution. What is needed in the enforcement area and what the Department is seeking to develop and implement is a national and comprehensive enforcement strategy focusing on the key elements present in most illegalities of substantial proportion—prevention, detention, investigation, prosecution, and swift punishment, either through incarceration or some other form of correctional attitude.

At this time I would like to review each of these elements briefly with you and to describe in part some of the steps being taken in the development and implementation of such a national strategy.

First, with regard to prevention, a large portion of the white-collar illegality is probably preventable. In this regard many segments of society—Government, the business community, and private citizens—have a role to play.

One anecdote I might mention in passing: I was recently in the great State of Michigan to give an address, and while there the U.S. attorney—we were discussing white-collar crime and the address was on the subject of white-collar crime—the U.S. attorney there related

to me the fact that people in the Grand Rapids area within the past year and a half had suffered from one of the oldest flimflam schemes known to man: the woeful heir scheme, wherein an attractive person, con man, seeks anywhere from $10,000 to $25,000 from members of the community in order to be able to settle this fabulous estate in New York, California or Texas, someplace far away, and then can repay the sucker, in effect, after the estate is settled.

As old as that scheme is and as tired as it is, almost $3 million was taken from a small area of the State of Michigan, the Grand Rapids area, by a colorful and effective con artist with that tired scheme. The case is being investigated. It will be prosecuted by the FBI. But many of the victims, many of the victims, even after being informed about the nature of the scheme, the unreliability of the subject, were insistent that the FBI was wrong and that this person really did have such an estate in a distant State.

One of the most important aspects of prevention involves the public awareness of the indicia or badges of fraud. The public and the business community must learn to recognize the telltale signs of white-collar crime schemes and quickly report their existence to the appropriate authorities. Those signs are many, and include promises of unusual and guaranteed returns, fancy company titles with only mail drops for offices, the bargain no one else can match, the backdating and postdating of documents, and numerous others. All such badges of fraud should be repeatedly publicized to businesses and to the public because the skill and expertise of such con artists is so great that there must be a constant awareness in order to recognize and alert individual members of the public as a first step in preventing at least this aspect of white-collar crime.

This situation is highlighted in the health industry where we have encountered doctors properly rejecting solicitation by unscrupulous operators to participate in fraudulent schemes to manipulate the medicare and medicaid programs. Although the vast majority of doctors reject such offers, few report them to law enforcement authorities so as to enable us to identify and perhaps help to further frustrate such schemes.

In similar fashion, corporations, professional groups, associations, must recognize their community obligation to develop and enforce strict codes of conduct for their officials and members. A corporate official who suffers administrative, civil, or criminal sanctions as a result of lawless behavior should be routinely stripped of his position and face the strong condemnation of his peers, rather than be excused for having committed what some label or would like to label merely a technical violation.

The Government can also play a key role in preventing fraud and abuse in the first instance with regard to its social benefit programs. For years we have routinely enacted sweeping social benefit legislation without adequate consideration of methods for minimizing the opportunities for fraud and abuse. The scenario is all too familiar: identification of the true and real social problem; rather rapid enactment of legislation to address the problem and to relieve the terrible need; the outpouring of funds and the concern to get the most funds into the hands of the beneficiaries and the quickest without layers of bureaucracy and red tape; but then followed in several years by disclo-

sures of widespread fraud and abuse permeating the program; and then, finally, perhaps 3 to 5 years later, remedial legislation designed to correct and prevent such illegal behavior in the future.

In the case of the medicaid program, this entire process took about 10 or 12 years and no doubt cost the Government untold billions of dollars.

We can, together, break this cycle if we address the enforcement issues at the inception of the program and build in the mechanisms to guard against potential fraud, as well as the incentives for some small part of the funds to be spent in this regard. The Department of Justice proposes that an enforcement impact statement be prepared to accompany social benefit legislation. The impact statement would address such critical questions as: the opportunities for fraud and abuse created by the design of the program; available checks built into the program to correct or minimize potential abuse; whether Federal, State, or local governments will bear primary or collective responsibility for enforcement; an analysis of the capability of the law enforcement system, including the investigative and prosecutive agencies as well as the courts and the prison system to handle the anticipated increase, if any, in workload; and the appropriateness of administrative, civil, and criminal sanctions particularly created by the program.

Federal agencies responsible for administering such programs must also be sensitive to their obligation to minimize opportunities for fraud and abuse when they promulgate regulations. Even a well-designed benefit program can be destroyed by ambiguous regulations which invite abuse and fraud. The program prevention does not have to mean simply redtape and need not necessarily chill or freeze the program from effectiveness.

It is precisely because of the pivotal role of the agencies in our efforts to control this type of white-collar illegality that the Department of Justice has strongly supported the concept of an agency Inspector General, which is now pending in legislation before this Congress. The essence of that concept is that the audit and investigative functions of each agency will be combined under one unit, reporting directly to the highest level of the agency. We anticipate that the Inspector General concept will give a new thrust and impetus to agencies actively to seek out fraud and coruption as well as abuse and waste. The Justice Department plans to work with the Inspectors General to help them establish standards and procedures to minimize program abuse in existing programs as well as to help have an input into the design of new benefit programs.

Mr. CONYERS. Would the Inspectors General, as you envision them, be a part of each agency or part of the Department of Justice?

Mr. CIVILETTI. Mr. Chairman, it would be part of the agency, and it would be not dissimilar from what now exists in one department, and that is HEW.

But the other remaining, I think, 12 major program benefit departments, Agriculture, Labor, do not have Inspector General concepts, and it will bring together the monitoring functions performed by auditors with the criminal investigation functions performed by criminal investigators in an ordinary Inspector General operation. We also

think that it would, because of its level of importance in the particular agency, more likely assure support and confidence and continuity to the protective actions of the agency toward the integrity of its programs than now exists.

The second area of white-collar enforcement that must be improved substantially is detection. Program managers and agency officials must learn to view fraud and corruption detection as a positive aspect of their responsibilities rather than as a negative reflection on mismanagement either of a program or an agency. It is erroneous to assume that crime detection techniques developed in response to so-called street crimes are or could be applicable to white-collar offenses. In contrast to more common crimes, white-collar offenses are often of low visibility. Victims may never be aware of their victimization, as in fraudulent charity solicitation schemes or antitrust or other consumer violations, or they may only learn of their victimization years after commission of the actual offense.

In addition, these crimes do not produce vivid witnesses and smoking guns. They are difficult to investigate and to prosecute. Criminal investigative agencies such as the FBI, the Postal Inspection Service, and local police departments historically have been reactive in their approach to crime. They respond to specific allegations of wrongdoing and rarely embark on efforts to ferret out such offenses on their own initiative, partly because they are flooded, even in the reactive state, with more work than they can possibly do.

Nevertheless, the covert nature of white-collar illegality requires us to move from a reactive enforcement posture, in which we wait for a complaint to be filed by a victim, to a proactive posture, in which we affirmatively seek out and pursue the telltale signs of white-collar illegality, even absent the filing of a formal complaint. The Bureau is doing that now. The Postal Inspection Service is doing it more and more. The agency participation will be a great step forward in a proactive posture.

To combat the white-collar criminal, the FBI has found it necessary to look for new investigative tools. Lawful techniques new to these investigations are the extended use of undercover agents and undercover operations. Undercover techniques have been extremely successful and have been used in instances where it is believed considerable impact will result. As, Mr. Chairman, I am sure you are undoubtedly aware, one of the recently surfaced undercover operations concerned the Southeastern United States and corruption and white-collar crime in the Longshoremen and shipping industry.

An undercover operation is approved in the Department following a determination that the operation will meet necessary legal requirements, will be cost effective, and will have an impact on the white-collar criminal element of some significance.

As part of our effort to detect signs of possible fraud and abuse of our Government programs as soon as possible, the Department, in conjunction with program agencies, has ongoing a series of pilot projects using computer screens to pinpoint areas of possible fraud and abuse. One such effort, called Project Integrity, is designed to identify medical providers who may be abusing the medicaid and medicare programs, based on a computer assessment of their claim submissions.

Another involves computer matching of the Federal payroll records with welfare rolls. A third involves computer matches of federally funded unemployment insurance rolls to determine if employed individuals are receiving benefits to which they are not entitled.

Those three examples show, I think, rather dramatically the differences between white-collar crimes in different applications and the reasons why there have to be different solutions. In the latter two examples the crimes may be volume crimes which in their total volume has a devastating impact on Federal programs, but singly, each of them has little or no significance and may involve less than a worthwhile cost-benefit method of pursuing. Whereas in the first, wherein we have one target, so to speak, a laboratory facility or a hospital service organization, one operation may be committing an enormous dollar amount of fraud and abuse, and it may well be worth intensive criminal investigation of that one operation. This is true so long as we could initially effectively screen out those individuals, $1 or $2 mistakes or overcharges or overclaims by an individual medicaid or medicare victim which are not worthwhile being pursued by the full force or effect of the Government.

What makes these three programs or examples that I have cited unique is that for the first time the agencies are assuming a proactive posture in devising techniques for detecting instances of possible abuse and fraud, rather than waiting to investigate complaints of suspected illegality. Organization changes alone within the program agencies will not bring under control the problem of fraud on the Government; skilled and well-trained investigators and auditors are also essential. During the House's consideration of the inspector general bill, the question of investigative and audit resources was thoroughly explored, and by and large those hearings revealed that all of the agencies are lacking in one degree or another in investigative capability, although some agencies are, of course, of better competence or have a volume of competence better than others.

We trust in the future this problem will be corrected, but the hiring and training of competent investigators and audit resources is not easy.

But assuming increasing the numbers of competent agency investigators and auditors, that alone again or as a single part of the solution to the problem will not be sufficient.

The Department of Defense, for example, has approximately 4,000 investigators and 6,000 auditors. Yet it is still a prime victim of serious fraud and abuse. Perhaps of far more importance than the actual number of investigators available to the agencies is the investigators' skill and expertise, because experience has demonstrated that in order to handle sophisticated white-collar offenses, investigators have to possess the ability to penetrate complex schemes, reconstruct intricate financial transactions, and follow logical audit trails. Financial criminal investigators needs to be able to follow the paper trails and not get off on side roads.

But even with that ability, without some form of prescreening to separate the wheat from the chaff, even investigators and auditors, before it goes to a criminal agency such as the FBI and the Department of Justice, will be lost among the sheer volume of the kind of programs that the Department of Defense, both in procurement, and

the Department of Health, Education, and Welfare in benefits, manage in 1 single fiscal year.

The Department of Justice recently devised and is currently making available to Federal program agencies a minicourse on criminal investigations, intended to be incorporated in standard agency investigator training programs. The course is presented by experienced Criminal Division personnel and concentrates on investigative requirements necessary to support a successful criminal prosecution.

I am glad to report that the course is being well received by the agencies, and currently we are preparing a parallel course specifically keyed to Government audit personnel, which should be available in the early fall of this year. Continuing education in the criminal investigation of white-collar crime is one of the most necessary of all the multifaceted solutions or approaches which we suggest as a part of a developing national strategy, as apart from detection which, of course, can be achieved not only through public education and through complaints, but also through the use of computer data, analyses, and through trained auditors and criminal investigators, and moving into the serious and heavy investigation of those outstanding violations and meaningful ones, in the substance of their amounts or in the impact on particular communities.

Investigations of white-collar illegality as a result of a need to reconstruct the questioned transactions and establish the requisite criminal intent by the subjects when they performed the questioned acts are difficult and time consuming. Often investigators must look at not merely a single discrete act constituting the offense, but an entire course of conduct spanning months and even years. Relevant evidence may be spread out across the Nation or around the world. Unlike street crimes, where the crime is evident and the investigation focuses on establishing the identity of the culprit, an investigation of white-collar illegality centers primarily on determining if a crime—or a prosecutable crime—has actually occurred.

Allocating investigative resources, whether in the FBI, Postal Inspection Service, or Internal Revenue Service, therefore, becomes critical. Many white-collar crime cases have little potential deterrent effects, but pose no unusual investigative obstacles. More significant cases, those with truly remedial effects, or deterrent effects, require a commitment of appreciable investigative resources, with no guarantee that a successful criminal prosecution can be ultimately developed. The Department of Justice has chosen as a matter of policy to focus our resources primarily on those cases which are perceived to have a maximum remedial impact and deterrent value.

In furtherance of this approach, the FBI, as you know, has adopted a quality-over-quantity program to insure that major cases are afforded or more likely to be afforded maximum investigative priority. At the same time, the Bureau has recruited more accountants and is shifting the greater portion of its agent personnel into white-collar crime investigations. Convictions recorded in the FBI white-collar program for fiscal years 1974 and 1975 respectively totaled 2,923 convictions in 1974 and 3,543 in 1975, and in contrast recorded convictions in the area in fiscal years 1976 and 1977 were 4,307 and 4,239 respectively, a significant increase, especially considering the approach of the Bureau.

This increase is largely the result of increased Bureau efforts in the white-collar crime area. White-collar crime now in the FBI is considered to be one of its four priority programs, and I believe ranks second in priority only to espionage and terrorism.

Major investigations of suspected white-collar crime frequently require that a multiagency investigative team be created to draw upon the expertise of various agencies on unraveling convoluted series of illegal financial transactions. It is not unusual for a special team now to be created comprised of investigators from the Bureau, Postal Inspection Service, the SEC, or one or more program agencies. The old jealousies and insular behavior of investigative agencies have broken down over the years, and I am glad to report that through communications and efforts between agencies—investigative and program—the cooperative attitude and effectiveness of these joint teams has improved dramatically.

Our efforts in this regard have been somewhat frustrated by the 1976 Tax Reform Act, which severely restricts our ability to utilize the expertise of the Internal Revenue Service special agents on such team projects. We have worked with the Internal Revenue Service, though, during the course of the last year, to try to improve, within the meaning of the Act and the regulations, the release of information, tax-return information, taxpayer information and tax returns, more quickly when the requisite standards of probable cause or reasonable suspicion have been met.

Turning now to prosecution, which in some instances in the Federal system is the smallest part of the system. Within our representative form of government, as we all know, the Federal Government prosecutive side is a tiny portion of the total prosecutive forces within the United States. We have approximately 1,600 prosecutors, assistant U.S. attorneys, and 95 U.S. attorneys. There are more prosecutors and more district attorneys in one large State than there are in the entire Federal system, and that is not an accident. That is by design of our Federal system that we abhor a State, in effect, a Federal State police force, we abhor a comprehensive Federal State prosecutive force, and we are content to follow the Constitution and historical guidelines and develop strong and independent State prosecutors, State investigators, and State police forces.

However, within our Federal prosecutive role, within the concept of our court system, Federal court system and our Federal correctional system, which again is small—in each instance, a small proportion of the State systems, as it should be—there is much that we can do.

The overall success of our current efforts to prosecute white-collar offenses will necessarily be affected by the legal weapons at our disposal, which in the Federal system are substantial. But there are some gaps which need to be filled by new legislation. Many such statutes have already been proposed and are awaiting congressional action. These include, among others: (a) Specifically proscribe computer fraud and abuse; (b) clarify internal corporate responsibility, thereby preventing high officials from escaping personal criminal liability by hiding within the corporate maze; (c) provide prosecutors with an effective injunctive procedure for stopping criminal schemes as soon as they are detected, rather than waiting until sufficient evidence is

gathered to institute criminal proceedings; and (d) outlaw pyramid sales schemes.

Merely having appropriate statutes on the books will not, however, be sufficient to control the problem. Vigorous prosecution of significant cases is required to achieve maximum deterrence and impact. That is why one of the Attorney General's first actions after he assumed office was to announce that white-collar crime prosecutions were one of his top priorities, and to direct all U.S. attorneys to devise 3-year enforcement programs for white-collar crime and public corruption, as well as for his other priorities of organized crime and illicit drug trafficking. Such an initial step was essential because the vast majority of white-collar prosecutions, including antitrust prosecutions, are handled by the U.S. attorneys. At the same time, we expanded the Fraud Section and Public Integrity Sections of the Criminal Division, which provide overall policy direction and support, including supplemental litigating support, to U.S. attorneys in the area of white-collar crime prosecutions.

Further expansions of these sections were projected for fiscal year 1979, but the House of Representatives rejected our budget request. I think we are still alive in the Senate because we made an appeal there, and I understand the Senate Appropriations Committee has reapplied the 50 positions for the Criminal Division as well as some of the other cuts made by the House.

At the present time, most of the larger U.S. attorney offices have established specialized white-collar crime units to focus on these offenses. Utilizing the team approach I earlier mentioned, these units have proven to be effective mechanisms for attacking specific white-collar-crime problems within their districts. I am not suggesting, though, that each of the units in every district has proved to be effective. The concept has proved to be effective.

To supplement this effort and to address multidistrict problems, we also use specialized task forces that draw upon resources from the Criminal Division, selected U.S. attorney offices, and relevant investigative agencies. We believe, though, and feel the efforts that have been made to date are not adequate, are not satisfactory, and not comprehensive enough in this regard.

We think that a more comprehensive approach to the problem is required if we are to have a larger and more substantial effect in the area. Accordingly, we have under active consideration a proposal designed to insure that maximum available prosecutive and investigative resources are directed at significant white-collar-crime cases.

The basic outlines of the proposal include specialized crime units in 29 Federal districts. Each unit will consist of no less than three attorneys, at least one of whom will be a Criminal Division attorney for the first time. Each nonunit district will be affiliated with one of the unit districts and will be serviced by the Criminal Division attorney assigned to the unit.

The Criminal Division component of each unit will perform several functions, including liaison with all relevant investigative agencies and with State and local prosecutors, discern emerging white-collar-crime problems within the jurisdiction, and provide the training and technical expertise for the affiliated office personnel.

All relative investigative agencies will designate a senior agent to maintain liaison with the unit on a pilot basis.

Each unit will work exclusively on priority cases.

National needs and the peculiar characteristics of the district will be taken into account in establishing each district's unit priorities. To insure that only major cases are worked by the units, case initiation reports will be filed, which will discuss the potential impact of the case.

We are in the process of evaluating the proposal to determine if it is the most effective approach to maximize at least this one phase of the white-collar-crime problem, and that is the Federal prosecutive efforts.

One remaining point concerning white-collar prosecutions relates to training of prosecutors. We have embarked on an aggressive training program especially designed for assistant U.S. attorneys. These programs vary, from courses dealing with specific white-collar-crime problems as narrow as, for example, fraud in HUD programs, to more general white-collar-crime seminars which cover a broad range of issues.

In an attempt to further coordinate the work of the prosecutor with that of the Bureau, we have been experimenting with joint training programs, one of which Director Webster and I attended at Quantico not too long ago, at the reception which involved assistant U.S. attorneys and special agents who are designated for white-collar-crime investigative functions; and I believe it was a 3- to 5-day program in which both the Bureau and the Criminal Division participated heavily.

One or two words with regard to sentencing and punishment. This is a difficult area because it is in the third branch. The primary responsibility for this part of the solution to white-collar-crime offenses and other offenses is lodged in the third and independent branch of the Government, the judiciary; but somehow we have the responsibility, since it is both the Congress and the executive branch who share the responsibility, too, because it is not an independent part of the process, but sentencing and punishment are an integral part of solutions to white-collar crime as well as other crimes. It is one continuous pipeline, and if any part of the pipeline is clogged or is smaller or inadequate, or has blockage, then the whole system has a tendency to be disrupted or to break down.

The treatment of convicted white-collar offenders is a difficult and emotionally charged public issue; rehabilitation has little relevancy for many such offenders. Questions can be raised about the efficacy and purpose of penal sanctions in white-collar-crime cases. I submit that such sanctions can play a vital role in our attempts to control white-collar crime.

Whatever the deterrent effect of the criminal law, it may have its greatest impact on white-collar offenders. White-collar-crimes offenses generally involve careful planning by the offender and a conscious weighing of the cost and anticipated benefits in the design of evil intent.

At present, the anticipated benefits of many white-collar crimes can be measured in millions of dollars by the potential offenders. We must

increase the cost of such crimes by insuring punishment more severe than only the possible loss of reputation and community standing. Imposition of heavy prison terms, joined with appropriate fines, should be the rule, with probation and early parole reserved only for the most exceptional cases. Only by recriminalizing white-collar offenses can we hope to deter would-be offenders, and this fits with the other parts of the developing national strategy, and that is, not to punish through full prosecution the minor offenses that can be treated either as misdemeanors or can be handled administratively with other punitive sanctions short of a full criminal prosecution, but to reserve and to intensify the effort for full criminal prosecution on those substantial offenses meaningful in terms of dollars and impact on the community which deserve uniformly severe punishments of the type that I have just described.

In the antitrust area, in particular, an integral part of white-collar crime, we have decided aggressively to seek stronger sentences. In December of 1974, Congress made violation of the Sherman Act a felony and substantially increased the maximum penalties.

The Antitrust Division has been placing a greater emphasis on criminal investigations and prosecutions of price fixing, and has adopted internal guidelines for sentencing recommendations in all felony cases.

The guidelines provide for the first time a base sentence of 18 months and set out certain aggravating and mitigating factors to be taken into consideration.

Imposition of severe punishment in white-collar-crime cases would also serve to assure the public that justice is truly being administered equally in this country.

Inconsistencies in jail terms must be eliminated, and toward that end and in other ways efficient for white-collar-crime problems, the proposed revision of the Federal Criminal Code which is now pending before the House Judiciary Committee—Subcommittee, I believe—contains sentencing guidelines and provides added protection for appellate review of sentences which are imposed outside those guidelines.

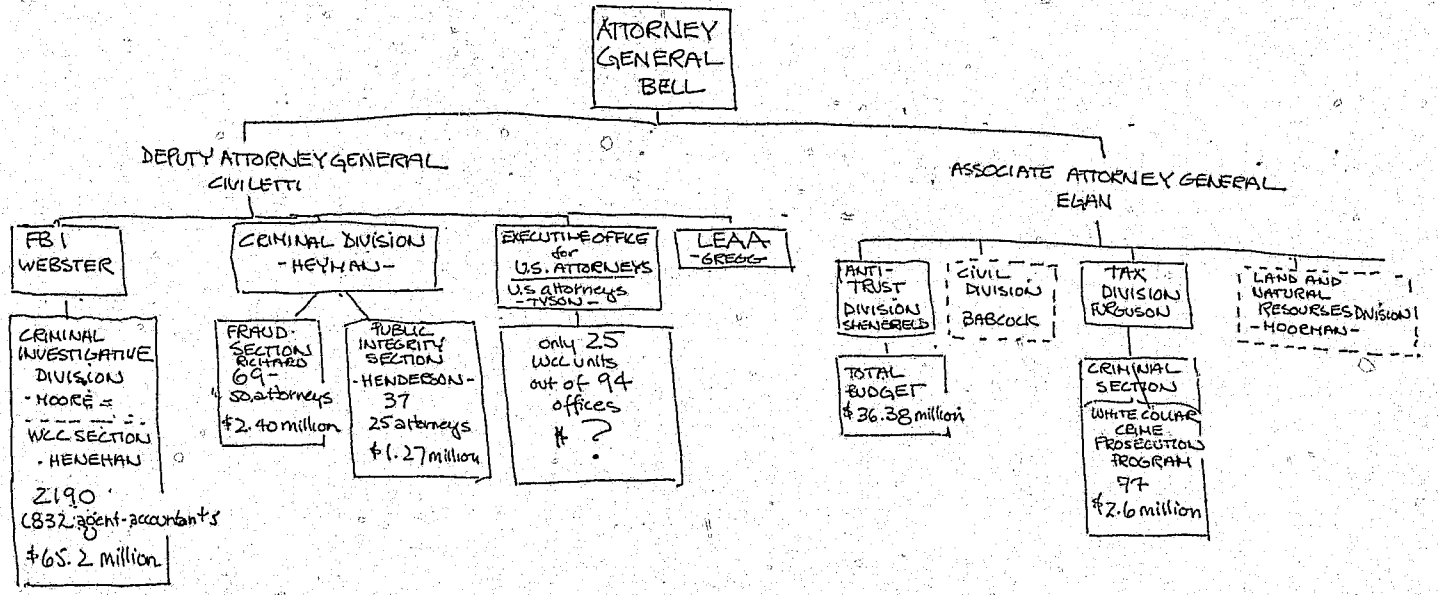
We must deal with many complex problems in order to mount a more effective law enforcement effort against white-collar crime. We have made some strides in the last year and a half within the administration. We have much work left to be done.

I thank you for appearing and I will try to answer, along with Mr. Richard, any questions that you may have on anything that I have mentioned or just generally on the subject.

Mr. CONYERS. Thank you.

We have a handmade chart that attempts to portray the various divisions and sections of the Department of Justice which in one way or the other deal with white-collar criminality. It is not drawn according to scale and may even be incorrect in some respects. I insert that chart at this point in the record.

U.S. Department of Justice—White Collar Crime Related Sections, Divisions, and Fiscal Year 1979 Expenditures



As indicated below, extremely generous estimates show (according to the Subcommittee on Crime estimates) only *5.5 percent of the total proposed Justice Department budget for fiscal year 1979 will be devoted to white collar crime.* Despite its promises, it still appears that white collar crime will be a low priority at the Justice Department next year:

SPECIFIC JUSTICE DEPARTMENT RESOURCES DEVOTED IN WHOLE OR PART TO WHITE COLLAR CRIME PROJECTED FOR FISCAL YEAR 1979

	Amount (millions)	Positions
Public Integrity Section (corruption)	$1.27	37
Fraud Section	2.40	69
Tax Division (white collar crime prosecution)	2.6	77
U.S. attorneys (all Federal criminal prosecution)	[1] 66.67	2,240
FBI White-Collar Crime Section (estimated)	30.00	1,200–1,400
Antitrust	36.38	977
Total	[2] 139.32	[2] 4,800
Total Justice Department budget, fiscal year 1979 (billions)	2.46	55,690
Percent of total Justice Department budget (estimate) for white collar crime	[2] 5.5	[2] 8.6

[1] Percent devoted to white-collar unknown.
[2] Estimates.

Note: These are very generous estimates. For example, the entire budget for the U.S. Attorney's Offices is figured in, despite the fact that in reality, probably far less than half of the U.S. attorney efforts are directed against white-collar crime. Furthermore, the "positions" listed are not all attorneys, but all positions, i.e., clerical, etc. Thus, for example of the 69 positions shown for the Fraud Section, only about 50 will be attorneys. Note also that although not figured in here, less than 5 percent of LEAA discretionary grants go to white-collar crime project funding and less than 1 percent of the total LEAA budget is devoted to funding directly related to white-collar crime.

Could you review that chart with us and make any passing comments about the various parts of the Department of Justice and how they would impact on our subject matter?

Mr. CIVILETTI. One of the things that the Attorney General has just done in the last month, one of the new things, which will help in this area and which is not reflected on the chart—and I don't know exactly how you would reflect it—is the Attorney General working recommendations of Attorneys General Levi and Richardson and others, that the Deputy's office should really be split because the volume of work and the multitude of disciplines involved in the Department of Justice was so great that the manager, so to speak, one manager, the Deputy, could not legitimately devote the kind of attention to the civil and the criminal sides of the Department's work that was necessary. So the Attorney General initially in February and March determined on a kind of split Deputy management idea with Associate Attorney General Egan handling the civil side and administrative side, and the Deputy Attorney General handling the criminal justice side. That appeared to have some merit and there was a recognition at the time that within particular units they had both civil responsibility and some criminal responsibility, but the assignment attempt was made upon their principal activities or responsibilities.

Well, some parts of that worked extremely well and some parts didn't work as well as anticipated, so the Attorney General, within the last month, has issued a new executive order which is designed to improve the working of that dual system.

In substance, what it does is give to the respective Deputy Attorney General and Associate Attorney General not only the units which deal primarily either with criminal and civil justice but also it—for instance, gives to the Deputy Attorney General the policy responsibility

for all criminal justice policy and attitudes wherever located within whatever units of the Department of Justice they exist.

Mr. CONYERS. That is yourself?

Mr. CIVILETTI. That is myself.

On the other side, or equivalent side, it gives to Associate Attorney General Egan civil policy responsibility for civil direction wherever located, even if it is not within the units which he administers; but as to the criminal side that means that now, for the first time within this administration, I have responsibility for the criminal policy within principally those three divisions that you see under the Associate Attorney General agency. The Antitrust, Tax, and Land and Natural Resources Divisions all have criminal sanctions and responsibilities and all are particularly affected and should be incorporated and are incorporated within the thinking concerning solutions to white-collar-crime problems.

We received the other day, for example, in the Land and Natural Resources Division, the prosecution and a 6-month jail sentence for the pollution of waterways for the first time in the history of that act. That is one comment I have with regard to the section.

Now, of course, you have correctly put on your chart that the two principal sections of the Criminal Division which deal with problems and offenses readily associated with white-collar crime are the Public Integrity Section and the Fraud Section; however, there are eight other sections within the Criminal Division and I would venture off the top of my head to say that at least four of them deal with offenses which are also within the white-collar-crime ambit, although that may not be their primary activity.

For example, the Organized Crime Section certainly has a role and an impact in the white-collar-crime area as well as the General Crime Section has such a role, and the Appellate Section has, although not a direct role, a very significant, indirect role in shaping the interpretation and development of those cases which we take to the circuit court.

Mr. CONYERS. Are those three departments within the Criminal Division?

Mr. CIVILETTI. Those three additional sections are all within the Criminal Division.

The Criminal Division has at the present time 10 sections, and you have on your chart the 2 principal sections which would be readily associated with white-collar crime and I am only suggesting to you that there are 3 other sections which have a role to play in that area, with a verying number of employees and personnel. The largest section in the Criminal Division is the Organized Crime Section which has 14 field offices, direct field offices, and another 20 or so suboffices, and has a personnel complement on board now of about, I think, 150 prosecuting attorneys, up from 112 back in March of 1977 when I came to the Department.

Your figure under the executive office for U.S. attorneys, 25 white-collar-crime units out of 94 offices, is about right in theory. There are 95 U.S. attorneys offices now, and there are about 25 units; but I think some of those units are in disrepair; they are not being properly utilized or fully utilized. We have reexamined them and that is one of the reasons for our suggesting and having out for consideration now as a

further effort a revitalization of those units and a restructuring of them, so there would be 29 units; but in addition to that, their makeup would be entirely or substantially different, so they would not fall back into disrepair and so that they would also have the responsibility for those sections or U.S. attorneys offices in other related districts; and we propose that a Criminal Division attorney, on the Criminal Division payroll that is, be one of at least 3 prosecutors in each of those offices, although there might be as many as 5 or 10.

Let me hasten to add that there are some outstanding examples in Los Angeles, Chicago, Detroit, New York, Baltimore of units which are superb in their operation and have been for several years.

The southern district of New York traditionally has had an outstanding white-collar-crime unit with many, many successful prosecutions.

Mr. CONYERS. The southern district of New York?

Mr. CIVILETTI. Of New York. Baltimore has a very fine record and one of the examples of their record is a 3½ year long investigation and prosecution of fraud and corruption involving doctors and lawyers in the false insurance claim industry in which I think there have been 18 successful prosecutions and at least half a dozen to a dozen prison sentences of members of those two professions. Some people suggest that these professions are immune from the full effects of the criminal law but the work of the U.S. attorney in Baltimore has disproved this.

I think the Bureau system roughly is correct. They have some middle management people under Moore and above Moore, but that is not significant.

LEAA has a very large role to play in community action programs and in white-collar programs.

Moving across, antitrust is appropriately mentioned in this area.

The Civil Division, the alternative remedies and fully integrated approach is extremely important for injunctive relief and other fraud actions.

The Tax Division is important; and Land and Natural Resources Division plays a significant role.

The Office for Improvements in the Administration of Justice has two or three projects which affect white-collar-crime strategies in one or more areas which they have undertaken now, and that is the office headed by Dan Meador; and, of course, there are several bills that have come out of that office primarily which are before the Congress, including the major streets bill and other bills to free up resources in the judicial system for more devotion to white-collar-crime cases and other-type cases.

The Office of Management and Finance, although not bearing a direct role, has a prime responsibility in a difficult area of implementing and coordinating and making sure that as soon as possible we can move out of the Dark Ages and into some enlightened period of time by having basic data in the criminal justice system, and particularly in the white-collar-crime area, for analysis, for planning, for use and comparative purposes, on a regular, reliable, and automated basis, none of which do we now have readily available to us at all.

DEA, as to which you would not ordinarily think having a white-collar-crime role, has one in its regulatory areas and responsibilities.

Industry guidelines and explanations and directions often involve corruption, fraud, misuse and abuse.

But I think that by and large, although that chart is handmade, I think it is a pretty good chart.

Mr. CONYERS. We will submit it to repairs immediately after this hearing.

If you know, what is the logic involved in describing one key assistant to the Attorney General as the Deputy Attorney General and the other as the Associate Attorney General?

Mr. CIVILETTI. I think the logic is that the functions can be better differentiated if the officials and offices have different names, No. 1; No. 2, that in the management and administrative sense there has to be a pecking order readily identifiable so that in the event of an emergency or absence or illness, someone has received some training to step into, and is automatically available to step into, the role of the next higher office; and that becomes difficult if you have two people of equal responsibility with the same title, and then there is a special battle. So I think that this concept, although the functions are on the same line, the concept of keeping the names different is substantial and is not just an artificial kind of labeling. The ranking positions are: one, the Attorney General, two, the Deputy, three, the Associate, and, fourth, the Solicitor General.

Mr. CONYERS. The Attorney General has mentioned many times the problems he has encountered in coordinating this massive agency of the Government. This chart and your additional comments, I think, make it clear that getting a handle on the organizational effort is of primary importance in moving against all crime, both white collar and street crime.

Would you comment on the nature of the massive organizational problems that occur within the Department of Justice?

Mr. CIVILETTI. Well, you are correct, there is a lot of work to be done in the Justice Department. It has a multitude of assignments which either the Executive has given to it over the years or it has collected by reorganizations or that the Congress has assigned to it.

As I see the Department generally within this difficult role it has, it acts in about four specific areas: No. 1, it enforces the law in court, the law determined by Congress. It is the Government's primary lawyer. It ought to speak forcefully and effectively in that area.

Two, it has a duty to communicate and report and cooperate with the Congress on important and needed legislation.

Three, it has a duty to advise the President on policy and direction with regard to the administration of justice, effectiveness of the law.

And, fourth, it has a national leadership role in terms of policy and not only in this kind of area, white collar crime, but also in a multitude of justice-related areas, of court-related areas, of law-enforcement-related areas, and in what the lawman or the members of the public would perceive as an appropriate subject for the administration of justice.

Some of the things that we do or we are asked to do or we are compelled to do under our duties: Immigration and Naturalization activities, for example, which are within the Department of Justice and under the Associate Attorney General—we are not necessarily best trained to do primarily as lawyers, but we try to do it.

Drug Abuse Administration—that department, which is within the Department of Justice since the reorganization, I guess, in about 1973 or so, some parts of that such as the prosecution and investigation of drug trafficking and the rest, we are generally well trained to handle, but as to treatment and prevention, the people within the Department historically would not be well trained for that; it would go someplace else, but the sense, I think, at the time, and perhaps legitimately, was that it was better to have prevention and treatment and investigation and prosecution integrated within one drug enforcement administration.

I think probably over the long haul that will prove to be the most successful.

Mr. CONYERS. You are referring to DEA?

Mr. CIVILETTI. Yes; the Attorney General has, I think, worked toward and initiated better management techniques within the Department for all of its assignments and by comparison, its budget and other ways, by comparison to other departments, it is a tiny department. It is very small. If you take out the investigative agencies, if you end Immigration and Naturalization, if you take out the 10,000 FBI personnel, the 10,000 Immigration and Naturalization Service personnel, and the 4,000 or 5,000 DEA personnel—that is 35,000 people or positions out of the Department of Justice—you are left with about 19,000 positions to do everything else which the Department is assigned to do on a national scale; so that you can see by comparison purposes the Department is a fairly small department with an enormous load of very important work covering a wide range of activity which is at the very pulsebeat of the American society.

Mr. CONYERS. The acting Administrator of LEAA has apparently made a unilateral decision to cut "part C," fiscal year 1979 discretionary funding available for "major criminal conspiracies," that is, white-collar crime, public corruption, and organized crime, in programs administered by the LEAA Office of Criminal Justice Programs from this year's $4 million down to $3 million for action funds and from $0.7 million down to $0.5 million in technical assistance.

Since white-collar crime and public corruption are now "top priority" at the Justice Department, why aren't Mr. Gregg's fiscal year 1979 funding decisions reflecting the Justice Department's priorities?

This, to me, is deserving of some analysis on this subcommittee's part and should be brought to your attention if you did not know about it.

Mr. CIVILETTI. I have no knowledge of it. I heard it yesterday as a rumor and that is all I know about it. I am not in a position to speak about it with any meaning.

I have a couple of observations: One, I hope the committee does look at it pretty hard. I am going to look at it pretty hard with Mr. Gregg. If it is true—and it may not be true—it may be perfectly explainable and maybe it is a temporary or transitory thing. Although we do not interfere with LEAA on any specific program, we do have a supervisory policy role to play with regard to the general attitude and conduct of LEAA, and if the impression that I received from the rumor and what you have just said is true, then it will be a short-lived unilateral decision.

Mr. CONYERS. Mr. Gregg's letter, which I am just reviewing now, since the subject came up, is to inform me that this is in further re-

sponse to a subcommittee inquiry on the programs relating to white-collar crime—well, we will put it in the record then.

[The information follows:]

U.S. DEPARTMENT OF JUSTICE,
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,
Washington, D.C., July 6, 1978.

HON. JOHN CONYERS, JR.
Chairman, Subcommittee on Crime, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further response to the inquiry on behalf of the Subcommittee on Crime for information regarding allocations by the Law Enforcement Assistance Administration for programs relating to white collar crime, organized crime, and public corruption.

You will recall that I originally responded to you in this matter by letter of June 7, 1978. I indicated at that time that there was not yet any planned allocation of funds for these purposes for fiscal year 1979. Since that letter, tentative decisions have been made. These are included as part of the attached memorandum dated June 16, 1978.

The items which directly relate to your area of inquiry are noted on page one of the attachment to the memorandum. These are the listings for 1,209, "Property Crime (Anti-Fencing)" and "Major Criminal Conspiracies." While the tentative allocation for these activities for fiscal year 1979 is less than that requested by the program office and less than the fiscal year 1978 allocation, several considerations should be kept in mind. First, the fiscal year 1978 allocation figures include a substantial amount of funds carried over from prior years and allocated only after the fiscal year had started. The fiscal year 1979 tentative figure, on the other hand, includes only the budget requested by the President. No reallocated carry-over is indicated.

A second consideration is the high request of many program offices for their fiscal year 1979 activities. Many of these requests were based on the final fiscal year 1978 allocations, not the amount appropriated by Congress for that year. The magnitude of these requpests, which exceed the funds available by one-third, meant that adjustments had to be made. The extent of these tentative cuts is magnified by the fact that the Agency's budget request for fiscal year 1979 indicates a cut of more than $16 million from the fiscal year 1978 appropriation for Parts C and E discretionary funds, as well as the addition of new program areas to the activities receiving discretionary support.

Finally, it should be noted that LEAA has been funding "Sting" anti-fencing projects for several years. These have been shown to be a successful and cost-effective means of reducing illicit criminal activity. Thus, many jurisdictions are replicating such projects using LEAA block grant and local funds. LEAA now has under consideration a proposal to designate Sting-type projects as an "Incentive Program" eligible for special funding. Thus, the amount of funds actually available for such programs in fiscal year 1979 may be greater than in the previous year.

All of the factors I have mentioned will be considered during the months ahead in making adjustments to these preliminary amounts.

Sincerely,

JAMES M. H. GREGG,
Assistant Administrator, Office of Planning and Management.

Enclosure.

[Memorandum]

U.S. GOVERNMENT,
DEPARTMENT OF JUSTICE,
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,
June 16, 1978.

To: Robert Grimes, Assistant Administrator, OCJP.
From: James M. H. Gregg, Assistant Administrator, OPM.
Subject: Fiscal year 1979 program plans and discretionary grant guide revisions.

I. FISCAL YEAR 1979 PROGRAM PLANS

This year's program plans were a marked improvement over those of prior years and reflect a more careful and systematic planning effort by program offices and staff.

Attached are the approved tentative allocations for your FY 79 program plans. These figures are subject to the following:

Availability of funds in FY 79;

Program Reviews that will be completed by the Office of Audit and Investigation (OAI) by September 30, 1978; and

Evaluation results.

Additional information on selected subprograms is requested for the following:

1.200—Major Criminal Conspiracies.

By July 31, 1978, submit a decision memorandum on program direction and include a complete analysis of continuation plans.

OFFICE OF CRIMINAL JUSTICE PROGRAMS

Subprogram		Fiscal year 1978 allocation		Fiscal year 1979 request		Fiscal year 1979 tentative allocation		
1.209	Property crime (antifencing).	8000	C	8200	C	4000	C	Possible incentive fund program with additional funds to be added.
		200	TA	400	TA	300	TA	
1.209	Major criminal conspiracies.	4000	C	4000	C	3000	C	Decision memo on program direction must be submitted by July 31 including a complete analysis of continuation plans.
		200	TA	700	TA	500	TA	
				250	(407)	250	(407)	

U.S. DEPARTMENT OF JUSTICE,
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,
Washington, D.C., June 7, 1978.

Hon. JOHN CONYERS, Jr.,
Chairman, Subcommittee on Crime, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to the inquiry on behalf of the Subcommittee on Crime for information regarding obligations by the Law Enforcement Assistance Administration for programs relating to white collar crime, organized crime, and public corruption.

Enclosed you will find a chart containing information for the National Institute of Law Enforcement and Criminal Justice, the Adjudication Division, and the Enforcement Division. The latter two are units of the Office of Criminal Justice Programs. The chart indicates funding in each of the categories specified for fiscal years 1975 through 1978. There is not yet any planned allocation of funds for these purposes for fiscal year 1979. These figures will depend on final action taken by Congress and the President on the LEAA fiscal year 1979 appropriation request.

Please note that decreases in allocations for certain activities do not reflect a lack of commitment by the Agency to support programs of this nature. Since 1975, the overall annual appropriation for LEAA under the Crime Control Act has been reduced significantly. In addition, discretionary demonstration programs are generally funded for a limited period of time. Information on successful techniques is then provided operational agencies and governmental units so that they can initiate similar programs using local or LEAA block funds. This permits us to focus on the development of additional programs.

I trust that this information will be useful to the Subcommittee in its deliberations.

Sincerely,

JAMES M. H. GREGG,
Assistant Administrator, Office of Planning and Management.

CONTINUED

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LAW ENFORCEMENT ASSISTANCE ADMINISTRATION—ALLOCATIONS FOR WHITE COLLAR CRIME, ORGANIZED CRIME, AND PUBLIC CORRUPTION—FISCAL YEARS 1975 THROUGH 1978 (SPECIFIED OFFICES)

	1975	1976 (TQ)	1977	1978
NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE				
White collar crime	$600,000	$343,000	$339,000	$972,000
Organized crime	79,000	182,000	310,000	
Public corruption	620,000	265,000		353,000
ENFORCEMENT DIVISION (OCJP)				
White collar crime	1,055,000	2,919,000	1,010,000	1,461,000
Organized crime/white collar crime	1,389,000	350,000		181,000
Organized crime	4,628,000	5,517,000	1,367,000	2,943,000
Public corruption	2,473,000	776,000	526,000	
Antifencing	293,000	5,368,000	7,350,000	8,000,000
ADJUDICATION DIVISION (OCJP)				
White collar crime	531,377	1,432,934	1,260,785	616,650
Subtotal	[1]11,668,377	[1]17,152,934	[1]12,162,785	[1]14,526,650
Agency appropriation	895,000,000	1,014,000,000	753,000,000	648,775,000
Subtotal of appropriation (percent)	1.3	1.7	1.6	2.2

[1] Subtotal does not include funds from block and formula grants for these programs.

Mr. CONYERS. It merely points out that these cuts have been apparently thought out by him unilaterally and involve funds for white-collar crime, antifencing, major criminal conspiracies, and so forth.

Now, of course, Mr. Gregg has been invited to appear before the subcommittee and I am sure that he will appear and so we don't want to belabor the subject prior to his coming.

I have to point out to you that this is analogous to another incident in which there was a unilateral decision made on Mr. Gregg's part earlier in the year to dispense with the Victimization Survey, at the same time the Attorney General was saying this Survey would be the centerpiece of the new Office of Criminal Justice Statistics. If there was any one program that reflected creditably on LEAA, it was certainly the Victimization Survey. Gregg's unilateral decision to wipe it out sent a shockwave through the criminologists and the Census Bureau and the scientists who were working with and conducting the Survey. They argued that any reduction or temporary interruption in the Victimization Survey would invalidate the victimization work for many years to come, that it couldn't be temporarily stopped and started without having a tremendous negative impact.

The subcommittee met. Great voices of anguish were brought before us in volume after volume of testimony, and finally there was a stay in this decision, a decision which we couldn't trace to the Attorney General or to the Deputy Attorney General. I don't believe there was an Associate Attorney General at that time; but it just unilaterally announced in the bureaucracy that, "Well, the victimization surveys don't add that much to the FBI reports, so we are going to have to cut it back." There was not prior consultation or coordination with the Attorney General, yourself, or me. It looks like this is happening again. And the Attorney General has spoken to the subcommittee at least once about the massive organizational difficulties.

Here we have all these parts of the Justice Department responsible for white-collar crime. No matter how you reorganize the Department, I am sure a year later some other reorganization plan might look a little bit more seductive. To what degree has this present operation aimed at white-collar crime met with your satisfaction and that of the Attorney General in terms of your notions of the overall organization of the Department during the time that you have been Deputy Attorney General?

Mr. CIVILETTI. I think the recent additional Executive order clarifying policy was a further, good step. I think another within that order, another good step, was that respectively under any management unit's assignments, the responsible respective heads have all budgetary authority, that is, for hiring, firing, demotions, promotions, or additions and, of course, that is the Golden Rule to a certain extent and was a handicap before, I think, for the Deputy Attorney General's office because, administratively, Associate Attorney General Egan had those functions. Now for those agencies or units which are within my supervision they are back, I think, in the posture that they belong.

As a general answer, I think that we are doing better than has been done in some time. My limited historic review of operation of the Department indicates to me that separate units have frequently, and much more than is true today, very frequently operated as separate fiefdoms. Their disciplines have been entirely different. The intricacies of the substantive law, for example, of Antitrust or Tax, were so extensive that they almost operated independently, as separate and independent units, without any strategy, and that what was being done in the Criminal Division sometimes in the past was inconsistent with what was being done in the Antitrust Division or in the Civil Division.

I think this present structure, begun to be developed under Attorney General Levi, but accelerated under Attorney General Bell, goes to improving that, to making the communication better, stronger, coordinated, to have less inconsistency.

You are always going to have difficulties and different viewpoints that have to be thrashed out. It is terribly difficult to coordinate, as you have pointed out, every effort when it is so diverse and irregular; but I think progress is being made. I think progress is being made in both accountability and in management direction and in policy, and I think some of that progress is being made without the false rhetoric historically in the past of these great promotions and great solutions.

The Attorney General has been careful not to make overblown promises and I have been extremely careful in trying to work toward coordinated efforts, work toward national strategies and not to have a myopic viewpoint as to one single solution to some of the problems which have developed in this country in 50 or 100 years, or to think that by some magic wand or some magic piece of legislation or some magic management decision we are going to be able to proclaim to the American public that the problem is solved.

To sum up, I think the Department is being better managed. I think its relationship with other agencies and departments is good. The Attorney General and I have both met and continue to meet on a regular basis with our respective State counterparts, and I am very encouraged.

Mr. CONYERS. With 50 lawyers in the Fraud Section projected for fiscal year 1979, how can we prosecute all of the transnational corporate bribery cases which seem to be continually revealed each month and referred to Justice by the SEC? New disclosures to the public are continually being made.

With only 50 lawyers in the Criminal Fraud Section, 25 lawyers in the Public Integrity Section, et cetera, are we really devoting adequate resources to the white-collar crime problem? We are talking about conservatively estimated $40 billion worth of white-collar crime per year, not including antitrust violations, and a handful of lawyers to deal with all of it.

I could conceive of a handful of Government lawyers being put on just one complex white-collar crime case and still not having adequate resources necessary to lead to successful prosecutions.

Mr. CIVILETTI. It is a certain perception that you, by drawing the multiples, which you perceive, which is both accurate and inaccurate, the perception that you perceive is, surely, we could use additional resources within the division, the main division itself, in the numbers that you have mentioned, but doubling those resources and those numbers without the attention to the other fields, the investigative, the detection, the preventian, the punishment and incarceration would not, I don't believe, significantly correct the white-collar-crime program; so that you cannot just look at one unit of the process and say, "Well, there is the solution: They are inadequately staffed."

But the second perception, which is inaccurate or troublesome, is—and you have to be careful of it, when you associate—I guess it is the chamber of commerce—figure of $40 billion or $44 billion—and I don't know wheer that figure comes from or how reliable or accurate it is, and I don't tend to talk in terms of those specific numbers because of my lack of certainty as to their accuracy—you are talking about the national structure and if you are talking about the national structure in terms of those numbers, you cannot compare it with only the support functions of two sections of the Federal Department of Justice Department of Justice Criminal Division.

If you are talking about the national problem of white-collar crime in all its rainbow of phases, then you have to talk not only about those attorneys but also you have to talk about the 1,600 or a certain percentage of the 1,600 assistant U.S. attorneys throughout the country that investigate and prosecute white-collar crime; and you have to talk about the thousands of assistant State's attorneys and county and district attorneys who also have a hand, and attorneys general who have a hand in prosecuting white-collar crime.

So it is important to keep in mind and in perspective that the problem touches State and local units, field units, as well as these divisional units. It would not be wise and would be inefficient, for example, to try to run an investigative and prosecutive unit which was a field operational unit solely out of, or primarily even out of, the main Justice Fraud Section, because the travel expenses alone of sending attorneys all over the country would be enormous, the problems with relocation would be substantial, and the local conditions would vary such that we would have less success than we do.

So the design of the Fraud Section is as a support function, as a collective function, as a coordinating function, and in some instances a

supplemental prosecutive function, where we have a fallback or a dropback or special knowledge, and also as a special project function such as the project that you mentioned which now occupies 17 lawyers, and that is the foreign bribery project. But as those cases are developed and reviewed and after sifting, they are spun out to the respective U.S. attorneys offices with venue jurisdictions in which the corporation can be charged or the individuals who perpetrated the alleged offense can be charged, and are handled, with some guidance from the Fraud Section, by those U.S. attorneys offices.

I think we have had so far in that investigation five or six convictions, prosecutions, with in excess of $6 million worth of fines imposed, and they are coming along fairly well.

Mr. CONYERS. May I ask the Chief of the Fraud Section for a brief summary of where his section is working presently?

Mr. RICHARD. I would suggest to the committee that we have three principal thrusts in the section: One, you already mentioned, is the multinational area, and it extends beyond just the corporate situations that have received notoriety and encompasses the whole problem of multinational white-collar crime.

We also have thrusts in the area of frauds against the Government.

Mr. CONYERS. What are you doing in that area and how do you describe the problem?

Mr. RICHARD. The problem basically boils down to a manipulation of foreign facilities to victimize either our nationals or to use our facilities to victimize citizens of foreign countries.

The schemes encountered vary from worthless financial institutions or corporate institutions, offshore operating in remote corners of the world. They can pose unusual investigative problems because of their multinational aspects and the difficulty in securing needed evidence and testimony. We have for several years now been focusing on this problem, primarily because of the multinational aspect, and frequently the difficulty encountered by individual U.S. attorneys in handling such multinational cases.

The second thrust is in the area of frauds against the Government, both in the field of procurement fraud and fraud and abuses on social benefit programs. There our efforts are primarily directed in working with the agencies in providing necessary training, as Mr. Civiletti indicated, insuring that there is an appropriate mechanism for working with all the agencies and the U.S. attorneys to make sure that the people that have cases do not let them slip between the cracks, provide a mechanism for adequate feedback from the U.S. attorneys to the agencies, specifically in the area of regulatory reforms and possible remedial legislation that is needed and is highlighted by particular schemes uncovered.

Mr. CONYERS. On that point, if I might interrupt, which agencies are the subject of your attention?

Mr. RICHARD. We service, I would suggest, no less than 25 separate Federal agencies.

Mr. CONYERS. Which ones are the subject of your primary focus?

Mr. RICHARD. I would suggest that you have a top tier of HEW, HUD, Department of Agriculture; to a lesser extent Labor, GSA.

Mr. CONYERS. What would you describe as the nature of the problem that you are facing in those several agencies?

Mr. RICHARD. There are a variety of problems, Mr. Chairman. At times it is an organizational problem within the particular agency and that we think would be addressed within the confines of the Inspector General concept. Compounding the problem is a resource problem, primarily in the area of investigative personnel in contrast to audit personnel.

Mr. CONYERS. Are you talking about internal fraud? When you said "organizational problem," what does that mean?

Mr. RICHARD. I am suggesting frequently you have within agencies—and it does vary between agencies—a sharp division between audit and investigative, and you also have some agencies, fairly autonomous investigative units, that have limited jurisdiction, and you may encounter within one organization three different units with some investigative responsibility and jurisdiction; so it is a problem of working with more than one investigative unit within the agency.

Similarly, you may encounter the same problem with respect to audit functions with different audit organizations within an agency.

Mr. CONYERS. What is the audit problem? What is the nature of the problem?

Mr. RICHARD. Again, I am not sure that I can articulate just one single problem. One, there is a training problem with audit personnel not being sensitive enough to the indicia of criminality as opposed to what may, for want of a better term, be described as abuse or negligence, mismanagement.

There is, as I indicated, a certain resource problem, and that can be more acute with one agency than with another. There are at times a lack of appreciation as to what to do when one uncovers possibilities or suggestions of abuse or fraud, the issue of whether merely disallowing a questioned item on pursuing it further, and this is again a function of adequate training not received.

What I think I am suggesting is that there is a variety of problems being encountered within the agencies, and it is not merely a resource problem or merely an organizational problem.

Finally, as far as what we are doing in this area, we are providing to the U.S. attorneys offices a supplemental staffing capability to handle those cases that either the U.S. attorneys cannot handle directly or require additional attorney manpower with which to adequately staff them up.

The final thrust, if you will, that the section is focusing on, is the whole area of consumer frauds, which encompass frauds from traditional SEC violations, bankruptcy frauds, banking violations, mail frauds which cover the whole gamut of traditional Ponzi-type schemes, and the other variety of schemes that have traditionally plagued us.

Here, too, we are working primarily in the area of liaison, maintaining adequate coordination with a variety of agencies, both regulatory and investigatory, and, again, providing a capability to assist the U.S. attorneys in those cases that require additional staffing, your forms of expertise, and what have you.

We do have several special projects that are being covered within the section, one on land fraud. We have started one now dealing with procurement out of the Department of Defense, focusing essentially on shipbuilding problems and the various cases that have arisen in

that area; and we do have a capability of marshaling resources within the section to focus on particular problems that arise at any given point in time.

Mr. CONYERS. What is the extent of your personnel over and above the 50 lawyers?

Mr. RICHARD. The extent of the Fraud Section personnel?

Mr. CONYERS. Yes.

Mr. RICHARD. We have no independent investigative capability within the section, but we do have the ability to call upon the various investigative agencies to assist. At this point, beyond the attorney complement and four paralegals, all we have are traditional clerical support, support personnel.

Mr. CONYERS. How much clerical support do you have, 20, 30 people?

Mr. RICHARD. I would have to check the figures, but I would estimate approximately 20.

Mr. CONYERS. What kind of comparison would you make between the resources that you have that are working on the multinational corporate bribery cases and other alleged transnational white-collar crime cases and those resources that are devoted to welfare fraud and other domestic program fraud?

Mr. RICHARD. I am not sure. When you say welfare, you are referring to a specific HEW program?

Mr. CONYERS. I am trying to use a broad brush there, in terms of fraud against various domestic programs.

Mr. RICHARD. Roughly the three major thrusts within the section are divided fairly equally in terms of resources, although it may vary from time to time as there is a specific need, but roughly it is one-third in each of the areas I have described, Mr. Chairman, but that, of course, as Mr. Civiletti pointed out, only relates to the Fraud Section effort and that is a small part of the total Federal effort in any one of these three areas.

Mr. CONYERS. Do you receive the referrals made by the Securities and Exchange Commission? Are you the principal unit within the Department of Justice to receive those referrals?

Mr. RICHARD. Formal SEC referrals, to be distinguished from informal referrals——

Mr. CONYERS. What is the difference? One has an "Informal" stamp on it and the other has "Formal"?

Mr. RICHARD. No; there is a sharp difference. The formal referral is accompanied by a formal criminal reference report and a recommendation by the Commission itself.

Mr. CONYERS. Usually recommending prosecution?

Mr. RICHARD. That is correct.

Now, the SEC, as you know, has discretionary referral authority under its enabling statute, but we do have—which has developed over the years—an informal referral procedure whereby at the request of the Department the SEC provides us access to their files in order to assist in the course of an ongoing investigation or to enable us to launch specific inquiry.

Mr. CONYERS. Do you get involved in cases some time before there is a consent decree?

Mr. RICHARD. Yes.

Mr. CONYERS. Would it be your candid view that many of the consent decrees are entered into because the SEC and the Department both recognize that there is nowhere near the litigation capability within the Department to take these cases to trail, regardless of their prosecutable merit?

Mr. RICHARD. No, Mr. Chairman, I wouldn't want to suggest that that is the reason for the disparity in numbers between the consent decrees and the actual criminal prosecutions.

I would hope it reflects a screening out process to some degree. There is, of course, an objective to be obtained under the SEC laws which are not necessarily the same objective, one that seeks to obtain by way of criminal prosecutions.

Mr. CONYERS. The consent decree is analogous to plea bargaining on the criminal side, isn't it?

Mr. RICHARD. I am unaware of any instance during the course of a consent decree negotiation there is any attempt to preclude the possibility of subsequent criminal prosecution.

Mr. CONYERS. Can you cite to me one case where a consent decree was entered and was followed by a criminal prosecution?

Mr. RICHARD. I would suggest that it is the rare case that there is a criminal prosecution where there isn't an outstanding consent decree.

Mr. CONYERS. Can you name any case in your memory in which a consent decree was followed by a prosecution?

Mr. RICHARDS. Oh, yes; I would say if last year's total SEC prosecutions were 150, 130, I would venture to say, probably had already outstanding consent decrees. That is the normal course of events in this area.

Mr. CONYERS. Why is that? Why would you need consent decrees if you are going to prosecute?

Mr. CIVILETTI. One of the reasons is because they are quicker, and you can prevent the continuation of the harm by a consent decree more promptly, whereas a criminal prosecution, with its elaborate proof and with the whole due process court proceeding attached to it, takes a greater amount of time. So you go with a consent decree first, even in an aggravated circumstance, to stop the harm, and then do not give up there, but the SEC refers the criminal matter to the Department with the recommendation, now we have a consent decree but punish these people through the criminal process with felony prosecutions and convictions.

But you do have a point, Mr. Chairman, and that is whether or not consent decree provisions are overutilized. There is an insufficient utilization of the criminal procedure in circumstances which would warrant criminal prosecutions by more referrals over from SEC or proactive attitude by the Department of Justice. And that is a valid point and a valid subject of discussion.

Mr. CONYERS. Well, thank you. How many consent decrees are entered into, as opposed to how many prosecutions?

Mr. RICHARD. I would venture to say off the top of my head, Mr. Chairman, that you have probably at least four times as many consent decrees as you do criminal prosecutions.

Mr. CONYERS. Are there not more than 1,000 consent decrees entered into annually?

Mr. RICHARD. I do not have the figures available. It could be that high, but I thought we were probably closer to 500. I may have the figures with me.

Mr. CONYERS. If you do not have them, you can supply it for the record.

Mr. RICHARD. Thank you.

Mr. CIVILETTI. It is 5 to 1.

Mr. RICHARD. Easily.

Mr. CONYERS. You were on board during the middle 1970's, were you not?

Mr. RICHARD. That is correct. Not in my current position, but I was with the Department of Justice.

Mr. CONYERS. Were you in the Criminal Fraud Section?

Mr. RICHARD. Yes; and as I am reminded here, the question came up in the Watergate hearings about the executives of Gulf and Northrop in terms of their illegal campaign payments from slush funds that were laundered in other countries, which gets us into something that has only been briefly touched on, these offshore bank accounts, the whole process of laundering organized crime and other illegally derived profits and funds, the Swiss and Bahamian, to name just two accounts, bank accounts.

Mr. CONYERS. Can you describe the Department's and your Section's relationship to these kinds of matters?

Mr. RICHARD. Well, it is not unusual to encounter in the white-collar-crime area situations involving utilization of foreign bank facilities in order to secrete ill-gotten gains whereby—or other instances in which foreign commercial facilities play a pivotal role in the accomplishment of the scheme.

We have attempted to deal with the specific problem on an account-by-account basis. The Department was able to work with the Swiss Government and, of course, the special treaty was ultimately enacted, ratified by the Congress, which provides a mechanism for gaining access to Swiss bank records in appropriate circumstances.

We are moving forward in this direction in an attempt to better coordinate our efforts with foreign law enforcement officials and our counterparts in foreign countries, but I must in all candor acknowledge that it is an area that is difficult, and there is no assurance that one is going to secure the cooperation of foreign officials and be in a position to secure the needed testimony and evidence.

Mr. CONYERS. Do you remember when Mr. Sporkin, the enforcement chief at the SEC, invited corporations to make voluntary disclosures of illicit foreign payments, and 400 corporations did so? Is that a matter of note and perhaps perusal by the Fraud Section?

Mr. RICHARD. Oh, yes.

Mr. CONYERS. What efforts are you making to prosecute these cases?

Mr. RICHARD. Well, it was primarily these revelations which triggered our current efforts to focus on the problem, to assess each of these situations, and to determine whether existing law was violated.

The same type programs have been announced by other agencies; I believe ATF and the Maritime Commission, for example, had similar calls. We are also assessing those in an attempt to determine whether any domestic laws were violated during the course of those transactions.

Mr. CONYERS. What did you do? Here you had 400 corporations come forward and say, "We want to admit these misdeeds and clear this up now, since we are being warned that immunity will not be operative." How was that handled?

Mr. CIVILETTI. One thing we did was, when I came to the department in February, there were 33 lawyers in the Fraud Section; without any additional appropriations whatever, we increased the onboard capacity in the last year by 17, to 50, just by scraping, pulling, designating, doing other things. We have also assembled within the Criminal Division under the supervision of the Fraud Section a team of 17 lawyers devoted exclusively to those 400 cases, investigating those cases, determining, reviewing the multitudinous files that you can imagine that were referred with 400.

We established criteria about which cases would be most likely prosecutable by the size of the illegal contributions, the extended period of payment, the forthrightness of the admissions, the detailed nature of the admissions, things of that kind, and through a sifting process, sifted down to somewhere between 70 and 80 corporate circumstances that merited further intensive review and investigation.

Through a second analysis then we have now gotten to a point where we have had 6 prosecutors out of those 70, and we have another 15 or so targeted for prosecution. One of the difficulties—and the Congress recognized it by passage of the specific new statute effective as of January 1, 1978—was that there was no specific law covering the exact circumstance. We utilized foreign currency law violations, exits and entrances, tax-law violations, and to a certain extent illegitimate, forceful, and appropriate mail fraud theory, wherein the victims are the residents or nationals of a foreign country.

That will be challenged, I am sure, from time to time. We think we are correct in that legal analysis. And we are forceful enough to have carried it out and received so far two successful prosecutions out of the six, I think, based on that theory. And in those circumstances, that is where I had mentioned before, the fines in just those six cases—and a recognition by the court of the seriousness of this kind of conduct to the American people, and our image abroad as well as the suffering here—the fines are in excess of about $6 million, and we have not stopped yet.

Mr. CONYERS. Have you been able to identify the foreign banking operatives who are involved in the illegal corporate bribery activity revealed in the recent voluntary disclosures to the SEC?

Mr. RICHARD. It varies. In some instances we are able to secure access to bank records, and the identity of various individuals and signatories on accounts, and what have you. I could not generalize, Mr. Chairman, because it varies, not only from account to account, but from instance to instance within a given account. Sometimes we are very successful, sometimes just partially, sometimes completely unsuccessful.

Mr. CONYERS. I hesitate to ask this question, but how do you do that with 17 lawyers and no investigative——

Mr. RICHARD. Well, let me add on that in addition, for this effort, we have some——

Mr. CONYERS. They must be Clark Kents in your section!

Mr. RICHARD. No, we are far from it, Mr. Chairman.

We have 35 customs inspectors, investigators, that are assigned exclusively to this effort. They are supplemented, where needed, by FBI agents. We have, in addition, assigned as part of the 17 complement, 2 SEC attorneys, especially designated as special attorneys with the division. We are utilizing, in addition, the U.S. attorneys' offices in appropriate instances to follow up.

Mr. CONYERS. The Department of Defense has 4,000 investigators and 6,000 auditors, and as we know, some planes do not fly and some ships still do not float. Let us face it, we are talking about only 6 percent of the Department of Justice's resources going into this incredibly complex legal prosecutorial effort against white-collar crime that is international in dimension. Can you give me some assurances that you can even just keep track of the files and the cases as they come in, much less follow them through to any conclusion? We seem to be enormously outnumbered.

Mr. RICHARD. There is a resource problem. I think, though, that is one of the problems plaguing this area, and I would not necessarily want to overly emphasize that aspect of the problem. The mechanism in the area of the multinational cases for case control, I think, is far better than in any other substantive area within the Fraud Section.

As far as means of insuring consistency of approach, I think you have far greater controls in that area than in contrast with other areas.

Mr. CONYERS. You know, Mr. Richard, I am willing, from what I have heard, to commend you in terms of what the Fraud Section is doing with what they have, and I think that the initial efforts described by the Deputy Attorney General in terms of trying to get ahold of this huge white-collar crime problem are laudable. But it seems to me that there is a larger question, as you raise it, of the nature of the commitment to this effort. If the Congress does not give you adequate resources, guidelines, encouragement, and support, if it is not outlined as a major problem, if there is not some equitable distribution of resources, if there is not a tremendous degree of coordination among the resources in and out of the Department of Justice, then there are so many ways that complex cases of this kind can fall between the cracks that I am afraid the odds are almost against anybody ever being brought to the bar of justice before the attorneys working with you have moved on to some different point in their careers. How do you suppose we might put a greater emphasis on the detection, investigation, and prosecution of white-collar crime? Is there some hope around the corner as we begin to all look at and recognize the nature of this problem?

Mr. RICHARD. I think that there are steps that can and are being taken in this area to at least bring it under control. I think we are attempting to deal with the small case or the de minimis case situation, which is a problem in this area. I think we are attempting to posture ourselves in such a way as to adequately track the cases in the system, so as to insure that those with maximum deterrent and impact value can be given top priority. And I think, ultimately, through the possible designation of appropriate units within the U.S. attorneys' offices, the problem can be adequately addressed. It requires specialized personnel. But again I would emphasize that in the broader context it is

not merely a problem of the criminal investigator: it is a regulatory problem. It raises a question of how we want to treat certain types of regulatory offenses; the question, do we want to criminalize certain activities on the regulatory scene?

There is, of course, the interests of the States and their abilities, State and local governments, to deal with the problem, especially in light of the problems they encounter dealing with the street and violent types of offenses. So it is a problem that transcends certainly the broad section of the Criminal Division.

Mr. CONYERS. You told me what you are doing and it really sounds heroic. Tell me what you are not able to do, what cannot be done under the present circumstances, that you would like to see, based on your experience.

Mr. RICHARD. Mr. Chairman, based on my experience and solely on my experience, I am reasonably confident that there are whole areas, various programs administered by the Federal Government, that are not being adequately addressed in terms of fraud and abuse. I am just as concerned, for example, with programs where we do not see referrals as I am with those that we do see referrals. I question, based on our prior experience, why one program, for example, has a very low rate of criminal referrals. That concerns me. We are not addressing that. There is a variety of specific schemes which can be addressed more aggressively, dealing with the whole category of professional white-collar offenders, which I suspect requires a unique type of response, because they have the unique capacity of running a variety of schemes simultaneously, and they present unique enforcement problems.

Additional emphasis must be placed on those types of offenders, to make sure that they are treated as what they are, professional white-collar offenders, whose business is white-collar crime. To make sure even in those instances where they are prosecuted that appropriate punishments are meted out.

There is a score of other areas that, given resources, given sufficient means of detecting the offenses, I certainly would want to address. With all modesty, Mr. Chairman, I would not want to present to you the notion that the Fraud Section is turning this problem around all by itself; far from it.

Mr. CONYERS. What about the price-fixing area? Can you describe the nature of the problem there and how the Department, how your section approaches it? And perhaps the Deputy Attorney General would want to add some comments, as well.

Mr. CIVILETTI. With regard to price fixing and other types of criminal antitrust behavior, the Fraud Section has little to do, within the Department's assignment of responsibilities or duties, with that role or function. It is exclusively within the prosecutive mandate of the Antitrust Division under Shenefield. And the Antitrust Division has, I think, in excess of 500 lawyers. Since the increase in the felony penalties mandated by the Congress in 1974, the Antitrust Division, beginning in 1975, has had an increase in its efforts, partially successful, to change direction and policy from either consent decrees or civil proceedings to direct criminal prosecutions as a result of grand jury investigations for aggravated cases of price fixing or other similar antitrust violations involving criminal intent and purpose.

And they have had, annually—I do not know if my statistics are correct—but over 50 to 75 such criminal prosecutions. They have had, I know, at least 6 within the last 3 or 4 months in which, as opposed to a historical 10-year average, there have been more jail sentences imposed in the last 18 months in the antitrust field for criminal prosecutions than have been imposed in the last 15 years of antitrust enforcement.

I cannot tell you, myself—I can supply it to you by getting the report from the Antitrust Division—the proportion of the 500 lawyers or roughly 500 lawyers in the division who are assigned to the Criminal Enforcement Section of the Antitrust Division which would be the ones primarily concerned with the antitrust enforcement.

In addition to that, this year, for the first time, the assistant U.S. attorneys who heretofore were not engaged in handling antitrust criminal prosecutions were brought into the responsibility for that function within the Department. There was a special Attorney General's advocacy institute program designed for the trial of antitrust cases in which 25 assistant U.S. attorneys from around the country, a seed group, were trained in antitrust issues, problems, and techniques. And there is an intention on the part of the Antitrust Division as they develop antitrust problems or experiences to spin off prosecutions to U.S. attorneys' offices as do other sections or divisions within the Criminal Division.

In addition to that, over the last, I guess, 3 years, there has been a very healthy response from State attorney generals, with the encouragement of the Department of Justice and support of the Department of Justice Antitrust Division, to enforce, through State proceedings, those noninterstate or noninternational wide-ranging regional restraints, price fixing or whatever, but those restraints which even have to some degree a more direct effect within a particular jurisdiction on conduct: The gathering together of used-car dealers for the setting and fixing of used-car repair prices, the prices for other services; also, the prices for commissions on real-estate sales—those things that really hit the average American—rental agreements, for instance, between competing rental agencies. They really hit the average American very hard, directly, day in and day out.

The State attorney generals have in the last 3 years begun to pick up the cudgels to enforce the antitrust prohibitions through criminal prosecutions. So it is an encouraging sign. We have met with resistance and frustration in the Antitrust Division because after sometimes long and difficult criminal proceedings and convictions, there seems to be reluctance on the part of judges to sentence convicted offenders who, from other respects, looking at them in other ways, are "model citizens," and therefore there is a difficult time in demonstrating to courts and emphasizing and showing them that if we are going to have a deterrent effect on like-minded individuals, we must not only make the convictions more certain, we must make the punishments more offensive, in effect, so that it is not simply a ruination of reputation or a disparagement within the community or a loss of standing or disemployment, but it is a treatment as a criminal, which these people truly are, and a sentence commensurate with the evil in indirect consequences which they have foisted on the members of their particular community. That has been frustrated.

Mr. CONYERS. There is a final passage vote on legislation on the floor, so the committee will stand in recess for 12 minutes.

[Recess.]

Mr. CONYERS. The subcommittee will come to order.

Mr. Deputy Attorney General, did you want to continue your observation?

Mr. CIVILETTI. Yes, Mr. Chairman.

To follow up on your questions with regard to antitrust enforcement and the price fixing, particularly, since December of 1974, 307 corporate defendants have been sentenced in misdemeanor cases and they have received an average fine of about $23,000.

By comparison, 49 corporate defendants have been sentenced in felony cases under the aid of the new act passed by Congress with fines averaging about $137,000 or a sixfold increase.

Mr. CONYERS. How many have been sentenced?

Mr. CIVILETTI. Forty-nine corporate defendants under the felony statutes and 307 under the misdemeanor. As far as individuals go, the numbers are even more drastic—23 individual defendants have been sentenced in felony cases so far and 14 of those 23, about 60 percent, have all received jail time.

By comparison, in the period preceding November 1976, only 7 percent of the individuals convicted of the misdemeanor violations were sentenced to jail. Jail sentences in those cases under the felony statute have now averaged almost 6 months, something short of that. about 167 days each; so we are hopeful that with increased grand jury proceedings, with increased felony prosecutions, with the increased penalties, that there will be a growing recognition of the deterrent value, the certainty and effect and the wisdom of jail sentences in some substantial violation circumstances.

Of course, at the same time I don't want to suggest that in every antitrust violation the Department of Justice is running around screaming for incarceration; we are not.

Mr. CONYERS. Let us turn to the recommendations of the American Bar Association regarding white-collar crime. Their section of the Criminal Justice Committee on Economic Offenses, as you recall last year through a LEAA grant, appropriately enough, conducted a study which I think was unique. We will insert that study in the record at this point. I refer you to the study's recommendations, some 10 in all, and ask if both of you would feel free to comment on these recommendations.

[See Appendix 2].

Mr. CONYERS. I suppose that by all being here in the same room we are following the second recommendation, that the Congress itself undertake an evaluation of this subject matter and of the Federal effort.

Mr. CIVILETTI. It is a good study. The recommendations are good, general recommendations. It is not perfect and they are not exhaustive. We are going beyond some of them already, both in the Justice Department and the Congress has gone beyond some of them; but they do address in a broad and general sense the white-collar-crime problem and afford means by which to come to better solutions. And No. 2 is one.

No. 1 is—we are working in a twofold way—that is the one recommending a better collective system and data analysis system. We are hopeful that the National Bureau of Criminal Statistics will help to do that.

The FBI in November reorganized their entire reporting and review systems and we have developed a referral form from all agencies that are referring criminal prosecutive recommendations to us which will enable us on an annual basis to analyze all these referrals, report meaningfully about them and, most importantly—which I am most anxious to see implemented—we are developing a case-weighing system so that we know, among other things, exactly how much time and how much resources we are placing on which cases, so it is no longer a business and a matter of simply good faith articulations which happened over the history, but you can actually now see data, precise and accurate data, which associate white-collar-crime cases, for example, with the number of manhours of attorney use which has been devoted to it in any fiscal year period or less.

The No. 3 recommendation, that the Federal agencies with law enforcement inspections have been required to issue annual reports. I think that is incorporated in the Inspector General bill or concept in part. It is already followed in part by some reporting agencies and we think that it is a reasonable idea, so long as we don't get i n the posture whereby the reporting and the recording and the statistical functions eat up the manpower out there to catch the criminals, prosecute them and put them in jail, and where we are spending a reverse proportionate amount of time analyzing and recording and reporting on the problem than we are solving it.

No. 4—Mark has addressed that; we have spoken to Congress with regard to that—that is the social or criminal justice impact part recommendation which I incorporated in my testimony we made before to the Congress on all social programs.

We agree with it.

Five, the committee recommends recruitment/manpower/training become priority items for every agency. We agree with that. We have jawboned because we do not have any power or authority over other agencies, but we have recommended and jawboned about that. It is also involved with the Inspector General concept that goes a long way to achieving that.

I think the Law Enforcement Assistance Administration, despite this letter from Jim Gregg, has considered, along with everyone else we have now had, these priorities out in the field for penetration, so to speak, almost a year. I think everybody now accepts and understands and in their own way, through meetings and discussions and coercion in some instances and inducement in others, are beginning to develop methods and means to meet the priority concepts—white-collar crime being one of them—and I think LEAA will make white-collar crime and its resources and its grants responsive to the needs in the State and local communities.

I met for, I think, the fifth time—concentrating more and more on white-collar crime—with the National District Attorneys Association yesterday in Hershey, Pa. I met with them a month before, or at least a representative group of them, to assure to them—I spent 2 hours

speaking to them on this subject and a few others—that the national strategy as it is developed and implemented, and about which I have spoken to you this morning, will incorporate and include their thoughts, their problems, their concerns, because it is essential; no matter how hard we try to put ourselves in their shoes unless you have walked in those shoes and faced those problems daily, you cannot fully appreciate them.

We have established a working group with them of seven to nine major city district attorneys and I think over the next 2 to 3 months during the course of this committee's recommendations and studies and longer, we will begin to implement what I have described here, with their full support, the national program.

The committee recommends the expansion to other jurisdictions of the crossdeputization experiment in San Diego. We have done that in part. We have expanded it to Denver and Milwaukee, and I think there are now four U.S. attorneys, assistant U.S. attorneys, who are also State's attorneys, in San Diego.

We are a little cautious about it until we have some more reliability data. We think it will be successful if it is not overextended. There is a great temptation if something works well in small doses to take, instead of a teaspoonful or a tablespoonful, a glassful; and that does not always prove to be a sound medicinal or remedial purpose; and, of course, the intent and design of such crossdeputization is to avoid the treatment of preferred cases, either by the State to the federal system or the federal system to the State system, the treatment of those referred cases as orphans or second-class cases, and to allow the followthrough by allowing the same prosecutors who are familiar with the investigation, the preparation of the case, to carry it through to the best prosecutive mode, be it State or Federal, with the same intensity of interest, the same knowledge, and the same purpose, so there is not slippage and so there is not second-class treatment, or there is not fibering, which sometimes occurs despite the best efforts.

The committee recommended that the pretrial reciprocal discovery in economic crime cases should be increased. That is a problematical recommendation. We have done it as far as open case file policy is concerned in all cases where we have felt it is consistent with the sound administration of justice and will avoid a miscarriage, but it is not possible, I don't believe, to adopt it, and not wise to adopt it, as a Federal rule of criminal procedure in the same form.

I think we have increased our effort to maintain wherever possible an open case policy for pretrial discovery because it expedites the case, it makes it fairer, and because generally it results in swifter dispositions which are satisfactory to the Government—and that means convictions and incarcerations.

Nine, we have discussed and we certainly agree strongly with that.

No. 10 is a matter which is, of course, an American Bar concern and as an American Bar member, rather than as the Deputy Attorney General, I think it is essenttial that the efforts of the American Bar be increased in this area and they ought to continue to have a committee and, in fact, ought to devote more effort to the economic crime problem as well as the kind of effort that will increasingly be devoted by, I think, the National District Attorneys Association, by the major city

police chiefs, as well as by the International Association of Chiefs of Police and by LEAA.

Larry Gibson, as you know, has been newly designated to head an economic crime program study, implementation study, at LEAA, with a target deadline of a full option paper for a national economic crime center by December of 1978. We are looking forward to his analysis and his reviews at that time, and I am hopeful that we can put it into effect.

Mr. Richard may have his own analyses with regard to those 10 recommendations, or you, Mr. Chairman, may have some questions, specifically. I ran through them quickly, to give you an overview of them.

Mr. CONYERS. I appreciate your analysis and I also appreciate the several hours you have spent with the subcommittee.

We are going to adjourn the hearing at this point. We hope that for the other questions and the other committee members who had conflicting engagements, that we will be able to reschedule you at a convenient date.

We are very grateful for your help, which is very necessary to the subcommittee, and the subcommittee stands in recess.

Thank you very much.

Mr. CIVILETTI. Thank you, Mr. Chairman.

[Whereupon, at 12:12 p.m., the hearing was adjourned.]

WHITE-COLLAR CRIME

WEDNESDAY, JULY 19, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:20 a.m., in room 2141, Rayburn House Office Building, the Honorable John Conyers, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Conyers, Gudger, Volkmer, and Ertel.

Also present: Hayden Gregory, counsel; Steven G. Raikin, assistant counsel; and Roscoe Stovall, Jr., associate counsel.

Mr. CONYERS. Good morning.

The Subcommittee on Crime of the House Judiciary Committee will come to order. Today, we resume our introductory examination of the subject of white-collar crime.

The subcommittee, in this third hearing, desires to reexamine in general terms the nature and the scope of white-collar crime, concern itself with the limited Federal efforts to combat white-collar crime, and evaluate the problem of how consciousness in the public and the Government can be elevated to adequately deal with this subject.

In this pursuit we are very pleased to have back with us Prof. Donald Cressey of the University of California, who has kindly rejoined our deliberations, and to have the additional witness from the Detroit College of Law, a very longstanding friend of this Member of Congress, Prof. Harold Norris.

The committee began its efforts in part by commissioning the Congressional Research Service of the Library of Congress to do a comprehensive study of "White-Collar Crime: The Problem and the Federal Response." Two GAO studies have been commissioned on the Justice Department resources devoted to white-collar crime and the referral and disposition of "public corruption" white-collar crime cases in selected districts across the country.

At the last hearing we entered into the record American Bar Association's Economic Offenses Committee report of last year, and out of the two earlier sessions, besides defining a great deal of work that this subcommittee could probably more appropriately do through staff resources, there comes an obvious suggestion that it would be appropriate for the President to establish a commission on this subject.

True, appointing Presidential commissions is a common way of dodging responsibility as often as it is a way of preparing to address a national problem, but the necessity for some form of increased

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Presidential commitment to fighting white-collar crime almost leaps from the discussion that has been had thus far on the subject.

One of this subcommittee's goals is to continue to the next logical step the Temporary National Economic Committee hearings of the late 1930's, the Kefauver and McClellan organized crime hearings, and the Hart and Kennedy antitrust hearings, in an attempt to update ourselves on this enormous subject of white-collar criminality.

Without any further ado, we bring back the professor who worked perhaps more with the late Professor Sutherland, the father of white-collar crime analysis, than anyone else, Professor Cressey. He has published a great deal on this subject and related subjects in the field of criminology. I welcome him again to the committee. His expertise in the area of white-collar crime is well known.

His statement, which he has prepared for this appearance before the subcommittee, will be incorporated in whole into the record at this point.

Good morning, Professor.

TESTIMONY OF DONALD R. CRESSEY, PROFESSOR OF SOCIOLOGY, UNIVERSITY OF CALIFORNIA, SANTA BARBARA

[The prepared statement of Professor Cressey follows:]

STATEMENT OF DONALD R. CRESSEY, PROFESSOR OF SOCIOLOGY, UNIVERSITY OF CALIFORNIA, SANTA BARBARA

In my June 21st testimony, I stressed the fact that crime rates are always high when people do not believe in the law. This principle seems to work for the rich as well as for the poor, and I would like to elaborate on it today.

Recurrent news stories remind us that neither European terrorists nor other foreign terrorists are flag-waiving patriots. They equate capitalism with exploitation. They therefore refuse to attribute legitimacy to established government in capitalist societies.

In the 1960's, too, we were frequently reminded that members of American militant organizations commit crimes against what they consider illegitimate and unjust social institutions. Ironically enough, government officials got so nervous they responded illegitimately. They intercepted letters, bugged telephones, and wrote defamatory letters anonymously, all in the name of national security. They also arrested hundreds of people illegally, in some cases for crimes that had been set up by undercover police officers. Crimes motivated by antagonism toward established institutions also stimulated more legitimate responses. Thousands of meetings, conferences, even Congressional Hearings, led to modification of govenrment practices. The Vietnam War ended. The draft stopped. The government became more open. Affirmative action programs were introduced. Some corruption was exposed. Wise leaders showed, in short, that the cure for the ills of democracy is more democracy.

Now we are beginning to recognize white-collar crime as a social problem. Can this ill of democracy be cured by instituting more democracy? Sociologists, criminologists, and others have long noted that the motivation for some white-collar crimes is similar to the motivation of terrorists and militants. Some businessmen have so little respect for the law that they would prefer an antitrust indictment to being caught wearing argyle socks. They violate regulatory criminal laws with impunity. In my earlier testimony I mentioned several studies which have documented the fact that they do so because they do not believe in the laws. This is just another way of saying that they consider the laws unwise and, thus, illegitimate. Even the first study of white-collar crime—Edwin H. Sutherland's analysis of the crimes committed by the 70 largest American corporations—showed that some business executives become habitual criminals because they deny the legitimacy of American institutions. In this respect, they are like the terrorists and other extreme radicals.

This finding—that businessmen violate laws they consider illegitimate—has fantastically important implications for U.S. Congress Members and other lawmakers. Sutherland even called business leaders "subversive," an epithet used frequently in the 1940's and early 1950's to refer to liberals and others accused of un-American activities. "If the word 'subversive' refers to efforts to make fundamental changes in a social system," he said, "business leaders are the most subversive influence in the United States."

It is not just that businessmen have a reckless disregard for the law. Also significant is the fact that they have a powerful voice in determining what the law shall be, how it shall be interpreted and enforced, how its violators shall be dealt with. As the late Senator Philip Hart of Michigan put it, "When a corporation wants to discuss something with a political representative, you can be sure it will be heard. When a company operates in 30 states, it will be heard by 30 times as many representatives."

Despite my agreement with this statement, I am convinced that it is possible to change the law, or the attitudes of businessmen, or both, in ways that will benefit the nation. The problem is more a problem of improving the nation's ethics than one of trying to reduce white-collar crime by setting up defenses against it. It is ridiculous to let white-collar crime (or any other kind of crime) take root and grow in fertile soil and then try to frustrate it, rather than trying to do something about its breeding grounds. What is needed is a grass roots program, sponsored by business leaders, which will convince more businessmen that America's regulatory laws, and the government behind them, are legitimate. Only a few nuts and a few extremists violate the laws of governments they revere.

Is it possible to get white-collar people to revere the SEC, the FTC, the IRS, the FDA, Anti-Trust Division of the Department of Justice, and other agencies housing white-collar police officers? I think so. We all remember the automobiles decked out with American flags on their antennas and displaying red, white and blue stickers on their bumpers: Support Your Local Police. Maybe we can get business executives to sport similar bumper stickers saying "Support Your Federal White-Collar Police."

I shall deal with this ethical theme more seriously after dwelling briefly on another theme, namely that the effectiveness of punishment also depends on whether the punishers are perceived as legitimate or not. If you do not believe in the law, you are not likely to be affected very much by punishment for violating it. Let me merely note, before discussing this point, that the issue of business ethics is critical to the survival of capitalism. Italy is about to go communist because Italians are tired of being mucked about by "the establishment." In a Wall Street Journal article, Fred T. Allen, Chairman and President of Pitney-Bowes, recently gave American businessmen the following message:

"As businessmen, we must learn to weigh short-term interests against long-term possibilities. We must learn to sacrifice what is immediate, what is expedient, if the moral price is too high. What we stand to gain [by immorality] is precious little compared to what we can ultimately lose."

Consider punishment. The temptation is for Congress Members and members of the Executive Branch to put the solution to our white-collar crime problem in the hands of the Judicial Branch. If the courts would just hand down more severe sentences to white-collar criminals, the Deputy Attorney General told this Subcommittee last week, our businessmen would be terrorized into conformity. But a month ago, I told the Subcommittee that stepping up punishments of white-collar criminals might mean simply that we have decided to engage in unjust discrimination against the rich. Now I note that there is an even more severe defect in this punitive plan: Punishment neither reforms criminals nor deters others unless the punished respect the punishers and also respect the norms underlying the penalty.

Recent experiences with terrorists have once again documented this well-known principle. They are not deterred by actions of a state they do not consider legitimate. Getting closer to home, everyone knows that when crooked police officers work ghetto beats, inner-city youth learn that you go to prison for inability to fix your case, not because you have done something wrong and deserve to be punished. Further, it probably is true that prison recidivism rates are high because most prisoners think the government is for sale, lawlessness is the road to wealth, honesty is a pitfall, morality is a trap for suckers. Punishment, not crime, is the thing to avoid.

Now it seems to me that businessmen, especially big businessmen, think they witness the same kind of government hanky panky that ghetto youth and blue-collar criminals think they see. The difference lies in the fact that businessmen are closer to the government they disrespect. Many analysts, including the Commerce Committee of this House, have noted that the businessmen being regulated by criminal laws and white-collar police agencies are frequently and intimately involved in their own regulation. It is no secret that there is a flow of personnel, especially top-level personnel, between business or legal firms representing business and the government agencies which regulate these businesses.

Put in cruder terms, government processes and agencies are dominated by the very criminals they are expected to control. It is no wonder that businessmen as a group have so little respect for regulatory criminal law. It is no wonder, either, that they seem indifferent to punishment.

Among terrorists, terrorists are not intensely hated, are not considered outlaws, are not ostracized. Among those businessmen who think their government and its laws are not legitimate, white-collar criminals are not intensely hated, are not considered outlaws, are not ostracized. Accordingly, when a white-collar criminal is convicted and punished, the attitude is, "The bastards got poor old Charlie." The attitude is not that of a person who is deterred by exemplary punishment—"The bastard was violating the law of the land." Spiro Agnew is these days eating shish kebab with businssmen who want to cut off the hands of shoplifters. Consistently, a little study of medical malpractice suits found that ninety percent of the doctors reported no negative effects on their practice, and that eight percent reported that their practice improved after the suit. A radiologist whose practice improved said, "I guess all the doctors in town felt sorry for me because new patients started coming in from doctors who had not sent me patients previously."

A short excursion into the past might help make sense of such contemporary indifference to white-collar crime. A few centuries ago, government had prestige because it was based on the divine character of the sovereign. Fixed social classes had mutual duties to each other. As world commerce began to develop, the traditional restrictions on economic activity became irksome. With the industrial revolution, rebellion against these restrictions resulted in a system of relatively free competition, with an accompanying individualistic ideology according to which social welfare is best attained if every person works for his or her own selfish interests.

The democratic revolutions, with their accompanying ideologies of natural and inalienable rights, cannot be clearly separated from this economic and ethical revolution. Participants in the new order resisted any measures which would inhibit free competition, and the slogan, "The least government the best," was given homage. Each participant was supposed to rebel against restrictions on personal behavior and therefore was supposed to help keep government weak.

But as commerce and industry developed it became obvious that competitive advantages could be secured through government manipulation. Economic competition was extended into the political sphere. Individuals and industries secured tariffs, franchises, patents, and other special privileges. Both by emphasis on a "hands off" policy and by emphasis on special privileges, government was made less effective as a controller of behavior.

The attitudes and ideology which developed with the industrial and democratic revolutions were thus opposed to the authorization principle in government and other institutions. New criminal laws were enacted in an attempt to control personal behavior in a world of competing strangers, but the laws tended to receive support only from special interest groups. The result was, and is, the anomolous condition of a great amount of legislation and little respect for legislation. Also, ethics became utilitarian. That which persons and organizations could get a legislature to outlaw was unethical to those who influenced the legislature to outlaw it, but it was not necessarily unethical to those who saw the regulation of their behavior as a mere political victory on the part of their competitors.

The ideology of individualism encouraged each citizen to disregard social welfare in the interest of selfish satisfactions, and the transfer of this ideology to the political sphere came to mean something like "anything goes." Each group then rebels against the legislation forced on it by other groups, and in a competitive process each group tries to secure legislation to regulate other groups. It is easy to break laws derived from a source that one does not greatly respect, and it is

easy to manipulate policies in the interests of one's own group when so few people have an interest in the welfare of all.

Under such conditions, the crime rate is bound to be high. Regulatory laws and even criminal statutes are viewed as implementations of the desires of one's competitors, not as codification of ethical principles or as attempts to minimize criminal behavior in the public interest, for the common good, or for the general welfare. Multiple moralities abound.

As I pointed out when I was here before, Clinard long ago noted that in America the prevailing attitude law obedience is that all laws except those dealing with very serious offenses may be violated if one can get away with it or, put another way, that laws should be selectively obeyed according to one's interests. This attitude appears as people violate traditional laws, and also as they violate more recent laws pertaining to drunken driving, marijuana smoking, and military service. But the attitude can be seen most clearly in white-collar crimes—tax evasion, business fraud, political corruption, and selective obedience to the many laws governing business, labor, and agriculture.

It seems to be true, then, that the ideology of individualism puts the focus on profits and obscures any enduring principles about what is right and what is wrong in a moral or ethical sense. The idea that "anything goes" puts American businessmen in bed with gangsters—persons who acquire with individual merit and a gun that which is denied them by the complex orders and forbiddings stemming from ethical principles such as The Golden Rule. Thorsten Veblen, a turn-of-the-century economist, put the matter this way:

"The ideal pecuniary man is like the ideal delinquent in his unscrupulous conversion of goods and persons to his own ends, and in a callous disregard of the feelings and wishes of others and of the remoter effects of his actions, but he is unlike them in possessing a keener sense of status and in working more farsightedly to a remoter end."

This assertion was not dramatically refuted by a study, published in the Harvard Business Review some years ago, that found that half the 1,700 corporation executives polled agreed with the following statement:

"The American business executive tends to ignore the great ethical laws as they apply immediately to his work. He is preoccupied chiefly with gain."

Neither has Veblen's characterization of businessmen been refuted by more recent polls along the same lines. I earlier quoted a statement by Fred T. Allen, Chairman and President of Pitney-Bowes. In 1975, Mr. Allen became troubled by the almost daily revelations of corporate bribes and payoffs in the United States and abroad, and by the steep decline in the public's esteem for business and its practitioners. In a Geneva address which was published in the Wall Street Journal, he said corporation executives were beginning to be perceived as "little more than manicured hoodlums." To get a line on the prevailing attitudes among corporations, his company commissioned a survey. The objective was to find out how some 531 top and middle managers, from a representative selection of all business sectors, viewed bribing foreign officials to attract and retain contracts. The results are a sad commentary on the state of American business ethics.

Fifty percent said that bribes should not be paid to foreign officials, but 48 percent said they should be paid if such practices are prevalent in a foreign country. Of those who accepted the practice, 68 percent said it was a cost of doing business in certain countries. And 38 percent said it was an established practice, inferring that there was no way to get around it. Some consolation is available from the fact that 64 percent of those who would not pay bribes said they would refuse on moral grounds.

Mr. Allen was startled by these findings. He asked corporate leaders to set realistic sales and profit goals, to spell out ethical codes, and to demonstrate that they "will not tolerate wrongdoing of any kind by anyone."

It is a bit ironic, therefore, to find that when the managers of his own company were surveyed anonymously in 1977, the majority said they feel pressure to compromise personal ethics to achieve corporate goals.

Similarly, a 1976 study by Uniroyal and University of Georgia Professor Archie B. Carroll III found that 70 percent of Uniroyal managers and 64 percent of a random sample of corporate managers perceived company pressure on personal ethics. Most managers believed that their peers would not defy orders to market off-standard and possibly dangerous products, although a majority insisted that they personally would reject such orders. The majority also said young managers automatically go along with their superiors to show loyalty.

These studies of corporate morality probably apply equally well to price fixing, illegal allocation of markets, false advertising, bid rigging, illegal use of insider information, shareholder ripoffs, and other white-collar crimes. Especially relevant is the finding that young managers go along with the questionable practices of their superiors. President Johnson's Commission on Law Enforcement and Administration of Justice went further. The Commission noted that more than young managers are influenced. When respectable white-collar people go wrong, they provide blue-collar people with one more piece of evidence that morality is a trap for suckers:

"Derelictions by corporations and their managers, who usually occupy leadership positions in their communities, establish an example which tends to erode the moral base of law and provide an opportunity for other kinds of offenders to rationalize their conduct."

All in all, then, it seems safe to conclude that our white-collar crime problem is a direct outcome of divisiveness and multiple moralities which have developed over the years. Nowadays, learning to behave according to a morality which makes it all right to engage in price fixing, false advertising, or bid rigging is as easy as learning to drive a car faster than 55 miles an hour.

Once this has been acknowledged we are faced with the task of developing a single morality, one which makes it unethical to ignore the public interest, the common good, the general welfare. This task is beyond the capabilities of the sociologist and criminologist. For that matter, it probably is beyond the capabilities of Congress too. Nevertheless, it is just possible that Congress—and this Subcommittee in particular—can stimulate American businessmen to move toward development of a national sense of community which would make white-collar crime unthinkable. There are three prongs on my utopian spear, and I hope you will launch it.

First, businessmen must come to respect government. If they are to do so, government must clean up its own act. Recent scandals have helped popularize the idea that government is corrupt, boss-ridden, and ineffective. A public opinion poll taken about 6 months ago found nine out of ten Americans asking Congress to do something about corruption in government. It is easy to condemn businessmen and corporations for making illegal political contributions while overlooking the fact that some aggressive candidates or their fund solicitors subtly or openly threaten retribution to those who do not come across with a donation. Businessmen know how laws are made and enforced. Perhaps that is why some have so little respect for law. Higher ethical standards in government would set an example for businessmen and would represent a great leap forward.

The legislative, executive and judicial branches of government (at all levels) also would take a giant stride if key officials formulated and announced clear definitions of unethical business behavior. Such an exercise of leadership would not require an excursion into the murky politics of defining white-collar crime. It is proper to denounce crimes against business, but this should not distract from the need to condemn unfair business practices. All we need from government leaders is a reiteration of the ethical and more principles—even the economic and political principles—on which our regulatory agencies were created. If these principles have changed we should know about it, and the relevant agencies should be abolished. But if there is something enduring about the principles, politicians should say so, over and over and over.

Second, consumers and other victims of white-collar crime should organize into pressure groups. It is a fact that our politics are now the politics of special interests. Business interests have had a strong voice in the making of laws and in the enforcement of them. They have successfully confused the issue of whether violations of regulatory laws are "real" crimes. They have fought to secure the appointment of enforcement personnel who will be friendly and quiescent in the face of clear violations of law or, if action has to be taken, will act politely and considerately. Enforcement agencies have not had the funds or attitudes necessary to educate the public about the dangers of restraint of trade and similar crimes, even as they have—in several campaigns—tried to educate citizens about the dangers of organized crime.

A powerful consumer organization with knowledgeable members could undo some of this mischief. In a Harper's Magazine article appearing a few years ago, Milton Viorst, the noted political columnist, asked a rhetorical question: "How can one expect an administration—any administration—to curb the power

of the giant corporations that are its chief source of political financing?" My response is that government will curb the corporations when people organize into groups more powerful than the corporations. At a minimum, an organization of consumer power demanding law and order in the corporate world would get an audience with political candidates.

Further, strong consumer organizations could prevent restraint of trade, false advertising, pollution, and similar crimes. They could do this by boycotting and otherwise raising hell with businesses that engage in crimes, that cheat them, raise their taxes, throw them out of work, or cause their small businesses to fail. According to Viorst, the Antitrust Law and Economic Review posed another rhetorical question: "Why does the American public tolerate the degree of monopoly we now have? The answer is that they don't know about it."

Restraint of trade and other economic crimes flourish at points in the economic system where organizations with power encounter weak potential victims. Then the victimization is like taking candy from a baby. A pioneering American sociologist said that business crimes "lack the brimstone smell" associated with long-standing Biblical proscriptions. Consumer organizations whose members educated each other about their own interests could put the smell of sin into white-collar offenses, thus helping business executives change their ethical standards.

The third and most important part of a good program to conquer white-collar crime would stimulate business leaders to develop and publish ethical codes and then stick to them. Indeed, the first two divisions of the program should be directed at the development of such mechanisms of self regulation. The Wall Street Journal article by the Chairman of Pitney-Bowes, mentioned earlier, announced the third part of the program in the following terms:

"It is, of course, easy for me or any executive to sound forth with a litany of high-minded principles. It is far more difficult to imbue an organization with the ideals behind the words. And it is most difficult of all for an executive to make sure that those ideals—once spelled out—are also carried out by employees at all levels.

"And yet that is exactly what we must do. Business organizations take their cues from their leaders. It is up to the leader to make sure that ethical behavior permeates the entire company. Employees must know exactly what is expected of them in the moral area and how to respond to warped ethics."

I have not been able to locate any such company campaigns aimed precisely at making white-collar crime so immoral that it is unthinkable. However, there are straws in the wind. Business ethics is now a popular topic of conversation in schools of business administration and in businessmen's clubs and executive suites all over the nation. Earlier I referred to a survey commissioned by Pitney-Bowes. When the respondents were asked if legislation—presumably calling for stronger defenses and punishments—would be effective in preventing bribery of foreign officials by U.S. nationals, 92 percent said it would not. They thought such bribery would continue despite such legislation, and they thought that publicity would be much more effective in discouraging bribery. What they had in mind, I think, is a need for publicizing unethical behavior to a degree such that bribery will become immoral.

But more than publicity is needed. Without increasing their costs very much, corporations could draw up codes of ethics and assign accountants to report violations to the board and, in the case of suspected crimes, to the police. Doing so would necessarily require board members and managers to think seriously about the morality of their conduct. Further, the very act of inaugurating such a program would announce that a board concerned about profits also is seriously concerned about the public interest, the common good, the general welfare. Other boards, questioned about why they have not published their ethical codes, would soon do so. For example, suppose one company stated explicitly that bribing foreign politicians or marketing dangerous products or advertising falsely is against company policy, and then explicitly assigned to some accountants the job of trying to police it, while another company did not take these two steps. Surely government officials, interested consumers, and the stockholders of the two companies would be able to make logical deductions about the ethics of management, even if the first company's accountants were not capable of detecting all instances of code violations. Over the years, a corporation board that published and enforced a code of ethics might even come to believe in it.

Professor CRESSEY. I am glad you invited me back because, among other things, my testimony in June didn't show enough indignation.

I am quite indignant about white-collar crime, and my prepared statement this time expresses a little of that indignation.

I am looking for solutions to our white-collar crime problem that involve something other than mere deterrence and defense. It is easy to recommend that we prosecute and punish white-collar criminals more severely, thus deterring potential offenders, and to let the matter go at that. Similarly, it is easy to take an attitude of defense. We do that with reference to street crime. We lock up ourselves and our valuables and then think we have a solution to the crime problem. What we need is a program which gets at the roots of the evil so deterrence and defense are not necessary, or at least not so critical.

Rooting out white-collar crime will not be an easy task. When President Carter introduced his energy program, he asked for the "moral equivalent of war." He hasn't received it. It is time to try again. We need the moral equivalent of war in the white-collar crime area.

We are beginning to recognize that white-collar crime is a social problem whose character is similar to that of the problem posed by the 1960's militants. That is, some businessmen refuse to attribute legitimacy to government, just as some of the more militant militants did in the 1960's. As I said in my testimony in June, crime rates are always high when people do not believe in the law, and there is good evidence, going back 25 years, that businessmen violate regulatory criminal laws because they don't believe in them.

We eventually responded quite well to the militancy of the 1960's. The Vietnam war stopped. The draft stopped. The Government became more open. Affirmative action programs were introduced. We did something constructive. Wise leaders demonstrated that the cure for the ills of democracy is more democracy.

White-collar crime is another ill of democracy. Can we cure this ill by instituting more democracy? Is it possible to get white-collar people to revere the SEC, the FTC, the IRS, the FDA, the EPA, the OSHA, the Antitrust Division of the Department of Justice, and many other agencies housing white-collar police officers? I think it is possible. It isn't going to be easy, but that must be our long-range goal.

At the end of my prepared statement I suggest a three-pronged program for starting this long-range effort. I haven't disillusioned myself into believing that this program could achieve its goal in our time. The reason is this: It asks for a change in morality, for restoration of a sense of community in the United States.

The proposal first asks that businessmen be inspired to respect our Government and its laws. This means, of course, that higher ethical standards are needed in Government. Congress Members and other Government officials must set an example for the rest of the United States and for business people in particular.

A public opinion poll taken about 6 months ago found 9 out of 10 Americans asking Congress to do something about corruption in Government.

Second, I advocate that consumers and other victims of white-collar crime organize themselves into pressure groups. It is a fact that our politics are now the politics of special interests. At a minimum, an organization of consumer power demanding law and order in the corporate world would get an audience with political candidates.

My third and last point asks business leaders to develop and publish ethical codes, and then stick to them. There are straws in the wind. When I was here before I mentioned some corporations which have already introduced such programs. They have drawn up specific statements regarding what is ethical conduct for any member of the corporation, and they are demanding that all the members of the corporation adhere to this code. More publicity is needed for programs of this kind. We need to give gold medals to the participating corporations and their executives. As I say at the end of my statement, it is quite possible that, over the years, a corporation board that published and enforced an ethical code, might come to believe in it.

Mr. CONYERS. Thank you very much.

We have a number of questions that we will direct to you, but in our more informal setting, we will bring on Professor Norris, professor of law at the Detroit College of Law. Professor Norris teaches constitutional law, has been a private practitioner, and has authored case books on criminal law and jurisprudence and produced other extensive legal writings. Without hoping this to be held against him, he is also a poet. We might as well make full disclosure here. We welcome him as one who, out of his public background, has served at the State level as a constitutional delegate in reforming the Constitution of the State of Michigan, and has served on a number of bar association panels that are related to our general subject matter.

We are very pleased that Professor Norris could join the subcommittee hearings today, and we welcome you before the subcommittee.

TESTIMONY OF HAROLD NORRIS, PROFESSOR OF LAW, DETROIT COLLEGE OF LAW, DETROIT, MICH.

Professor NORRIS. Thank you, Mr. Chairman.

I am delighted to be here. I only want to make a few modest observations. I think the terrain is broad and variegated, and it is easy indeed to get lost in it, and perhaps by tendering a few modest views, I might be of service to this committee.

I want to commend the House Judiciary Committee, and particularly this subcommittee, for dealing with this question. I think it has been too long delayed, and because of what I perceive to be the impact of this problem upon the American polity, it is a problem that deserves very serious, circumspent and urgent consideration.

One observation I would like to begin with is the very size of the problem. The problem has been shaped and formulated by some authoritative studies, though I must hasten to add, Mr. Chairman, that there is great need for more precise and authoritative study in this field. And I am delighted to note that the President of the United States, in reformulating the way in which LEAA is to operate, has indicated a very sizable quantity of work contemplated to be in the field of research and statistics. And it would appear to me that there is a natural affinity between the subject matter under purview by this committee and the new method of dealing with LEAA as directed by the President of the United States in his authority over the executive branch of Government.

I would think that perhaps one thing that could be done by this committee is to organize some kinds of subject matter that might be

the subject of study by that new branch of the executive branch of Government.

Mr. CONYERS. You mean LEAA.

Professor NORRIS. Yes. I don't have the precise directive in front of me, Mr. Chairman, but I am aware of the continuous use, both in the organizational chart and in delineation of function of the words "research and statistics" for the administration of laws regarding crime. And it would appear to me that there will be budgetary allocation for such studies, and some close cooperation between this branch of Government, this committee, and that unit might very well be on the horizon and worth contemplation by this committee. The announcement only came last week, so I haven't had a chance to familiarize myself as much as I would like to with regard to that.

With regard to the size of the problem, Mr. Chairman, I noted in the report made to this committee, the subcommittee, by the Library of Congress, that there is a reference on page 10 to a report of the American Management Association stating that approximately 15 percent of the retail costs of U.S. goods is due to business crimes. Fifteen percent of the total retail cost of U.S. goods, 15 percent.

I understood that the late Senator Phil Hart has been the authority for a statement that some 30 to 35 percent of the prices of goods sold in the United States could be accounted for by business crimes. The U.S. Chamber of Commerce has been talking in terms of $40 billion involved in such activity. These figures and these percentages indicate, Mr. Chairman, a dimension that I believe the consciousness of our people has not really been fully directed to, and I certainly would urge that there be a definition of this problem of business crime, economic crime, corruption, white-collar crime, whatever handle we might use, to see exactly what we are talking about in relation to the dollar impact of white-collar crime.

If the figures are as we have been led to believe in part by these materials, there is a linkage, Mr. Chairman, to what I believe I would like to underscore as one of the keynotes of my presentation before this committee. There is proper concern in our Nation about inflation. I assert that white-collar crime is inflationary. White-collar crime increases the cost of goods, without any relationship to production, and bids up the price, and by bidding up the price becomes a way of reaching into the pocketbooks of 200 million Americans, and I am not sure they are aware of it. That amounts, if you wish, to a regressive tax. It particularly hits people who are consuming goods, who are in the low-income, modest-income groups of the United States, and I am pretty certain in my own mind that the American people have not fully had their consciousness engaged about the seriousness of this impact upon their standard of living.

If, for example, the Consumer Price Index of the Bureau of Labor Statistics rose 1 percent or 2 percent, we would take more than judicial notice of that and its impact upon our pocketbook. Here we have a flat rate of costs of 15 percent, according to the American Management Association, going up to 30 percent in terms of such authorities as Senator Hart, and that does not appear to have reached the consciousness or caused the concern that ought to be the case. And so I want to congratulate the chairman and his committee for dealing with this

question and using the investigative power of the Congress to unearth the problem, delineate its impact upon the people, and arouse them to appropriate action.

One thing that I am sure the committee has already been discussing, because I see that in some of its proceedings, is urging more law enforcement in this area based upon laws already on the books, particularly with regard to the action of the Department of Justice, and I commend the committee for moving in this direction for two reasons.

First, there is ample need for that to happen and, second, one of the things that I think this committee might be aware of is the kind of feeling on the part of many people, with regard to many investigations, that they are spinning their wheels, they are really not accomplishing too much, they are not well targeted, that there is a great deal of oral doodling. But you have a measurable thing here, that as of July 1978 there are x number of investigators, x numbers of lawyers in the Department of Justice, x number of cases being prosecuted in this area. I have a feeling that by July 1979 as a result of the work of this committee, there will be y number of investigators, y number of prosecutors, y number of cases, so there is a measurable standard, a kind of arithmetic with which to evaluate some of the work of this committee in the law enforcement field. And I commend the committee for the work it has already done, and I would hope that more of this would be continued, not alone on the level in Washington, but in the several offices of the U.S. district attorneys throughout the country. I would hope that they would be urged to allocate more personnel in this area.

I would urge also, as an observation, that more attention be given to what I call commercial bribery, kickbacks. It is a debatable question whether failure on the part of business enterprise to obey Federal rules and regulations, antitrust laws or the obeying of the orders of the National Labor Relations Board or the Federal Communications Commission or safety regulations, whether such disobedience is the proper subject matter of the criminal power. Thus far we have been dealing with these matters in most respects with measures short of the awesome use of the criminal power. We have been using cease-and-desist orders. We have been using injunctions, matters of that kind, and it may be that those things should be the exclusive techniques of enforcement. I don't know. I am certain we ought to use more of them. But when it gets to commercial bribery, when it gets to kickbacks, it seems to me there you have a legitimate target for the use of the criminal power.

I would like to call your attention to some work done by Mr. Norman Jaspan, head of a New York based firm specializing in detection and prevention of white-collar crime. In an article in U.S. News and World Report on October 29, 1973, this gentleman talks about kickbacks as a way of life, and how widespread it is in the United States, and he sets forth a series of illustrations which I think might help our imagination and target our perceptions. Under the title "Kickbacks Without Cash, 15 Common Devices," Mr. Jaspan states, and I quote:

> Authorities on white collar crime say businesses increasingly in return for favors are making kickbacks in ways other than straight cash payments. Among

those frequently cited are (1) paying for auto rentals by recipients of kickbacks, (2) providing paid vacations, (3) unlimited use of credit cards and charge accounts by recipients, (4) paying rents on homes away from home, (5) providing unsecured loans, (6) opening up brokerage accounts under aliases, (7) providing free goods in the form of "samples," (8) buying from businesses run by relatives of the recipient, (9) putting relatives on company payroll as "consultants," (10) giving scholarships to children, (11) offering gift certificates, (12) paying for country club dues, (13) furnishing company aircraft, (14) permitting special discounts at donor's sales outlets, and (15) rigging company contests so the recipient is sure to win a prize.

Just that fly-by on these specific ways in which there is commercial bribery opens up a visita here, it seems to me, for this committee to exercise inquiry that all of us know about, and there is a question of perhaps alerting the public as to what they might do in the several business and corporate enterprises in which they are employed when they see such things happening. I am sure that people see them.

Now obviously whistleblowing has some danger. There may be wrongful accusation. There may be harm to reputation. There is need for care and circumspection, but there is also the recognition that these things are wrong. They are morally wrong. They are bad for business and bad for government. These kickback practices undermine confidence in the way in which goods and services are produced in our country, and it seems to me there ought to be a precise evaluation of what statutes are now on the book in the area of commercial bribery on the Federal as well as State level and see whether or not some of these kinds of activities might be prosecuted under present law. And if they are not encompassed within present statute, then there ought to be contemplated remedial language in such statutes. But I think there can be, Mr. Chairman, a kind of consensus or unanimity among the American people that these things are wrong, and that they are the proper subject for the use of the criminal power.

I have already mentioned the idea that there is need for more precise data in this area, and I am delighted to share this podium today with Professor Cressey. Mr. Sutherland has done trailblazing work in this area, because we have to go much further and build upon what they have done and branch out in new areas. And I have already stated that in my humble judgment the President's new directive can be an occasion for a forward thrust in this direction with regard to study and compilation of data.

There is also the need to involve a sister profession here, namely, the accountants, in some appropriate way. There is of course a problem of conflict of interest. There is a question of ethics involved in relation to the way in which accountants operate, but they do have an access to the way in which business operates, which is unique, in the preparation of audits and the several accounting methods by which money is accounted for. And I think the accounting profession ought to be invited as a matter of volunteerism to come forward with perhaps some suggestions that they might have with regard to how commercial misconduct may be properly superintended. They are a unique profession in this regard, and much can be done. I approach this problem with some trepidation because the legal profession is not without its own way in which it might be helpful in this direction.

There is of course the notion that fidelity and the interests of due process require exclusive service to one's client, and I am sure that

the accounting profession shares that notion as well, but there are ways I am certain that the several professions may be of use to the public good in this direction.

I would like to note also that the business community bears a primary responsibility in this area. How far self-regulation may proceed is an area which hasn't been fully exhausted. I noted with great interest and I support Professor Cressey's notion of voluntary codes of ethics. I think they can be serviceable in setting standards for corporate enterprise as to what is expected of their employees, indeed, what is expected of their managers.

We are not only talking here about pilfering and theft with regard to subordinates. That is a serious problem. And I do not wish to demean or minimize that because it is serious in its impact upon the public, in mulcting the public out of money as an inflationary cost as I put it before. But there is also the question of managerial misconduct in terms of bribery, in terms of corruption, in terms of kickbacks and the rest of it, and it seems to me that there is need for a definition of what is to be expected of the several employees on all levels.

There is that story, you know, about the person who indicated that "to err is human, but to forgive is against company policy." That's not a bad standard.

I think we have to almost get into that area, that company policy does not condone such conduct, and I would hope that the point that Professor Cressey mentions, of voluntary codes, is significantly followed.

I noted also in the congressional study by the Library of Congress that there is some reference in its recommendations to Federal charters for corporations. I am sure this committee is aware of that recommendation. It certainly ought to be given great study. But I have a disposition to feel that while voluntary regulation will have some effect, it will not have as much effect as it ought to have to protect the public interest, and sooner or later we are going to get to the notion of the Federal chartering of corporate enterprise.

There is too much public interest in the way in which business operates, public interest for which business is not accountable, whether we are talking about environment, whether we are talking about allocation of resources, scarce resources, whether we are talking about safety, whether we are talking about all the ways in which the American people earn a living and conduct enterprise that affects the total community. And one of them is in this area, too, the conduct of people to avoid white-collar-crime, misconduct, bribery, kickbacks, and so forth.

I do not advocate the idea of Federal chartering solely on the basis of superintending wrongful conduct of corporate enterprise, but I look ahead some 10 years down the line, and there will be, in my judgment, a convergence of the interest of the public in superintending the criminal conduct of corporate enterprise with the interests of the public in superintending the environmental interests, the safety interests, the health interests, the price policy interest that the public has in the conduct of enterprise.

I realize that this raises images of unwarranted extension of governmental power over industry. We have had that problem since this

Nation began. It will continue. But in terms of the criterion of what best serves the interests of 200 million Americans, I can't help but feel that we will be moving by increments in this direction to a point of convergence with other interests of the public to shape up for congressional decision the direct question of whether or not we should have Federal chartering of corporations.

Ralph Nader and his associates have moved very positively in this direction in a recent publication. Whether that is premature, I am not prepared to say. I am merely saying that we ought to confront the question of chartering as one appropriate method of dealing with business crime.

These are some of the observations I had, Mr. Chairman. I would hope that there would be coming from this committee a way in which the public could be enlisted to be of help not only to this committee but to law enforcement authority with regard to superintending the problem of white-collar-crime in both government and private industry.

What are the telltale signs? What are some of the indicia? What things might the public be concerned about?

I have already indicated some indicia in relation to kickbacks, some 15 of them, so that there would be ways in which there would be appropriate reporting and appropriate evaluating, so that there would be effective law enforcement at the same time protecting the constitutional rights of people who might be involved as the objects of such criticism. But there is no law that can succeed, no investigation that can succeed, without the cooperation of the public. And I would hope that there would be some thought given to how the public might be of help to this committee and to law enforcement.

I want to thank the chairman for inviting me to participate in this great work you are engaged in. I would be happy to answer any questions.

Mr. CONYERS. Thank you very much.

Professor Cressey.

Professor CRESSEY. Having worked in the organized crime area for some years, I am enthusiastic about the idea of a Presidential Commission on White-Collar Crime. I am not sure that a Commission of this kind could do much more than this subcommittee will do in making the Nation aware of its white-collar problem. Nevertheless, the appointment of such a Commission would have fantastic symbolic value, if nothing else.

We are engaged in a struggle regarding the definition of white-collar crime, and a President's Commission would have to spend a lot of its time in that struggle. Since I was here last, I have read a May memorandum that the Attorney General wrote to Associate Deputy Attorney General Larry Gibson appointing him Director of the National Economic Crime Project. The memorandum, sadly enough, identifies "economic crime" and "white-collar crime" as crime committed "against the business community."

Now, I have no quarrel with a center for the study of crimes against business. Neither, for that matter, do I have any quarrel with a law enforcement, prosecutorial, campaign regarding crimes against business. But we should not get a campaign of that sort confused with

a campaign against crimes by business. We need both, and defining white-collar crime so that it involves only crimes against business ignores that fact.

Just how the definition will get sorted out is a mystery to me. But I hope this subcommittee will continue to worry about crimes by business as well as crimes against business. The chart you had here a month ago, showing that white-collar crime was costing $44 billion a year, did not contain figures on antitrust violation, on income tax evasion, on the kickback problem that Professor Norris just mentioned. If we added those crimes which are peculiarly committed by corporations, crimes by business, the $44 billion would be at least doubled, probably increased by a factor of 10.

A professor can never resist recommending what Professor Norris just recommended; namely, more study, more research, better statistics. As you said, Mr. Chairman, a President's Commission could at least provide the stimulus for such study and indeed might inaugurate the study itself. The danger is that which you noted; namely, that a study group will be appointed merely as a way of avoiding doing something real about the problem.

Professor NORRIS. I think the notion of having a Presidential Commission on White-Collar Crime ought to be on the horizon and ought to be an objective of this committee. I do think moving one step forward from what Mr. Cressey has just mentioned, that this committee could put in place the pieces which might move a President to appoint such a commission. I don't think at this point the President might be responsive directly to such a suggestion. One of the questions that would go on in his mind as what work has already been done to substantiate the need for such a commission. We certainly wouldn't want to engage in an idle exploratory task.

I am sure the President would want to feel that something tangible will be coming out of it that would serve the public interest, and the Nation. I concur with Professor Cressey and this committee's thinking about a Presidential Commission. I'd like to move the idea one step further—to think in terms of what would be the pieces put in place that might reinforce the concept as a recommendation to the President of the United States. What studies should be undertaken of a modest character to show that even further study is necessary? What kinds of legislation might be explored? How might the various activities of the Government be affected? What kinds of coordination might be contemplated between the several branches of Government? What would be the impact of a Presidential commission not only upon the development of Federal law but State law? Because whatever is done in this area, and it is one of the pervasive reaches of this committee, is that it will have an effect in the States.

We must never lose sight of the fact, Mr. Chairman, that the great area for the invocation of the criminal law is in the States and not in the Federal Government. Under the 10th amendment, the reserve power clause, the power to enact statutes for the purpose of protecting the public health, welfare, safety, and morality, the police power, resides in the States. That is the power which the States have to enact criminal law, and whatever is done on the Federal level will have an impact upon the States. But the States have a great reservoir of this authority and of

its effects. So that the Presidential commission can be contemplated in terms of how it might reach into the States.

I would urge, I would strongly suggest, that that would be one of the main accomplishments among many that I could foresee this commitee getting effected, namely, the appointment of a Persidential commission. An excellent idea.

Mr. CONYERS. Nobody has reminded the Congress of the 10th amendment in quite a few years. I want to make that clear.

We are summoned to the floor for a quorum call, and we will return immediately after the vote.

[Recess.]

Mr. CONYERS. The Chair recognizes Mr. Harold Volkmer.

Mr. VOLKMER. Thank you very much, Mr. Chairman.

I wish to commend both of you for your indepth study of the problem. I don't want to really take issue with you at all. I would like to, however, maybe enlarge on the discussion that you have started. I made some notes here.

In reviewing, Dr. Cressey, your statement, perhaps at the heart of it, at least from my view, and correct me if I am wrong, that the problem of, I believe you call it—I call it do your own thing, you call it anything goes, I think it is, something to that effect, and that philosophy that pervades I think society since the 1950's, individualism and morality. You make your own determination as to what is right and wrong. You see that as one of the basic problems we have.

Professor CRESSEY. Yes. But not appearing as recently as the 1950's——

Mr. VOLKMER. I am not saying in white-collar crime, but I am saying in the growth of the society in this country, the question of individualism arose—well, let's forget when it arose. We have it, right?

Professor CRESSEY. Yes.

Mr. VOLKMER. It has developed over a period of years.

Do you agree with that?

Professor CRESSEY. Yes.

Mr. VOLKMER. Now how does it affect crime?

Mr. CRESSEY. As I tried to indicate in the prepared statement, I think individualism is highly significant to crime, all kinds of crime, not just white-collar crime. The thrust of my written statement is that morality has somehow become relative. We have developed multiple moralities.

Mr. VOLKMER. Right.

Professor CRESSEY. When we talk about competition now, we are talking mostly about competition in the legislative process. So if I succeed in getting some regulatory law passed that affects you——

Mr. VOLKMER. And I am a competitor.

Professor CRESSEY. If you are my competitor and I get Congress to regulate you, you don't have any moral compunctions about violating the law. You don't believe in the law.

I am unrealistic. I am calling for a moral crusade. I want businessmen to believe in the law.

Mr. VOLKMER. Just to comment a little bit further on this. I would like to say that just yesterday evening, after our meeting here, I was discussing with a person the question of whether morality should be even considered in legislation, and personal morality should be con-

sidered. I personally believe that morality is a basic structure in society and in law. This person did not, and I am afraid a lot of the people feel that morals—in other words, the old saying that you cannot legislate morals. I believe in that. I believe you touched on that, but I do believe that morality is a basic structure.

Do you agree with that?

Professor CRESSEY. Yes; I do.

Mr. VOLKMER. And if you continue with the thought that morality should not be part of the legislative process, not make a decision based on morality, then where are we?

Professor CRESSEY. No; I don't subscribe to that idea. It seems to me in criminal law legislation we are always talking about——

Mr. VOLKMER. Morality.

Professor CRESSEY. About morality, what is sinful.

Mr. VOLKMER. It is all based on morality.

Professor CRESSEY. Surely, it has to be. The controversy about personal morality and legislation is set in a very different context. The question of whether morality can be legislated arises in connection with attempts by the Government to control homosexuality, adultery, personal kinds of behavior.

Mr. VOLKMER. Right.

Professor CRESSEY. I am not talking about that sort of thing, and I don't think you are either.

Mr. VOLKMER. No; I am not. I am talking about a basic premise though.

Professor CRESSEY. Yes.

Mr. VOLKNER. And also your multiple morality reminds me of what is going on, has been proven to be going on I know in my own State in certain areas. Utility rates go up, so the homeowner bypasses the system, the meter doesn't show anything. The meter reader comes around. It is estimated for 3 months. The meter reader comes around. It is very low, How does he prove it? It is hooked back up. The neighbor finds out about it. Instead of the neighbor complaining he says "Hey, that is a pretty good idea. How do you do it?"

Is that what we are talking about?

Professor CRESSEY. Exactly.

Mr. VOLKMER. A businessman sees someone cheating and that is bad; is that right?

Professor Cressey. Yes.

Mr. VOLKMER. That is multiple morality.

Professor Cressey. That is correct.

Mr. VOLKNER. And the utility which is maybe charging more and going to the commission that regulates it to get more than it needs sees that person, and what he is doing, as wrong, but sees right in what they are doing.

Professor CRESSEY. Yes.

Mr. VOLKMER. Correct?

Professor CRESSEY. Exactly, yes.

Mr. VOLKMER. And also when we here in Congress, our own Members, see our own Members violating a code or violating a law, and instead of criticizing them, we say "It is too bad about Joe. He is a pretty good guy," pat him on the back and give him moral support. That is wrong, isn't that correct?

Professor CRESSEY. That is correct.

Mr. VOLKMER. That is what happens, correct?

Professor CRESSEY. Yes.

Mr. VOLKMER. How do we change it; through a Presidential Commission?

Professor CRESSEY. I am not given to great praise, but it seems to me that this subcommittee is taking the first step in a thousand-mile journey toward making the Nation aware of some of the things that you just talked about. Everywhere, including, as you say, in Congress, we are not indignant about someone who bypasses the meter or who violates criminal law. I think we ought to be morally indignant.

When business persons are asked about whether they would violate the law or take a cut in profits, about half vote for violating the law. I want to put the spotlight on the other half. I want to give hero medals to the half of the corporation executives who are indignant about the other 50 percent. If we could somehow get half of the business community to embark on a moral crusade, if that is the right word, we would be taking an important first step.

Mr. VOLKMER. I thank you. I think your statements here are very thought provoking.

Mr. CONYERS. Would you permit Professor Norris to comment?

Mr. VOLKMER. Yes; I would like to hear his comments on this.

Professor NORRIS. I appreciate, sir, your getting to the heart of this very important area, because Mr. Justice Jackson once put it that the ultimate justification for criminal law are considerations of morality, and certainly you have in the matter of whether it is done by consumers against a corporation or corporation officials in relation to consumers or the Government or other members of the business community you have a wrongful deprivation, a deprivation either by way of misappropriation of resources, the practice of fraud and deceit. Fraud and deceit do not produce good and services, and yet we are all paying more for what is being done, and some people are getting some kinds of benefits not earned, and there is a disposition across the board in our Nation, which seems to say, "I am going to look out for No. 1. I am going to survive in my way," and not recognize that the whole edifice rests upon an assumption of personal responsibility for what happens.

I am going to do something, in response to your question, which I must say in terms of legal concepts is not premeditated, not deliberate, not intentional.

Mr. CONYERS. It is willful though.

Mr. VOLKMER. Off the top of the head, do you mean?

Professor NORRIS. Yes. When your chairman spoke to me about coming here, I didn't realize fully we were going to be in the same room in which the Watergate hearings were conducted. This room was part of my home for 5 or 6 months, as it was indeed the appendage to homes of thousands of homes around the country, and I wanted in some way to say thank you to this House committee, including yourself, the chairman, Mr. Rodino, and all your conferers.

I worked for 30 years on a book. I am happy to announce it was nominated for a Pulitzer. It didn't win, but it has the theme which I think is an answer to your question. The book entitled "You Are This Nation," and the title poem develops this notion of personal responsibility for what happens in this country.

And with the chairman's permission, may I read it? It is short.

Mr. CONYERS. Yes.

Professor NORRIS. It was entitled "To the Class of '76" because it was written during the Bicentennial. [Reading:]

This Nation from sea to shining sea
Has its being in you, its purpose yours.
Its Shenandoah and Mississippi move
Through you to the gulf of history.
Its plains and rockies
Dams and bridges, yours.
This Nation is what you do.

You are the evolution
Of its every beginning.
You are the Revolution,
Gettysburg, Bataan, Bastogne,
Party to every treaty;
Its emancipation is proclaimed in you,
Black, red, yellow, and white
Stars in your stripes,
Its every conscience the geography
Of your mind,
Its constitution, yours.

Ten generations unite in you,
You are brother to Jefferson
And the Unknown Soldier,
To Frederick Douglass and
Forty acres and a mule,
To the lady in the harbor
And votes for women,
To drought, depression, and grapes of wrath,
To Vietnam and Watergate,
To the Model T, B-17, TVA, UAW, and the U.N.,
To the parliament of man and the federation of the world;
Encapsuled in you is one small step for man.

Its destiny is manifest in
Your every move, you are its action and passion,
Triumph and agony,
Means and ends,
Trial and verdict;
Its independence is declared in you,
In your every thought and act
You are this Nation,
You are the great integration,
The government of yourselves
Is its self-government.
This country lives
Right
Through
You.

[Applause.]

Professor NORRIS. What I am trying to say by that is that whether we are talking about crime, whether we are talking about morality, this country is nothing more than what we as individuals do, collectively do. There is no escaping. Whether you do something or don't do something, that is what the country is, and whether people try to take advantage of their brothers and sisters in whatever activity they are engaged in, in business enterprise, in trade unions, in government, that is, the sum total of all those pieces of conduct is the country.

I think your question, sir, is just most appropriate, because most people haven't regarded white-collar crime as a crime. They haven't appreciated how there is a wrongful deprivation and how they are paying for it, and one of the great achievements that I see this committee trailblazing across the horizon of the country, and I certainly want to commend all of you for it, is to engender the notion that what people do in their several capacities, that departures from morality, become wrongful deprivations, become things that cost, and for every moral choice there is a price, and we have to pay that price.

One of the prices here we have to pay is that if we try to gyp a utility company, or if someone tries to do something wrong, we are going to have to pay for it somewhere down the line. You are this Nation. We are this Nation.

Mr. VOLKMER. One other question, and then I would like to go, is do either of you see any attempts in the legislative process to narrow the definition of white-collar crime as to what specifically is white-collar crime?

Professor CRESSEY. I am not sure enough of myself regarding the legislative process, but——

Mr. VOLKMER. Let's say in the evolutionary process of society then.

Professor CRESSEY. I think that right now, on the contemporary Washington scene, we are engaged in what I described when I was here before as "the politics of definition." Edwin H. Sutherland, who invented the term "white-collar crime," invented it in order to call our attention to the fact that there is a lot of crime which is not committed in the central city, which is not street crime. White-collar crime, he said, is crime committed by persons of respectability and high social status. Crime, therefore, cannot be attributed to poverty or to personal pathologies. Ever since Sutherland thus defined the term, in the late 1930's, we have seen attempt after attempt to define it as something else.

As I said earlier, there now seems to be a tendency over in the Attorney General's Office to define white-collar crime as crime against business. There also is a temptation to define white-collar crime as that which is easy to prosecute. Doing so leaves out the difficult problems, the ones we have been talking about this morning—antitrust, bid rigging, kickbacks, and other gentlemanly criminal acts.

So I think this subcommittee will constantly be encountering the question of definition. What is it? If Congress tries to pass legislation against white-collar crime, you will have an extremely difficult time. But if you concern yourselves with the right things it doesn't matter whether you call them white-collar crime. Thus, if you concern yourselves with income tax evasion, violation of the antitrust laws, bid rigging, and so on, you don't have to put the epithet "white-collar crime"

on them. All I ask is that you do not lose track of the fact that that is where the problem is.

Could I, sir, just make one more comment before you go?

Mr. VOLKMER. Yes, surely. I have got another committee meeting.

Professor CRESSEY. I was part of the task force on organized crime of President Johnson's Commission on Law Enforcement and the Administration of Justice. It is an exaggeration, but nevertheless somewhat true, that a half dozen of us gave the United States an organized crime problem. We gave it a problem in the sense that we got people talking about it, worrying about it. Congress took special actions against organized crime. Some of the programs didn't work out very well—there now is an organized crime intelligence unit in almost every police department in the United States, and I am not too proud of that. Some things didn't work out the way we thought they were going to work out, but a very small group of people got the ball rolling.

There was a time only 10 years ago when practically every Member of Congress, as part of a ritual, gave an antiorganized crime speech. The legislature was aroused. The enthusiasm has died down now. I want to see the Congress and the people similarly aroused by white-collar crime. It can be done. It won't be easy. It won't be easy because organized criminals don't have as much power in legislative halls as white-collar criminals do, but it can be done.

Mr. VOLKMER. I agree with you. I think it could be done. I don't think that perhaps the opposition would be as great as I think you perceive it to be, because again I think as individuals, even though they may feel what they are doing, kickbacks, et cetera, are permissible, publicly they cannot go out and say, so I don't perceive the opposition to be as great. I know it would be greater in organized crime, the opposition. Then your opinion is, of course, that given the proper structure to such a task force, et cetera, proper direction, proper individuals, that there be an opportunity then to focus, draw attention and start the process from that end.

Professor CRESSEY. Yes, sir.

Mr. VOLKMER. Thank you very much, Mr. Chairman.

Mr. CONYERS. Professor Cressey, tell us a little bit more. We never had a witness that was on the task force before.

Can you give us the inside dope on how those operations work? Were you a political appointee to begin with?

Professor CRESSEY. No; I wasn't. The President's Commission originally had no task force on organized crime. It was stimulated to create a task force by Henry Ruth, who later became the Special Prosecutor. Ruth was the Deputy Director of the Commission. He had worked in the Organized Crime Division of the Department of Justice and had almost single-handedly prosecuted everybody in Reading, Pa., for corruption. He insisted that the Commission establish an organized crime task force.

Mr. CONYERS. I thought it might have been stimulated by the issues raised in the Presidential contest that was forthcoming at that time.

Professor CRESSEY. I am not sure of that. I don't think so.

Mr. VOLKMER. Who was the individual again?

Professor CRESSEY. Henry Ruth. Ruth convinced the Commission to employ Charles Rogovin, who was then Assistant Prosecuting At-

torney in Philadelphia. Rogovin later became the first head of LEAA. I used to say that the total budget of the task force on organized crime consisted of Charlie, a secretary, and two unsharpened pencils. The rest of us were volunteers.

I had not worked in organized crime before. Various police departments around the Nation, and all the Federal agencies, were submitting reports on organized crime to the Commission. They need a social scientist to try to make sense of them. I was asked to come to Washington on a scouting trip, to consider doing that job. I became an addict. I saw documents that raised the hair on my head. I volunteered for work on the task force, and I have been an organized crime nut ever since.

Ruth and Rogovin were also joined by Robert Blakey, who later worked for the late Senator McClellan, and who now is running an organized crime institute in the Cornell Law School. Henry Petersen, who later became the Assistant Attorney General but who was then the head of the Organized Crime and Racketeering Section in the Department of Justice, also was actively involved, as was Ralph Salerno, of the New York Police Department. The six of us worked night and day to get the country nervous about organized crime. We wrote, we talked, we went on television. We put "road shows" together and toured the country, talking mostly to local government officials and businessmen. We gave the country a problem.

Mr. CONYERS. Some might say you overstimulated 223 million citizens. I mean after all, LEAA was created almost as a political afterthought. It was to deal with the rioting. Later on the funding came fast and furious, and even though there were a lot of speeches made, there was a very minimum of effective work at the Government level, both legislatively and prosecutorially. I mean there was so much rhetoric. There were so many sensational hearings where we brought these guys forward, and it was almost like out of a "B" movie where the witness turns to his lawyer and says "I take the fifth amendment," and they do that about 15 times, and the committee displays the typical frustrations of Government. The committee is ready to move against these known mobsters, but here they are hiding behind the constitutional protection. Then the subsidary argument became "Let's take away the fifth amendment. Who needs the fifth but the crooks?"

You might want to consider a follow-up to "Theft of a Nation," in which we detail the full-extent of the white-collar crime problem. We need more scientific, empirical documentation and analysis of the problem, which a congressional committee cannot provide. Your work and Sutherland's work still are the seminal efforts in this area. There ought to be shelves full of follow-up studies flowing from the suggestions that you dropped along the way.

Somehow or other, when we begin thinking of the large number of institutions and resources in our society that can be called into play, our work becomes really more controllable, becomes more administrative than anything else. Suppose the sociologists and the criminologists in particular decided to really expend meaningful efforts to study white-collar crime?

You alone could hold a seminar and create work for hundreds of people. It could be the "Full Employment Act for Criminologists,"

and it would be very necessary. It wouldn't just be some more junk research. We still don't have accurate crime statistics in the United States as we meet here, and it was all of the efforts of this subcommittee and Ben Civiletti to save the LEAA victimization survey, which was a very needed supplement to the FBI statistics (which merely collate whatever law enforcement people mail in and which is of varying degree of reliability). It was all we could do to keep this little minor victimization survey. We proposed Bureau of Criminal Justice Statistics, that wouldn't turn on the need of the Government to magnify crime or diminish it where it is convenient, but that would stand there in fair weather and foul and accurately report the nature of criminal activity in the country.

We are still at that point of getting our statistics together. So there is a great deal that could be done in the academic community that would have a fantastic impact and also lighten the responsibilities of those of us who understand the Government's role in the process.

The Justice Department, regulatory agencies, the Bar Association, the accountants, branches of government at the State level, and business and industry should all be joining hands to combat white-collar crime. It is a misperception to think that everybody in business are crooks. Clearly, there are ethical businessmen, and that they need to be pinpointed and encouraged to speak out against corporate criminality. They need to be brought forward. They need to be held out as examples.

When we start thinking about all of this, we examine some very basic assumptions about our society which enormously impact on how we think about white-collar crime. This inquiry creates a very large arena which could be going on almost independently of the humble works of one subcommittee.

Mr. VOLKMER. Mr. Chairman, will you yield before I go?

I am sure that you will not attack this problem the same as we attacked the organized crime problems which are of concern to the chairman, It is my concern basically, too, and I am sure reading your statement—in other words, how to develop the means to get to the end is not the sensationalism and the publicity and the push to have a lot of prosecution, legislation, and things; is that correct?

Professor CRESSEY. That is correct.

Mr. VOLKMER. In this area, it is a push on the side of the legislation and the courts; is that correct?

Professor CRESSEY. Yes, And with regard to organized crime. I am not proud of some of the things that happend, as I said. We did not intend them to happen.

Mr. VOLKMER. That is what I am afraid of here. You start talking about white-collar crime, somebody comes in here saying we have got to have some new laws, we have got to have the courts starting to put everybody in the penitentiary that do this and that.

Professor CRESSEY. That is a danger.

Mr. VOLKMER. And that being the answer to them. That is what I am afraid of, that would be the answer.

Professor CRESSEY. That is not the answer.

Mr. VOLKMER. It is not the answer?

Professor CRESSEY. Let me respond by returning to the chairman's comments. In the academic world, something important did happen,

with regard to organized crime. We published the task force report. Then I wrote a book, a rather academic study of organized crime. Since then, there have been a half dozen books, maybe more, a lot of articles. Some of these argue persuasively that I was wrong on some points. That is fine. It is a sign that we are making progess in the organized-crime area.

In organized crime, we created what I call a "pattern-setting document." People are still following the pattern, even while changing it. An important question is, "Why hasn't this happened in the white-collar-crime area?" Thirty years ago Sutherland wrote a pattern-setting document. Why has there been so little following? The answer, it seems to me, is that information, data, are extremely difficult to obtain. Much of the early organized-crime data came from the files of the Department of Justice. Now, people are going out and talking to organized criminals, getting them to correct some of the things we said and to affirm other things. We have not been able to do that in the white-collar-crime field.

Indeed, I could name a half dozen academicians, myself included, who worked in the white-collar-crime area for a couple of years, then abandoned it for something else. They did not abandon this area of research because there was political pressure or threats of economic sanctions. They abandoned it because they could not get valid information, including statistics.

Mr. VOLKMER. I think that is what the chairman is addressing, that that needs to be done.

Professor CRESSEY. Yes.

Mr. CONYERS. Thank you very much for your contribution.

How do we deal with this problem? It is still around. Cannot the Government take this on a little bit more effectively? Even one individual expert charged with a strong feeling about the subject can go in and really come up with something. After all, it was just a security guard doing his job that helped unravel most of the white-collar crime that later became known as Watergate.

It is a difficult area, but nonetheless, once we undertake it, once we began to draw up criteria and methodology, and get ourselves organized around the nature of the subject matter, I do not think it is offensive to suggest that we can have an enormous impact on the national understanding of the white-collar-crime problem.

In drawing an analogy between organized crime and this subject, much knowledge about white-collar crime will come out of increased prosecutorial activity in this area.

Professor CRESSEY. I think there is a straw in the wind. The Yale Law School has a small grant from the National Institute of Law Enforcement and Criminal Justice to do studies of white-collar crime. They have had a very difficult time, nevertheless they are making the first new studies of white-collar crime in 15 or 20 years. It might be that Congress or the executive branch could help a lot by enlarging that operation, creating additional centers around the country, getting academics stimulated again to work in this very difficult area.

Professor NORRIS. I would like to call attention, if I may, Mr. Chairman, again to this study by the Library of Congress, following through on what Mr. Cressey was just mentioning, and following through on Mr. Volkmer's question before about defining white-collar

crime. I think the definition has something to do with how you are going to get figures. The definition on page 7 of this report states, among other elements, the following:

> Crimes committed in the course of or in the context of one's lawful occupation, that is, a bank employee who embezzles funds while carrying out his normal legal duties.

So there is a question of the act in the course of one's lawful occupation.

> Second, a violation of trust. Third, a lack of physical force ot accomplish the crime. Fourth, money, property or power, prestige as the primary goal of the crime.
>
> A definite intent to commit, talking about intent, an intent to conceal the crime, usually by passing it off as a normal legal business transaction and by using the power at one's source to protect from legal prosecution."

Within that definition the report goes on to recite certain examples of white-collar crime: Consumer fraud, illegal competition, price fixing, deceptive practices, embezzlement, check and credit card fraud, tax evasion, bankruptcy fraud, corporate bribery, kickbacks, payoffs, bait-and-switch fraud, computer crime, pilferage, a securities fraud, corruption, fraud against the Government.

Now, where in those definitions you have an enforcement body or a forum in which charge and defense are adjudicated—for example, when you have a price-fixing program, you have a Federal court that gets into determining whether or not there has been price fixing; when you get into embezzlement, you have a criminal court—so there are records with regard to those matters in such forums.

When you have check and credit card fraud, it seems to me the people who deal with credit cards, checks, banks, may have data with regard to that, so the way in which you describe the conduct has something to do with where you go to get the data and what kinds of data might be procured.

Certainly that must have been in mind in the chamber of commerce study, which gets to the idea that $41.78 billion are involved in this economic cost of economic crime. On pages 8 and 9 of this study, they talk about bankruptcy fraud, $800 million; bribery, kickbacks, and payoffs, $3 billion. But when they say bribery payoffs, and you have as responsible a body as the U.S. Chamber of Commerce making an estimate, the question comes up in my mind how do they estimate that there is $3 billion involved in bribery, kickbacks, and payoffs? What is the basis for their making that judgment? They must have some kinds of experiences which lead them to such a conclusion.

It may be that those experiences are helpful to research and data-gathering. It may be, however, that they are speculative and require refinement, but the President's Commission on Crime, about which Mr. Cressey just spoke, says:

> The Commission has not been abel to investigate in detail the many kinds of business crime and antisocial conduct, and so it cannot recommend specific measures for coping with them.

That is a point of beginning for your committee, what specific studies. I wonder, Mr. Chairman, whether or not, as it occurred to me while the colloquy of questions and answers was going on between yourself, Mr. Volkmer, and Mr. Cressey, that maybe the U.S. Chamber

of Commerce ought to be before this committee and elaborate on how they arrived at these figures, which might particularize in part how they surmise that such dollar amounts are related to given acts, given conduct.

However, sooner or later I think that you are going to confront one very important fact. There is a reason we use the words "private enterprise," and that is the conduct of most enterprise in the United States is private. You are not going to get persons engaged in management to volunteer that there are kickbacks, either committed by themselves or by their peers. I am not sure how you can get into that area without entering into the area we call managerial prerogatives or private enterprise.

There are some built-in limitations in our economy and our constitutional structure regarding what you can do about such matters, but where you have a forum, where you have a commission of government, a court, which superintends the given conduct of enterprise, there is the most reliable data, because there has been adjudication and an illumination of the facts upon which a judgment was predicated, and you can compile those judgments. What trajectories you can plot from those judgments regarding the incidence of those various activities then becomes a subject for debate.

But as I read some of Professor Sutherland's studies, one of them that I refer to was that 70 of the largest corporations had a history of infractions of various kinds. He called them crimes, but the source was adjudications by governmental bodies or courts, and that was probative, so that the conclusions could be measurable and have utility to the committee, but it would appear that every agency of government that has something to do with white-collar crime would be a source of data that could be compiled, and maybe there were interweavings between the several agencies, because it could be that some entities were engaging in conduct reviewed by several Government agencies who are, if you could take a term from another area and apply it here, hardcore offenders, recidivists, if you will. That would be of some significance.

I do want to underscore Mr. Cressey's point and Mr. Volkmer's point, that as the President's Commission on Crime indictaed, there has to be more probative data in the several fields, and there are things that are already happening.

I am sure that with regard to credit cards, for example, a lot of data is being compiled by credit card people that might be helpful.

Professor CRESSEY. Could I just add a historical footnote to that? To compile the information which Professor Sutherland used in this little book, he worked in the Indiana University Law Library every afternoon for 20 years. Nowadays that would not be necessary. The retrieval methods are much more efficient. We could assemble a team which could in 6 months compile the data that Sutherland compiled. The problem is to get someone motivated to do it.

Mr. CONYERS. Staff counsel Hayden Gregory.

Mr. GREGORY. I wonder if either of you think in addition to the question of whether or not there are enough resources being committed to enforcement, and we are looking at least initially at the Federal level, whether or not maybe there needs to be some structural differences

in that enforcement machinery? What seems to emerge is a pattern in which the U.S. attorneys' offices tend to prosecute those cases that are packaged and brought to them ready to go, not providing a heck of a lot of direction, and at the same time you have got investigative agencies, primarily the FBI, which are very much statistics-oriented, how many cases are generated, and these are very difficult, time-consuming cases, so on both ends there seems to be some slippage.

I wonder if in addition to something more than 5 percent of the resources, whether maybe there needs to be some structural differences or some different direction in this?

Professor CRESSEY. I cannot bring myself to recommend a super anti-white-collar-crime Government agency. It is true that there are so many Federal and State agencies involved in the enforcement of regulatory criminal laws that nobody can figure out what they are doing. There is a clear need for coordination. These days, business people are overwhelmed by governmental regulatory agencies. I do not know how many annual hours a corporation or other business devotes to meeting Federal regulations. But these hours must take a good chunk out of every business budget. The chunk would not be so large if the efforts were coordinated. This agency asks the businessman to do that, that agency asks him to do this, and another one asks him to do something else. We are overregulating business.

I therefore cannot recommend that we ought to regulate some more. But I do see the problem arising from the fact that the prosecutorial part of the Government—specifically the U.S. attorneys you mentioned—are not filled in on what the SEC is doing, what the FTC is doing, and so on. I do not know what the solution is.

Professor NORRIS. I think this concept of coordination is certainly important, using the data already obtained from business enterprise. One of my jobs in the U.S. Army Air Force during World War II was helping to operate a war room in a place called Bushy Park in London. It was a room four or five times as big as this room, and all along the walls were charts, and Mr. Churchill, Mr. Halifax, General Eisenhower, General Eakev, would be common visitors, and they used to draw connections right off the wall, literally, because they could see, by having it demonstrated in front of them, the relationship between what was happening in regard to personnel, property, regarding oil, regarding gas, regarding battle-damaged aircraft, regarding sick call, regarding all the data that we put right in front of them, draw certain connections. The idea of being able to draw certain connections from apparently disparate data is very important.

A member of my statistical class at the Harvard Business School was a statistical officer, too, and later became Secretary of Defense, was Mr. McNamara. He was later called a "whiz kid" because he was able to use data so well. He was part of this process of being able to take data from various sources, put them together in such a way that people could see connections. It could be that when the matter of income-tax-evasion data, bankruptcy fraud data, price-fixing data, illegal competition data, consumer fraud data are put together in some way, you begin to see some patterns and some ways in which conduct to produce what we call white-collar crime can be more apparent.

I share Professor Cressey's apprehension that you might not want to add additional burdens upon enterprise, but you already have lots

of data. The question is using the data in some form of intelligence basis, the way the CIA operates. They get a bunch of data and they begin to interpret and see connections and relationships and draw conclusions. That is a pretty sophisticated operation, and that may have some relationship to what kind of administrative organization structure is appropriate. But there is a lot of data extant. As Professor Cressey mentioned, the retrieval business is far more effective, but I would like to, perhaps it is overly dramatic, but this war-room concept to me has always been a useful technique, because by just walking along the wall you could see the connections, and if you just got a bunch of reports on your desk, you do not quite see it that way. To see the connections and the interweavings is most important with regard to intelligence, with regard to crime or anything else.

Mr. CONYERS. That is as off-the-wall an idea as I have ever heard in subcommittee hearings. In addition to beginning to pull together this information about white-collar crime and recognizing what it suggests, it seems to me that we would be at a point whereby merely stimulating a lot of institutions to do a little bit more, we would have a quantum leap in our understanding and approach that may not be so clear now. If all of these institutions, both governmental, nongovernmental, public, and private, all did a little bit more, we would perhaps be considerably further advanced along the way in terms of understanding the necessary strategy and approach that may not be clear now. So I am not at all dismayed by the formidability of the problem, because it seems to me that once we start hearing from criminologists, once the lawyers and the accountants begin to move, once many of the social science researchers in the public and private sectors begin to devote attention to this area, once we have involved all of these informational sources that are now randomly strewn across the stratosphere, then we can begin to say, "Well, now, these charts do relate to one another; these statistics do seem to suggest certain things." Then the job suddenly becomes more manageable than it might be at the present point.

Steve Railkin.

Mr. RAILKIN. Professor Cressey, in a recent article entitled "Restraint of Trade, Recidivism, and Delinquent Neighborhoods," you presented the proposition that just as there are "criminal neighborhoods" in which delinquents are likely to learn delinquent behavior, there are also so-called corporate neighborhoods in which members of corporations learn to be deviant. Will you please elaborate on this idea, and describe some of the implications such a concept has for public policy? Is this your theory of "differential association," and if so, could you elaborate on that theory for the committee at this time?

Professor CRESSEY. The basic idea is quite simple: Criminal behavior is learned. One learns to behave as a criminal just as one learns to become a doctor or a Congressman or a teacher or a plumber or a bookkeeper or anything else. If I may use a biological analogy which I do not really like, criminality is an infectious disease. People catch it from each other.

Now, if 10 boys move into a neighborhood with a high delinquency rate, the probabilities are extraordinarily high that within a year

or so those 10 boys will have the delinquency rate of the neighborhood. A 1930's study in Los Angeles demonstrated this point quite well. An immigrant group, a Mollacon religious group, moved into a high-delinquency area of Los Angeles. In the first 5 years they were there, 5 percent of the boys who were of juvenile court age came in contact with juvenile court. In the second 5-year period, about 45 percent of the immigrant boys came into contact with the juvenile court. In the third 5-year period, meaning that the group now had been living in the high-delinquency area for 15 years, some 80 percent of the boys of juvenile court age came in contact with the juvenile court. In 15 years, then, the immigrant group took on the delinquency rate of the neighborhood where they lived.

In the article you mentioned, Mr. Raikin, I suggested that corporations behave like neighborhood boys. I fooled around with this idea, but I do not really have any data. My assumption is that industries are analogous to neighborhoods in regard to crime rates. One industry has a high rate of, say, violation of price-rigging and price-fixing laws; another industry has a low violation rate. My hypothesis is that when corporations moves into these "neighborhoods," they take on the white-collar crime rate of the industry.

When I was here last time I noted that this hypothesis cannot be tested unless one is able to assemble the criminal histories of corporations. As a substitute, I presented a little information about recidivism, culled from the old Sutherland data. Corporation recidivism rates suggest that my hypothesis is worth exploring further. There were two mail order houses in Sutherland's study of the 70 largest nonfinancial corporations in the United States. One of them had no violations of laws outlawing restraint of trade, and the other one had one. At the other end of the continuum were moving picture companies. I have again forgotten the number of corporations in the movie industry at the time, but I think there were three. All of them had 20 or 21 violations of laws regulating restraint of trade. In between were two dairy corporations; one had seven violations and the other had eight. The patterning is the thing to ponder. Why do corporations in the same industry have the same recidivism rates? Data on the criminal histories of corporations would make a very good set of charts to hang on the wall of that room that Professor Norris mentioned.

Mr. RAIKIN. You pointed out on page 8 of your testimony that a study published in the Harvard Business Review some years ago found that half of the 1,700 corporate executives polled agreed with the statement that "The American business executive tends to ignore the great ethical laws as they apply immediately to his work. He is preoccupied chiefly with gain."

If that study is accurate, what does that say about the likelihood of success of your proposal that voluntary codes of ethics are an answer to this problem?

Professor CRESSEY. I think it supports the proposal. As I indicated before, I want to pay attention to the half that does not ignore the great ethical laws. I am very pessimistic in this area. It is easy to take a dismal view, which I do. Nevertheless, we should remember that half of the executives were not condemned as immoral money grabbers. We must put our focus on them.

Mr. CONYERS. We want to thank you both for joining us here, and hope you will continue contributing your important views as we move on this course. Thank you very much.

The subcommittee stands adjourned.

[Whereupon, at 11:35, the subcommittee was adjourned, to reconvene upon the call of the Chair.]

WHITE-COLLAR CRIME

FRIDAY, DECEMBER 1, 1978

U.S. HOUSE OF REPRESENTATIVES,
HOUSE COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CRIME,
Newark, N.J.

The committee met at 8:45 a.m. in room 113, Rutgers University School of Criminal Justice, S. I. Newhouse Law Center Building, 15 Washington Street, Newark, N.J., Hon. John Conyers, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Conyers, Rodino, Holtzman, and Gudger.

Staff present: Hayden Gregory counsel; Steven G. Raikin assistant counsel; and Linda Hall, staff assistant.

Mr. CONYERS. The Subcommittee on Crime of the House Committee on the Judiciary will come to order.

Good morning. As chairman of the Subcommittee on Crime I am very pleased to be in Newark, N.J., for the fourth in our extensive introductory series of white-collar crime hearings. I am very pleased to have with us our subcommittee member, the Honorable Lamar Gudger from North Carolina; and the chairman of the Judiciary Committee the Honorable Peter W. Rodino, Jr., of course of Newark, N.J. Congresswoman Elizabeth Holtzman of New York will join us momentarily.

We are very pleased that you are all with us, and I will now yield to our distinguished chairman, whose activities in this area are very well known. Through his Subcommittee on Monopolies and Commercial Law he has led the way with many initiatives on the subject of white-collar crime that have resulted in legislation, and he has been very supportive of the activities of this subcommittee. Of course his crucial role in the Nixon impeachment hearings of 1974—which heightened all of our perceptions about white-collar criminality considerably—is well known to all Americans.

Good morning and welcome, Mr. Chairman.

STATEMENT BY HON. PETER W. RODINO, JR. CHAIRMAN OF THE COMMITTEE ON THE JUDICIARY

Mr. RODINO. Thank you very much, John.

Mr. Chairman and members of the committee, I am really delighted to be here this morning, especially since this is my hometown, the heart of my congressional district, the city of Newark.

I want to commend the subcommittee chairman for initiating these hearings which I believe are going to make an important contribution to the Federal effort in the area of fighting white-collar crime.

White-collar crime is a serious problem, and it is time the Congress took a thoughtful hard new look at the issue. The work of this subcommittee is highly significant.

In June of 1978, the subcommittee began its hearings on the subject of "White-Collar Crime: The Problem and the Federal Response." And the importance and the timeliness of these hearings is underscored by the staggering magnitude of the white-collar crime problem. As a matter of fact President Carter only recently in a speech before the Los Angeles Bar Association, had this to say:

> Powerful white-collar criminals cheat consumers of millions of dollars. Public officials who abuse their high rank damage the integrity of our Nation in profound and longlasting ways. But too often these big-shot crooks escape the consequences of their acts. Justice must be blind to rank, power, and position.

In 1974, the U.S. Chamber of Commerce conservatively estimated that the short-term direct annual cost of certain white-collar crimes to the U.S. economy was at least $40 billion, 10 times the Uniform Crime Reports' estimates for annual losses attributable to property-related street crimes. The chamber's estimate, which was increased to $44 billion annually by the Joint Economic Committee of the U.S. Congress in 1976, including bribery, fraud, kickbacks, payoffs, computer crime, consumer fraud, illegal competition, deceptive practices, embezzlement, pilferage, receiving stolen property, and securities thefts.

And these calculations did not incorporate the 1968 Justice Department estimate that $35 billion is effected each year by the violations of the Sherman Act. Nor did they include fraud against Government programs which a GAO study released last September estimated at $25 billion annually in the seven Federal agencies, excluding the Defense Department, which it studied.

If one considers these figures together, one realizes that we are talking about over $100 billion annually in the area of white-collar crime.

These hearings, hopefully, will document for the public record the parameters, nature, extent, and scope of the white-collar crime problem. The other function of these hearings is to analyze the adequacy of the Federal response to the white-collar crime problem—and the track record to date, I'm sorry to say, is not encouraging.

In a comprehensive report released by the Committee on Economic Offenses, the American Bar Association stated last year that the Federal effort against such crimes is, quote, "underfunded, undirected, and uncoordinated, and there is a need for the development of priorities."

Furthermore, the committee found that, quote:

> For the most part within the Federal agencies with direct responsibility in the economic crime offenses area, available resources are unequal to the task of combatting economic crime.

And the committee also found that in cases where, "seemingly adequate resources exist, these resources are poorly deployed, underutilized, or frustrated by jurisdictional considerations."

This is indeed a sad commentary when we consider the extent, the scope, the effect, and the awful impact of white-collar crime on the United States, its economy, and its people.

Historically and politically the crime problem has generally been perceived in terms of crimes committed in the streets. This is reflected in the fact that to this day the FBI's Uniform Crime Reports only track such so-called index crimes as murder and robbery.

The amount of serious study of white-collar crime by criminologists, sociologists, and other experts has been very limited compared

to the amount of study devoted to street crime. The Law Enforcement Assistance Administration has devoted less than 5 percent of its discretionary grants to white-collar-crime related programs, and to this day the Federal Government has absolutely no centralized statistics-gathering capability to monitor the extent of white-collar crime.

And I must again commend the chairman of the subcommittee for pointing out some time ago that there has been an alarming lack at the Federal Government level of the ability and capacity to gather crime statistics so that we might better be able to deal with the problem.

In the Justice Department as a whole, it is only recently that concerted efforts to upgrade capabilities in the detection, investigation, and prosecution of white-collar crime have been undertaken. It is only recently that the necessity of a national strategy has been discussed. Such a strategy is long overdue and the efforts need to be increased and improved dramatically in the months and years ahead. The hearings which this subcommittee has undertken will serve, hopefully, to enlighten the public and the Congress and awaken at the Federal level a recognition of the need for widening efforts to combat white-collar crime.

And that is why I dwell on the fine work of this subcommittee.

I would like to take this opportunity to really commend its staff and its chairman, John Conyers. I want to take this opportunity also to thank the witnesses who will be appearing here today, especially my good friend and a man who is one of the pioneers in calling attention to the need to make this effort against white-collar crime, and that is the former Attorney General, Ramsey Clark.

I hope that the fact that I have come here this morning shows indeed the interest and the concern of the full Judiciary Committee in this effort. And, Mr. Chairman, I hope that in a period of time we will have been able to gather the data and the statistics and then get underway with some action to resolve the problem.

Thank you very much, Mr. Chairman.

Mr. CONYERS. Thank you very much, Chairman Rodino. These kind words of support and your review of what we have been doing are very important to us.

We note that this is the fourth in this series of hearings. It is also the first white-collar crime hearing this subcommittee has ever held outside of Washington and outside of the House of Representatives. And so we consider it a real honor to be in the district of the chairman of the Judiciary Committee, the Honorable Peter W. Rodino, Jr.

Today, we turn our introductory focus to an important aspect of the "response" to white-collar crime, which is the execution at the Federal field level of the new "national priority" of combating white-collar crime, which is, of course, the responsibility of our U.S. Attorneys. Another aspect of the "working" level we will be examining today is action at the State level to combat this form of criminality. We are going to have, we think, an important set of witnesses: The former U.S. attorney for the Southern District of New York, the present U.S. attorneys for the Southern District of New York and New Jersey, the Attorney General and Division of Criminal Justice director of New Jersey—and we are learning here of the unique relationship between the New Jersey local prosecutors, the county prosecutors, and the New

Jersey State Attorney General, which is something we hope we will be able to go into. To give us a good overview of the problem, we also have Professor Sparks, of the Rutgers School of Criminal Justice; and, of course, the former Attorney General of the United States, Ramsey Clark himself.

These hearings, from a historical point of view track the Temporary National Economic Committee hearings held from 1939–41, the organized crime hearings held by Senators McClellan and Kefauver, and the antitrust hearings held by the late Senator Phil Hart and Senator Kenedy. We are building on a generation of studies on white-collar crime and corporate illegality, and we hope to explore all of the ramifications of such criminality in greater detail in the 96th Congress next year.

We feel very strongly that we are obligated to examine the tremendous impact—perhaps some will say the growing impact—of white-collar crime on society, and we feel that these hearings, which start off without any preconceived notions, are an important way to begin an examination of such a complex subject.

We'd like to point out that the Deputy Attorney General, Mr. Ben Civiletti, and Mark Richard, Chief of the Justice Department's Criminal Fraud Section, testified earlier.

During this introductory phase of the hearings, we are pursuing a few major lines of inquiry:

First of all, we are trying to establish in a broad and general way the question of "what is white-collar crime?" "How much does it cost the American taxpayer?" "What is the relationship between white-collar crime and inflation? The consumer price index? Organized crime? Street crime? The American people's faith in the even-handedness of our criminal justice system?"

Second, we are trying to assess, generally at this point and more specifically next year, the adequacy of the Federal, State, and local law enforcement and regulatory response to white-collar criminality, including our capabilities to investigate, detect, and prosecute white-collar criminals. The testimony to date suggests that much remains to be done by way of improvements in this area, and that a serious national strategy to combat white-collar crime is sorely lacking.

Third, we are seeking testimony regarding the experience to date of those who have worked in this area in order to assess anti-white collar crime strategy options. We'd like to get a prognosis and some recommendations for solutions for the kinds of problems that we are investigating.

Next year, in the second phase of our hearings, we will examine some models of specific white-collar crime cases that might be relevant in terms of helping us understanding the nature of the problem and gauging the ability of the criminal justice system to adequately respond to it.

So I am very, very pleased to have as our first witness in Newark the former Attorney General of the United States, the Honorable Ramsey Clark, who is currently a teacher, a writer, and a practicing attorney.

Mr. Clark attended the Universities of Texas and Chicago. He received a B.A. from the University of Texas in 1949 and his law degree

from the University of Chicago in 1950. In 1961, he was nominated Assistant Attorney General of the United States by President Kennedy, a position which he held until 1965. Subsequently, he was nominated Deputy Attorney General by President Johnson and served in that capacity until 1967, and he later became the Attorney General, a post which he held until January 20, 1969. Since 1969, he has been a candidate for the Senate in New York, a teacher, a writer, and a practicing attorney.

He has given himself very generously to the Judiciary Committee, having testified before it almost as frequently as the need arises to receive his advice and counsel, and I think he is a very appropriate witness to begin our examination in Newark of a subject as challenging as the one before us.

We welcome you, Mr. Ramsey Clark, again and invite you to proceed in your own unique way.

TESTIMONY OF RAMSEY CLARK, FORMER ATTORNEY GENERAL OF THE UNITED STATES

Mr. CLARK. Thank you very much, Chairman Conyers.

Chairman Rodino, Congressman Gudger, let me thank you first for two things. I have testified now at least a few score times before the Judiciary Committee but never outside Washington. And I think this precedent of bringing the hearings where the action really is will prove highly beneficial to the committee, to the community, and to the country. And it is particularly appropriate that they would be in this city that to me so symbolizes the hope for urban America and the city of the distinguished chairman of the House Judiciary Committee.

Second, I'd like to thank you for focusing on what is so fundamental to the great flaw in American justice. White-collar crime, as we call it, seems colorless to many. Yet, it takes us toward the terrible cant or bias, if you will, in our approach to economic crime.

Definitions become terribly important in a field like this, unfortunately. I would really caution against the use of "white-collar" and "street" crime. They are both emotion-laden phrases that have more the appearance of content than substantively they possess.

To me what we are talking about is economic crime. We have tended in the past to call it property crime as distinguished from violent crime. And even there it is not too easy to draw the line. If a surgeon knowingly commits unneeded surgery on a human being because he wants money, is that a less violent physical assault on an individual than to be mugged in the streets? I have to tell you that at a purely moral level I find it far more reprehensible. Yet, we will think of it as a property crime overwhelmingly.

When we approach the problem of economic crime, we have to look at our value patterns. And sadly, to paraphrase one of Justice William O. Douglas' favorite quotes, most people are as unaware of their value patterns as they are of the air they breathe. We are a very materialistic society. We love things. It is perhaps our major characteristic flaw. We glorify the power of wealth. Our heroes, to a very considerable degree, are those who have attained—and not always by means we would deem ethical—great amounts of money.

Those value patterns pervade the society. They afflict, in their difficult ways, the poor as well as the rich and aspiring rich. Yet, the poor are tightly constricted by laws that will severely punish them, that are clear and unambiguous and endorsed by hundreds of thousands of police on the streets. When was the last time you heard of a conviction and a penitentiary sentence for an employer using illegal immigrants that he may have brought across the Rio Grande or Caribbean himself and, in a form of slavery, if you will, used their bodies and their sweat?

Yet, how many young Americans, as did George Jackson, go to prison for very minor property crimes?

It has been 75 years since George Bernard Shaw observed that, "In England we send a boy to the borstal for stealing a stuffed potato, but a rich man who has successfully fleeced millions is sent"—no disrespect intended—"to the parliament," which is his way of saying that we glorify one type of acquisition and are horrified by another.

You see, in the area of white-collar crime, we haven't made many things that are terribly wrong themselves criminal. What is to prevent a lawyer from charging the family or the folks who care about a young person who is indicted for crime everything they possess, holding them in the most coercive of circumstances—their child may go to prison. So the home is sold and wedding rings and all the rest. But beware of the young boy stealing the stuffed potato because he will be sent to the borstal.

The line at which the law approaches the conduct of people with access or power for unlawful diversions or for unethical diversions or antisocial diversions of property is not clear.

Now, let's look at what we do for a minute. Annually, in the more than 10 million crimes reported to police and included in the uniform crime reports, better than 90 percent—it ranges as low as 89 percent some years but in the main it's above 90 percent—are what we call property crime. You are talking about millions and millions of burglaries, larcenies, and thefts. When you say "street crime," you invoke fear, "that young black," "that young Puerto Rican," "the shadow in the night." That scares the hell out of Americans.

Well, that is not street crime. Maybe the automobiles are on the streets. Burglaries and larcenies and thefts aren't on the streets. We are not talking about armed robbery now. We are talking about the ways poor people have of fulfilling the American dream for themselves. It requires the adverse possession of other people's property.

We don't prosecute people for violating the Fair Labor Standards Act. You haven't seen anybody go to the penitentiary for paying people less than the minimum wage But if that person steals food, if that person steals a color television set, we will send that person to the penitentiary. Overwhelmingly the first offense, if it doesn't involve running away from home, involves property crime—by poor people who have no access to property. People who work in banks embezzle. They don't have to take all the risks involved for those who are born to lose and rob a bank. The money diverted illegally by bank embezzlements—which is reported—by about three times to one exceeds all bank robberies, because bank robberies are all reported, and you have to report it or you don't get your money back from the insurance.

But embezzlement is very embarrassing—first, to discover it. Second, if they will pay it back you will let them pay it back. It is kind of embarrassing to have to tell your depositors that somebody who works for you is stealing their money.

The American Management Association, not in my experience a terribly radical association, has estimated about $30 to $40 billion against businesses annually in the United States.

Now, the fact is, Chairman Rodino, if you add up all we know about white-collar crime, it would probably exceed the gross national product annually. Some people say that is impossible, but when you start thinking about it, it's not. Economic crime just transfers things, so you can transfer it three and four times over. So the crimes they put at $30 to $40 billion. They put at $5 billion pilfering.

It is interesting to look at the differences between pilfering and what we call crime in the uniform crime reports. I think this helps get us closer to what we are talking about. Pilfering is by employees of corporations that have access to the property and a possessory right in a sense. "This pen belongs to the company. If I use the pen at the office I have a right to possess it there. They supplied it to me for that purpose. But I am going to put it in my pocket and take it home, and I will put three more in so the kids will have pens to do their homework, and as long as I'm at it, I see some other things, including cash in the cash drawer." It didn't require an adverse approach or adverse possession of it.

In that sense economic crime, when we finally put laws on the books that address it outright—because in the main it's been a lot of times trying to make money not working—and it may be gambling, it may be on the stock market, it may be with the idea of picking up this company or that, it may be, "How can I charge more for my product?"

I remember Phil Hart at one time estimating violations of the antitrust laws may illegally divert annually as much as $200 billion. We have had one price-fixing conspiracy which was estimated to divert illegally each year of its existence more money than all the burglaries, larcenies, or thefts in the United States combined. That was the electrical company.

When we say "white-collar crime," that doesn't sound so bad. That may be a terrible thing. It may mean that somebody didn't have a light in the hallway because bulbs cost too much. And suppose it finally comes down to milk or bread, as it does in price fixing. That means those kids didn't have milk because they are poor. You are taking milk from young children or babies who need it for their teeth to get hard by your price fixing.

And yet, the business community isn't terribly horrified by that. It has never understood the use of the criminal sanction against that sort of thing. But it understands intimately and vitally why you use a criminal sanction against some kid who steals your Cadillac while you are in the office working so hard.

When you look at the application of the law you see that it goes toward poor people committing crime. And those 90 percent of the uniform crime reports statistics are one individual at a time, and we are wiping out their lives very often. We are sending them on a road to a life of crime.

And yet, the business community isn't terribly horrified by that. It people—overwhelmingly. The percentage that are poor is greater than the percentage that is male. And it is 97-percent male.

Now, this is an enormous social cant that we have to recognize, and the meaning of our failure to recognize it or to tinker with it in the sense of: Well, there are some business people that do some bad things. They cross the bar, and we need some sophisticated ways of prosecuting and indicting securities fraud. And we will spend a lot of manpower and we will take incredibly good investigators, the Carmen Bellinos of the world, and they bring all the account sheets and ledgers in, and we will spend hundreds of thousands of dollars going over this one.

It is important to see that that just touches the surface. We can become much too esoteric about the phenomenon of white-collar crime because it is pervasive, reflects our moral values, reflects the character of the country. And it creates an enormous inequality in the way our Nation, our Government, of, by, and for the people, addresses individual freedom.

And equality is the mother of justice. As Aristotle said, the chief cause of the revolutionary impulse is the desire for equality.

On television and elsewhere through our value systems we glorify the acquisition of property by the middle class and rich, and we punish the poor for stealing. And it reflects really the same value pattern. It is a matter of opportunity. It is the same characteristic that permits a person to steal, to commit a burglary, a larceny, or a theft that permits someone to have different opportunity. It is interesting to see how when a middle-class or rich person engages in shoplifting we think they are crazy and call them kleptomaniacs, but when a poor person does it we just think they are evil, they've got bad genes or something, and we want to beat them down and put them in the penitentiary. And that is how we rationalize. The power system in the society that makes the laws—and it is not evil; it is just human nature—sees the type of crime that is available as not evil. It has great compassion when it learns the treasurer of the church has embezzled from its funds because she is such a lovely person, you know, and the idea that you'd ever sentence her to prison seems wrong. But something has to be done, so you work on restitution, and sometimes there may be an indictment. We don't see, when this gangly 16-year-old kid comes before us, that he was just acting out what others have been doing.

So I think the definitions are imperative. I think we have to look at economic crime. I think we have to see that it comes from affluent and materialistic society, and it is applied very unequally toward the poor. And if we don't, then we will continue the division in America that threatens our values, which are freedom and equality and justice.

One reaction that we tend to have—and this is perhaps the more controversial part of my thinking on this subject—is: What do you do when you apprehend persons caught clearly in white-collar crime? Obviously, if you enforce the statutes in white-collar crime you wouldn't be able to touch the diversions of property. The diversions of property that occur by people who have access to property far exceed—it is not tenfold, it's hundredfold—the diversion of property by poor people.

If the purpose of creating criminal sanctions against property crime is to inhibit and prevent diversions of property that you don't want to happen—stealing and cheating and all the rest—then you have to assume that if that is your real purpose you would allocate your resources where most of the money or resources or values are being diverted. But we don't. We keep it, for various reasons, on the poor people, which makes for a state of repression—the use of criminal sanctions against poor people.

Do you then put middle-class people in prison for it? The only justification I see for it is that if rich people and middle-class people go to jail, we will do something about jails.

But it doesn't work that way because they go to Allenwood, don't they? We set up a place just off the golf course down in Alabama where you are in a little cottage where you don't get to play but at least you see the other guys in the rough swinging and at least keep an eye on your form that way. [Laughter.]

The idea of us putting businessmen into jail in Newark or a penitentiary in Trenton is very, very remote. We have to face this problem in a slightly different way. Prisons don't work. Equality of injustices is no better than unequal justice. And the idea of using the penal sanction against economic crime is a very bad idea that has caused an enormous amount of violent crime among other things.

I believe that the sanctions applied toward those of advantage should be greater than those with disadvantages, for any variety of reasons. But I think the sanctions should be other than sanctions that don't work anyway. And just to take out our meanness, because we have mistreated the poor, on those who are first caught in white-collar prosecutions, won't do the job.

The difficulty with this analysis is it means we have to have a revolutionary new approach to how we treat poverty property crime. Because as long as we imprison them, it is hard to see how we can refuse to imprison rich people. The solution, it seems to me, is not to imprison people. The sanction to be used against the middle class and rich ought to be the economic sanction. It was agreed which forced them to do it, and the most equitable thing would be to take away from them that which they value the most and apply it to beneficial purposes and apply their energies to valuable purposes.

If a doctor has been convicted of a crime and there are a lot of sick poor, I'd rather have him out treating the poor rather than sitting in the penitentiary getting ulcers and thinking how hard life has been to him. The idea that might make it penitent might have worked with William Penn's followers, but it won't in American society. He will get bitter—not that he will go to prison anyway because that's too rare.

So I see tightening up on our statutes that do not permit these vast conversions by people of opportunity and people who have engaged in economic crimes in a more uniform fashion.

Thank you.

Mr. CONYERS. Thank you.

Chairman Rodino for questions or comments.

Mr. RODINO. Thank you very much.

Mr. Clark, first of all, let me say that your statement is certainly one that is going to challenge those of us who have to deal with this

problem. The scope of what you have had to say concerns me, at least as to when we might at last really get to that point where we are going to be able to deal with this problem and deal with it effectively. It seems that we are going to have to change some basic attitudes in our society, its values, and whatever else may be necessary. And God knows we are already frustrated trying to find out some of the answers; if it is going to take us too much longer, I don't know where we are going to go.

Just to begin, is it not a basic change in approach that we need to begin to undo some of the inequality in sanctions and penalties that exist in our criminal justice system regarding white-collar crime?

Now, is it necessary that we begin by saying that we've got to change the total mental attitude of our society as to the way we treat crime in general?

Mr. CLARK. I guess I think that to make a significant and permanent change it will be. You know, the profession of medicine doesn't really worry about medicaid fraud that much. Yet, it threatens the very hope for delivery of health and medical care services to the poor.

Consumer fraud doesn't sound so bad to people; yet, it is a more dangerous ripoff. It causes food poisoning in the ghetto, and malnutrition, and many other things.

So it seems to me finally what the law can do is not place a whistle in the executive's mouth and have everybody skate the other way when it's blown. That is not possible. It can define values and set us in directions. And we have come to a terribly schizophrenic approach to economic crime, and unless we can liberate ourselves from that we will continue overwhelmingly to punish the poor for doing what we envy the wealthy achieving.

Mr. RODINO. I have heard the present Attorney General, Judge Bell, say in discussions with me when we have talked about the problem of antitrust violations—and you spoke awhile ago about the late Phil Hart having once said that antitrust protections may cost the consumer $200 million—Judge Bell has said we need stiffer penalties. Merely fining large corporations may not be enough.

Would you say, then, since the present Attorney General has said that maybe the penalties that we mete out in antitrust violations aren't severe enough, that corporate finances are not threatened by fines, that perhaps we should send some of these corporate executives to jail—that that might have some effect?

Well, first of all, I don't think it will be possible. but then again it won't have the desired effect of setting things straight or maybe in the end being able to cope with this problem and resolve this problem.

Mr. CLARK. Since General Sherman's brother's law was put on the books in 1890, we have sent fewer people to prison than you can count on your fingers and toes, I think. Last time I counted there were seven. This was some years ago, before I came into office. And I can almost count the others in my head just by coming through the years.

It is interesting to note who the seven were. All were labor. We have always said we don't use the antitrust laws against labor, they are exempt; yet, certain labor practices aren't, and they were all labor. We meted out a few sentences.

How much money has been diverted? Hundreds of billions of dollars since 1890. What is the impact? Lost jobs, concentration in the

economy with the loss of opportunities, a threat to our economic system for those who believe in the cause of this failure of integrity.

But that is where power in America is. And the idea that you are going to employ the penal sanction against those people of power is contrary to human experience.

I am a southern protestant so I can say this. It is rather indicative of southern protestantism that you would use the whip as the means of achieving conformity. How do we know to cause people to act as we would have them but send them to prison. That is what we do with all the maladjusted so we will do it with these businessmen, too. That is not the answer. The fines can vary enormously.

I remember the debates in the late 1950's on whether the Sherman Act fines should be increased from $5,000 to $50,000. Well, you made $50 million on that violation. Yes; $50,000—your attorney's fees cost you 10 times that. [Laughter.]

A fine is ridiculous. That doesn't mean you can have full restitution. That gets serious. It doesn't mean you can have economic penalties that are very substantial against the individual involved, and say, "You wanted to get big and rich and you did by violating the law. Now we are going to put you back where you were."

We have a fifth amendment which says you can't deprive people of property without just cause. But it doesn't apply to ill-gotten gains in these situations.

It is money that caused them to do it, and prison is something they see on the late movie, and that's probably all they will ever see of it.

Mr. RODINO. General, one last question. It is often asserted that sending the middle-class Watergate offenders to prison was one of the greatest things for achieving prison reform. Might not sending white-collar economic criminals to prison not have a similar effect?

Mr. CLARK. Well, I haven't been in but one jail this week, which is an unusual week because it's Friday, and if they are better I can't tell it. I happened to follow Mr. Colson into Attica a few months back, and if he left anything behind other than some false hope and misunderstanding, I don't know what it was. It was very interesting to watch Hoffa get into prison reform. Hoffa was comfortable; let's not kid ourselves. Sam Giacona when he was in prison in Chicago had carpets on his prison cell and they brought food from the best restaurants in town.

Watergate—the tokenism of it, the inequality of punishment, the place of confinement—I'm sure it was a terribly traumatic thing for the individuals involved, but the probability of others being deterred by it is virtually nonexistent, in my judgment, and if the prison system in this country is reformed, I haven't seen it. The fact is you can't reform it. There is no beautification system that can do that. They don't work.

Mr. RODINO. Thank you.

Mr. CONYERS. Mr. Lamar Gudger.

Mr. GUDGER. In general, there are so many of these classes of what we have referred to as white-collar crime or economic crime. One, of course, is bid-rigging on Government contracts or on private contracts. And yet, there is virtually no real system in place to discover that kind of a criminal offense, and we seem to be closing our ears to

the opportunities to use electronic surveillance in even other fields where it may be needed.

I see where price-fixing was mentioned in the Sherman Antitrust Act. I see also, of course, the merchandising pilfering that is taking place all the time, but a system of laws seems to have grown up within the commercial community of dealing with that, where it never gets into prosecution. There is some sort of an arrangement whereby the offender is allowed to make up by restitution to his employer whatever he has taken, and then an admission that he was rightfully discharged. We see this happening. I know as a district attorney that only perhaps 1 out of 20 instances of embezzlement within the merchandising community ever reached my office.

But we are talking about so many areas in which the crime itself is ill-defined and the machinery for its discovery is inadequate, and the punishment is, as you say, difficult to assess. Where do we begin? Do we begin simply by saying that economic punishment is the best punishment for the economic crime? If so, maybe the commercial community has found its own solution—the merchandiser. Or do we have to admit that maybe we are going to have to erect a system of values—we started out talking about values—and that we are going to have to find suitable punishment, and maybe not just an economic punishment for frequently the economic rewards have dissipated. The embezzler having spent his money in Palm Beach or somewhere else?

Mr. CLARK. Let me go back to your first illustration of bid-rigging because it opens up interesting opportunities to explore the difficulties in definition.

How much money do corporations spend to convince contracting officers in the Pentagon that they ought to place this with their company without competitive bidding? And finally, how many of the contracts and what proportion of the whole Defense budget goes without competitive bidding? And what does that mean in terms of concentration? Why is it that we had about 15 major airframe manufacturers at the end of World War II and by 1967 we only had two manufacturers of commercial jet aircraft, with the Pentagon purchasing to a very considerable degree? That is where the prototypes came from and that is where the economic possibility of the development came from. Yet, we never frown on that.

But that is so obviously a part of it. In fact, companies vie to get those people that are most effective—the admiral who has just retired—in achieving that next contract. And they pay fancy prices for it.

So it seems to me that what you have to do is pick your priorities. In competitive biddings, at least where the Government is concerned, you can have tough laws and know it. You can require competitive bidding and enforce it rather strictly, and where you see someone has come in with a bid that just seemed to imply some inside information or something, you go after it. You can have inspector general inside ombudsmen for that sort of thing. But until you come to grips with it at that level, it seems to me when you look at the history of governments the first use of the panel sanction has always been the protection of Government function. Treason was the first one because the first thing you have to do is maintain your own authority. Now when

you look at the range of activities we are engaged in and the amount of crime against the Government in the sense of not just expense vouchers on your income tax—I wonder how many people don't fudge on that, you know. I don't mean to comment badly——

Mr. CONYERS. Are you asking for a show of hands?

[Laughter.]

Mr. CLARK. I have too much respect for the fifth amendment to ask for a show of hands.

[Laughter.]

If we began—and there is so much at stake—with a study to be sure that to the highest degree possible we had a system with integrity in the delivery of public funds for health care—we don't, you know. We let the GAO look at it 4 years later with inadequate resources, and they are tackling tough people. We debate about whether we ought to publish which doctors are making $250,000 a year. You couldn't run that many cattle through the stockyard in Chicago for one person—and a fee-for-service thing.

There is no question in my mind about the nursing home service. The very design of the law encourages, I would say, crime. It is cost-plus. Build in as high a cost to that new nursing home as you can because it will determine your reimbursement rate. And your cash stream is how you measure the value of the property. And your cash stream, your income flow, is going to come from reimbursement.

So what you do is you've got your friends who are helping you build it and the kickback and using subsidiaries of relative's companies and your own companies and all the rest, and you get the price up as high as you can, and then the poor folks are shorted on food and other things that they need to have a decent life.

So it seems to me that a place that this committee could well focus is in insuring to the highest degree possible through the use of law integrity in Federal delivery systems.

I think a whole lot can be done there. That is pure white-collar crime when you think about it. I really don't like the phrase of "white-collar crime." But I like it a lot better than "white-collar illegality." I am very keen on Mr. Civiletti, he's a fine man, but I think he speaks volumes when he uses the phrase "white-collar illegality," because that is putting it down even further than it was before. At least with "crime" they say, "Hum, jail," but "illegality" sounds like it wasn't even a parking offense—jaywalking, maybe.

I think we have to begin with the big picture now. On economic sanctions this requires a lot of thinking, but the fact that the embezzler went to Palm Springs or Palm Beach, whichever he chose, and spent all his money, doesn't mean you can't apply economic sanctions against him because he still aspires to wealth and comfort if he is married. And they will be coming back, and you can have as an alternative to incarceration in all those cases—people laughed about it, but I thought Judge Carl Muecke's sentencing in the milk price-fixing cases was very imaginative and very constructive, and the outcome was interesting. For conviction for price-fixing in Arizona in milk—or a nolo plea; I think he may have accepted one—he gave maximum fines against the companies and the individuals.

He then converted the fines into milk at cost—I'm not sure of the legality of the sentence in that regard—and then required the execu-

tives to deliver the milk themselves over a period of 6 months to poor children in the Phoenix area who weren't included in milk programs because the community didn't favor the milk programs. And they spilled a lot of milk. These men didn't know how to handle a big can. But they'd come in in their business suits and put on a white jacket and get in the back end of the truck and roll the trucks out and have a few accidents and drive to the schools and deliver milk, and they saw a few poor kids drinking milk and they hadn't seen that before.

And several commented later it was a revolutionary experience in their personal lives, that they had no sense of what it meant to price-fix; they thought that was the way you made money and that is what they were in business for. And suddenly the realization that it affected people's lives, that there were families out there who had a little trouble with their budgets and might not cut out the beer but would cut out the milk.

So that type of alternative sentence on Spiro Agnew—I have as much reason as most, I think, to think that he should be punished, although I think punishment is a crime—but I think he could have gone to the ghetto in Baltimore and done some constructive work for a year or two. When I'd say that, people used to say, "What?"

[Laughter.]

And that always challenged me. And one time I made the mistake in a large gathering of saying he could work in a day care center if nothing else, if you decided he couldn't handle a paint brush or something. Some woman stood up in the back very angry and said, "Not with my kids, he won't." [Laughter.]

But that is just a prejudice. I think that type of service that diverts you from your intense desire to make money for awhile and shows you what it's like to live on the other end of the spectrum might give us a little religion.

Mr. GUDGER. Thank you, very much.

Mr. CONYERS. From your experience in government, what do you see as the proper role of the Department of Justice? In other words, what we already know is that we have very limited resources. Do you have recommendations as to how we can build them up?

Mr. CLARK. I see the role of the Department as being principally in two areas.

One, is what you might call leadership for State and local government.

We created an Office of Crime Against Consumers back in the late 1960's—never had one before—put two people in it and thought we were having a tremendous impact. But what we realized was the Federal Government's role in street-level consumer crime—probably a lot more of that crime is on the streets than is reflected in the Federal uniform crime reports.

We found with the encouragement of LEAA—we didn't have LEAA at the time; this was before the 1958 action—we could encourage the establishment of investigation and enforcement potential at the local level and at the State level to create a new awareness and try to magnify it to show the district attorneys and the county attorneys and the city attorneys and the State attorneys general and others the importance of this area, and to create a sense of competition as to who would provide the leadership and pioneer the way.

I think that is one area in which the Department of Justice can have an enormous impact.

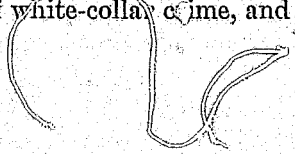
The other—and it requires a strict observation of one of the three basic tenets of our Constitution, federalism—is to show that you can have excellence in enforcement of laws that are appropriately Federal. And this involves first the integrity of the Federal Government in its operations itself—and that means developing ways to show that thousands of governmental programs, whether it's the Department of Defense contracting or HEW programing, or other programs, because the tragedy of the failure of those programs is not so much the loss of the money as the corrupttion of Government and respect for our system. It is the most destructive and corrosive thing possible. But to show that you can really do a good job.

Now, the idea that the Department of Justice had anything to do with defense contracting would have been terribly shocking. That is just none of our business. I can remember believing that the enforcement of the antitrust laws was not significant in comparison with Pentagon purchasing. The Government purchasing has by far a greater impact on vitality in the economy than all the Sherman Act could do. I am a romantic. I'd rather spend my time on that than anything else; it's good fun. But it can't begin to do what the Pentagon purchasing can do because there billions and billions and billions are going out into the economy and they need to go out in ways that provide efficient and effective delivery of goods and services that are needed for the public interest.

I have mentioned the medicaid programs. We ought to show that you can have integrity in those. It is white-collar crime where you don't. And that requires new laws, and it requires imagination in the use of policing.

But you know, even in LEAA—and here is something right in the Department of Justice—nobody looked to see how the funds were expended, and 2 or 3 years later GAO came along—and Justice always claimed that GAO was unconstitutional anyway, "What business does it have policing the policeman?" And in LEAA that is your own back yard—or front yard, depending on which way you face—you ought to know that there is absolute integrity in the expenditure of those funds. And the saddest thing is to see something like the poverty program, as we called it, and attributing to the failure and creating hatred by a belief that there was so much corruption in it and, "You can't trust those poor people because they are corrupt and no good," and, in fact, if we'd gotten out of the offices an down into the streets—because the poverty programs are in the streets; those folks ain't got no other place to be—and insured integrity in those programs as could have been done by building in inspection and delivery systems that assure that, it would make an enormous difference.

Now, it is so easy to sloganeer in anything, but in crime—in nearly everything sloganeering carries the day, fear of crime and everything else. It is easy to come in and wave the flag on what you're going to do about white-collar crime when, in fact, you have just symbolized the problem by taking on a few big cases—you are worried about numbered bank accounts in Switzerland, and to you that represents the heart of white-collar crime, and besides you get to go to Geneva once



in awhile even though they never give you the name behind the number.

But that is a very small amount of white-collar crime. It tends to be more organized crime when right back home in your own back yard you have white-collar crime all over the place.

So I think we ought to avoid making it too esoteric and drive for the obvious. We have the most pervasive combinations of economic crime all over the place, but we should begin with integrity in the government delivery system itself in the Federal area as a prime area, I would say.

Mr. CONYERS. Well, you have outlined the dimensions of the program in your own unique way, and I hope that you will follow us through our examinations and ultimately the conclusions and action that we hope will flow from our investigation.

On behalf of the subcommittee, we are grateful to see you again, and we are in your debt for the contribution you have made to making us see the white-collar crime problem in an even wider light.

Thank you very much, Ramsey Clark.

Mr. CLARK. Thank you very much. You have a very exciting opportunity, and I appreciate your efforts, and any time I can help in any way I hope you will call on me.

Mr. CONYERS. Thank you very much.

The Chair acknowledges that Mr. Whitney North Seymour is with us, and we are going to call him as a witness after we have Prof. Richard Sparks, a criminologist with the School of Criminal Justice at Rutgers University, join us as a witness at this point. I am going to call Professor Sparks first.

Mr. SEYMOUR. Then I am going to ask to be excused because I have clients waiting in the city. Can I ask to be excused and come back at a later date?

Mr. CONYERS. You may. I didn't realize you were under such time constraints.

Mr. SEYMOUR. I am. I only arranged my schedule with the assurance of staff that I'd be the second witness. I have people waiting for me.

Mr. CONYERS. There is no reason we can't bring you on now. I apologize. I didn't know you had the understanding you were going to be second.

Mr. SEYMOUR. I promise the professor I'll be fairly short, but I have a thought or two I'd like to share with you.

Mr. CONYERS. Surely. We are very delighted you are going to be with us and we had no intention of inconveniencing you whatsoever.

Mr. SEYMOUR. Thank you very much.

Mr. CONYERS. We welcome Mr. Whitney North Seymour, Jr., who is widely known for his public service from 1970–73 as the U.S. attorney for the southern district of New York. Mr. Seymour has been past president of the New York State Bar Association. He is chairman of the Special Committee on Criminal Justice of the Association of the Bar of the City of New York. He served as a member of the New York State Senate from 1966 to 1968, and his concern for our subject matter is one that we are very deeply indebted to him for. Mr. Seymour is the author of several books on criminal justice problems, including "Why Justice Fails" which is widely used in college courses.

We do have your prepared statement, and it will be incorporated in its entirety at this point in the record. This frees you to proceed in your own way.

[The statement follows:]

EXCERPTS FROM STATEMENT BY WHITNEY NORTH SEYMOUR, JR., FORMER U.S. ATTORNEY, S.D.N.Y.

We have made a lot of progress in the past five years in raising the consciousness of the courts, the public, and the business world to the undermining effects of white collar crime on the moral climate of our country. Judges are more aware of the need for evenhandedness between business school graduates and high school dropouts. The public has recorded its disgust at unethical behaviour in both government and the board room. Business leaders have spoken out against illegal practices in the business community, and a number of corporations have shown commendable leadership in voluntary disclosures and house-cleaning.

But the problem of white collar crime is still with us. It will continue to be a serious blight on our national pride and character until two major steps are taken. These are steps which the Congress of the United States can implement, and I commend them to your consideration.

1. A means must be found to encourage the growth of an independent press which is not dependent on big business.

2. A vehicle must be created for coordination and planning of federal law enforcement activities nationwide against white collar crime.

NEED FOR AN INDEPENDENT PRESS

We have witnessed a dramatic shift in newspaper ownership since World War II, as more and more business people have discovered that they can be good investments. Newspaper companies listed on the stock exchanges in 1975 produced an average return on stockholders' equity of 13.8 per cent. The return on invested capital was 12.1 per cent and pretax profits averaged 17.4 per cent. That makes for a pretty attractive investment.

A component part of this new business approach to newspapering has been the buy-out of independent newspapers at an alarming rate. Ten newspaper chains now control one-third of the nation's newspapers and what is read by 20 million newspaper readers. Newspaper ownership has also become involved in the building of big conglomerates, with enormous purchasing power, and with efficiency experts who know how to trim the "fat" out of newspapers so they will show a good profit margin.

The key to good profits, of course, is paid advertising. The big newspaper advertisers are also usually big business—and therein lies a basic conflict of interest. If an investigative reporter turns in a story on unethical conduct by a business executive, he risks offending a big advertiser, or a friend of a big adviser. If advertising lineage is reduced as a result, profits will go down. Somebody may lose his job.

It is self-evident, therefore, why investigative journalism—which once placed heavy emphasis on exposing malefactors of great wealth—now prefers to focus on elected officials and judges instead. Rarely, if ever, does one read an exposé of business corruption or wrongdoing unearthed by a reporter. The news stories about white collar crime simply report the results of official investigations conducted by law enforcement agencies, not the results of investigative journalism.

Another aspect of big business control of the press is the disappearance of competition between individual newspapers. Today less than 50 of the 1,550 cities in the United States with daily newspapers have two or more under different ownership. No longer do reporters need to work hard at their own investigations in order to "scoop" the other guy. They and their editors and their publishers have total control over what will or will not be investigated, and what will or will not be published. No one can beat them out.

This very unhealthy situation is one of the major reasons we cannot combat white collar crime with the same tools we use against corruption or malfeasance by public officials.

I urge your committee to consider proposing legislation to provide a form of loan guarantee to permit experienced journalists to obtain the huge sums of

capital needed today to start off competing independent newspapers in the one-newspaper towns in America. Journalists who do not have to worry about what the stockholders or advertisers will say when they step on some toes.

STRATEGIC PLANNING FOR FEDERAL LAW ENFORCEMENT

The one overriding defect in Federal law enforcement is the lack of any meaningful coordination in the use of enforcement resources. Policy-making on the national level is nonexistent in most areas of criminal justice. Individual United States Attorneys are allowed to set their own enforcement policy in important and sensitive fields. Although a certain amount of free enterprise is desirable to help generate new ideas and test out new concepts, as a matter of long-range operations, studied anarchy is not desirable in Federal law enforcement. The wide differences in the types of cases prosecuted in different Federal districts and the wide range of sentencing policies as applied by the courts, clearly demonstrate the need for better coordination. By repeating expensive lessons on a district-by-district basis, we waste precious resources—not to mention violating the concept of evenhanded justice.

Federal and state law enforcement could be dramatically strengthened by the creation of a "National Law Enforcement Planning Council", similar to the Council of Economic Advisers, to report each year to the President on the state of crime and law enforcement and to recommend the proper allocation of human and fiscal resources. The council could propose a national enforcement policy in such fields as white collar crime instead of leaving enforcement in its present sporadic state, dependent entirely on the interest of prosecutors in particular districts. The council should establish national enforcement goals and policies, pool intelligence, and exchange practical experience on effective law enforcement techniques. Existing resources can and should be used much more effectively and economically.

Some of the areas that need national law enforcement planning include misuse of secret foreign bank accounts, consumer fraud, corruption in the administration of justice, urban-renewal frauds, election law abuses, as well as narcotics distribution, hijacking and improper delivery of government-funded programs and services. The goal is to pool experience and insight into law enforcement problems with participation from specialists and technicians other than prosecutors and investigators.

I urge this committee to sponsor such legislation at the earliest opportunity.

Mr. CONYERS. We welcome you before the subcommittee. Thank you for coming.

TESTIMONY OF WHITNEY NORTH SEYMOUR, JR., FORMER U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK

Mr. SEYMOUR. Thank you.

Mr. Chairman, Mr. Rodino, Mr. Gudger, I had the honor of being U.S. attorney in the southern district from 1970 to 1972. As you probably know, the southern district U.S. attorney's office has really been the pioneer in white-collar crime enforcement. Primarily, that has been because of the accident of its being in the money market where particularly securities frauds and then foreign bank accounts and other types of economic crimes took place.

But also it resulted from the fact that the Southern District had a tradition of independence and excellence in law enforcement and has had the advantage of having leaders like Robert Morgenthau, my predecessor, and Paul Curran, and Robert Fiske, who is currently the United States attorney, men with the imagination and the ability to create a white-collar crime program notwithstanding not only a lack of interest but a lack of capacity in the Department, frequently, to understand the nature of those enforcements, to participate in them, and to provide support for them.

I have watched with great interest as things have changed in recent years. I see a number of improvements in white-collar crime enforcement. But I also am aware there are a lot of things still to do. And what I'd like to address with you today are some specific suggestions as to what I think your committee could do in making recommendations to the larger committee and ultimately in proposing legislation to the House.

I'd like to talk about two or three nuts-and-bolts questions on actual enforcement, and then I'd like to pose two fairly major and I think innovative concepts that I think could have a significant impact.

One of the fundamental problems in combatting white-collar crime through the Federal establishment has been the lack of adequate human resources. I have to say that the Congress of the United States has been one of those directly at fault. It is not a matter of simple economy that there are not sufficient IRS agents. It is a matter of policy.

The fact is that the IRS can demonstrate that it is a profit-making enterprise to hire IRS agents. They return twice as much to the Government as they cost. And it makes no sense at all from an economic point of view not to have sufficient IRS agents. It is because the people who set policy in this area have decided that so much is enough. I really think that you all could do well to challenge that policy decision and question why there is not a more sensible economic approach to the full dollar value to the Government of additional IRS agents, not to mention the social and ethical value.

That applies, I think, equally well in some of the other enforcement fields.

That is the first proposition I commend to you.

The second is that if there is one area that the Federal law enforcement establishment has a particular competence in and a particular priority responsibility for, it is the area of prosecution of white-collar crime and official corruption, two things which really often go hand in hand, in particular in communities where local law enforcement is either captive by business or unlawful enterprises, through the corruption of the police or the prosecutors or even the courts, or even the legislators. Under these circumstances there is nobody around to police, unless it's Uncle Sam.

The problem is that the jurisdictional handles available to Uncle Sam are very, very limited. I commend to you again a review of the actual substantive statutes available for Federal prosecution in this area. I think it has been a mistake to limit those simply to interstate commerce rubrics as a basis for jurisdiction. There are other Federal interests that are directly impaired by white-collar crime and local corruption that are properly the subject of congressional interest.

Now, one of the [illegible] that I have had a direct hand in is the subject of disparate sentencing, a subject that Mr. Clark spoke about quite feelingly, and properly.

In the Southern District of [illegible]72, I was the one who thought up and directed the study of disparate sentencing in that district, which is still, I believe, the only one in existence. The result of that study was the appointment of a Second Circuit Sentencing Committee by Chief Judge Irving Kaufman, of which Harold Tyler is the current chairman. That Committee encouraged studies of disparate sentencing by

the Administrative Office which confirmed what our initial study had shown.

I am happy to say that current work by that committee, of which I am a member, indicates that today in the Southern District of New York disparity has been very substantially eliminated. That is to say, there appears to be much less disparity between rich and poor, white-collar and street-type crime.

I think that is the result of the raised consciousness on the part of the court to that problem.

Now, let me put to you two fairly large, but I think useful, suggestions for affirmative legislative proposals. I think your committee may wish to recommend.

We have made a lot of progress in the past five years in raising the consciousness of the courts, the public, and the business world to the undermining effects of white-collar crime on the moral climate of our country. Judges are more aware of the need for evenhandedness between business school graduates and high school dropouts. The public has recorded its disgust at unethical behavior in both Government and the board room.

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A component part of this new business approach to newspapering has been the buy-out of independent newspapers at an alarming rate. Ten newspaper chains now control one-third of the Nation's newspayers and what is read by 20 million newspaper readers. Newspaper ownership has also become involved in the building of big conglomerates, with enormous purchasing power, and with efficiency experts who know how to trim the fat out of newspapers so they will show a good profit margin.

The key to good profits, of course, is paid advertising. The big newspaper advertisers are also usually big business—and therein lies a basic conflict of interest. If an investigative reporter turns in a story on unethical conduct by a business executive, he risks offending a big advertiser, or a friend of a big advertiser. If advertising linage is reduced as a result, profits will go down. Somebody may lose his job.

It is self-evident, therefore, why investigative journalism—which once placed heavy emphasis on exposing malefactors of great wealth—now prefers to focus on elected officials and judges instead. Rarely, if ever, does one read an expose of business corruption or wrongdoing unearthed by a reporter. The news stories about white-collar crime simply report the results of official investigations conducted by law enforcement agencies, not the results of investigative journalism.

Another aspect of big-business control of the press is the disappearance of competition between individual newspapers. Today less than 50 of the 1550 cities in the United States with daily newspapers have two or more under different ownership. No longer do reporters need to work hard at their own investigations in order to scoop the other guy. They and their editors and their publishers have total control over what will or will not be investigated, and what will or will not be published. No one can beat them out.

This very unhealthy situation is one of the major reasons we cannot combat white-collar crime with the same tools we use against corruption or malfeasance by public officials.

I urge your committee to consider proposing legislation to provide a form of loan guarantee to permit experienced journalists to obtain the huge sums of capital needed today to start off competing independent newspapers in the one-newspaper towns in America—journalists who do not have to worry about what the stockholders or advertisers will say when they step on some toes.

The one overriding defect in Federal law enforcement is the lack of any meaningful coordination in the use of enforcement resources. Policymaking on the national level is non-existent in most areas of criminal justice. Individual U.S. attorneys are allowed to set their own enforcement policy in important and sensitive fields. Although a certain amount of free enterprise is desirable to help generate new ideas and test out new concepts, as a matter of long-range operations, studied anarchy is not desirable in Federal law enforcement. The wide differences in the types of cases prosecuted in different Federal districts and the wide range of sentencing policies as applied by the courts clearly demonstrate the need for better coordination. By repeating expensive lessons on a district-by-district basis, we waste precious resources—not to mention violating the concept of evenhanded justice.

Federal and State law enforcement could be dramatically strengthened by the creation of a "National Law Enforcement Planning Council, similar to the Council of Economic Advisers, to report each year to the President on the state of crime and law enforcement and to recommend the proper allocation of human and fiscal resources. The council could propose a national enforcement policy in such fields as white-collar crime instead of leaving enforcement in its present sporadic state, dependent entirely on the interest of prosecutors in particular districts.

The council should establish national enforcement goals and policies, pool intelligence, and exchange practical experience on effective law enforcement techniques. Existing resources can and should be used much more effectively and economically.

Some of the areas that need national law enforcement planning include misuse of secret foreign bank accounts, consumer fraud, corruption in the administration of justice, urban renewal frauds, elec-

tion law abuses, as well as narcotics distribution, hijacking, and improper delivery of government-funded programs and services. The goal is to pool experience and insight into law enforcement problems, with participation from specialists and technicians other than prosecutors and investigators.

I urge this committee to sponsor such legislation at the earliest opportunity.

Thank you, Mr. Chairman.

Mr. CONYERS. Thank you very much.

We can all appreciate here your long experience with the Department of Justice as being the source of these very specific recommendations. And I must may in this short amount of time that I think you have been helpful and I hope you will continue to be helpful to us by monitoring the enormous job that we are trying to embark upon here in evaluating the white-collar crime problem.

I'd just like to interrupt to welcome our colleague here from New York, Elizabeth Holtzman, the ranking majority member of the subcommittee, and we are very happy to have you with us. Even though she will soon be a subcommittee chairperson, I hope she will still be with this subcommittee in the 96th Congress.

I will now turn to Mr. Rodino for questions and comments.

Mr. RODINO. Thank you very much.

Mr. Seymour, I am very much impressed with the statement you have presented to us, especially when you make reference to the need to focus on an independent press.

You talk about conflicts of interest and point out that rarely, if ever, does one read an expose of business corruption or wrongdoing unearthed by a reporter.

Would you say, Mr. Seymour, that in your experience as U.S. attorney, that there has been evidence of not just conflict of interest but perhaps a coverup, with reporters reporting, after investigating some alleged corruption, and then no disclosure? It would seem to me that would be a coverup.

Was there in your experience a good deal of this?

Mr. SEYMOUR. The problem with your question, Mr. Rodino, is that one would have to know that the investigative reporter in fact had turned up something before you could go as far as saying that it had been covered up.

My concern is that the investigative reporter doesn't apply his attention to this area at all. He is looking at Congressmen and Governors or petty or lesser officials. That is his beat. That is where the open season is. He doesn't look at the business executives.

Mr. RODINO. Is this as a result of instructions from the overseers or his employers that they lay off of this area?

Mr. SEYMOUR. I doubt if that is necessary. I'm sure it is the instinct of self-preservation. Any reporter who were to file such a story and end up having the corporation involved pulling its linage and putting it on television instead would soon be out on the street. That is not hard to figure out.

I do have one example——

Mr. RODINO. If that is the case then, Mr. Seymour, how are we ever going to know that corruption is going on if the reporter himself instinctively is going to lay off?

Mr. SEYMOUR. It leaves it to the law enforcement agencies. And that is the problem, you see. We have two independent forces coming together on official corruption. We have the law enforcement agencies and the investigative journalists. That is a very healthy situation. But on white-collar crime we don't have the investigative journalists, just the law enforcement agencies. And if they don't have sufficient resources—and even if the Federal Government is tight, you ought to see the problem of State and local resources with regard to resources. It is heartbreaking. So with no money for resources and no journalism, white-collar crime is one of the best-kept secrets of our time.

Mr. RODINO. You believe if we devise a means of insuring there is an independent press, in some way provide resources for those who would want to get into the journalistic investigative field, we might be in a better position to unearth this?

Mr. SEYMOUR. Absolutely. I have no doubt at all that the journalists would like to do it. The problem is they are stuck. The only jobs in town are the ones currently offered by the newspapers owned by the big conglomerates, many of them who have to tell their stockholders that they got more advertising linage this quarter, "It was our best quarter yet." And if those fellows could go out and start a competing newspaper in these towns, I believe they could have great freedom and also make the existing newspaper get back on its toes. The problem is it costs them a half-million dollars to do it. They can't get the AP and UP wire services without having substantial thousands of dollars.

Mr. RODINO. Well, what do you suggest? That Government get into the field of subsidizing people?

Mr. SEYMOUR. Not directly. A Government-controlled press is just as bad as a business-controlled press.

Mr. RODINO. How do we do it?

Mr. SEYMOUR. Loan guarantees. You become the security for the journalist to go to the bank and say, "I need a half-million dollars to start a competing newspaper in this town, and Uncle Sam will stand the loss if I fail." And then all that fellow has to do is to be able to keep in the black and make payments over the course of years to pay off his bank loan while you are sitting there in case he really stubs his toe.

Mr. RODINO. Thank you very much. I'd like to pursue this further with you at some other time. It is a very, very interesting observation.

Mr. SEYMOUR. I do have one example in response to your earlier question. It isn't quite on target but it is instructive.

We had an investigation in the southern district when I was U.S. attorney about a fellow who was committing white-collar crimes fleecing investors who had come to him through classified ads in one of our leading New York dailies under the heading "Business Opportunities." And it turned out his victims said, "Gee, the ad appeared in a leading New York newspaper. Therefore, I assumed he was perfectly OK."

I wrote the publisher and told the publisher that that is what the victims had told us, and I suggested that he run at the top of that "Business Opportunities" column a notice to readers that, "The newspaper has not investigated the qualifications of any of our advertisers, and readers deal with them at their own risk."

And the publisher wrote back and said, "That would not be in keeping with our policies."

Mr. RODINO. Thank you very much.

Mr. CONYERS. Congresswoman Holtzman.

Ms. HOLTZMAN. Thank you very much, Mr. Chairman.

Mr. Seymour, I have been very impressed with your testimony also, and I think it has given us food for thought.

I want to say that I agree with your observations with respect to the importance of the press just in terms of my own experience in dealing with a scandal in the summer feeding program in New York City. If it hadn't been for the press attention which, by the way, came about as a result of competition between two newspapers, I question whether we would ultimately have had the effective law enforcement that did take place in the southern district.

I want to ask you with respect to the issue of insuring more investigative reporting whether you think that a system of grants to investigative reporters would be effective or would be something worth exploring.

Mr. SEYMOUR. I had one experience with an investigative reporter that got a grant from some foundation somewhere, and it was the most irresponsible job of investigative journalism I ever saw, because the fellow wasn't answerable to his editor. He had the money in his pocket and he could run all over and put the time in.

And I am nervous about that. I think the test has to be what a responsible editor thinks the readers should have. And he's got to say to the journalist, "I want to be sure that you've got some backup for what you're saying. I want to be sure that you've got a real story here. But I also want to be sure it's useful to my readership." I think that is a much more useful way to test these things out rather than just give the fellow the money and say, "Spend it."

Ms. HOLTZMAN. I also want to ask you your view of the U.S. attorneys' ability to call on experienced investigative staff. For example, is the FBI trained to deal with securities problems, antitrust fraud, and the like? Are there sufficient investigative staff available to the U.S. attorneys to enable them to fight effectively against white-collar crime?

Mr. SEYMOUR. My observation is obviouly 5 years old. At the time, our relationship between our office and the FBI was absolutely abysmal in this area. They categorically refused to conduct these investigations. We finally, with help from people in the Department, were able to hire a couple of investigators on our staff, and that is the way we made our white-collar crime cases. The FBI had one type of cases they liked, bank robbery cases. Beyond that, they liked hijacking cases. Beyond that, they made their own decisions on what they were going to do, which we have now found is illegally opening people's mail and breaking into their apartments. Mr. Fiske assures me the situation has changed for the better, and the administration has turned it around and he is getting much better support.

Ms. HOLTZMAN. Thank you. I have no further questions.

Mr. CONYERS. Congressman Gudger.

Mr. GUDGER. I have only one question and that pertains to the National Law Enforcement Planning Council. Of course, we know there are 91 districts, and I suspect that is what you have reference to in the

reference to studied anarchy, in that each of the district attorneys has a great deal of autonomy.

Mr. SEYMOUR. Absolutely.

Mr. GUDGER. And, of course, is subject to the restrictions you pointed out with respect to staffing and his need to depend on existing Federal agencies such as the FBI.

Can you come up with any clear or specific suggestions as to what should be the size and scope of this council, how it should be structured, and how much breadth of study and scope it should have?

Mr. SEYMOUR. Let me take a flier at the way I would picture it. What I'm talking about is essentially a fact-gathering and evaluation agency, not a line operations agency. And I would envision a permanent staff that had some law enforcement experienced people just because they would know what was possible and what was not possible. But then primarily economists and social scientists who could each year gather the data as to what parts of the country people were being preyed on with certain types of offenses, where narcotics problems were particularly serious, where economic pressures on the poor because of consumer fraud were very serious, and the like, and then bring that before a council made up of policymakers—probably all of the Federal top law enforcement people, all of the Federal program people, those who dispense funds to help the public in fields like housing and health and education and the like; then a rotating membership of State attorneys general, heads of State police, chiefs of police in major cities, and U.S. attorneys—now only on a selected basis—so that possibly your planning council might be 30 or 40 at any one time, your staff might be 15 at any one time. But essentially what they would say is the most serious problem in the State of Florida is the ripoffs of retired people who are coming down here to find a place to live, and it is not the smoking of marihuana cigarettes on college campuses.

When I was U.S. attorney in the southern district and we were pursuing corruption of the local criminal justice system and the use of secret bank accounts for high-level white-collar crime, my colleague in Florida was conducting raids on college campuses, going after marihuana users. And that just made no sense at all.

So what I am suggesting is somebody ought to be telling the law enforcement people what the problems are, what the good techniques are that can be used, and urge them to apply their resources in a more constructive direction.

Mr. GUDGER. One final question. You do not perceive of this council as being within the Department of Justice?

Mr. SEYMOUR. No; not at all.

Mr. GUDGER. But as being an independent agency.

Mr. SEYMOUR. Right, and providing information to both State and local as well as Federal agencies.

Mr. GUDGER. Thank you.

Mr. CONYERS. We are honored that you would join us. And I am only hopeful that you can follow our investigations. We realize that this is an area that is quite complex. As a matter of fact, it gets more enormous the further we get into it. So any oversight and recommendations that you would care to make to us as we move along

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would be greatly appreciated. We are glad you could come today.

Mr. SEYMOUR. Thanks very much, Mr. Conyers. Obviously it is your end product we are most interested in. Any time I can help, don't hesitate to ask.

Mr. CONYERS. Our next witness before a brief break is a professor of the School of Criminal Justice here at Rutgers, Mr. Richard Sparks, who has prepared a statement which will be incorporated into the record at this time.

He is a professor at the School of Criminal Justice, Rutgers University, the State University of New Jersey. The School of Criminal Justice is a graduate school, located in Newark, N.J.; it was established in 1974, as a result of a mandate from the New Jersey Legislature.

He received the B.A. degree from Northwestern University, Evanston, Ill., in 1954; and the Ph. D. degree from the University of Cambridge, England, in 1966. His previous university appointments were as lecturer in criminal law and criminology, Faculty of Law, University of Birmingham, England (1964–67); and as assistant director of research, Institute of Criminology, University of Cambridge, England (1967–74). He was visiting professor at the School of Criminal Justice, Rutgers University, during 1974–75; and he has held his present appointment as professor at that school since 1975.

In addition to journal articles and technical reports, his publications include the following books: "Key Issues in Criminology" (with R. G. Hood: London: Weidenfeld and Nicolson; New York: McGraw-Hill, 1970); "Local Prisons: The Crisis in the English Penal System" (London: Heinemann, 1971); and "Surveying Victims: A Study of the Measurement of Criminal Victimization, Perceptions of Crime and Attitudes to Criminal Justice" (with H. G. Genn and D. J. Dodd; London: John Wiley and Sons Ltd., 1977).

He has served as a consultant to the Panel for the Evaluation of Crime Surveys, Committee on National Statistics, National Academy of Sciences; to the Division of Crime Problems of the Council of Europe; and to the Crime Prevention and Criminal Justice Section of the United Nations Secretariat. He is at present a member of the Crime and Delinquency Review Committee of the National Institute of Mental Health. He is also a member of the American Society of Criminology and the American Sociological Association.

At the present time he is project director of a project on the evaluation of statewide sentencing guidelines; and project codirector of a research project on strategies for determinate sentencing; both of these projects are funded by the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration.

[The prepared statement of Mr. Sparks follows:]

WHITE-COLLAR CRIME: THE PROBLEM AND THE FEDERAL RESPONSE

(By Richard F. Sparks, School of Criminal Justice, Rutgers University, Newark, N.J.)

WHITE-COLLAR CRIME, AND ITS IMPACT ON THE COMMUNITY

Many people, I am sure, will welcome the decision of this Subcommittee to hold some of its current hearings outside Washington, and to go to some of the cities which are affected, in one way or another, by the problems of crime which the Subcommittee is charged with investigating. It seems especially appropriate that

today's hearings should be held here in Newark—a city whose recent history vividly illustrates many of the problems concerning so-called "white-collar" crime that we have been asked to discuss today.

Even before the riots which engulfed Newark in the summer of 1967, the city was widely believed to have one of the worst crime problems in the United States. Data published by one of the Task Forces of the 1967 President's Commission on Law Enforcement and Administration of Justice showed that in 1965, for each of the seven "index" offenses included in the F.B.I.'s "Uniform Crime Reports," crime rates in Newark were either the highest, or nearly the highest, of any of the largest American cities. Newark's aggregate rate for all seven "index" offenses—murder, rape, robbery, aggravated assault, burglary, larceny and car theft—was the highest in the country; at 4940.1 known offenses per 100,000 population, it exceeded that of Los Angeles—its closest competitor—by eleven per cent. Generally speaking, the picture of crime in Newark which emerges from U.C.R. statistics since 1965 is just as gloomy as it was in that year; only in 1976 did the "index" crime rate show signs of beginning to level off or even decline.

In fact, there is some reason to think that the U.C.R. statistics greatly exaggerated the problem of "street crime" in Newark during recent years. Thanks to pioneering work done for the President's Commission, a new method of crime is now available: the survey of victimization, in which representative samples of the general public are asked directly about crimes which may have been committed against them in a particular period such as the preceding year. As one of the eight American cities included in LEAA's "high impact" crime reduction program, Newark was the site of victimization surveys carried out in 1972 and 1975. These surveys showed that, even in 1971/72, victimization rates in Newark were by no means as high as many people had supposed; in fact, total rates of violent victimization in Newark were the lowest of any of the eight "high impact" cities. Moreover, a comparison of 1974/75 victimization rates with those for 1971/72 showed a decrease, in Newark, in almost every category of crime covered by the surveys.

I know that this Subcommittee is well aware of the methodological limitations of victimization surveys in general, and of the Census-LEAA National Crime Panel Surveys in particular. Indeed, it is thanks largely to hearings which the Subcommittee held, just over a year ago, that LEAA's proposed suspension of the National Crime Survey was averted—thus giving some hope that those limitations may be overcome by methodological and developmental research in the future. For reasons which I shall discuss in a moment, victimization surveys (at least in their present form) are of no help at all in studying white-collar crime. My point is simply that, even if we are considering only street crimes, the situation in Newark may well have been much less serious, over the past decade, than the U.C.R. statistics suggested.

And yet, paradoxically, it can be argued that Newark really did have a serious crime problem during at least the early part of that period. Up to the end of the 1960's, there was a plain sense in which Newark's reputation as "crime capital" was thoroughly justified, quite apart from the statistical data I have just mentioned. For nearly half a century—since the Prohibition years—Newark had been well-known as a center of operations for so-called "organized crime". And in more recent years, Newark had become nationally known for political corruption: three witnesses told the Lilley Commission, which investigated the Newark riot, that "there is a price on everything at City Hall", and the Commission itself concluded that "a pervasive feeling of corruption" in the city was an important underlying cause of the riots. Throughout the early 1960's, there were repeated allegations of corruption in the Newark police department; and a long and sordid history of extortion, bribery and kickback contracts involving Newark political figures was brought to an end by the conviction (and subsequent imprisonment) of Mayor Hugh A. Addonizio in 1970.

Even in its worst years, of course, Newark did not have a monopoly on municipal-government venality; racketeering and corruption have existed, to a greater or lesser extent, in all large American cities over the past century. What is important for present purposes, however, is that racketeering and corruption played only a minor part in creating Newark's recent reputation as a crime-ridden city. Indeed, they played no part at all in assessments based on the Uniform Crime Reports and similar police-compiled statistics. The reason for this is simple: political corruption and other forms of white-collar crime, like most of the illicit activities of so-called organized crime, are not included in those statistics.

It is true that the Uniform Crime Reports contain data on the numbers of persons arrested for a variety of such offenses, including fraud and embezzlement as well as violations of narcotics and liquor laws. But the UCR statistics most commonly quoted—and those published by the President's Commission, in the Task Force volume referred to earlier—relate to offenses known; these statistics are restricted to four types of interpersonal violence and three types of traditional property crime. The UCR crime index, in short, focuses almost entirely on those crimes most often committed by the relatively poor and powerless. It omits entirely those forms of lawlessness which the middle classes find most congenial; neither the corruption of Watergate nor the corruption of Newark was recorded in the Uniform Crime Reports.

This illustrates one of the most important features of white-collar crime; namely, its invisibility. Crimes by businesses and businessmen, political corruption, fraud and abuse—these and other forms of middle-class rule-breaking are for practical purposes completely excluded from our existing systems for measuring crime and assessing its social consequences.

This is true not merely for police-compiled statistics like those in the Uniform Crime Reports; it is also true for our main alternative to those statistics, namely data from victimization surveys. At present, as the Subcommittee will know, the Census-LEAA National Crime Surveys concentrate almost entirely on the FBI "index" offenses (excluding, of course, homicide); they do not even attempt to measure victimization through such things as consumer fraud, price-fixing, unfair labor practices, illegal redlining by lending institutions, environmental pollution or the sale of dangerous products. In principle, at least some of these kinds of victimization could perhaps be measured in sample surveys based on interviews with the general public; and I hope that some attempts will be made to do this in the future. But there are clearly limits to the extent to which white-collar crime can be adequately assessed even in this way. For one thing, in many white-collar crimes there is no individual ("assignable") victim: electoral fraud, tax evasion and transfer pricing are examples. In other cases, the consequences of white-collar crime may be very diffuse; a price-fixing conspiracy may net millions of dollars for its prepetrators, at a cost of only a few cents apiece for several million ultimate consumers. In any case, before a survey respondent can report being criminally victimized to an interviewer, he must know of his own victimization, and know that it included a crime: plainly neither of these conditions is fulfilled, in the case of many kinds of white-collar crimes. Finally, for a large and important class of white-collar crimes, the immediate victim is not an individual, but a corporation or other organization: and there is good reason to believe that survey methods are not very well suited to the measurement of crimes against organizations.

A general consequence of the invisibility of white-collar crime is that the general public's beliefs about "the crime problem"—their stereotypes, if you will—are based on a biased set of information. The social definition of "crime"—and the public's beliefs about "criminals"—are powerfully influenced by the statistical machinery which we use to measure crime. So long as that statistical machinery systematically excludes from its consideration middle-class rule-breaking, that rule-breaking will play no part in public perceptions of crime and its social consequences. In the public mind, then, crime will continue to be something mainly committed by poor people. Fraud and abuse, bribery and corruption, price-fixing and election-rigging may briefly enter the public consciousness from time to time—through anecdotal evidence, or after a spectacular prosecution or the non-indictment of a co-conspirator. But the effects of such things are inevitably weak and transient; they cannot compete, in terms of shaping public awareness of the true nature and consequences of crime, with official statistical series like the Uniform Crime Reports or the victimization survey data.

It is obvious that such a state of affairs is both grossly unjust and socially divisive. It can lead to the wrongful stigmatization of whole communities, and of social-class and racial groups, as "dangerous classes"; at the other extreme, it may allow other groups who are in fact highly law-breaking to be described (and to describe themselves) as "non-criminals". It can thus lead to radically mistaken public perceptions of what the crime problem in a particular community really is—as, I would argue, was the case here in Newark throughout the 1960's. To sum up: our official information systems, on which we rely for our definitions of crime, may lead to a dangerous polarization of our society. And since this polarization (between "criminals" and "noncriminals") is related to differences in political

and economic power, it can serve to reinforce class conflicts which we ought to be trying instead to eliminate.

In addition, our present conceptions of "crime"—based, as they are, on data from the Uniform Crime Reports and from victimization surveys—help to conceal many of the serious consequences of white-collar crime for the community. I am not, of course, attempting to minimize the social and personal costs of street crime, in terms of death or physical injury, or personal property lost by its victims. But there can be little doubt that the costs of white-collar crime are far greater, even in the crudest, purely monetary terms. In previous sessions this Subcommittee has heard evidence suggesting that white-collar crimes (excluding antitrust violations) cost the public about $44 billion a year, or about eleven times as much as traditional property crimes such as robbery and burglary. For reasons that I shall try to make clear in a moment, dollar-loss estimates of this kind must be treated with considerable care. But there can be no doubt that the rough magnitudes are correct, and that the personal and social costs of white-collar crime far outweigh those of traditional violent and personal crime. I do not think that there is any need for me to try to persuade this Subcommittee that white-collar crime is a serious social problem.

It has sometimes been argued that one of the most serious consequences of white-collar crime is that it leads to street crime—that (to put it crudely) poor people, seeing that the rich and powerful are able to violate laws with impunity, would be led to commit more crimes themselves, perhaps out of a sense of injustice or disillusionment with an unfair social system. In fact, so far as I am aware, there is no hard evidence whatsoever that this is the case. After they have been caught and convicted, some of those guilty of burglary, robbery or aggravated assault may well try to excuse their behavior by saying that "everybody does it"—while pointing to cases in which price-fixing, unfenced machinery or tax evasion have led to consent-decrees or pleas of nolo contendere.

Common sense suggests that "a pervasive feeling of corruption" (as was said to exist in Newark, at the time of the riots) is unlikely to make ordinary people more law-abiding. It also seems reasonable to assume that a widespread perception of a double standard of justice for rich and poor is unlikely to breed confidence in the criminal justice system. But the hypothesis that white-collar crime and corruption—or the system's failure to punish white-collar-crime and corruption—can cause people to commit armed robbery, rape or burglary, is not a hypothesis to which the available evidence lends much support.

In any case, it is surely not necessary to argue that white-collar crime may lead to street crime, in order to show that white-collar crime constitutes a serious social problem. A company dumps poisonous industrial waste into a river or lake; another company rigs the prices of sales to its foreign subsidiaries, so as to avoid paying corporate income taxes which are due; another company makes illegal political campaign contributions, in return for promises of favorable legislative treatment. These things would plainly be serious social harms, even if it could be shown that they actually reduced the amount of rape and armed robbery being committed, instead of increasing it.

Thus far, I have been concerned with our sources of information about white-collar crime, and the limited part that that information plays in public perceptions of crime in general. I would like to return, in a moment, to the question of the kinds of data which we should be trying to obtain on white-collar crime and its consequences—and to some suggestions for appropriate federal action aimed at reducing that crime and minimizing its consequences. First, however, I would like to consider briefly some facts about the nature of white-collar crime, since I think that a clear understanding of the concepts underlying this kind of crime is essential if we are ever to make any real progress in controlling it.

"CRIME AS BUSINESS" AND WHITE-COLLAR CRIME

Edwin Sutherland, the greatest of American criminologists, did us a great service by coining the name "white-collar crime" and thus calling attention to a type of law-breaking that had previously been almost entirely ignored both by students of crime and by those who tried to control crime. But explorers are not necessarily the best map-makers; and Sutherland was not in fact very clear as to just what he meant by "white-collar crime." At one point he defined it as "crime . . . committed by businessmen or other persons of high social status . . . in the course of their occupations". But it has often been pointed out that this

definition includes two different elements: it refers to (1) crimes committed by businessmen (and so might include individual acts of income tax fraud or embezzlement by middle-class persons, even though these did not have anything to do with their occupations); and (2) crimes committed "in the course of" one's occupation, which might include occupational theft by lower-class persons, e.g. pilfering from factories, union racketeering and bribe-taking by policemen. (Another sociologist, Edwin Lemert, reports that he once asked Sutherland whether he meant by "white-collar crime" a type of criminal behavior, or crime committed by a certain group of people; Lemert reports that Sutherland said he wasn't sure.) Most of the examples which Sutherland discussed in his early papers, and in his book White Collar Crime, involved violations by corporations of regulatory statutes or anti-trust laws. But I am reasonably sure that Sutherland would not have wanted to exclude from scrutiny individual illegal acts (such as income tax evasion or embezzlement.)

Since Sutherland first wrote, much time has been spent—and much ink spilled—in an effort to provide a satisfactory working definition of "white-collar crime". In my opinion, this search for definitions has been largely misconceived. What matters is not the meaning of some words; it does no harm to use the expression "white-collar crime" as a handy general name for whole range of illegal or improper acts. It is important, however, to be clear about the variety of kinds of behavior within that range; since a variety of causes, and of control strategies, are involved.

In an effort to clarify some of the conceptual issues surrounding white-collar crime, I recently proposed a somewhat different conception of "crime as business". By this term I meant those crimes (or, more generally, those deviant acts) possessing all or most of the following features:

(1) *They are carried out primarily for economic gain, and involve some form of commerce, industry, trade or legitimate profession.* Thus my concept of "crime as business" would exclude most cases of kidnapping or skyjacking for ransom, just as it would exclude most armed robbery: since no form of legitimate enterprise is involved in those crimes.

(2) *They necessarily involve some sort of formal organization, in the sense of a set or system of more or less formal relationships between the parties involved in committing the criminal acts.* Thus what I am calling "crime as business" would include most of what criminologists usually call "organized" or "syndicated" crime; it would also include price-fixing conspiracies, most types of company frauds, violations of regulations concerning manufacturing processes (e.g. environmental pollution or worker protection laws), and the laundering of money through illegal banking or other financial transactions.

(3) *They necessarily involve either the use, or the misuse, of legitimate forms and techniques of business, trade or industry.* What distinguishes such things as price-fixing conspiracies, involve faking and bankruptcy fraud from robbery, burglary and shoplifting is that the former do, but the latter do not, involve methods and techniques which are also used for legitimate business purposes.

I am not claiming, of course, that this conception of "crime as business" covers everything that people have ever called "white-collar crime"—or that anything not falling within my definition is not worth considering. Individual illegal acts by middle-class persons—a businessman cheating on his income tax, a doctor filing phony Medicare claims, a solitary embezzlement by a bank teller or union treasurer—do not fall within the definition I have just given, yet they are obviously important. What I do claim is that the features I have just mentioned mark off a number of types of criminal and quasi-criminal behavior which have significant similarities, which have often been obscured in discussions of "white-collar crime" in the past; and that different control strategies may be appropriate for what I am calling "crime as business" than for other forms of white-collar crime.

Any attempt to understand what I am calling "crime as business" must begin with the truism that the pattern of economic crime displayed by any society necessarily depends on that society's patterns of legitimate economic development; and that changes in the form and frequency of economic crime are largely a consequence of changes in the patterns of legitimate economic enterprise. This is so, in part, because of the crucial role of *opportunity* in the causation of criminal behavior. Opportunity is generally important in shaping crime and deviant behavior, of course; it is not relevant only to "crime as business". But it is especially important there, because of the scale and complexity of new forms of busi-

ness and industry which are characteristic of the twentieth century, and especially the last fifty years or so.

Of special importance here are developments in the world of banking and finance. As corporate and governmental investment have grown, in the post-World War II years, new and increasingly complex forms of funding have been developed, which in turn have permitted new and increasingly complex kinds of fraud. Financial service conglomerates like Equity Funding; "offshore" mutual funds; multinational corporations—all of these things have made possible new forms of fraud of a kind which could not have been carried out in the simpler financial world of fifty years ago. In short, the *technology* of crime in the business world has become much more complicated—because business has become more complicated. Our techniques of control must become correspondingly more sophisticated, if they are to have any hope of success.

To some extent, my conception of "crime as business" has some affinities with the "theory of illicit enterprise" recently sketched by my colleague Dwight Smith. Smith was mainly concerned with what criminologists (and journalists) have called "organized" crime—the Mafia, Cosa Nostra, mob or whatever. He pointed out that "entrepreneurial transactions can be ranked on a scale that reflects levels of legitimacy within a specific marketplace"; there is, for example, a market spectrum in the banking industry which ranges from trust companies and commercial banks at one end to loan sharks and other usurers at the other. In looking at racketeering in this way, Smith shifted the focus from "alien conspiracy" theories which have obsessed criminologists and the general public for the last twenty years or so, to the economic activities involved. I suggest that exactly the same shift in emphasis is needed in the study of what criminologists have called "white-collar crime".

Indeed, it seems to me that there may often be little point in distinguishing between persons who are (or regard themselves as) "racketeers", and those who purpose to be legitimate businessmen: given comparable market or financial circumstances, the behavior of the two groups is often strikingly similar. (The "Mafia" is often alleged to launder money through banks in the Bahamas; the Gulf Oil Company has admitted laundering money through a bank in the Bahamas.) It is often alleged that so-called organized criminals have turned away from traditional rackets such as gambling, narcotics and prostitution, and have taken up the infiltration of legitimate business instead. It is undoubtedly true that there has been an increasing use, in recent years, of legitimate forms of business for dishonest purposes: bankruptcy fraud is an example. But it remains to be seen how frequent the "infiltration" of legitimate business by racketeers really is, and whether it leads to any more crime, or any more social harm, than is caused by legitimate businessmen in similar circumstances.

I suggest, then, that in order to understand (and to try to control) what I have called "crime as business", we need to start by understanding the kinds of businesses involved in particular kinds of crime. If this approach is correct, it has an important practical consequence: namely, that control strategies for white-collar crimes will have to be tailored to the problems of particular kinds of industries and/or economic activities. There seems to me to be very little point in trying to alter some supposed general morality of businessmen, so as to persuade them that government regulation in general is legitimate or desirable. Businessmen who engage in stock frauds may well turn out to be highly indignant about environmental pollution; businessmen who feel free to pay bribes in order to get contracts may well disapprove of other businessmen who sell cars that explode in collisions, or pharmaceutical products that cause blindness.

Our control strategies will also have to be tailored to take into account what I have called the technology of crime as business—that is, in police terms, its modus operandi; an understanding of this is likely to require a thorough knowledge of the legitimate business and/or commercial practices underlying the form of crime in question. From the standpoint of both prevention and control, it may be important to distinguish between frauds aimed at competitors, and those aimed at shareholders or creditors (such as bankruptcy fraud).

To a certain extent, of course, the law already makes such distinctions, in a rough and ready way; and a whole range of different administrative and law-enforcement agencies are now charged with dealing with various forms of business misbehavior. Working relationships between U.S. Attorneys on the one hand, and agencies such as the Securities and Exchange Commission or the Federal Trade Commission may not always be as close as they should be; overlapping state and federal jurisdictions, and divisions of powers between ad-

ministrative, criminal and civil agencies may not be optimum. It has often been pointed out that consumer protection, for example, is the responsibility of a large number of federal and state agencies. Basically, however, I think that this eclectic and functionally specialized approach is the right one, however cumbersome it may occasionally seem. Program frauds in the area of Housing and Urban Development are likely to be very different in kind from program frauds in the area of Health, Education and Welfare. It is likely that control strategies will also have to differ accordingly.

Similar distinctions need to be made with respect to the several different kinds of misbehavior that we conventionally label "corruption". One approach to the problem of corruption places great emphasis on promoting the general integrity of politicians and public servants, and on halting some supposed decline in public morality. A more realistic approach, I think, would be to recognize that "corruption" comes in at least three very different forms. First, there are corrupt practices concerned with getting, or holding, public office. Second, there are corrupt activities which spring from what are essentially commercial activities of federal, state and local government—in the procurement of supplies, equipment and services, and in the letting of contracts for public works. Third, there is the corruption of law enforcement. It should be obvious that the improper activities involved in these three areas are very different; and we should not be misled by the fact that we use the same general term for all three, into supposing that they must have something important in common. (They may, however, have connections with other forms of white-collar crime: procurement and program frauds against government agencies may well turn out to be very similar to fraud and embezzlement in purchasing and contracting departments in the private sector.)

In summary, then, I would urge that in thinking about the problem of white-collar crime we should be aware of the great variety of forms that it can take; and to look at each of those forms in the context of the legitimate economic and social activities in which it occurs.

THE FEDERAL RESPONSE TO WHITE-COLLAR CRIME

If the perspective for which I am arguing be accepted, what might it entail by way of federal action in the immediate future? The first priority, in my opinion, is a great deal more by way of information about the problem than we now possess. I noted earlier that neither police statistics nor victimization survey data (at least in their present form) can throw much light on the extent and consequences of white-collar crime. Indeed, we are probably never going to get an accurate measure of the amount of any particular kind of white-collar crime; statistics based on investigations or prosecutions, like statistics of arrests for street crime, are mainly measures of law enforcement activity and not of the crime itself. I do not think, however, that our lack of that kind of data matters very much. What we really need is a very different sort of information; that is, detailed information about the nature and consequences, both immediate and longer-term, of various kinds of white-collar illegality. The number of illegal acts committed by businessmen is of no value, either for theoretical explanation or for social policy—in the latter case, because a single act (say, a price-fixing conspiracy) can have drastic effects on the community, through increased consumer prices, driving competition out of business, and so on. These diffuse consequences are part of what we need to understand.

In short, what we need is detailed research on crime as business, and not merely statistics. The best approach for this kind of research would be a series of case studies—based on particular industries or industrial sectors. The problems of crime and crime control encountered in cargo transportation or retailing, for example, are likely to be very different from those encountered in fields such as banking, insurance and consumer credit; these in turn will differ from crime problems in the aircraft industry, or the car industry.

By taking major industries—or industrial sectors—separately, we could at least begin to understand the specific problems of crime and crime control in those industries, and we could begin to build toward a more general theory and a more general strategy of control (if indeed there is one). We would be asking down-to-earth, answerable questions such as: do *all* multinational or international companies in a particular industry (say, engineering and construction) go along with paying bribes—or only some of them? How many companies in such an

industry have a policy on bribes or improper commisisons—and what are these policies? If—as Sutherland found—some companies can accurately be described as "recidivists", what kinds of companies are those? Are they dominant companies in the industry, or are they struggling for survival on the fringe of it? Are problems of controlling pollution and the disposal of toxic waste in a particular industry special to particular manufacturing processes or plants? If so, what kinds?

There has been almost no good, solid empirical research of this kind on white-collar crime. There are, I think, several reasons for this. But one of the most important is undoubtedly that the federal agency responsible for funding research on crime—the Law Enforcement Assistance Administration—has not placed anything like enough emphasis on the subject. It would not be true to say that LEAA has done nothing at all in this area; white-collar crime was a program priority of the National Institute of Law Enforcement and Criminal Justice in 1976, and other related topics have been announced as program priorities since then. A program of research funded by LEAA is now being carried out at Yale, and there are isolated projects elsewhere. But it is clear that white-collar crime now gets a far smaller share of LEAA's budget—about five per cent, I believe—than it should get, in view of the seriousness of the problem.

I hope, therefore, that when it is finally decided what sort of agency is going to replace LEAA, the research arm of that agency will have as an explicit priority the funding of research in this area. There is a tendency for the funding of research by federal agencies to get compartmentalized: projects funded by the National Institute of Mental Health, for example, are supposed to be "relevant" to mental health problems. I would hope that future research on white-collar crime is not too narrowly focussed on crime. There may well be socially harmful business practices which are not (yet) against the criminal law; and I would not want to have these excluded from research in the future, merely for that reason. In any case, even where an act is technically a crime, the law often provides alternative civil remedies (injunctions and/or civil damages, for instance, in the case of anti-trust). I know that there are often deep feelings of injustice when businessmen are able to escape imprisonment for what are ein fact serious social harms. But we need to face the fact that—like it or not—the criminal law may not always be the best or most efficient instrument for controlling corporate misbehavior. For the purpose of funding future research in this area, therefore, the net should be able to be cast more widely even if the funding agency is one that primarily deals with crime in the strict sense of that term.

There are, of course, other reasons for the present limited amount of research on white-collar crime. For one thing, that kind of research is often difficult to do—not least because it is a lot harder to interview businessmen about their misbehavior than it is to interview schoolchildren about theirs.

In addition, as I have already mentioned, in order to understand crime as business, it is necessary to understand business; and it is unfortunately true that teachers and researchers with special knowledge of crime and criminal justice tend to be unfamiliar with the business world. (On the other hand, businessmen and professors of business administration tend to know very little about patterns of criminal behavior, theories of crime causation or techniques of crime control.) It may therefore be that this is an area in which multi-disciplinary research—involving students of business administration, economists, lawyers and criminologists—may be of use.

There is a further priority in this area, though I have to admit that I do not know how it may best be achieved. The priority is the changing of attitudes in the business community toward research on business-related crime. We have been speaking today about the broader social consequences of white-collar crime, for the community—for instance, through higher prices, environmental pollution, and so on; and of the social polarization that comes from identifying "crime" with street crime, and from the perceived injustice in the treatment of white-collar offenders. But it needs to be emphasized that one victim of crime as business is the business community itself. A recent Commerce department report, for instance, estimated that crime cost American businesses about $30 billion in 1976, with losses exceeding $9 billion in service industries alone. Given that state of affairs, business and industry ought to be in the forefront of the war on business crime—funding research on the problem, and opening their doors to those who are trying to understand the contexts in which illegal

activities arise. These hearings, which have helped to reveal the magnitude of the problem of white-collar crime, may help to bring about such a change in attitudes.

Finally, there is a Congressional function that can be very useful in providing information on a variety of kinds of white-collar crime: namely, data collection through hearings in the course of legislative oversight of areas in which white-collar crime is a problem. The hearings on the Watergate affair are of course a good example on this; another example is the hearings held by the Senate Foreign Relations committee's subcommittee on multinational corporations, which a couple of years ago revealed the problem of "improper" payments made overseas by a large number of American companies. At the time of those hearings, I contacted the counsel to the subcommittee, and asked if some of the materials which the subcommittee had obtained could be made available to me for research purposes; I was informed that they could not, since the materials in question had been obtained by subpoena. But of course many of those materials were subsequently published by the subcommittee; and they are extremely useful for research purposes. In fact, one of our doctoral students is now engaged in research in this area, and has made extensive use of the materials I just referred to. In some cases, in other words, a Congressional subpoena is a lot more effective than a researcher's questionnaire.

In summary: I have argued that the present state of public knowledge about what I have called "crime as business" is totally inadequate—in part because the main methods by which we try to measure crime and assess its consequences—police statistics like the Uniform Crime Reports and victimization surveys—are of little if any use when it comes to assessing white-collar crime. As a result, "crime as business" is largely invisible. One result is that we continue to perpetuate a picture of "crime" as consisting largely if not entirely of acts committed by the poor—excluding the fraud, the corruption, the price-fixing, the pollution of the environment and other kinds of organized illegal behavior by businessmen.

As a first step toward remedy that situation, and toward devising effective strategies of control, much more detailed information about crime in the business community is urgently needed. I have argued that that information can best be collected by concentrating on particular industries or groups of industries—proceeding on a case-by-case basis to understand the situations which give rise to illegal behavior by businessmen, and examining the available remedies in the light of specific problems. The time for rhetoric about white-collar crime has long since ended; what is needed now is specific information, which can serve as a basis for informed and effective action.

Mr. CONYERS. Professor Sparks, on behalf of the subcommittee we welcome you before us and would invite you to proceed in your own way.

TESTIMONY OF RICHARD SPARKS, PROFESSOR, SCHOOL OF CRIMINAL JUSTICE, RUTGERS UNIVERSITY

Mr. SPARKS. Thank you very much, Mr. Chairman, Chairman Rodino, Mr. Gudger, Ms. Holtzman.

I think many people are going to welcome the decision of this subcommittee to come here to Newark today and hold this hearing outside Washington. I think it is especially appropriate that today's hearings should be here in Newark because the recent history of Newark illustrates a lot of the problems of white-collar crime that we have been asked to discuss today.

Even if we go back to before the riots of 1967, as we all know, Newark had an image as a crime-ridden city, as a dangerous place to live. The President's Commission in 1967 published statistics that showed that Newark had the worst crime problem in the country.

Mr. CONYERS. Was it true?

Mr. SPARKS. Well, in fact, there is some reason to think that the uniform crime report statistics actually exaggerated the problem

considerably, and this we found out with the victimization surveys that were carried out in the early 1970's.

As you know, Newark was one of the eight high-impact cities, and as a result of being in that high-impact program, surveys were conducted asking people about their experience of predominantly street crime. They found two things: One, the street crime picture in Newark was not as bleak as the uniform crime reports painted it and, second, there was actually some indication of decline in the early 1970's.

I know the subcommittee is aware of some of the problems of victimization surveys. Indeed, we have to thank the subcommittee for the hearings it held a year ago that averted the suspension of those surveys.

But victimization surveys don't help us much with white-collar crime. My point is they gave us for the first time an alternative picture of street crime which showed people's preconceptions about Newark were somewhat exaggerated.

The paradox, at any rate, is through the 1960's Newark did have a crime problem, a white-collar crime problem, a problem of corruption. The witnesses before the Lilley commission testified a pervasive feeling of corruption in the city was one of the things that may have st[illegible]d the riots or helped to fuel them. There was a long history of bribery, extortion, and kickback contracts in the city which came to an end with the conviction of the former mayor.

I think that Newark did have a crime problem but it wasn't the crime problem everybody thought it was. It illustrates an important problem about white-collar crime which is its invisibility. None of the sources of information from which we form our picture of crime include fraud and abuse, political corruption, crimes by businesses and businessmen. They are all systematically excluded. This is so for uniform crime reports; it is so for victimization surveys. The surveys don't even attempt to measure consumer fraud or price-fixing or illegal labor practices or illegal redlining by lending institutions or environmental pollution. Probably something could be done with some of these surveys to get some kind of handle on some kind of white-collar crime, but I think there are limits even to the extent you can measure it with surveys.

So a general consequence of the invisibility of white-collar crime is that the general public's views of crime are based on biased information. Our statistical machinery systematically excludes middle-class rule breaking, so that rule breaking just plays no part in what the public thinks of as criminal. The public is going to go on thinking that crime is what poor people do.

Fraud and abuse and bribery and the like may briefly enter the public consciousness from time to time—anecdotal evidence or the occasional nonindictment of a coconspirator. But things like that are very weak and transient influences and they just can't compete in terms of shaping public awareness with official statistical data like the Uniform Crime Reports.

I think it is obvious enough that a state of affairs like that is grossly unjust and socially divisive. It can lead to polarization of a community in a way that reinforces class conflicts and racial conflicts that we ought to be trying to eliminate.

In addition, I think our present conceptions of crime, based on Uniform Crime Reports, help to conceal a lot of the serious consequences

of white-collar crime for the community. There is little doubt that the costs of white-collar crime are far, far greater, even in the purest monetary terms. In previous sessions this subcommittee has heard evidence suggesting that white-collar crimes could cost, I believe, about $44 billion a year, about 11 times as much as the traditional property claims. I think even that is an underestimate. But there is no doubt that the rough magnitudes are correct. I don't think there is a need for me to try to persuade the subcommittee of the seriousness of the social problem involved in white-collar crime.

So far I have talked about our sources of information about white-collar crime. I'd like to say a few words about the concept or the subject itself, because I think that, as many of the witnesses before the subcommittee have testified, it is a very broad and vague notion and a lot of crimes of behavior are included in this label of white-collar crime.

Mr. CONYERS. How about a definition?

Mr. SPARKS. Well, the concept I would prefer to use is one that would be a little narrower, a concept that I call "crime as business," by which I mean those crimes that are carried out primarily for economic gain and involve some form of commerce or industry or trade or legitimate profession.

They are crimes that involve some kind of formal organization in the sense of a set of relationships between the people that are involved in them—company frauds, violations of regulations on manufacturing processes, laundering of money, and that sort of thing.

And finally, these are crimes that involve either the use or misuse of legitimate forms and techniques of business, trade, or industry. What distinguishes such things as price-fixing conspiracies, invoice faking, and bankruptcy fraud from robbery, burglary, and shoplifting is that the former do, but the latter do not, involve methods and techniques which are also used for legitimate business purposes.

I am not claiming my concept of "crime as business" covers everything that people have ever called white-collar crime. Individual acts like a person cheating on his income tax or a doctor filing a phony medicare claim, a solitary embezzlement by a bank teller or union treasurer, don't fall within this definition I have given, but they are obviously important. What I do claim is there is a large and important class of crimes with significant similaries, and the different control strategies may be appropriate for what I am calling "crime as business" than for some of these other individuals forms of white-collar crime.

I think if you are going to understand what I call "crime as business," we have to start out looking at the business in which the crime is embedded—partly because of the role of opportunity in shaping criminal behavior, partly because of the technology of crime differs depending on the economic or industrial environment in which it takes place.

One special problem here is developments in the field of banking and finance. Over the past 20 or 30 years we have seen increasingly complex forms of funding have been developed, and these have led to new and increasingly complex forms of fraud. Financial service conglomerates like equity funding, offshore mutual funds, multinational

corporations, and others have brought their own special new problems. Business has become more complicated, and our techniques of control have to become correspondingly more sophisticated if we are going to keep up.

To some extent my concept of "crime as business" has some affinities with a notion sketched by one of my colleagues, Dwight Smith, who has propounded a theory of illicit enterprise. Smith propounded his theory at the end of a study of the so-called Mafia or organized crime. And in looking at racketeering from a theory of illicit enterprise, what Smith did was to shift attention away from the alien conspiracy theory, which has obsessed everybody when talking racketeering and the Mafia, and focused on the economic activity, bookmaking, loansharking. There is a spectrum that goes from one end to the other.

I think the same thing is useful if we think about what we are calling white-collar crime. As a matter of fact, I think if you look at crime in this way there doesn't seem to be much point in distinguishing between so-called racketeering and crimes done by people who describe themselves as legitimate businessmen because if you confront them with similar economic or market circumstances, their behavior is often strikingly similar.

Take one example. It is often said the so-called Mafia launders money through banks in the Bahamas. I know of only one case where it has been demonstrated that anybody laundered money through a bank in the Bahamas, and that was the Gulf Oil Co. a few years ago.

It is often said that organized criminals have infiltrated legitimate business. I know of no evidence that it is true to a large scale. Even if it is true, could it be said that that infiltration leads to any more crime or any more social harm than is caused by legitimate businessmen in similar circumstances.

What I suggest is we have to take account of the economic context of crime as business, and I will say in a few minutes a consequence I think that has for future research on crime as business.

If this perspective that I am arguing is followed by way of Federal action, I think there are three or four priorities which I'd like to direct to the subcommittee's attention.

The first is that we need a great deal more by way of information about this problem than we now possess. As I pointed out, neither police statistics nor victimization surveys will throw much light on the problem of white-collar crime and its consequences. We will probably never get an accurate measure of how many acts of this kind take place, but I don't think that our lack of statistical data is very important here. What we really need is a different kind of information. We need detailed information about the nature and consequences of various different kinds of illegality. The number of illegal acts committed by businessmen is not important because a single price-fixing conspiracy can have enormous effects on the community through increased prices, through driving out competitors, and so on.

So I think the best approach for the research we need would be a series of case studies based on individual sectors. I think the problems are going to be very different in cargo transportation or retailing, on the one hand, from those encountered in banking and insurance and consumer credit, and those in turn will differ from those in the air-

craft industry or the car industry. So I think we ought to take specific industries separately and at least begin to understand the problems of these different sectors.

So far there has been almost no good empirical research on any of these white-collar crimes. I think there are several reasons for this—not the least because it is easier for criminologists to interview juvenile delinquents than businessmen. But one thing is to see that the Federal agency responsible for funding most of our research on crime, LEAA, has not placed much emphasis on this survey. I won't say they have done nothing. White-collar crime was a program priority of the National Institute of Law Enforcement and Criminal Justice in 1976, and other related topics have been announced as program priorities since then. But it is clear that white-collar crime gets a smaller amount of LEAA's budget—I believe Chairman Rodino mentioned the figure of 5 percent.

So I hope, Mr. Chairman, when you finally decide what kind of agency is going to replace LEAA, that you will consider the idea that the research arm of that agency should have as one of its explicit priorities the funding of research in this area. There is a tendency for research funding to become compartmentalized so that projects funded by the National Institute of Mental Health have to deal with mental health and so on. I hope projects won't be too narrowly focused on crime, because there may be a lot of harmful business practices which aren't yet outside the law, and I wouldn't want these excluded from research just for that reason.

Another reason for our limited research at the moment is because the subject is complicated. Criminologists tend to not know much about the business world, and at the same time professors of business administration and businessmen tend to not have much knowledge about crime. So while generally I am not very much for multidisciplinary research where you get a psychologist and so on together and brainstorm an idea, but this may be an area where such research would be useful.

Two more areas of priority to which I'd direct the committee's attention. The first priority I don't know how to accomplish. It is the changing attitudes in the business community toward research on business-related crime. I think it needs to be emphasized that one victim of crime in this business is the business community itself. It has been estimated that crime cost American businesses about $30 billion in 1976, $9 billion in service industries alone. Given that state of affairs, business and industry ought to be out in the forefront of this war on crime. They ought to be funding projects and opening their doors to people who are trying to understand the business contexts and the economic contexts in which these illegal activities arise.

I think these hearings which are helping to reveal the magnitude of the problem may help to bring about that kind of a change in attitudes.

Finally, there is a congressional function that can be very useful to those of us who are trying to get information on white-collar crime, namely, data collection in the course of hearings in legislative oversight. The hearings on the Watergate affair are, of course, a very good example of this. Another good example is the Senate Foreign Relations

Committee's subcommittee hearings on multinational corporations which a couple of years ago revealed the, "improper payments" that were being made abroad by large corporations.

At the time of those hearings I contacted the counsel of that subcommittee and asked if some of their materials could be made available to me for research purposes, with the necessary guarantees of confidentiality, and so forth. And he informed me there was no way they could be made available to me because they had been obtained by subpena. But, of course, many of the materials were subsequently published by the subcommittee and they are very, very useful. One of our doctoral students has made extensive use of the materials. So very often a congressional subpena is a great deal more effective than a researcher's questionnaires, and hearings like this can do much to illuminate researchers as well as the general public on the problems of crime in the business world.

Mr. CONYERS. Thank you very much.

Chairman Rodino.

Mr. RODINO. Thank you very much, Professor Sparks.

Professor, you heard Mr. Seymour state awhile ago that there was a need for an independent press in order to better focus on white-collar crime. Is this what you are suggesting when you talk about the invisibility of crime as business, the fact that in the area especially of white-collar crime we seem to lack the kind of information that should be coming to the public perhaps in part because of the attitude of newspaper publishers?

Mr. SPARKS. My reference to white-collar crime being invisible—I was thinking mainly of the fact of the statistics the FBI puts out every year and now the victimization surveys the Census Bureau is carrying out for LEAA—those things concentrate on poor people's crimes. So every year we get press releases saying the number of murders is up by x percent, and figures are given for assaults, burglaries, rape, car theft. Nothing whatever is said about the amount of white-collar crime. And it is in that sense that I meant that white-collar crime is invisible.

It is, of course, true that the investigative reporting and other forms of information are also limited here by comparison with street crime.

Mr. RODINO. Would you then go along with Mr. Seymour's suggestion to this committee that we focus a great deal of our attention on trying to get an independent press to focus in this area? Because it seems to me that a great deal of the white-collar crime, and especially the money involved attributable to white-collar crime in those areas, is tremendously substantial, and especially when you consider the pervasive impact that it has on the public at large—whether it is in the form of price fixing or whether it is bid rigging or whatever it may be.

Mr. SPARKS. Absolutely. I think if we look back over the history of the past few years and see what good investigative reporting did in the case of political corruption, if that same kind of machinery could be focused on crime as business in the private sector, that would certainly be beneficial. We would see, incidentally, that the two are not all that dissimilar in many important respects—in the private sector and public sector—if public attention were focused on the problem.

Mr. RODINO. Thank you very much, Professor.

Mr. CONYERS. Congresswoman Holtzman.

Ms. HOLTZMAN. Professor, you alluded to the hearings that were held on the issue of bribery by U.S. corporations abroad. What is your estimate of the extent to which there has been bribery by U.S. corporations of Government officials for purposes of obtaining contracts in the United States?

Mr. SPARKS. I'm sure I have no estimate. I have no idea. I would expect it to be substantial, but this is one of those crucial areas in which we need—we badly need—hard empirical research, and we just don't have it at the moment.

Ms. HOLTZMAN. Have you addressed the issue of the effectiveness of present Federal law enforcement with respect to white-collar crimes in the sense of the adequacy of their staffing? Could you comment on that?

Mr. SPARKS. Well, only briefly. I am not well-informed on the subject. I note that President Carter signed into law, I believe it was last October, a law which would augment the law enforcement efforts in this area.

I think one of the problems here is that there is a danger that people will set up white-collar crime units as if all kinds of white-collar crimes were the same. It seems to me that program frauds in the area of health, education, and welfare, for example, are going to be very different from program frauds in the area of housing and urban development. And if we are to effectively control crimes of that kind, the prosecution effort and the investigative effort has to be relatively specialized. And I am far from certain that that kind of specialization is going to come out of the present effort.

Ms. HOLTZMAN. Well, just from my very limited experience I would say that some of these criminals are generalists and their activities may go across several Federal agencies and not be limited to just one.

I don't have any further questions, Mr. Chairman.

Mr. CONYERS. Thank you.

Congressman Gudger.

Mr. GUDGER. No questions, Mr. Chairman.

Mr. CONYERS. We are grateful. Thank you very much for appearing before the subcommittee.

Mr. SPARKS. Thank you very much, Mr. Chairman.

Mr. CONYERS. Do you have any parting observations?

Mr. SPARKS. One I make with some trepidation because it is only with some trepidation that anybody would disagree with Ramsey Clark on matters of crime and criminal justice in America.

Mr. CONYERS. True, but go ahead.

Mr. SPARKS. Well, fools rush in. [Laughter.]

I think that it is possible to take another view about the most appropriate way of dealing with offenders in this area. As a matter of historical fact, I was only in England when large numbers of middle-class offenders started going to prisons that the prisons were improved. This was at the beginning of World War I when conscientious objectors were sent there. That is where the minimum security prison came from. But anyway, we are talking about a class of crimes that is highly deterrable. We are talking about businessmen's crimes, businessmen who can afford to pay large legal staffs—of course, it is true they often

come around afterward and ask the lawyers to get them out of trouble. Criminal sanctions, including imprisonment, could be useful and appropriate, in my view. As you know, there is a shifting going on in penal philosophy more toward a concept of just deserts. One of the principal advocates of that, Andrew von Hirsch, is also here at Rutgers.

It may be that the court's reluctance to deal fairly but severely with white-collar criminals who cause serious harm will change. So I think there is a place for the criminal sanction. I wouldn't want to limit our efforts to deal with this kind of crime to criminal punishment, though. Like it or not, it will always be the case that some kind of civil remedies are more effective—new possibilities that we havn't considered—for example, that the larger corporations be chartered and if they misbehave we have capital punishment for corporations; we take the charter away.

Another suggestion is that corporations have on their boards of directors public directors appointed to keep an eye on the public interest.

But in my view, these are a supplement to criminal punishment and not including imprisonment and not a substitute for it.

Mr. CONYERS. Thank you very much. We appreciate your comments and your preparation for the subcommittee.

Mr. SPARKS. If there is anything I and my colleagues can do to be of further help to the subcommittee, please let us know.

Mr. CONYERS. Thank you.

We are going to take a 10-minute recess, after which we are going to have the U.S. attorneys for the southern district of New York and the State of New Jersey.

The subcommittee stands recessed.

[Whereupon, a short recess was taken.]

Mr. CONYERS. Will the hearing come to order so that the subcommittee can proceed.

We welcome the U.S. attorneys, first for the southern district of New York, Mr. Robert Fiske, and the U.S. attorney for New Jersey, Mr. Robert Del Tufo.

We appreciate very much your presence here today, gentlemen.

Mr. Robert Fiske attended Pomfret School, Yale University, and the University of Michigan Law School, where he received a J.D. in 1955. He was associate editor of the Michigan Law Review. After law school, Mr. Fiske worked for Davis, Polk, Wardwell, Sunder & Kiendl. Two years at that firm were followed by 4 years as Assistant Chief of the Criminal Division and as head of the Prosecution Unit on Organized Crime. His major prosecutions included the conviction of Johnny Dioguardi, "Johnny Dio," for tax evasion and the conviction of Fortune and Anthony Pope for criminal violations of the SEC proxy rules.

Mr. Fiske has distinguished himself as a fellow in the American College of Trial Lawyers and is a member of the American Bar Association, New York State Bar Association, Bar Association of the City of New York, and a trustee of the Federal Bar Council. In April 1978, Mr. Fiske was elected chairman of the Attorney General's Advisory Committee of U.S. Attorneys. He has been U.S. attorney, since

March 1, 1976. Since his appointment as U.S. attorney, he has personally prosecuted two important criminal cases including Leroy (Snicky) Barnes, and has argued nine appeals in the court of appeals.

Mr. Robert Del Tufo is a graduate of Princeton University and Yale University Law School. He served as law secretary to Chief Justice Weintraub of the New Jersey Supreme Court from 1958–60. He was an assistant prosecutor in Morris County from 1963 to 1965. Currently, he is the U.S. attorney for the district of New Jersey. Mr. Del Tufo is a member of the American Bar Foundation; the Criminal Law Drafting Committee, National Conference of Bar Examiners; the Law Enforcement Advisory Committee, County College of Morris; the Morris County, New Jersey State, and American Bar Associations; the National District Attorneys Association; and the American Judicature Society.

We welcome both of you and would ask Mr. Fiske to begin his discussion with us.

TESTIMONY OF ROBERT FISKE, U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK; AND ROBERT DEL TUFO, U.S. ATTORNEY, NEW JERSEY

Mr. FISKE. Thank you very much.

Let me say first that I am very pleased indeed to be here, to have an opportunity to appear before this committee. I think every U.S. attorney—and Mr. Seymour referred to the fact that U.S. attorneys consider themselves to some extent the setters of their own priorities—each U.S. attorney has to do that for his office. And my highest priority from the time I assumed the position of U.S. attorney almost 3 years ago has been white-collar crime. And what I would like to do is to state very briefly the reasons why we have put the emphasis in our office that we have on white-collar crime, why we feel that is important. And then I would like to be fairly specific with the committee in terms of exactly what we are doing, what kinds of resources we are devoting to it, and what we are trying to accomplish.

I know the committee has heard at great length about the problem of white-collar crime. The reason why we in the southern district of New York give it such a high priority is not simply the tremendous dollar loss that white-collar crime causes every year—I know you have had staggering figures ranging from $44 billion to $200 billion—numbers that almost boggle the mind.

To us, an equally and perhaps almost more important reason for prosecuting white-collar crime vigorously is because white-collar crime, particularly when it involves Government officials or business officials, erodes the confidence that the American people have in their institutions, their most important institutions, Government institutions, and business institutions. And to the extent that they see that kind of crime going on unprosecuted in those institutions, it erodes not only their confidence in the institutions themselves, but in our whole law enforcement process.

And we are greatly concerned to avoid any possible appearance of any kind of a double standard of justice in this country where the rich and the powerful are not investigated and prosecuted as vigor-

ously as the indigent people, recognizing that on a more generalized basis it is the rich and powerful who are involved in white-collar crime while the less rich and less powerful people are involved in street crime. Unless the American people think that their law enforcement people are giving equal attention to white-collar crime, it erodes confidence in law enforcement.

Our office is divided into a civil and a criminal division. Within the criminal division we have approximately 80 assistant U.S. attorneys, approximately 15 to 20 of whom at any one time are the new assistants who are really in a sort of basic training program, learning what it's all about, prosecuting the simplest types of cases. But among the 60 or so assistants who we have assigned to specialized units, units that we have made priority units in our law enforcement program, two-thirds of those are involved in what we would call white-collar crime prosecutions.

So within our Office, two-thirds of the most experienced assistants are directed exclusively to white-collar crime.

That, in turn, is divided up in a very broad way into three areas. We have a Business Frauds Units, consisting of 14 assistants who, as the name implies, specialize on crimes involving crimes by business and crimes by high individuals in business against business itself.

We have a special prosecutions Official Corruptions Unit consisting of 12 assistants, which again, as the name implies, is devoted to prosecuting corruption in Government and also to prosecuting what has emerged in the last 2 or 3 years as a tremendous problem in the white-collar crime area, the problem of fraud against the Government in a wide variety of Government programs.

The third major unit that is devoted to white-collar crime in our Office is something we call our Major Crimes Unit which has responsibility for some violent crimes, such as terrorist bombings and high-level hijackings, bank robberies, and conspiracies, but primarily it, too, is directed at bank fraud and other types of economic crime.

I think perhaps the best way I can describe to you what kind of effort is going into this in our Office is to just take yesterday and today in terms of what is going on in the U.S. Attorney's Office for the southern district of New York.

You may have read in the paper yesterday that as a result of a prosecution we brought, the former general services commissioner for the city of New York, a lawyer, pleaded guilty to charges of mail fraud arising out of a scheme whereby he embezzled $70,000 from one of New York City's major law firms. And as a result of the investigation which led to that indictment and that plea of guilty, this individual, Mr. Peter Smith, has resigned his position with the city and has been replaced.

Also, yesterday the Court of Appeals for the Second Circuit handed down an opinion affirming a conviction which we had obtained after trial in what is the first criminal prosecution involving the misuse of inside information for an individual to profit to his personal benefit. And we expect that decision, which we think is a precedent-setting decision, to have a widespread impact against the misuse of inside information in the trading of securities on our stock exchanges.

We had five cases on trial yesterday in the southern district of New York, major cases involving white-collar crime. One ended yesterday

after 10 weeks of trial with the conviction of all four defendants. This involved a $600,000 fraud participated in by four individuals who had been overcharging hospitals in New Jersey and New York for services and supplies rendered by them to the hospital. The Federal Government was the victim because Federal money had been used to finance these purchases. One assistant devoted 10 weeks of his time in court to obtain that conviction, and that indictment in turn resulted from a 6-month grand jury investigation that he conducted with the assistance of the FBI.

We have on trial, starting Friday, a case that we expect to last 4 weeks before a jury, involving the three top officials of the now defunct Franklin National Bank, charging them with fraud in connection with overstating the earnings of the Franklin National Bank to the detriment of the people who bought stock in that bank just prior to its collapse. This is the chairman of the board, the president, and the vice chairman of the bank.

We have on trial, nearing the end of an 8-week trial, a case involving four defendants, including a former limited partner in the firm of Bear, Stearns & Co., who was the head of their commodities section. This charges these four defendants with rigged trading on the crude oil market which was part of the Cotton Exchange, and as a result of what we claim to be prearranged fictitious trading they generated fictitious losses and tax deductions of over $27 million for clients of theirs, with a resulting loss to the U.S. revenues.

We have on trial, nearing again the end of completion after 8 weeks, an advance-fee fraud case with more than a million dollars of fraud involved—eight defendants in a nationwide scheme, with victims at all levels of society throughout the country.

And finally, we have another case on trial which is going to be 10 weeks in trial before it's over—it is now in about the 7th week—involving first securities fraud, and then looting and bankruptcy fraud, in connection with the Westchester Premiere Theater in Tarrytown, N.Y.

Describing these cases to you—what is going on in white-collar crime prosecutions in the southern district of New York as we all sit here today— think probably is as good a way as any of giving this committee an insight into what we are trying to accomplish in this area.

We have made a major effort in this field. We think that it is tremendously important, and we recognize that there is a long way to go. We don't think anybody here has all the answers. These cases are very difficult to investigate; they are very time consuming. They require extraordinary resources. And it is only recently that we have begun to feel that the end product of all of this work is justified by the sentences that the courts hand out.

For a long time—I think Mr. Seymour alluded to this—we were all concerned that the courts were not imposing the kinds of sentences that would serve the deterrent function which we think is so crucial in the area of white-collar crime. And I would just like to say one word about that before I turn the microphone over to my friend, Bob Del Tufo.

I think white-collar crime, perhaps more than any other, is an area where sentencing has a general deterrent function that is extremely important in the sense of deterring other people from engaging in criminal conduct. A great deal of street crime is committed by impulse; it is committed as a result of need. And there is less deterrence in many respects in sentencing there than there is in white-collar crime which in a general way is committed by people who are very intelligent. They are very smart. They are committing these crimes not out of need but out of greed, and they are smart enough to weigh the risks-to-benefit ratios before they go into the crime

The profit from this kind of crime is enormous. The profit potential is enormous. They know the risk of detection, even with everything the Federal Government is trying to do now, is very slight. The cases are very difficult to investigate and very difficult to prosecute. And if, at the end of all that, after you have investigated and prosecuted successfully, a Federal judge is going to give somebody 2 months in jail or probation for work in a community-type program, then there is nothing to deter the next person from engaging in that kind of criminal activity.

So we are taking a very strong position in the southern district for increased sentences in this area, and we are very gratified by the fact that in the last year or so we have begun to detect a significant improvement in the length of sentences that we are receiving.

Mr. CONYERS. Well, that is an insightful view into the operation of perhaps the biggest U.S. attorney's office in the country.

Mr. Del Tufo, I invite you to proceed in your own way.

We welcome you to the Subcommittee to present your views.

Mr. DEL TUFO. Thank you very much, Chairman Conyers, Chairman Rodino, Congressman Gudger, and Congresswomen Holtzman. I certainly echo Mr. Fiske's statement, and I do appreciate the opportunity to be with you to describe briefly the work being accomplished in the State of New Jersey by the U.S. attorney's office, and perhaps to comment briefly upon some additional steps which I feel might be very helpful if pursued.

The investigation and prosecution of white-collar-type offenses is also the priority of the U.S. Attorney's Office for the District of New Jersey. It certainly has been a priority that is mine since I took office a year ago, and it is the type of investigative and prosecutive work that has characterized the direction of the office in New Jersey for some years now.

I concur fully with Mr. Fiske's statements on the importance of having a law-enforcement presence in this area. I will not restate the sentiments which he expressed, which are so aptly on point. Though clearly less visible, perhaps, than the street-type crime, the white-collar crime situation in the country today is truly a cancer which is eroding the society from the inside, a cancer which affects the integrity of all of our institutions—political, economic, and social. And law enforcement must be vigilant, must do something about it, and I think we as a society have to address the problem on an even broader scope and try to deal with it.

Now, in the U.S. attorney's office in New Jersey, we have 62 Assistant U.S. attorneys. Sixteen of these are assigned to undertake

civil responsibilities. There is heavy civil responsibility of U.S. attorneys as well as criminal responsibility. But of the remaining attorneys, over 30 are deployed exclusively to undertake complex white-collar crime investigations.

They are deployed in essentially three separate units.

There is a Fraud and Public Protection Division, which is designed to deal with a broad spectrum of economic crime, and also to engage in various regulatory agency offenses, and to become directly involved in frauds against Government programs.

A special prosecution's unit has as its responsibilities a direction toward official corruption.

The Federal strike force in New Jersey, which is headed by two Assistant U.S. attorneys, has responsibilities in the organized crime area. We have found that organized crime has sought to reap economic gain from white-collar crime itself, so that the strike force is also involved in what we could generically call white-collar crime.

Certainly all of these particular areas are not mutually exclusive, and during the course of investigations there are overlaps which call for the deployment of assistants in appropriate fashion.

In addition to these 30 or more attorneys who are exclusively involved in white-collar investigations, many of our attorneys in the Criminal Division, some 16 attorneys in that locus, are also involved in white-collar-type offenses on a day-to-day basis, in addition to doing what might be considered the more routine criminal business of the office.

Beyond that, the attorneys in the Civil Division are of assistance on a day-to-day basis in trying to pursue various civil remedies in the white-collar crime area, remedies commensurate with the processing of criminal prosecutions.

Now, I would like to digress just for a moment to call to your attention something which is unique to the State of New Jersey and which you might want to consider in assessing long-term law enforcement initiatives and trying to deal with white collar crime.

I know Attorney General Degnan and Director Stier are with us today and will be talking with you soon and will also probably be addressing themselves to this area. But let me say very briefly that in 1970 the New Jersey Legislature, through the enactment of the Criminal Justice Act and other accompanying legislation, created a climate in New Jersey conducive to the growth of an experienced cadre of attorneys and investigators to undertake white-collar crime, organized crime, investigations, and prosecutions on the State level.

Over the last 8 years that climate has produced substantial results, and there are over 100 attorneys at the Attorney General level in New Jersey, and over 50 investigators who are conducting precisely that type of investigation.

New Jersey happens to be a State which is characterized by the most law enforcement authority being lodged in an attorney general than anywhere else in the country.

Over the years there has been Federal-State cooperation to varying or less degrees—cooperation developing essentially on a case-by-case basis. But in February of this year these past cooperative undertakings between State and Federal law enforcement were codified by the cre-

ation of a formal structure for undertaking such cooperation—the creation of a Federal-State law enforcement committee which is composed of the attorney general of the State, the director of the Division of Criminal Justice, the president of the County Prosecutors Association, representing the various prosecutors in the counties, and the U.S. attorney.

In addition, all the Federal investigative agencies, FBI, postal, and the like are ex-officio members of this committee, as are State investigative agencies such as the State police.

It certainly makes commonsense from all standpoints, certainly a resources and effectiveness standpoint, that if both State and Federal law enforcement can be brought together, resources may be deployed to the best advantage. It is particularly advantageous in the State of New Jersey when in addition to the skilled investigators and prosecutors that we find on the Federal side of the ledger there are skilled investigators and attorneys on the State side at the level of the Attorney General. And we continue to work together on a daily basis. We have put together various joint initiatives in the area of banking, environment, medicaid, and medicare prosecutions. And I think it is a very healthy thing and has borne results and will continue to do so.

Now, very briefly—I realize you are under time constraints—let me tell you some of the areas in which we have undertaken investigations and prosecutions using these specialized attorneys who are involved in this type of endeavor.

We have moved into the Government program field and have conducted investigations and prosecutions in areas involving HUD housing projects, into public health—that is, the medicare-medicaid area—into poverty programs, into programs of HEW involving student loans, into Department of Labor programs dealing with Job Corps grants, and a variety of Department of Agriculture programs, including food stamps. That is a representative type of area.

Just last week certain defendants were sentenced—and given substantial sentences—for fraud involved in a HUD housing project, for example, where kickbacks were secured from contractors in order to secure the award of contracts for various public housing projects in the borough of Lodi.

In addition to that, the office has moved into various consumer areas and has become involved in securities fraud, for example, and frauds in the sale of lands, interstate sales and the like.

There has been significant activity in the bank fraud area dealing with events that range from simple teller embezzlements to much more sophisticated multimember undertakings which have embezzled hundreds of thousands of dollars from people. I think over the last 2 years 61 individuals have been convicted in the course of investigations into the bank fraud area. There have been practices dealing with, as I say, simple misapplications to the practice of making fraudulent loans and to accepting fictitious collateral as the basis for loans.

Here you also find, unfortunately, some labor influence in the deployment of union pension funds, which is another area in itself which demands much regulatory attention, whereby union pension funds will be promised as deposits in a bank, particularly in a small bank, in return for loans being made to persons who are not in any way qualified to receive those loans. And this type of practice has brought

some banks to the bring of collapse. And in New Jersey at least two small banks suffered that fate because of this and other types of fraud.

There is a case which will be going to trial in New Jersey within the next month or so involving precisely this type of activity.

There is another area of white-collar offense which was mentioned by Ramsey Clark this morning, which I think is an important one for us to keep in mind. And I'm talking essentially about regulatory-type offenses.

Regulatory agencies, of course, are trying to protect people from a wide array of dangers. We have the Food and Drug Administration, Environmental Protection Agency, and the like. The Fraud and Public Protection Division in my office is and has been involved in investigations in this area. They are working with the FDA to seize food which is adulterated or contaminated or drugs which are not living up to their labels or do what they are supposed to do.

The area of toxic wastes is one which is of great consequence now, especially in the State of New Jersey, the illegal dumping of chemical wastes, at great hazard to the public.

And an effort has to be made in these areas where one will see companies who want to dispose of these wastes really closing their eyes to how and where this type of waste material is going to be disposed of and turning it over to somebody who will place it in locations where it simply should not be located.

In addition to criminal prosecution we have, together with the attorney general in the State, embarked on a program of attempting, wherever possible, as an adjunct to criminal enforcement efforts, to recover the proceeds of the crimes. We have proceeded under the civil recovery provisions of the Rico statute, under the Federal False Claims Act, and where appropriate and applicable under common law theories of unjust enrichment and constructive trusts.

The idea is, I think—and alluding again to Mr. Fiske's comments about the premeditated, calculated nature and the greed motivation behind these types of crimes—if we can, through law enforcement, demonstrate to would-be white-collar offenders that not only will they run the risk of criminal prosecution and perhaps incarceration or like treatment, but in addition they will simply not be permitted to retain their ill-gotten gains which we will seek to recover through pursuit of civil remedies, I think the deterrent effect will be greatly heightened and perhaps our task may be easier in trying to deal with these problems in the first instance.

In conclusion, let me say that I certainly represent to you that as I see it, law enforcement, and certainly Federal and State law enforcement in the State of New Jersey, is fully committed to the struggle against white-collar crime. But I think in order for the problem to be properly addressed and for it to be controlled that more is required.

Mr. Fiske has talked about a 10-week trial and a 3-month investigation. And the 3 months sound like a short period of time, in fact, because of the complexities in this type of crime and this type of prosecution. We have had investigations that have gone on for a year or longer, and not only are the investigations difficult and time consuming but the trials are complex and, as Mr. Fiske has said, take a considerable period of time.

In order for law enforcement to do everything that it possibly can in this area, more resources are required.

Law enforcement, of course, comes into play usually after a corrupt act has occurred, and certainly that approach to things, that law enforcement reactive approach, cannot be and was never intended to be the entire answer to the problem. Preventive steps, I think, are required.

We must, for example, as I see it, encourage private industry and the professions to take the necessary steps to police their own affairs, to discipline those within their midst who would choose to steal and also, frankly, to report criminal acts promptly to law enforcement authorities.

This does not always happen. Criminal acts that may be undertaken by an employee of a corporation sometimes are simply not reported but pass as a cost of doing business.

In addition, I suggest that a great deal of abuse in Government program fraud could possibly be eliminated by the implementation of tighter controls within the programs themselves. I think it has been our experience that inadequate and imprecise regulations covering the disbursements of these funds have invited fraud and have posted obstacles to investigation and prosecution of that fraud. And, indeed, I have to say that in some instances misapplications may be more or less innocent or based on incompetency, simply because the controls or the guidelines for the use and expenditure of those funds are nonexistent.

The size of Government social programs in terms of money and resources is so extensive that we certainly should try to run those programs more like someone who is running a large corporation and not like a candy-grocery store.

So I think it makes good sense to build proper controls into the procedures by which expenditures are authorized, rather than attempt to rely on law enforcement to play catch-up after the fact.

I think that it is important that as new programs are devised, the Congress take into account all the ramifications of what it's doing. If a socially beneficial program is to be put into effect and money put into the States, rather than simply doing it, I think thought has to be given to the impact that this is going to have on law enforcement, on the type of enforcement that is going to be required for control of funds, and so on.

I may draw your attention to Mr. Civiletti's statement to you back in June for some type of enforcement statement to accompany remedial legislation before it is put into effect.

Last, on terms of sentences in terms of potential deterrent effect, stiffer sentences for white-collar offenders are clearly appropriate and would have a dramatic impact, I think, upon the would-be white-collar criminal, would have a deterrent effect. And also recently the courts seem more willing to mete out those types of sentences.

I have to agree also with some of the thoughts expressed this morning by Ramsey Clark on that score, and I would also add to that circumstance that once one takes some action with one area of the criminal justice system, it has an effect in other areas. And if one is going to be sending white-collar offenders to prison with the situation that we have in the prisons around the country today, the overcrowded condi-

tions, then something is going to have to give with street offenders who may pose a violent threat to the community.

I don't really presuppose to try to answer that question, but I would suggest that minimally the idea of alternate sentence is one which should be explored further, that a white-collar offender who has some skills should perhaps, if a prison sentence is not appropriate for one reason or another, be forced to work and serve the community for a considerable period of time and to use the skills he has to better society.

Finally, I suggest to you all that the white-collar crime situation is probably never going to be entirely solved because we are all human beings and we are not perfect, obviously. But it has to be contained really by a restructuring of the attitudes of our society itself.

Now, for whatever reason, be it the reasons expressed by Mr. Clark this morning about the focus of this society upon wealth and materialism, be it because the public is somehow jaded by seeing white-collar criminals not treated in like fashion as other criminals, or because perhaps there has not been uniformly around the country the type of devotion to white-collar crime prosecution that there should be, the public seemingly does not care or becomes very apathetic. I have detected the absence of the same moral outcry that one would attach or that society attaches to violent crime to the person who chooses to steal from the business or from the company or from the Government. I think the public has to learn that it is the total loser when these events take place, that in Government program fraud, for example, the public loses twice. If the moneys that are designed to further social objectives are misapplied in the first instance, those are tax dollars, so the public is being disenfranchised in that sense of the world. Then the public is the body which has to finance the law enforcement efforts to detect that misapplication and prosecute the offender.

This is where we get into the enormous losses. But somehow, in some measure, because law enforcement can never be the answer, there can never be enough resources at the end of the process to control this business. In some manner or means the public has to be convinced that people who engage in these activities should be treated as criminals in every sense of the word and should be censured by society perhaps even in a way that falls short of the criminal process.

But I think we need resources in this country and a restructuring of attitudes to enable the cancer to be controlled.

Thank you.

Mr. CONYERS. It is good to get an insight on what two U.S. attorney offices are doing.

We turn now to Chairman Rodino for questions.

Mr. RODINO. Thank you very much, Mr. Chairman.

I welcome both Mr. Fiske and Mr. Del Tufo. I am particularly pleased to see my friend Mr. Del Tufo. I was present at the time of his swearing-in as the new U.S. attorney for the district of New Jersey, and I recall the statement that he made and that statement held real promise that he would work in this area and he would work with a great deal of emphasis in the area of white-collar crime. And I note with a great deal of satisfaction that that has been going on, and I want to commend you especially.

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Mr. DEL TUFO. Thank you.

Mr. RODINO. It was a wise selection that was made by the President of the United States.

Let me ask just a couple of questions because, frankly, there are so many that come to mind.

You mentioned, Bob, the public outcry, the fact that the people are losing confidence in law enforcement, in fact, in the system, because of our failure to be able to deal with this big problem of white-collar crime.

And it seems to me that it emphasizes all the more what Mr. Seymour said awhile ago, about the failure of the press, the media or otherwise, to focus in this area so that the public would know and then, I suppose, demand some action.

Because, very frankly, while I note how well you are doing, I suppose that it is going to be pretty difficult if you cannot have generated the support of the public and people who call these matters to your attention.

Mr. DEL TUFO. It is certainly important to have public support, participation, and information. I really believe that the type of hearings that are underway and that you people are conducting are very much conducive to showing the public the enormity of the problem, and I think also in demonstrating that as public officials all of us care about this problem and want to do something about it.

And I think what is happening here is very constructive in that sense.

Mr. RODINO. Mr. Fiske, you mentioned sentencing, and you noted that, in fact, there have been prosecutions and convictions and sentences. And Mr. Del Tufo stated he was happy to note that the courts are now meting out the kinds of penalties that at least may serve as a deterrent.

Do you think that presently our statutes provide adequate punishment for this kind of crime?

Mr. FISKE. I would say that in terms of prison sentences, the penalties that are provided for in the criminal statutes are certainly adequate.

The most commonly used statute for prosecuting white-collar crime is the mail fraud statute, and every time a letter goes into the mails with a scheme to defraud, that is a separate crime for which a person could receive 5 years in jail. So if a person is involved in a fraudulent scheme and puts five letters in the mail, he is exposed to 25 years in jail. I think even the most hardnosed prosecutor would say that is a sufficient exposure in terms of jailtime.

Where the statute needs to be improved in the area of sentencing authority is in the area of fines, particularly when you are talking about corporate crime. I think the statutes are totally out of tune as to the prosecution of corporations the way they are now. The mail fraud statute that will send an individual to jail for 5 years only allows a fine of $1,000. So if you prosecute a corporate employee and also the corporation, you can send the individual to jail, but the corporation can only be fined $1,000. And there are many cases where it is impractical for one reason or another to prosecute individuals. You may end up just prosecuting the corporation, or you may end up prosecuting the individual and the corporation.

But there is very little deterrent effect now against corporations in the sentencing penalties that are provided in title 18. And that is one reason that as prosecutors we very much endorse the concepts in the new sentencing provisions under the proposed provisions of the Criminal Code which would materially increase the amounts of fines that could be assessed against corporations the way that has been done in the antitrust field.

Mr. RODINO. Would you limit that to fines or perhaps, include imprisonment?

Mr. FISKE. Obviously, when it comes to corporations, nobody yet has found a way to send a corporation to jail.

Mr. RODINO. Yes; but I'm talking about the individuals that are involved, and perhaps making a greater effort to find a connection.

Mr. FISKE. Well, we would as prosecutors prosecuting white-collar crime always prefer, whenever we can, whenever we can find sufficient evidence, to prosecute the individuals because that's a greater deterrent than prosecuting the corporation, particularly with the sentencing structure the way it is now.

I don't think in terms of maximum penalties we need an increase from what is in the legislation now. We do very much endorse the whole concept of sentencing commissions which is embraced in the proposed provisions of the Criminal Code. But that is a subject for another day. We think that would be very helpful in white-collar crime, particularly because, as Bob Del Tufo says, as we read that legislation, it would provide for the disgorgement of profits received as a result of criminal activity.

Mr. RODINO. Thank you very much.

Mr. CONYERS. Congresswoman Holtzman?

Ms. HOLTZMAN. Thank you, Mr. Chairman.

It gives me great pleasure to welcome Mr. Fiske to the subcommittee. I have enormous respect for the work he has done as U.S. attorney for the southern district of New York. He has been a credit to the southern district, the city, and the country for the vigor, diligence, and fairness with which he has pursued his task, particularly in the area of fraud against the U.S. Government.

I'd like to pursue briefly this issue that Chairman Rodino raised about the adequacy of penalties and the deterrent effect of present penalties that we have.

First, in order to recover the profits of white-collar crime, whether it's fraud against the Government or fraud against the public, is the Government now required to bring a separate civil action? And in how many cases do you bring the separate civil action? And in how many cases do you, in fact, recover the proceeds of the white-collar crime?

Mr. FISKE. Right now it is very difficult. I think we have followed exactly the same policy that Bob Del Tufo described in starting collateral civil actions every chance we get.

We brought a group of medicaid prosecutions against doctors about 3 years ago. We convicted about 30 doctors for medicaid fraud, and as soon as we convicted them we started civil actions to recover, under the False Claims Act, double the amount they had collected fraudulently from the Federal Government. That program was very successful. We obtained judgments in excess of half a million dollars against that group of doctors.

Where the Government has been a victim, usually you can prosecute a civil case separately under the False Claims Act, but that requires a separate civil proceeding.

It is more difficult when it is a crime against the public. For instance, 2 years ago we had a prosecution involving a major land fraud by a company in New York selling lots in Albuquerque, N. Mex. We estimated and the proof at trial showed that the total loss to purchasers was over $200 million as a result of that fraud. There is no way under the law now that the Federal Government can bring an action on behalf of those victims to get that money back from the corporation. The victims would have to sue themselves. They would have to show that they meet the requirements for a class action—and again that is another subject for another day. But that is a very difficult, cumbersome procedure.

And one of the things I think personally is of most value in the proposed new Criminal Code are the provisions which would give the court as part of the criminal sentencing process the power to require the disgorgement of illegally gained profits, not simply to the Government where the Government is a victim but also to members of the public where on a mass scale they have been victimized.

Ms. HOLTZMAN. Would you say that without such a provision we will not be able to say to the victims that have been convicted that crime doesn't pay?

Mr. FISKE. I think that is a fair statement, yes.

Ms. HOLTZMAN. Would you agree, Mr. Del Tufo?

Mr. DEL TUFO. I wouldn't say you can make that entire statement. I think to a limited extent you can have some recoveries. I think it is very important that we pursue the iniatives he has outlined.

Ms. HOLTZMAN. Let me turn to the issues you raised about the Federal legislation itself and the regulations that are issued. In the summer feeding program, which was the subject of major scandals in New York City, we found the statutes were overly broad and permitted corruption to take place.

What mechanism exists right now for you, when you have experience of a statute that is overly broad and permits corruption, to communicate that to the Congress or the Federal agency so that changes can be made?

Mr. DEL TUFO. If we detect something that requires legislative attention, I think that we can try to operate through the legislative affairs people within the Justice Department who might be able to pursue initiatives in that sense of the word, by putting together some proposed legislation and sending it along to the Hill. Or I imagine if it is a matter that is of particular moment, it would not be untold for one of us to call it to the attention of one of the particular legislators themselves who might be interested and have a hearing.

Ms. HOLTZMAN. Do you have any comments, Mr. Fiske?

Mr. FISKE. We make an effort to do that. As we have experience with a particular criminal statute or regulatory statute, if we complete a case successfully but feel we could have done it better if the statute had been better written, we communicate that. If we are unable to make a case because the statute is written too broadly, we try to communicate that.

And people from my office have testified before congressional committees on the subject of medicaid fraud and the subject of fradulent land sales with the specific objective of bringing to their attention specific changes we thought could be made in the legislation and which have, in fact, been made.

Ms. HOLTZMAN. Mr. Chairman, may I ask two more questions?

Mr. CONYERS. Yes.

Ms. HOLTZMAN. Thank you.

Some of the cases that you get involved in have to do with political figures, and sometimes these are high-level political figures.

To what extent do you get overruled by Washington with respect to the bringing of cases against important political figures?

Mr. FISKE. I would say absolutely not at all.

Mr. DEL TUFO. I agree.

Ms. HOLTZMAN. Finally, with respect to the issue of adequate investigative staff, Mr. Seymour, when he testified, said that 5 years ago the FBI was abysmal, to use his word, in terms of their willingness to assist in the investigation of white-collar crimes.

What is your experience now? Is the FBI an effective aid in investigating white-collar crime? Do they have the expertise in sophisticated business cases? Are they available when you need them?

Mr. FISKE. I am glad you asked that question, as lawyers like to say.

We feel, I think, that in combating white-collar crime the FBI is potentially the most important and the most effective Federal agency. In the work that we have done in white-collar crime, we have worked closely with the SEC but they have a very limited staff. They just don't have the resources to be of significant assistance.

When you are talking about any type of cooperative law enforcement effort, it is very difficult to work with the Internal Revenue Services because of the antidisclosure provisions of the Tax Reform Act which prevent them from sharing information with any other law-enforcing agency until after an indictment is brought.

So we have come to rely very heavily on the FBI. And one of the major efforts that we have been making in the Justice Department—and it is one of the things that the advisory committee of the U.S. attorneys is focusing on very strongly—is increasing the FBI's efforts in the white-collar crime area. And I think we have seen some very encouraging signs since Judge Webster took over, continuing some of the steps which Director Kelly had started earlier.

I think the FBI at the highest levels is dedicated now to a full-scale effort on white-collar crime. That is also certainly true in the New York office.

Now, there is a little gap between dedication at the highest levels and performance in the field, and it does, as Mr. Seymour said earlier, require essentially a whole rethinking of the FBI's priorities. And you don't just flip a switch and it happens that suddenly overnight people who have been spending their careers investigating bank robberies become experts in financial crime. You have to hire different kinds of agents, people with financial experience, business school backgrounds, and train them. And there is a major effort in the Department of Justice to do that. Training programs have been set up at least twice a year on the east coast and west coast with top Justice Department and FBI people to train them on white-collar crime.

Personally in New York we have had very good experience with some agents. There are some who still belong to the old school that are coming around a lot more slowly. But overall, I would say that significant strides have been made, and I for one believe the FBI is firmly committed in this area.

Ms. HOLTZMAN. But much more in your judgment needs to be done in terms of training and commitment?

Mr. FISKE. Yes.

Mr. DEL TUFO. If I may, and not to restate what Mr. Fiske has said, it does take time to change priorities and attitudes, and I believe that change is endorsed by the highest levels within the Bureau. And I think everyone is making a conscientious effort in the ranks to march to the beat of that drum. And I believe we have made substantial progress in New Jersey. I am satisfied that we are all trying our best to work together and to move in the same direction. And I also agree that further training is required, but it is in the works; it is underway.

Ms. HOLTZMAN. I have no further questions, Mr. Chairman.

Mr. CONYERS. Congressman Gudger.

Mr. GUDGER. I will be very brief.

Mr. Fiske, you have, I think, amply demonstrated that the autonomy of your office has not defeated its ability to meet the challenge and the needs of law enforcement in your community. Yet, one of the witnesses earlier commented about the fact that there are 91 separate district attorneys offices and that this creates a form of anarchy or a form of separateness of direction which limits effective law enforcement in this area.

Do you feel that the fact that in some of the district attorneys' offices there is a very limited staff may mean that there does need to be some development at the national level through the Attorney General's Offices to support this line of work in those types of offices?

Mr. FISKE. I would say absolutely. And you have put your finger on a very important part of the problem. In the southern district of New York where we have 80 assistants in the criminal division, we can afford to put 40 or 45 of them exclusively into white-collar crime because I still have 20 assistants in my general crimes unit who will take care of the bank robberies, the post office thefts, the forgeries, the Federal equivalent of the common law crimes that are handled by state prosecutors.

When you get into a smaller office where there may be only two or three assistants, it is very difficult for that U.S. attorney to take in effect one-third of his staff, one assistant, and put him on the type of investigations that we have going to our office, where, as Bob Del Tufo indicated, one assistant can spend 6 months working in the grand jury full time to make one white-collar crime case, one like the land fraud case referred to earlier or the ones I referred to earlier that are on trial now. In the smaller offices it is very difficult for the U.S. attorney to do that.

I think there has been a recognition of that problem in the Justice Department, and I think Deputy Attorney General Civiletti when he testified before this committee addressed himself to that, the formation of these units under the Justice Department in Washington where there will be supervision from Washington now, some effort to cordinate the work that is going on across the country and some effort

to provide from Washington, where necessary, the additional resources that are necessary in the smaller offices so they can make the same kind of effort in their district on white-collar crime that Bob Del Tufo and I are able to in our districts with much larger staffs.

Mr. GUDGER. You have given a category of offenses against the Federal Government which you have been called upon to prosecute, some dealing with HUD, others with SEC. Do most of these originate in your office from reports from those agencies?

Mr. FISKE. If you are asking how do our investigations get started——

Mr. GUDGER. Yes.

Mr. FISKE [continuing]. I would say 50 percent of them come to us by referral from a particular investigative agency. Fifty percent came to us either because of the fact that we will convict a defendant who then, in an effort to get a lower sentence, will agree to cooperate, and also will bring to our attention other crimes that we will investigate. And a significant amount come to use from members of the public, and I would certainly like to include in that people like Congresswoman Holtzman who by the work that she did in exposing the problems in the summer lunch program in New York really was responsible for initiating the investigations which our office, I am glad to say, handled successfully.

Mr. GUDGER. Thank you very much, gentlemen.

Thank you, Mr. Chairman.

Mr. CONYERS. In connection with the strike forces, our investigators at GAO have told us that in certain areas, there are all kinds of conflicts between the Federal strike force and the State strike force, and that there are sometimes measures of hostility, to use an unfortunate phrase, between the U.S. attorney's office and these various strike forces and local prosecutors so that coordination, even in respect to the prosecution of ordinary violent crimes, become difficult, and that with white-collar crime and public corruption cases, coordination and cooperation become even more difficult to obtain.

Can you tell us what direction those kinds of relationships are moving in in your offices?

Mr. FISKE. I have a unique situation in New York where the strike force is merged into our office so the organized crime responsibility in the southern district of New York is directly under my supervision. So my problem is only coordinating my own organized crime unit with my other units. And so far that hasn't been a problem.

Mr. DEL TUFO. In New Jersey it is a little different than it is elsewhere because the strike force chief and assistant strike force chief are to be assistant U.S. attorneys.

However, we have, I think, six or seven special Justice Department attorneys in the strike force. I don't want to emphasize that leadership, though, as necessarily being the reason why we have this great deal of cooperation in New York and New Jersey between the strike force and the U.S. Attorney's Office.

There have been guidelines put out by the Organized Crime Section in Washington to govern disputes if they arise. I think it is more a question of compatibility and people willing to work together and cooperate together and move in the same direction.

Bob Stewart, who was in charge of my strike force in Newark, although technically convertible to a U.S. attorney's position, has not undertaken that because I haven't asked him to. It means I can use the position somewhere else. I have absolutely no difficulty with one office. We share personnel and investigations and the like.

Mr. FISKE. It is much less of a problem than it used to be nationally.

Mr. CONYERS. Should there be white-collar crime strike forces?

Mr. FISKE. If you're talking about the same sort of concept in white-collar crime that now exists in organized crime, I think every U.S. attorney that I know would strongly oppose that. Because I think the more you decentralize the responsibility for criminal prosecutions within a district, the more you diffuse it, then the more difficult it becomes to focus responsibility on any one person, and the job just doesn't get done.

And I think a far better way to do it is the way that Deputy Attorney General Civiletti is proposing, which is coordination from Washington, with Washington supplying additional resources to the U.S. attorneys where they need it, but with the ultimate control and responsibility lying with the U.S. attorneys.

Mr. DEL TUFO. Yes. I think if there were additional attorneys and investigative resources given to the U.S. attorneys' offices to undertake the actual day-to-day investigation, working with investigators from HUD, HEW, and other agencies, the job could be accomplished very well, in a better fashion than under another superstructure.

Mr. CONYERS. In your opinion, to what extent has the mob invaded Wall Street?

Mr. DEL TUFO. Wall Street is in New York. [Laughter.]

Mr. CONYERS. Not to slight New Jersey, to what extent has organized crime infiltrated business?

Mr. DEL TUFO. Organized crime, certainly in the broadest sense of the definition, is interested in economic gain wherever it may exist. And I think to that extent it will seek an opportunity wherever an opportunity presents itself.

We have, as I mentioned to you before, seen some racketeering-type elements in control of labor union pension funds and that type of thing, so there is a problem that needs to be addressed.

Mr. CONYERS. Is it serious?

Mr. DEL TUFO. In terms of organized crime and their objectives, it is a problem, of course, that is serious and has to be countered and fought every day. Especially in the economic centers of the Northeast it is a problem which has to be addressed every day.

Mr. CONYERS. Is it growing?

Mr. DEL TUFO. I don't know if I can categorize it in one way or the other. It is certainly there and has to be contended with.

Mr. CONYERS. What about the Wall Street question?

Mr. FISKE. Well, I don't think it is any different on Wall Street than anyplace else. I think what Bob Del Tufo said is very accurate, that wherever organized crime sees an opportunity to make a profit through infiltrating business, they are going to do it, whether it's a securities firm, whether it's commodities trading, or whether it's a laundry, or whether it's a large business. I think it's something that is a major focus of the Organized Crime Section in Washington—again with

this type of centralized control that is also being given to white-collar crime. I know that one of the priorities that they have is the investigation of precisely what you're talking about.

Mr. CONYERS. So what is the extent of organized crime involvement?

Mr. FISKE. In business?

Mr. CONYERS. In Wall Street precisely. And the reason I ask that is because "Wall Street" connotes a little different concept from business in general. The economic center of the United States, as I understand it, happens to be vested in that "neighborhood."

So when you talk about organized crime investment or activity there, you are talking about the same animal but of a completely different dimension. Because we are talking about the stock exchanges; we are talking about the international economic systems; we are talking about the multinational corporations; we are talking about the very fabric of the economy itself. And nothing could be more corrosive than to have a criminal involvement in such grand-scale economic processes.

So I ask you again——

Mr. FISKE. Just to put you at ease, if that is what you are looking for in this area, we have no evidence that organized crime has taken over the New York Stock Exchange, the American Stock Exchange. We don't find any evidence that organized crime is infiltrating the major banks, the major investment banking firms in New York City in any way that would mean that organized crime is manipulating the nerve center of our financial capital.

I think what we are talking about when we are talking about organized crime infiltrating legitimate business is a much more widespread concern. You have to recognize that organized crime is going to move into those areas where it is easy for them to take over and easy for them to assume control. And I think it is a safe assumption that the major institutions on Wall Street are going to be immune from that kind of infiltration.

Mr. CONYERS. Well, what about the pension funds which don't seem very immune from mobster-business collusion? Are you familiar with that problem?

Mr. FISKE. Yes. Well, I think Bob Del Tufo has referred to it earlier in terms of his own experience here in New Jersey.

Now you are talking about something different. You are talking about the extent to which union money may be invested improperly in racketeer-controlled organizations. And that is a problem, obviously, for the union membership. But I think that is a different area entirely.

Mr. CONYERS. What about the average citizen, though, and what about the effect that that has on other competing businesses?

Mr. FISKE. It is really serious.

Mr. CONYERS. I see it, Mr. U.S. Attorney, as going far beyond just the victimized union member whose pensions are misused for ill gains. That illegal money operates unfairly as leverage against the competitive activities of many businesses. One of the easiest ways to put your competitors out of business in our free American society is to happen to have a few million dollars surplus that is illegal and unknown to everybody, with which one can threaten perfectly legitimate busi-

nesses that can't underbid; that can't get the security and loan guarantees and are in no position to compete with another company which may have secret reserves of cash that are illegally derived.

Mr. DEL TUFO. It is certainly a problem that demands a lot of attention. Maybe it even demands some further legislative attention.

Mr. CONYERS. Well, does the problem exist, first of all? And second, then, to what extent does it exist?

Mr. DEL TUFO. You have the litigation pending involving the Central States pension funds. You have litigation pending involving the loan of Teamster pension funds in New Jersey to Romanos in Florida. There is a civil suit pending on that score.

There is the ERISA legislation that is being enacted giving the Department of Labor some jurisdiction to oversee these funds.

Perhaps with the creation of the Compliance Office, I think it is called, within the Department of Labor now and assignment of some 90 persons to review these things, there will be even further review of them.

It is a problem which has commanded our attention. It is one that we feel requires attention. And to the extent that there are steps or review procedures that my office can get involved in, we are trying to undertake them.

Mr. FISKE. I can give you a specific example. This may be exactly what you're talking about.

We had a case in our office last spring against Tony Provenzano who is well know in New Jersey——

Mr. DEL TUFO. Not on Wall Street.

Mr. CONYERS. He works in New York but lives in New Jersey.

Mr. DEL TUFO. He lives in somewhere in upstate New York now. [Laughter.]

Mr. FISKE. But it involves precisely what you're talking about. It was a conspiracy to get a kickback from the Teamsters' pension fund in return for the pension fund making a loan to a business which had not been able to obtain that loan from a bank. The business was so shaky that no reputable financial institution would loan them the money, so the plan was to go to the Teamsters' pension fund and get the loan from the pension fund but only by paying a kickback because it was not a bona fide investment.

Mr. CONYERS. So what happened?

Mr. FISKE. The scheme was uncovered before it went through and the case was prosecuted as a conspiracy and Provenzano was convicted.

Mr. CONYERS. So what happened then?

Mr. FISKE. The investigation is continuing.

Mr. CONYERS. Was there a sentence?

Mr. FISKE. Yes. The maximum sentence he could have received on that one conspiracy charge was 5 years and he received 3. Subsequently, he was convicted for murder and received life for that.

Mr. CONYERS. We close on the discussion of the case of Robert Vesco. Can you enlighten us as to the problems that occurred there, and whether we will ever bring him to the bar of justice?

Mr. FISKE. Well, I can tell you exactly what has happened and what is being done.

Mr. Vesco fled the United States in 1973 prior to the time that he was indicted. The first indictment was in the spring of 1973 charging him

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with conspiracy, together with John Mitchell and Maurice Stans, in connection with the $200,000 cash contribution to President Nixon's campaign.

Subsequent to that indictment, he was indicted on four additional charges at various times from the spring of 1973 to January of 1976.

All of these indictments were returned after Vesco had left the United States.

Originally he was in Costa Rica and an effort was made to extradite him from Costa Rica and the extradition was unsuccessful. It was rejected by the Costa Rican courts on the grounds that the crimes for which he was being charged were not covered by treaty between Costa Rica and the United States.

Ultimately he left Costa Rica and went to the Bahamas. An attempt was made while he was in the Bahamas to extradite him on another one of these indictments, and again there was the holding of the Bahamian court that the type of crime charged in the indictment was not the type of crime covered by the treaty between the United States and the Bahamas.

Subsequently there were efforts—I think well publicized by now—of the State Department to intervene with the Government of Costa Rica to have Mr. Vesco expelled, and those efforts were not successful.

Mr. Vesco left Costa Rica and is now in the Bahamas, and I can say the Government is still interested in pursuing every legitimate way we can to have him returned to the United States.

Mr. CONYERS. Do you have anything further?

Mr. GUDGER. No.

Mr. CONYERS. Then thank you very much, gentlemen. We appreciate very much your contributions to the hearing.

Our final witness is the Attorney General for the State of New Jersey, Mr. John J. Degnan, accompanied by the Director of the New Jersey Division of Criminal Justice, Mr. Edwin H. Stier.

[The prepared statement of Mr. Degnan and Mr. Stier follows:]

STATEMENT OF JOHN J. DEGNAN, ATTORNEY GENERAL, STATE OF NEW JERSEY; AND EDWIN H. STIER, DIRECTOR, NEW JERSEY DIVISION OF CRIMINAL JUSTICE, BEFORE THE SUBCOMMITTEE ON CRIME, COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, CONCERNING WHITE-COLLAR CRIME, ON NOVEMBER 30, 1978, AT THE SCHOOL OF CRIMINAL JUSTICE, RUTGERS UNIVERSITY, NEWARK, N.J.

In the following statement, I intend to describe some of the experiences which the State of New Jersey has encountered in dealing with economic crime.[1] In so doing, I also intend to discuss areas in which I feel New Jersey has been successful and has developed unique remedies for dealing with this type of crime. Conversely, while discussing the New Jersey experience, I also intend to suggest ways in which the relationship between the State and Federal governments can be molded to produce a more effective law enforcement scheme in confronting the challenge of economic crime.

New Jersey is uniquely suited to investigate and prosecute sophisticated economic crimes. In 1970, the State Legislature passed the Criminal Justice Act which placed in the hands of the Attorney General sweeping power to investigate and prosecute crimes on a state-wide basis. The Act also created the Division of Criminal Justice for the purpose of exercising the powers and responsibilities of the Attorney General relating to the enforcement and prosecution of criminal matters. In addition, it was intended that the Division serve a coordinative func-

[1] The source documents from which this statement was derived are attached as appendices and contain considerably more detailed information relating to economic crime in New Jersey.

tion which was designed to effect a uniform, cooperative enforcement of the criminal law. Because of the working relationship among the Division of Criminal Justice, the Division of State Police and the twenty-one County Prosecutors, there are no jurisdictional bars or other impediments to the law enforcement apparatus in New Jersey in investigating economic crime in an effective way. Within the Division of Criminal Justice, certain sections are responsble for the investigation and prosecution of sophisticated economic crimes which require a combination of resources not found in State law enforcement in any other agency. These resources include individuals with legal, investigative and accounting experience as well as intelligence analysts from the New Jersey State Police Intelligence Bureau. In this way, permanent institutions have been developed for the purpose of investigating and prosecuting economic crime and cooperative relationships have been established which are essential for success in this area.

In February 1968, the Governor's Select Commission on Civil Disorders issued a report detailing its investigation into the causes and events of the 1967 Newark Riots. The Commission found that a central cause of the 1967 riots was a "pervasive feeling of corruption" among the people concerning the city government. The report of the Commission was rife with examples of the manner in which the legitimacy of the political, economic and social institutions in Newark deteriorated to the point at which those institutions were no longer viable. The current prevalence of economic crime threatens the legitimacy of our institutions in a way similar to the crisis which confronted the institutions of Newark more than ten years ago. As Congressman Conyers noted in his opening statement during the introductory hearing in June 1978, economic crime breeds a cynicism and disrespect for the law and erodes the moral fabric and values upon which our society is built.

One of the issues which Congressman Conyers has raised as an area of inquiry by this Subcommittee is the degree to which economic crime impacts on the price of goods and services in urban areas thereby exacting a disproportionate toll on those segments of the population least able to bear such a burden. In reviewing the areas of criminality which the Economic Crime Section has investigated and prosecuted thus far, the severity of this impact becomes clear.

The Economic Crime Section of the Division of Criminal Justice was created in 1976 under a grant from LEAA. As an early project, the Section targeted energy theft, both electrical and fuel, as an area of major fraud which was in need of investigation. Concerning the theft of electricity, through the efforts of the Economic Crime Section, the State Grand Jury returned an indictment involving a conspiracy whereby a group of individuals devised a means of tampering with electrical meters and allowing a vast number of businesses to cheat the electrical company of justified electrical billing. The indictment charged twelve individuals and eleven corporations with 291 counts in connection with this scheme to defraud Public Service Electric and Gas by tampering with the watt hour meters. The indictment charged in excess of $200,000 in fraud and it is believed that this ring actually defrauded PSE & G of several million dollars during the course of a seven-year period. To date, three individuals and seven business entities have pleaded guilty. As a result of this successful investigation, the two major power companies in New Jersey have increased their security forces and are working closely with the Economic Crime Section in identifying other violations. At the present time, civil suits are being brought by the power companies to recover the money involved. As a result of the success of the initial investigation, the Economic Crime Section began a separate proactive investigation in which one of the corporations involved recently pled to an accusation admitting to larceny of $44,000. This corporation also reimbursed PSE & G for the amount of $102,000 for stolen watt hours.

Similarly, the Economic Crime Section has initiated proactive investigations into the short delivery of fuel oil by companies holding public contracts. One of the investigations involved a conspiracy between the president of a fuel oil company and its employees to defraud municipalities, school districts and other commercial customers in connection with their fuel contracts. The investigation required extensive surveillance of fuel deliveries by the investigators and a subsequent indepth analysis of the corporate records was required to determine the extent of possible short fuel deliveries to school districts and municipalities. The case resulted in a plea of guilty by the president of the corporation to a criminal accusation charging him with the short delivery of fuel oil. He was sentenced to one-to-three years in the New Jersey State Prison and paid $56,000 through the

State to the municipalities in full restitution for the shortages. In a similar scheme, the State Grand Jury returned an indictment for the alleged short delivering of fuel oil to the Board of Education and the school system of West Orange and the Amtrack Railroad.

In conjunction with railroad police, the Economic Crime Section corroborated allegations that railroad diesel fuel was being diverted by a contractor who had been hired by the railroad to service their equipment. The diversion was made to the storage tanks of the fuel oil dealer conspiring with the contractor. Interestingly, this same scheme had been investigated by local law enforcement officials in 1970 whose investigation had failed essentially because of inadequate resources. Consequently, the scheme continued allowing approximately 1,107,000 or more gallons of fuel oil to be diverted.

Another area of illegality which has been investigated by the Economic Crime Section is the illegal disposal of liquid chemical waste. The Economic Crime Section discovered through referrals by other agencies that there were companies in the business of the disposal of toxic chemicals and that this activity was being conducted in an illegal fashion and created a public hazard. As a result, the Section conducted several lengthy investigations and returned indictments against numerous individuals and corporations. In one of the most significant cases, the indictments disclosed a conspiracy whereby large profits were being made by illegally disposing of chemical waste. Often the waste was extremely flammable, toxic and highly explosive and was dumped clandestinely in urban areas creating not only a problem of pollution but also an extreme public hazard. In the course of this investigation, it was determined that this activity was being carried on throughout the State of New Jersey as well as other sections of the country. As a result of the information obtained in regard to this illegal activity, the investigation has shifted to the proactive stage and other investigations are currently being pursued. In addition to its continued liaison with other agencies in this area, the Section has undertaken the task of educating local police departments and county prosecutors of this problem and the manner in which these investigations can be successfully conducted. This entire issue has been addressed at a meeting of the New Jersey County Prosecutors Association.

Within the Economic Crime Section, the Employment Security Unit has responsibility for the investigation and prosecution of fraudulent receipts of unemployment benefits. The Unit also prosecutes employers who fail to contribute as required under the unemployment compensation program. On May 9, 1978, twenty-three individuals were arrested on charges of conspiracy and filing fraudulent unemployment insurance benefit claims. These individuals were arrested at various unemployment insurance offices in northern New Jersey. Many were identified as claimants obtaining multiple benefits under several aliases. This fraud carried out against the public fund was accomplished by the incorporation of four non-existent companies which carried a payroll of 300 employees. These fictitious employees would be "laid-off" and then collect unemployment insurance. The arrests were in six different cities and involved the use of State Investigators from the Division of Criminal Justice as well as members of the New Jersey State Police and police officers from the municipalities. At the present time, the Economic Crime Section is continuing its investigation based upon allegations which are supplied from the Division of Employment Security. In another public fund fraud, an individual entered a plea of guilty to an accusation charging him with embezzlement in excess of $341,000 of his employer's funds. The defendant developed a scheme of writing out checks to companies doing business with the employer and then appropriating these checks to his own use. The matter was referred to the Economic Crime Section by the New Jersey Housing Finance Agency and which also provided primary funding for the defrauded project. The plea was the result of a two month investigation resulting in a sentence to a term of four-to-six years in New Jersey State Prison.

In addition to these general areas of investigation, the Economic Crime Section also conducts numerous investigations in the area of bank and insurance fraud. One of the most significant cases prosecuted by the Economic Crime Section involved the reinsurance brokerage firm of Pritchard and Baird located in Morristown, New Jersey. Its principal business was to accept insurance contracts from ceding insurance corporations and distribute the risk of these policies to reinsurance corporations. For this service, Pritchard and Baird received a percentage of the premium. In 1975, the company went into receivership and an

investigation was referred to our office by the New Jersey Department of Insurance concerning possible misapplication of corporate funds by the principals of the company, Charles and William Pritchard. The corporation has gross revenues of approximately one hundred million per year and it was necessary for accountants within the Economic Crime Section to analyze all of the books and records of this corporation relating to the receipt and disposition of funds for approximately a five-year period. This case required the use of three accountants who worked almost full time for several months in order to identify possible areas of criminal mis-application of funds. Field interviews were then conducted through the use of Economic Crime Section investigators, who were directed by the attorney in charge of the investigation. In addition, it was necessary to secure records from eighteen insurance companies which were located throughout the country. Representatives from these eighteen corporations were interviewed by the investigators and the attorney in charge and they testified before the State Grand Jury. The investigation also required a complete analysis of computer print-outs from this corporation which detailed the disposition of premiums which they received over a five-year period. To conclude the investigation, all three of the accountants presented their analysis and findings to the Grand Jury. The case would probably have been incomprehensible without such a detailed analysis and presentation by the accountants. The Grand Jury returned a 112 count indictment against the Pritchard brothers, charging them with misappropriating approximately eight million in money owed to other insurance companies. This was the first time that any principals in a reinsurance corporation had been indicted for such a large scale fraud.

Also charged with the responsibility of investigating a unique type of economic crime is the Medicaid Fraud Section, in the Division of Criminal Justice. This Section was formed in 1975 for the purpose of establishing a specialized unit capable of effectively investigating and prosecuting medicaid provider fraud. Prior to the establishment of this Unit between 1972 and 1974, three providers were indicted for medicaid fraud in New Jersey. Since the creation of this specialized unit, over 52 indictments have been returned involving all varieties of medicaid fraud. Most significant is the fact that the conviction rate in these cases is approximately 95%. The amount of medicaid fraud alleged in indictments returned by the Medicaid Fraud Section is approximately two million dollars. Although medicaid fraud has been explored by other committees, I raise it here as being relevant to the general economic crime problem because it preys upon the elderly and infirm and is therefore particularly incidious.

Also impacting upon economic crime, the Corruption Investigation Section is staffed with attorneys, accountants and State Police personnel, all headquartered within the Division of Criminal Justice, and dedicated to the investigation and prosecution of governmental corruption at every level. This blending of personnel from different disciplines is essential for the analysis of complex financial transactions between State agencies, independent authorities, various governmental subdivisions and the entities in the private sector with which they contract. In 1974, Governor Byrne pledged to "eradicate official corruption from State and local government and, therefore, to restore confidence in our institutions." His pledge highlighted the serious threat posed by criminal conduct pertaining to government officials and thereby assured that the resources would be permanently available for the invsetigation and prosecution of any matter, including economic crime, that threatened the integrity of public officials and institutions.

All of the foregoing areas of economic criminality represent a serious threat to the political, economic and social foundations of our society. If individuals are permitted to successfully raid the public fund, either directly or indirectly, through economic crimes, the impact on the society as a whole is much broader than the specific act of criminality. From the foregoing description of the investigations and prosecutions conducted by the Office of the Attorney General through the Division of Criminal Justice, it is clear that this type of economic crime necessarily impacts most heavily upon the strata of society which is either middle income or economically disadvantaged. For example, the theft of energy, either electrical or fuel, inevitably leads to a higher cost which is passed along to the retail level to compensate for fraud. Our investigations into the toxic waste problem has shown that the waste is often highly dangerous and not only presents a public hazard, but also requirse an added enforcement effort and clean-up effort, the cost of which must be carried by the public and which

obviously diverts scarce public money from other vital services. Unemployment fraud clearly diverts funds which are legitimately needed by other persons. Medicaid fraud takes from the public fund money which has been allocated for assisting the elderly and sick. Corruption of government officials and institutions at any level is one of the most serious aspects of economic crime in that it destroys the faith of the public in the ability of public institutions to address and solve problems. When the public perceives government institutions in a cynical way and disrespects the law because of a pervasive feeling of corruption, then the legitimacy of our institutions is challenged to its very foundations.

An important factor in the ability of law enforcement to effectively investigate and prosecute economic crime is a strong working relationship among the various agencies at the State and Federal level. In New Jersey, this relationship has been formalized in the New Jersey Federal-State Law Enforcement Committee. From this committee comprised of the top law enforcement officials in New Jersey at the State and Federal level, have emerged three documents pledging cooperation in the investigation and prosecution of specific types of economic crime. Agreements have been formalized in the area of medicaid, bank fraud and toxic chemical waste disposal. By formalizing these heretofore informal relationships, it is assured that cooperation will continue both in a more structured form and in a manner conducive to the most advantageous and economic use of available resources.

At the State level, many of the investigative leads which ultimately develop into successful prosecutions are received as a result of referrals by various State and Federal regulatory agencies. In addition, the Division of Criminal Justice follows this policy in its relationship with regulatory agencies and the county prosecutors. This cooperative scheme has led to the most effective way of utilizing the resources of the criminal justice system. Of particular importance to the Division of Criminal Justice is the working relationship which has evolved with the Division of State Police. In many of the economic crimes investigated by this Division, the individuals or business entities often have alleged connections to organized crime groups operating in the State. The New Jersey State Police Intelligence Bureau and the Division of Criminal Justice through the Special Prosecutions Section have worked cooperatively using the unique resources of the state law enforcement apparatus to investigate any information pertaining to organized crime. For example, at the present time, the Antitrust Section of this Division is currently coordinating an investigation into the solid waste industry as it operates in New Jersey. In addition to utilizing civil investigative demands and other techniques used in antitrust investigations, the New Jersey State Police Intelligence Bureau is simultaneously examining the industry for the corrupt influence of organized crime. This type of antitrust investigation is representative of the industry-wide examination which the Antitrust Section is currently making of several industries presently operating in the State. The primary method of investigation has been through the use of civil investigative interrogatories which are uniquely suited to an examination of the economic marketplace.

At the conclusion of a significant prosecution which has revealed a pervasive problem, the Attorney General's Office has drafted legislative proposals for submission to the appropriate State legislative committees. Such proposals are intended to serve as preventative function in the future. This approach is consistent with the Attorney General's obligation to improve the structure of the criminal law. For example, as a result of a lengthy investigation into the reinsurance industry, legislation is being drafted by both New Jersey and New York and may result in uniform regulations of the entire industry which was heretofore completely unregulated by any governmental body. As a result of the energy theft investigations in the area of fuel, recommendations are currently being drafted which will recommend statutory changes and increased penalties for the theft of fuel. In September 1977, legislative changes were made in regard to many of the corruption-related statutes. For example, penalties were increased from three years maximum sentence to seven years maximum sentence. The statute of limitations for corruption offenses was lengthened to seven years. The amount of fine was increased from $1,000 to $10,000 for individuals and $3,000 to $100,000 for corporations. Other remedies including the debarment of individuals from doing business with the State for a period of five years were also introduced. Legislation is also currently being drafted in the area of arson. Presently, there is little information available to law enforcement agencies pertaining to arson. The legislation which is being drafted will mandate the

sharing of information between insurance companies and the New Jersey State Police Arson Unit and other agencies and will also recommend immunity for insurance companies which have disseminated information to law enforcement agencies. In a recently completed package of legislative initiatives recommended jointly by the Attorney General and the County Prosecutors Association, provisions were suggested which would provide New Jersey a statute analogous to the federal RICO (Racketeer Influenced and Corrupt Organizations) Act. Although such legislation is more specifically directed at organized crime, it is intended to give law enforcement an enhanced ability to prevent organized crime from dominating the legitimate economic marketplace.

Consistent with the scheme undertaken by New Jersey of developing preventative measures in the area of economic crime, Governor Byrne has provided through Executive Order 34 for the ability of the State to debar, suspend or disqualify persons from participating in contracts and subcontracts with the State on the basis of a lack of responsibility. Such a lack of responsibility will usually be evidenced by a particular type of criminal activity enumerated in the Order. New Jersey has used the Executive Order providing for debarment in an aggressive way and on a monthly basis publishes a list of all persons and corporations suspended, debarred or disqualified. This list is then disseminated throughout the State government so that such persons and corporations can be eliminated from bidding on or accepting State contracts.

Integral to the success which New Jersey has experienced in meeting the challenge of economic crime has been the strong encouragement and support of the federal government. Federal funding often provided the resources which were central to the initial and continued operation of the specialized sections in the Division of Criminal Justice charged with the responsibility of investigating and prosecuting economic crime. This support continued until the State budget could assume all or major portions of particular grants. It is recommended to this Subcommittee that worthy State and local projects which show promise of combatting economic criminality be encouraged and supported as much as possible from the federal level.

Another recommendation which I would like to make to this Subcommittee as it hears testimony is to consider the issue of the right to privacy and access to financial records. One of the major problems which we face in investigating economic crime is the fact that the crimes are designed to go undetected for a substantial period of time. When this factor is combined with the potential of lengthy delays in the receipt of documents necessary to conduct the investigation, it might very well result in total frustration of effective law enforcement in the area of economic crime. In two specific investigations conducted by the Division of Criminal Justice, our subpoena for documents was contested under present standards. In one of the cases, we did not receive the document until at least six months after the original service. This resulted in the loss of some counts because of the statute of limitations. In the second case, it was approximately one year after the original service of the subpoena until we received the documents. A substantial number of counts were lost as a result of the statute of limitations, and, in effect, this case was not prosecuted. In May 1978, I testified before the Senate Subcommittee on Financial Institutions of the Committee on Banking, Finance and Urban Affairs, concerning the right to Financial Privacy Act of 1977, S. 2096. In that testimony, I strongly opposed enactment of this bill. Further, I stated that an individual's right to privacy in bank records must be weighed against the government's obligation to protect the public from the pernicious effects of economic crime. Stated differently, the interest of the customer must be balanced against the government's obligation to prevent and detect crime which may only be discovered or proven through records.

In my view, the public's right to be protected against criminal conduct far outweighs the limited interest of the customer in this regard. This type of privacy legislation often tends to reveal an unfortunate lack of confidence in the executive officers entrusted with the enforcement of the criminal laws. The inference seems to be that prosecutors commonly abuse their right of access to bank records. In this context, it would be well to note that it is as much the prosecutor's obligation to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just result. These obligations are not mere theoretical concepts or idealistic abstractions. They are responsibilities imposed on prosecutors as a matter of law. Further, there are existing judicial safeguards which insure that an over-zealous prosecutor will be denied access to bank records in appropriate cases. This Subcommittee

should be sensitive to the issues involved in considering questions which attempt to strike the appropriate balance between an individual's right to privacy in bank records and other financial records against the government's obligation to protect the public in their society as a whole from the threat of economic crime.

Mr. John Degnan is a graduate of St. Benedict Prep School. He received his B.A. magna cum laude from St. Vincent in Latrobe, Pa., and his LL.B. from Harvard Law School. He served as law secretary to Justice John J. Francis; assistant counsel to Governor Byrne, and later as executive secretary. Mr. Degnan was appointed attorney general during Governor Byrne's second term. He is a member of the Ethics Committee of the County Bar Association; the New Jersey State Bar Association; the Harvard Law School Association; the Commission on Capital Budget and Planning and is director of the New Jersey Cancer Institute.

Mr. Stier attended Rutgers University, receiving his A.B. in 1961. He then attended Rutgers University Law School, graduating with an LL.B. in 1964. He was editor of Law Review, and was admitted to the bar in February 1975. He has been director of the New Jersey Division of Criminal Justice since Dec. 2, 1977. Prior to that time, he was deputy director and also assistant to the director, New Jersey Division of Criminal Justice. Mr. Stier has served as deputy attorney general in charge of the organized crime and special prosecution section. From 1967 to 1969, he served as chief of the criminal division, U.S. attorneys office, district of New Jersey and from 1965 to 1967 he was assistant U.S. attorney for the district of New Jersey.

Mr. Attorney General Degnan and Mr. Stier, on behalf of the subcommittee, I would like to welcome you and invite you to proceed in your own way.

TESTIMONY OF JOHN J. DEGNAN, ATTORNEY GENERAL FOR THE STATE OF NEW JERSEY; AND EDWIN H. STIER, DIRECTOR, NEW JERSEY DIVISION OF CRIMINAL JUSTICE

Mr. DEGNAN. Thank you, Mr. Chairman.

I'd like to take this opportunity on behalf of the State of New Jersey to welcome your committee to Newark and to New Jersey. I think you are to be commended for the focus you are bringing as a committee on what has been revealed to you, I'm sure, to date as a fairly enormous problem confronting society generally and law enforcement particularly in the Nation and in this State. Its extent and its ramifications have been eloquently articulated before this committee based on my review of some of the statements that have been submitted to you.

I would like to add to you my persepective as attorney general of the State of New Jersey. I have been in that post since January 17 of this year. I'd suggest New Jersey is a good State for you to look at for a couple of reasons, both in terms of what it has been able to do since 1968 in dealing with this area, and particularly the area of organized crime, and also sadly for what remains the nature of the problem in New Jersey today.

There are two basic characteristcis of law enforcement in this State today which I think are worthy of note at the outset. The first has been alluded to by Bob Del Tufo. And that is what I, through my discussions with fellow attorneys general across the country, perceive to be an extraordinary Federal-State level of cooperation. People in the Justice Department in Washington have said to me—and Bob didn't say this because it reflects too well on him—that it reflects a model which has not always existed in New Jersey.

Mr. CONYERS. Is that between the Federal and State law enforcement officers?

Mr. DEGNAN. That is right, because of Bob Del Tufo's personal commitment, mine and my predecessors, the fact that Bob used to be director of the New Jersey Division of Criminal Justice, which Ed Stier is now, so it carries over in a way that hasn't been so in the past.

The second characteristic I think is that New Jersey has really gone through a dramatic evolution in law enforcement in the last 10 years. In 1967 in this city we had major riots. A commission appointed to investigate them cited as one of the reasons a pervasive sense of corruption that people had about government in New Jersey. In 1968 Life magazine and Saturday Evening Post both published articles which characterized New Jersey as one of the most corrupt States in the country.

I think that bears, by the way, on the point Mr. Seymour made this morning, about the need for an independent press. The reaction to the characterization of our State by its people was dramatic and resulted in a number of improvements in the law enforcement system in New Jersey and overhaul and reform of that system in the Criminal Justice Act of 1970 which Bob alluded to.

As a result of that, we gave the attorney general in New Jersey the power to supersede any or all of the 21 county prosecutors that we have in New Jersey. We created a wiretap authorization statute, a witness immunity statute, a statewide grand jury system which crosses county lines.

I am proud to say we probably have the most integrated law enforcement system on the State level in the country. Particularly with respect to the area of white-collar crime, in the division of criminal justice there are about 120 attorneys, one-third of whom work full time on white-collar crime investigations and prosecutions, and another good number of whom work because they do organized crime work and appellate section work in matters related to medicaid fraud, the economic crime section, official corruption, and bank and insurance fraud.

All of those are described in detail in the statement I have submitted to you and I won't go into detail on those.

I would like to mention one area in particular which is civil remedies in which, to date, we have used creatively, I think, as other jurisdictions in the country have, common law remedies to try to regain some of the money that is being ripped off from the public and the government in white-collar crime schemes that are being perpetrated day after day. In the model penal code, which was passed in New Jersey and will be implemented September 1, 1979, the concept of restitution is codified. Under the current law in New Jersey, restitution can be imposed as a penalty after a criminal conviction only as part of the probation system. Under the model penal code when it is passed, restitution will be, I suggest, a very effective device in the area of white-collar crimes so people can't go to jail and then come out and live off the benefits of the money they have been able to rip off.

But I would suggest to you that people in New Jersey and around the country have to have some degree of realism about what law enforcement can do. I noticed when I was in practice a client would bring a case to a lawyer, drop it on his desk, and say, "fix it," much in the way I drop a car off at a garage and ask for it to be fixed.

It doesn't work that way.

In New Jersey today we are debating heatedly law enforcement's capability and the visibility of its enforcing criminal sanctions against the possession of small amounts of marihuana and against homosexual acts committed between consenting adults in privacy. I suggest people look to law enforcement in those instances because it is the easy way out for them, because it avoids putting the institutions of society to the tests they have to meet in those areas and in white-collar crimes. It avoids putting the families to the test and putting churches and educational institutions to the test.

So while I am proud of what we have been able to do in New Jersey in law enforcement, I caution against an unreasonable reliance on our ability to deal with this problem, and I urge very strongly that the public itself has to be persuaded that this area is deserving of its attention.

It is a great honor for me to appear before Chairman Rodino. I'd like to point out the way public officials handle themselves in office has a lot to do with people's perception of the system, its ability to root out corruption, which we have done in New Jersey and have to do nationally.

While I point to the many accomplishments of the criminal justice system in New Jersey, I think none of them rate as highly as the effect that Chairman Rodino's dignity and competence in office during a period of national crisis in this country has had on the people of New Jersey in terms of their assessment of how this system works and the confidence they place in New Jersey on law enforcement and its ability to deal with particular areas. I think there is some confidence in New Jersey in those areas. I don't think the casino gaming would have passed were it not for the fact that New Jersey people thought law enforcement had developed in this State to the point where there was the possibility of controlling the undesirable elements that kind of social experiment necessarily attracts.

We need a major commitment in the area of white-collar crime. We need it in the area of law enforcement. And in New Jersey under the powers I have, I am the sole legal advisor to all the agencies of State government. This is not a fact at the Federal level and it is difficult for me to conceive of how a consistent, coordinated legal approach to problems is dealt with in a system where there isn't a single coordinated source of legal advice to the agencies of State government.

For example, I serve as counsel to the department of environmental protection, to the public utilities commission, to the ABC in the area of alcohol, which I'd like to mention briefly for a moment.

In that dual role as the chief law enforcement officer in this State and also its civil lawyer, I have an almost unique opportunity to bring a consistent, coordinated approach to white-collar crime between law enforcement and the governmental regulatory agencies that so often regulates areas where these white-collar crimes are perpetrated.

I'd like to point out a few of those areas. One, Bob Del Tufo mentioned and I won't go into it at length. That is dumping. In this State dump trucks go in the dark of night on city roads and dump toxic chemical wastes into sewers which pollute our waters. Our ability to deal with that as law enforcement agencies is limited. There are not enough cops in New Jersey or Newark or in the country to prevent those kinds of random violations which take place. If that kind of

dumping is tolerated either because of ineptness or inattention by a governmental agency—and I don't suggest that it is in New Jersey—law enforcement can't answer the problem.

So as a result of my dual role we have created a task force between the Department of Environmental Protection and the Division of Criminal Justice which deals with increasing effectiveness in this area of toxic chemical dumping.

Years ago there was the problem of kickbacks and payoffs in the alcohol industry. The response of my predecessor was not only to open an investigation into that but, because the Division of Alcohol Control is in our jurisdiction, a review of the statutes and regulatory system in New Jersey to determine why these practices occur with the frequency with which everybody in the industry told us they did. And our investigation is about to be concluded, and we will be making announcements about it in the next few weeks.

But it did show there was a pervasive system of that kind of practice in the industry, and it shows the regulatory system in the State of New Jersey, which is characteristic of the systems of many other States, in many ways fostered and engendered that type of thing.

So we have to attack the system and revise it and reform it so the opportunity and compulsion for these kinds of practices are eliminated.

One more area is energy theft. We found too frequently that utility companies in New Jersey, which are regulated, would rather write off the costs of energy thefts than report them to us and incur the influx of the State investigators and the State lawyers that that would necessarily produce, because they don't want to go through the inconvenience and the possible revelation of other ancillary kinds of regulations in the industry that foster these thefts.

I pay for that and you pay for it when you pay your utility bill. People lose confidence in government not just because they pay a lot of taxes but because they believe the services they receive in response to those taxes are not coming back to them, that they are lost in a maze of government that doesn't mean much. That is very unfortunate.

We have been watching programs such as the summer feeding program in New York. Again because of my dual role, I have arranged with the treasurer of the State of New Jersey, through the Division of Criminal Justice, which has accounting expertise in the area of criminal embezzlement and ripoffs and frauds of all sorts, to monitor any new social spending program in New Jersey so that the regulations which were set up to implement that program at the outset have the inputs of people with the experience of how those programs have been abused in the past, so that that is prevented in the future.

I would suggest that that could be done informally and without a great deal of expenditure at a Federal level more consistently if there were that coordinated approach that we have in New Jersey between the civil and criminal sides dealing with these kinds of problems.

And one final note I'd like to make is that beyond a major commitment from law enforcement and from government regulatory agencies, somehow—and I wish I knew how—we have got to convince business in this State and around the country that it ought to cooperate with us, that it ought to bring us a case of fraud or embezzlement, not simply pass it on to the public and consumer in terms of the rate structure.

I have had two very frustrating incidents, one involving a union official and one a prominent businessman. In each case they reported the facts to us but when I asked them to take what I thought were fairly minimal steps beyond that to aid us in conviction for this specific offense and probably build pressure for reforms to eliminate them in the future, they backed away; they weren't willing to help. And the businessman told me if he did so he'd probably be unable to continue in his business in this State because they wouldn't deal with him. They'd perceive him as a person who'd report to law enforcement officials on those things.

I don't condemn them for that, but it is because of some misapprehension of how the system works or because, God forbid, that might be true, which I don't think it is.

Mr. CONYERS. Thank you.

Mr. Stier, welcome to the subcommittee.

Mr. STIER. Thank you. I find it a pleasure to be here, not only because you are here focusing attention on New Jersey's problems and accomplishments, but I have had some contact with your staff and I know something about the depth to which you are going in your research. And I am very pleased to be associated with a group that is so much interested in getting at the heart of the problems, getting at the tough issues, and not just taking a superficial look at what is going on. And I offer from the New Jersey Division of Criminal Justice to the staff whatever assistance you may need in your studies in the future.

I don't want to repeat what has already been said. You have had some very fine insights into both the problems and the solutions that have been proposed and implemented. There are just a couple of areas that I would like to touch on to refine some of the things the Attorney General has mentioned about what we are doing here in New Jersey.

I view the Division of Criminal Justice and the State law enforcement system in this State as somewhat of a laboratory, not just to test ideas generated in the State but ideas that come in from all over the country. Because of my view of criminal justice and the fact that the Division of Criminal Justice, although it is made up of something in excess of 400 people, has no routine caseload, we are able to shift our cases around a little bit to experiment and try to find the right formula to deal with some of the difficult problems local agencies are unable to deal with because of inadequate resources and because of the press of more routine business.

We have structured the Division of Criminal Justice in a way that takes into account the blend of resources, law enforcement resources, that it will take to deal with a specific problem. As the Attorney General has outlined and as you will find in the remarks that have been submitted to the committee in writing, we have broken down the area of white-collar crime into several sections, including an economic crime section that deals with a wide range of major fraud cases, such as bank fraud, insurance fraud, and so forth; a corruption section which deals with corruption investigations at all levels of government in New Jersey; and an antitrust section, a civil remedy section, a drug diversion unit, and so forth.

Each of those units is made up of people who have been recruited because of the kind of expertise that is required to deal with that

area of law enforcement—accountants, economists, attorneys with specific backgrounds that are tailored with the problems that the section to which they are assigned focuses on most closely.

But within the Division of Criminal Justice, because we are one agency and because of the integrated nature of the system in this State, we are able to cut across sectional lines.

So, for example, the solid waste industry in New Jersey has been recognized for the last 10 years as a major problem. What to do about it? Give it to the Public Utilities Commission to regulate, and periodically reports are received that there are continuing problems and that they have been unable to solve them.

As a result of the attention that that has received, the Department of Justice gave us through their antitrust section a grant in order to develop an antitrust approach to viewing the solid waste industry in the State.

We have put together a team of people made up of antitrust experts, economists, accountants, organized crime experts, representatives of the State police intelligence bureau, all to bring the kind of expertise that they possess to bear on what is a very complex problem.

Hopefully over the term of the grant, which will take us through the next 1½ years, we will finally see some results.

That kind of a massive effort and that kind of flexibility in bringing the kind of people together who have to deal with the problem is absolutely essential.

There are other examples in this State. An investigation a year ago of the operation of a municipal utilities authority resulted in a number of things that are very interesting, I think.

First of all, the major source of the problem could not be prosecuted criminally. It turned out that we just couldn't develop a criminal case that covered the entire spectrum of problems that we found. However, we were able to successfully prosecute the engineering contractor for fraudulently billing three-quarters of a million dollars to the utility authority. We were able to bring a civil action against members of the utility authority to recover money that had been squandered by them and to recover from the engineering firm the money that had been defrauded. We were able to bring pressure to bear on the county governing body, the board of freeholders, to hold hearings to remove the members of the utility authority, which was ultimately accomplished. And last, we were able to secure the debarment of the engineering firm from doing business with the State and with other governmental agencies.

The point is that we are not only organized in terms of the manpower resources that we bring to bear on problems, but we have tried to use as wide a range of legal resources as we can to get at the heart of the problem, because as we all know, putting an individual in jail very often does absolutely nothing to solve the underlying problems that that individual represents.

The objective of developing cooperation among agencies is something that everybody recognizes as important but very few people are able to do anything about effectively. I don't think you would find anybody who would sit here and testify that it is better to be uncoordinated than to be coordinated. But to bring it about is an extremely difficult problem.

In New Jersey we are probably best able to accomplish that because of the absence of the usual reasons for failure of cooperation among agencies—and now I am talking specifically about the Federal Government and the State law enforcement. We don't have the usual excuses like the question of integrity of one of the members of law enforcement with which you are dealing. We don't have the fear that one of the agencies is going to exploit for its personal advantage or the personal advantage of its heads the publicity that generally surrounds success in this area. We don't have one side of the equation having too little resources. As the general has described, we have enormous resources concentrated at the State level.

And last, we don't have the personality conflicts that sometimes lead to the inability to cooperate. Bob Del Tufo and I, as with the Attorney General, have a very close personal relationship.

However, in trying to bring about cooperation, we have found certain problems that we are working very hard to solve and which are going to take some time to deal with.

Assuming that there is a desire to accomplish cooperation, when you have an equal amount of resources on both sides, the kind of cooperation that you are looking for is a partnership type of arrangement without the superior and subordinate type of relationship that you naturally have when the Federal Government has all the resources and when the State has very little.

We feel that is extremely important. It would be very easy in this State to sit back and say, "Let the Federal Government handle major problems of white-collar crime and organized crime. After all, don't they have the more sophisticated investigators? Don't they have the most resources? Why don't we deal with the problems of street crime and the problems we have a direct and immediate responsibility to handle?"

The answer is that we feel that all levels of criminal activity in this State are interrelated. I have been in law enforcement in this State for approximately 15 years, and I have seen the transition that we have come through. I have seen the feeling of frustration in law enforcement that existed when the deserved reputation of the State was one in which inadequate resources were devoted to problems of organized crime, corruption, and white-collar crime. And I know that had an effect not only on the level of street crime, petty crime that went on, but I know it had an effect on the quality of law enforcement that was devoted to all levels of criminal activity. And I know now that with the development of a sense of pride, a sense of accomplishment in law enforcement in this State, the quality of law enforcement at all levels has been upgraded. And I think that it is extremely important for the public to be able to maintain confidence in its law enforcement institutions, the ones that are closest to it. Although the attorney general of this State possesses enormous resources, we devote a great deal of those resources to strengthening, bolstering, training the county and local law enforcement. Because we know, if the public feels it can't trust and rely on its local police department and its county prosecutor, that the quality of government that is perceived at the local level will be very drastically reduced. And if they feel it is only the outsiders who can come in and solve their problems, only

the State and Federal Government, then I think we are not going to develop the changes in attitude that every speaker that has appeared before you has mentioned as fundamental to ultimately controlling the development of white-collar crime.

Mr. CONYERS. Thank you. You have given us a very good insight into a shining example of effective prosecutorial cooperation.

Chairman Rodino.

Mr. RODINO. Thank you very much, Mr. Chairman.

I am delighted to welcome my friends—the attorney general of the State and Mr. Stier. I know them both and I know their records and it is refreshing to see these two individuals in positions of authority. They are forward looking officials.

I am happy, too, having known Mr. Del Tufo once served as head of the Criminal Justice Division in the State, that he is now in a position where at least from a personal point of view there can be a give and take between your offices. That cooperative effort, I think, augurs well.

Knowing about the unique situation that exists in the State of New Jersey with the attorney general's authority and his supervisory power over the prosecutors and all, tell me, do you feel, Mr. Attorney General, that with the prosecutors there has been the same kind of emphasis on white-collar crime that your office has?

Mr. DEGNAN. I think to a large extent, yes. I meet with Ed and the county prosecutors on a monthly basis in my office. All 21 of those prosecutors attend those regularly. Each has been told that if they don't it will reflect on their reappointment. [Laughter.]

That is the level of importance that has been viewed in this State by people in positions of agents. I don't see the priority for each prosecutor's office, but by the process of exchanging information and intelligent data, I think there is a fairly consistent priority attached in the county prosecutor's office to the same kind of crimes we do at the State level. And I'm very proud of that. I think we have a group of aggressive prosecutors in this State capable of running their own offices. I don't very often disagree with them.

Mr. RODINO. I'm glad to hear Mr. Stier say he recognizes the need to focus locally on these problems because I think we are more effective when the local law enforcement agencies are dealing with problems because they can see it up close.

Tell me, how much percentagewise, of your staff of the Criminal Justice Division is allocated to the effort in fighting white-collar crime?

Mr. DEGNAN. Of the various sections we have, 120 attorneys, I'd say 32 of them, a little more than a third, work full-time on white-collar crime. We have an additional section that deals with organized crime and another appellate section. So probably 50 people a year effectively are dedicated to that.

Mr. STIER. That is just attorney manpower. In addition, we have an investigative staff made up of accountants and all the other kinds of specialized skills that it takes to do it. We have units from the State police assigned directly to us so that the entire staff is quite substantial.

Mr. RODINO. Thank you, very much.

Mr. CONYERS. Congressman Gudger.

Mr. GUDGER. May I ask one or two very brief questions?

I understand your present structure which gives your supervision over the 21 county prosecutors came about under the Criminal Justice Act of 1970. Is that substantially correct?

Mr. DEGNAN. That is substantially correct. That act substantially increased my authority over the prosecutors. I did have some.

Mr. GUDGER. You had some supervisory authority. Now, to what extent do you participate in the prosecution of criminal actions in the various county jurisdictions?

Mr. DEGNAN. The great bulk are conducted at a county level solely within the county prosecutor's offices. We do have authority to bring prosecutions ourselves and do bring quite a number each year.

Mr. GUDGER. You say you have the almost unique power of summoning a statewide grand jury.

Mr. DEGNAN. Yes, sir.

Mr. GUDGER. I assume when such an indictment has been found by such a grand jury you'd proceed to handle that.

Mr. DEGNAN. We prosecute all such cases.

Mr. GUDGER. On the other hand, when the indictments have been made by the county prosecutor, then you could intercede if you see fit?

Mr. DEGNAN. Either at the request of the prosecutor or if I saw fit I could supersede, yes, after the indictment.

Mr. GUDGER. So a portion of your staff of 120 would have this supervisory and participation function?

Mr. DEGNAN. Yes; we have a separate supervisory prosecutor section, which works full time on supervising prosecutors. We assign attorneys from the trial section when we supercede a local prosecutor.

Mr. GUDGER. You have advisory power?

Mr. DEGNAN. Under the statutes of New Jersey, I am the sole legal adviser to all State departments. They are bound by my advice.

Mr. GUDGER. So you'd have to someone who is a specialist in transportation and another——

Mr. DEGNAN. Right. I have about 160 such specialists.

Mr. RODINO. Mr. Chairman, would you yield for a moment?

I note in our presence the distinguished director of police of the city of Newark, my good friend Mr. Hubert Williams. I merely want to acknowledge his presence and welcome him here. He has been a witness before various committees of the Congress and especially this one, I know. He is always an able witness and always brings wisdom and practical experience to his testimony.

Mr. CONYERS. We are pleased to have your police chief here.

Might I ask this final question of you gentlemen: Are there other States investigating the unique relationship in New Jersey between the attorney general and the local prosecutors?

Mr. DEGNAN. There are other States. I believe Arizona is one which is very close to us in terms of structure. I also believe Puerto Rico is. I know whenever I go to a national attorney generals meeting—I am missing one today—I get into a great many conversations about how we got to the point of where we had this authority. Pennsylvania is spending a good deal of time looking at our system.

Mr. CONYERS. It ultimately requires a State law to reconsolidate?

Mr. DEGNAN. That is right.

Mr. STIER. I might say the meeting the attorney general is missing is in Puerto Rico, so you can see how important this hearing was. [Laughter.]

Mr. CONYERS. We gave him a choice of going there or being subpenaed. He responded very thoughtfully. [Laughter.]

Thank you very much gentlemen. Your complete statement will be made a part of the record. But before we do that, we want to thank Dean Don Godfriedson of the School of Criminal Justice at Rutgers, who has facilitated very much our hearing here, and criminologist Frieda Adler, who has been very helpful and who is largely responsible for our coming to Rutgers. And we have appreciated being here, Chairman Rodino, in Newark. We feel that these hearings will be very important to our work. We thank all of you for coming. We insert the prepared testimony of the gentlemen from New Jersey at this point in the record, and the subcommittee stands adjourned.

[Whereupon, at 1 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX 1

PROGRAM REVIEW MEMORANDUM

1. PROJECT SUMMARY

A. OBJECTIVES

The Office of the Attorney General of the State of New Jersey received a federal discretionary grant to staff, equip and initiate an Economic Crime Section (ECS). This project was initiated on October 1, 1976 and was extended to March 31, 1978. Based on the success of the initial grant, the Section was continued for an extension of fifteen months.

The primary objective of the ECS was to establish an experienced, knowledgeable, effective organization to identify, investigate and prosecute White Collar criminal activities in the State of New Jersey as it relates to organized crime. LEAA defines organized crime as any group of individuals whose primary activity involves violating criminal laws to seek illegal profits and power by engaging in racketeering activities and for intricate financial manipulations. The perpetrators of organzed crime may include corrupt business executives, members of the professions, public officials, or members of any other occupational groups in addition to the conventional racketeer element. Therefore, the first task of the ECS was to develop a unit composed of individuals having the necessary experience and expertise to conduct the complex investigations and prosecutions projected by the proposal.

The grant forecasted activity which would benefit the general citizenry by diminishing the destructive effects which White Collar Crime conducted in an organized nature has on the economy and public revenue and the general quality of life.

The Section was formed with the funds received through the Federal grant. It was initially staffed with three (3) attorneys; one (1) appointed as project director); one (1) supervising investigator-accountant; four (4) investigator-accountants; one (1) field investigator; and two (2) secretaries. The ECS was subsequently detailed with five (5) additional attorneys, four (4) investigative accountants, six (6) field investigators, and three (3) secretaries.

The project director is a former assistant Essex County Prosecutor, and member of the Division of Criminal Justice's Trial Section, who has had extensive investigative and trial experience. The assistant project director has been with the Division of Criminal Justice for five years, and likewise has had extensive criminal investigative and trial experience.

The investigative staff has a wide range of experience. The supervising investigator and one investigator-accountant retired as Group Managers with the Intelligence Division, Internal Revenue Service. Another investigator-accountant retired as a Special Agent with the same activity, each bringing an average of 22 years experience. A third investigator-accountant has prior audit experience with the Internal Revenue Service, three years as an audit-supervisor with S.L.E.P.A. and passed the State Securities Examination as a "Principal", which qualifies him as a Securities Specialist. The fourth investigator-accountant has three years experience as a Senior Auditor (team leader) with the Chase Manhattan Bank which included specialized and complete bank audits. The field investigator was an investigator with the Essex County Prosecutor's Office, investigating organized crime, fraud, and other criminal offenses.

The additional staff, detailed to the ESC from Division, came from similar backgrounds.

In an effort to develop the necessary intelligence and informational systems, contacts with state regulatory agencies were made to alter them of the existence

of the ECS. Members of the ECS met with the Commissioners and their staff, and this contact has resulted in significant prosecutions. A review of their regulations with them by an attorney identified various areas of potential criminal violations which should be referred to us. From those meetings, a steady flow of allegations and information has been funneled to us for our review. The flow was minimal prior to the ECS. In addition, outside contacts were made with Public Service Electric and Gas, Insurance Crime Prevention Institute, New York Stock Exchange, SEC, and the New Jersey Bankers Association.

In addition, monthly meetings, held by the County Prosecutors, were attended to inform them of the organization and staffing of the ECS. Attendance has continued at these meetings during which informtaion and intelligence data are exchanged as well as discussions held relating to the identification, investigation and prosecution of white collar crime.

During 22 months of operation, 296 complaints and/or information were received for review and evaluation and assigned for investigation. The majority of these complaints/information were received from the following sources: Citizen Complaint; New Jersey State Government, Department of Banking, Department of Environmental Protection, Department of Human Services, Department of Higher Education, Department of Insurance, Department of Law and Public Safety (Division of Consumer Affairs), Bureau of Securities (Office of Weights and Measures), Department of Treasury; New Jersey State Law Enforcement Agencies.

Allegations made were as diversified as the sources received from, including adoption violation, alcohol board violations, bribery, charity fraud, insufficent funds—checks issued, conspiracy, illegal disposal of toxic chemical waste without a license, embezzlement, evasion-excise tax, forgery, larceny, loansharking, misappropriation, misconduct in office, misrepresentation, obtaining money under false pretenses, securities fraud, theft.

Those assigned for investigation resulted in twenty four (24) indictments against forty nine (49) individuals and twenty four (24) business entities. In addition, six (6) individuals and three (3) business entities entered guilty pleas to a Prosecutor's Accusation prior to Grand Jury indictment. The charges to date allege over $15,000,000 in fraud committed by the various defendants.

The indictments cover a variety of defendants and charges which are outlined as follows:

ENERGY THEFT

The Economic Crime Section targeted energy theft as an area of major fraud which was in need of investigation, both electrical and fuel. It is estimated that five billion dollars worth of electricity is diverted nationally on an annual basis. As a result of our investigation, a large energy theft ring was apprehended and indictments were returned.

(A) *Theft of Electricity.—State* v. *Cox, et al.*—This indictment involved a scheme wherein a ring of individuals devised a means of tampering with electrical meters allowing a vast number of businesses to cheat the electrical company of justified electrical billing. The indictment charges 12 individuals and 11 corporations with 291 counts in connection with this scheme to defraud PSE&G by tampering with the watt hour meters. The indictment charges in excess of $200,000 in fraud and it is believed that this ring actually defrauded PSE&G of several million dollars over a seven year period of time. To date, three (3) individuals and seven (7) business entities have pleaded guilty. Intelligence and background information obtained on a number of the individuals and corporations involved indicated organized crime connections.

Further, Public Service Electric and Gas and Jersey Central Power and Light, which are the two major power companies in New Jersey, have increased their security force and are working closely with the ECS in identifying other violations. Civil suits are being brought by these companies to recover the monies involved. Of the indicted corporations, several have already plead guilty and have made restitution for the monies stolen. This is the first indictment of its kind in New Jersey and required expenditure of numerous manpower hours throughout several counties in Northern New Jersey.

As a result of the success of the initial investigation, the ECS has proactively initiated energy theft investigations throughout the State. Search warrants were recently executed against a large corporation and a grand jury probe was initiated. On September 28, 1978, the corporation plead to an accusation admit-

ting to larcency of $44,000. The corporation also reimbursed PSE&G $102,000 for stolen watt hours.

(B) *Theft of Fuel Oil.*—In addition to electrical theft, the ECS has initiated proactive investigations into the short delivery of fuel oil by companies, involving public contracts.

State v. *Joseph Bowman.*—This investigation involved a conspiracy between the President of a fuel oil company and his employees to defraud municipalities, school districts and other commercial customers in connection with their fuel contracts. The investigation required extensive surveillance of fuel deliveries by the investigators and, subsequently, an in-depth analysis of the corporate records to determine the extent of possible short fuel deliveries to school districts and municipalities. The case resulted in a plea of guilty by the President of the corporation to a criminal accusation charging him with the short delivery of fuel oil. He was sentenced to one to three years in New Jersey State Prison and paid $66,000 to the State in full restitution for the shortages.

State v. *Joseph A. Dominick & Sons, Inc.*—Investigation by ECS investigators, in conjunction with railroad police, corroborated allegations that railroad diesel fuel was being diverted by a contractor, hired by the railroad to service their equipment, to the storage tanks of a fuel oil dealer conspiring with him. The driver of the contractor's fuel truck was stealing an average of 4,500 gallons per week of diesel fuel (worth about $1.2 million) for the past five years, which he off-loaded into trucks of a legtimate fuel oil dealer. An interesting facet of this investigation is the discovery of the same scheme by local law enforcement officials in 1970 whose investigation failed, essentially, for lack of thoroughness. Consequently, the scheme continued allowing approximately 1,170,000 or more, gallons of fuel oil to be diverted. Because of the substantial monetary gain realized, the investigation will also include a determination of corporate income tax evasion. There is an indication that some of the participants have organized crime ties. This investigation involved extensive surveillance. A State Grand Jury returned the indictment.

State v. *National Fuel Oil, Inc.*—The ECS investigated National Fuel Oil, Inc., for allegedly short delivering fuel oil to the Board of Education of West Orange and the school system, and the Amtrak railroad. The investigation required extensive surveillance, wherein search warrants were executed. An indictment was returned by the State Grand Jury, ending a scheme which was ongoing for years.

ILLEGAL DISPOSAL OF CHEMICAL WASTE

In addition, the ECS discovered that there were companies in the business of the disposal of toxic chemicals, and that this activity was being conducted in illegal fashion, i.e., creation of public nuisances. As a result, the ECS devoted the manpower necessary to conduct extensive surveillance of these targeted companies.

State v. *Kelley & Mercy; State* v. *Chemical Control Corporation; State* v. *Keith Industries, Jamco Corporation and L & J Drum Company.*—Separate Indictments were returned as a result of a lengthy investigation by the ECS. The subject of these indictments involves the illegal dumping of toxic chemicals throughout the northern region of the State of New Jersey. The indictments were returned against several corporations and a large chemical recycling plant in Elizabeth, New Jersey. These individuals are alleged to have organized crime ties. As a result of the initial indictment which was returned, the investigation became proactive and subsequent indictments were returned against these corporations for dumps throughout Essex, Union and Hudson Counties. The ECS educated and used various local police officers in order to successfully conduct this investigation. As a result of this education, local enforcement officers are now making arrests of individuals and charging them with similar offenses. These corporations are all subjected to $100,000 fines upon conviction. This prosecution is the first of its kind in New Jersey. It has been determined that 50 percent of all chemical waste throughout the Country is being disposed of in fashions similar to that which is the subject of the indictment. These investigations were conducted with the Newark Police Department, Newark Fire Department, and the same agencies in Jersey City, as well as in Elizabeth, New Jersey. It has been determined that the chemicals that are being dumped are extremely flammable, toxic and highly explosive, creating an extreme public hazard to the environment wherein they are being dumped. They also create a danger to humans in that they are often being dumped in a populated area.

Convictions were returned in a jury trial against a large corporation, Chemical Control Corp., and four individuals. The case was tried by the project director. Some of the subjects involved in the investigation and indictments have substantial organized crime ties. Extensive jail terms were received by the defendants, in addition to large fines.

The Chemical Control Corporation, et als., indictments disclosed a scheme wherein large profits were being made by illegally disposing of chemical waste in clandestine fashion. In the course of this investigation, it was determined that this activity was being done throughout the State of New Jersey, and in other sections of the country as well. As a result of the information obtained in regard to this illegal activity, the investigation has shifted to the proactive stage, and other significant investigations are currently being conducted. The ECS has executed search warrants of a large recycling plant, and a second grand jury probe has been initiated. In addition, the ECS is the nucleus of a newly formed task force, with the State Department of Environmental Protection, the Public Utility Commission, and the Newark Police and Fire Departments, with whom these proactive investigations will be pursued. Also, the ECS has and will continue to educate local police departments and prosecutors of this problem and the manner in which these investigations are conducted. The problem was recently addressed at a meeting ofthe 21 county prosecutors.

State v. *Gold Leaf Transportation Co., Inc.; State* v. *James E. Finch.*—The indictment charges the corporation and Finch, a driver for the company, with hauling hazardous chemical wastes without a permit from the State Public Utility Commission (PUC) and causing a public nuisance. The spill of chemicals involved apparently caused a two-week shutdown of the water supply of Perth Amboy, New Jersey. The oil spill contained cancer-causing and flammable polychlorinated biphenyls (PCBs) and spilled out in Old Bridge Township over a 1.2 mile stretch of Cheesequake and Runyon Roads, near Perth Amboy's watershed.

PUBLIC FUND FRAUD

State v. *Manzo Contracting Co., Inc.* and *Michael J. Manzo.*—This investigation required the work of an attorney, an accountant and a field investigator in that thousands of documents had to be reviewed before the matter could be presented to a Grand Jury. The case involved approximately $100,000 in fraud alleging a conspiracy whereby the corporation was shortweighing the delivery of asphalt to various State, County and Municipal Governments. In addition, a civil suit has been brought against the corporation seeking $100,000 in damages. This investigation has been extended into other areas of the State wherein the same type of activities are alleged to have been perpetrated. The Manzo Contracting Co., Inc. is now blacklisted from doing any State work. The Manzo Contracting Co. has been stopped from continuing this type of fraudulent activity, which had been ongoing for the last five years. It has recently been brought to our attention that state, local and county governmental bodies are now closely scrutinizing this type of construction work as a result of the indictment. During the investigation, it was determined that the roads were being built in such a manner, not in accordance with the specifications, that they did not provide adequate road surfaces which would stand up to the required normal physical wear. ECS surfaced a particular area of fraud which appears to be widespread throughout the State. Various allegations of corruption pertaining to county and state officials were also brought to the attention of the ECS during the course of the investigation. These allegations were referred to the Corruption Control Bureau of the Division of Criminal Justice. In the course of the lengthy investigation, the ECS acquired a great familiarity of the nature of the business, and the manner in which such frauds are perpetrated. It was also learned that the problem was widespread throughout the industry. As a result, the ECS has started an investigation of this type of activity on a proactive basis.

State v. *James Dale.*—This case concerned the investigation of Mr. James Dale, C.P.A., and the accountant for a State and Federal Project which was designed to assist the disadvantaged by providing them with educational opportunities. Mr. Dale controlled the finances for a period of approximately four years and included more than $2 million in State and Federal grants. After an initial audit by the New Jersey Department of Fiscal Affairs disclosed some irregularities, the case was referred to the ECS for further investigation. The case required a very thorough analysis of the acounting records of this corporation in order to identify possible areas of fraud which could have been committed and were well

disguised by this certified public accountant. Areas which were identified by our accountant included payments to possible fictitious consultants, repayments of loans through false bookkeeping entries, payments to fictitious consulting firms and payments to the defendant's wife through the issuance of checks in her maiden name. The assistance of a field investigator was necessary to trace all of the possible leads identified by our accountant. The defendant was indicted on 18 counts of embezzlement; entered a plea of guilty to six counts and was sentenced to two to three years. New Jersey State Prison. In addition, a judgment in the amount of $20,000 was obtained against Mr. Dale. The State has begun to receive some of the payments in this judgment.

Unemployment Insurance Fraud—On May 9, 1978, twenty-three (23) Hispanics were arrested on charges of filing fraudulent unemployment insurance benefit claims. These individuals were arrested at various unemployment insurance offices in northern New Jersey. Many were identified as claimants obtaining multiple benefits under several aliases. This fraud was accomplished by the incorporation of four (4) nonexisted companies, which carried a payroll of 300 employees. These fictitious employees would be "laid off" and then collect unemployment insurance. The ring netted an excess of $1½ million before the warrants were executed. The arrests were in six (6) different cities, and involved the use of State Police and policemen from the local municipalities. There are indications that this activity is ongoing, so the ECS is proactively investigating similar allegations which are generated from the Division of Employment Security.

State v. *Norman A. Hirshfield.*—On September 13, 1978, Norman A. Hirshfield entered a plea of guilty to a two-county accusation charging him with embezzlement in excess of $341,000 of his employer's funds. The defendant has effected a scheme of writing out checks to companies doing business with the employer and appropriating these to his own use. The matter was referred to the Economic Crime Section from the New Jersey Housing Finance Authority and the plea was the result of a two month investigation. On October 6, 1978, Hirshfield was sentenced to a term of 4–6 years in New Jersey State Prison and fined $2,000.00.

REINSURANCE FRAUD

State v. *Pritchard and Baird.*—Pritchard and Baird was a reinsurance brokerage firm located in Morristown, New Jersey. Its principle business was to accept insurance contracts from ceding insurance corporations and distribute the risk of these policies to reinsurance corporations. For this service, Pritchard and Baird received a percentage of the premium. In 1975, the company went into receivership and an investigation was referred to our office by the New Jersey Department of Insurance concerning possible misapplication of corporate funds by the principals of the company, Charles and William Pritchard. The corporation had gross revenues of approximately $100 million per year and it was necessary for accountants within the ECS to analyze all of the books and records of this corporation relating to the receipt and disposition of funds for approximately a five year period. This case required the use of three accountants in the ECS who worked almost full time for several months in order to identify possible areas of criminal misapplication of funds. Field interviews were then conducted through the use of ECS investigators, who were directed by the attorney in charge of the investigation. In addition, it was necessary to secure records from 18 insurance companies which were located throughout the Country. Representatives from these 18 corporations were interviewed by the investigators and the attorney in charge and they testified before the State Grand Jury. The investigation also required a complete analysis of computer print-outs from this corporation which detailed the disposition of premiums which they received over a five year period. To conclude the investigation, all three of the accountants presented their analysis and findings to the Grand Jury. The case would probably have been incomprehensible without such a detailed analysis and presentation by the accountants. The Grand Jury returned a 112 count indictment against the Pritchard brothers, charging them with misappropriating approximately $8 million in monies owed to other insurance companies. This was the first time that any principals in a reinsurance corporation had been indicted for such a large scale fraud. It resulted in proposed legislation by New York and New Jersey and may result in uniform regulations of the entire reinsurance industry which was heretofore completely unregulated by any governmental body.

State v. *Aaron Stier, et al.*—This investigation resulted in an indictment of an attorney and two real estate agents involving a scheme wherein they were submitting false contracts of sale to a bank which stated an inflated purchase price. On the basis of these false contracts they would obtain mortgage money from the bank in excess of that which normally would be obtained; thereby allowing themselves to invest in large pieces of property without using any of their own financing. In order to successfully prosecute this matter, it was necessary that an attorney, an accountant and investigator be used in that the fraud was hidden within a complicated series of contracts and deeds and was then submitted to the bank. The defendants were successful in obtaining $2½ million in mortgage money in this fraudulent manner.

State v. *Shelby Ford and the First Provident Corporation.*—This case was referred to the ECS by the New Jersey Department of Banking after bank examiners discovered that the bank had sustained a loss of approximately $500,000 in a mortgage agreement with a South Carolina corporation. The investigation required the execution of two interstate subpoenas to secure necessary records from a bank in South Carolina and from the target mortgage banking corporation. It was necessary for an accountant to review extensive accounting workpapers which were prepared by a National accounting firm. In addition, an extensive analysis of bank records and the mortgage bank records was required to determine the full extent of the fraud. Since the targets were located in South Carolina, it was also necessary to interview numerous witnesses who resided in the State of South Carolina and to require their appearance in New Jersey to testify. After the presentation of the audit work of the accountants, a 139 count indictment was returned against the corporation and its Assistant Treasurer. The amount of fraud involved was $339,000.

State v. *Robert J. Williams*, former president of Sentry Savings & Loan Association, was indicted and entered a plea of guilty to two counts of forgery and uttering a forged instrument. Williams issued bank checks in payment of alleged appraisal fees, then forged the endorsements to cash the checks for personal gain. Williams was sentenced to a custodial term of 12 months—suspended; placed on one year probation and fined $500.

State v. *Albert D'Huyvetter*, former Vice President and Mortgage Officer of the Trust Co. of New Jersey, was indicted on 69 counts of embezzlement by a bank employee and he entered a guilty plea in early 1978. He received a three month custodial sentence—supended; placed on five years probation and ordered to make restitution of $2,300 on the 3 counts involved.

An indictment was returned against George Foley, the principal owner of Smoke Rise, involving a $1,025,000 bank fraud. Foley was indicted on numerous charges of false swearing, submission of false personal and corporate financial statements and securing funds by false pretenses. An investigative team comprised of a Deputy Attorney General, an accountant-investigator and a field investigator were assigned on a full time basis for three (3) months in order to present this matter to the State Grand Jury.

In re Pinelands—The ECS is investigating several extensive land fraud conspiracies, which involve thousands of acres of undeveloped land in south Jersey, which has been obtained in a fraudulent manner. The fraud involves a sophisticated scheme, which makes use of false deeds in order to obtain the land of absentee owners, without their knowledge. The individuals in the conspiracies, who are realtors and attorneys, then take an apparent legal title in a quiet title action in Superior Court. The conspirators do not contact the true owners and advise them of the Court action even though they know of their existence. Yet, they represent to the Court that the true owners cannot be found. This land is rapidly increasing in value, in that it is in close proximity to Atlantic City. One indictment has been returned as a result of this probe, and two grand juries are currently looking into similar transactions.

State v. *Abe Schusterman*—Involves an embezzlement, and obtaining money under false pretenses, by a salesman, in the amount of $50,000. The target of this investigation has lead a lifetime involved in white-collar crime, with an extensive criminal record, and is currently in Florida doing the same thing. An accountant-investigator analyzed numerous accounts receivable records of the employer (complainant) corporation, as well as accounts payable records of complainant's customers, to determine the specific payments made to subject

which were never submitted to his employer. The defendant was indicted by the State Grand Jury.

Amtrak Investigation—On May 18, 1978, Prim Specialty Products, Inc., Aaron J. Kemble, Eris F. Kujas and Robert T. McAnally, Sr. were indicted by the State Grand Jury on 32 counts including obtaining money by false pretenses, conspiring to defraud, incorporating for a fraudulent purpose, and using a corporation to defraud the National Railroad Passenger Corporation, commonly known as Amtrak. The indictment charges that the conspiracy resulted in Prim Specialty Products Company receiving $214,058.33 for chemical products which were materially misrepresented as to their contents and effectiveness. Robert T. McAnally, Sr. is President of Prim. Aaron J. Kemble and Eric F. Kujas are engineers of Amtrak at its corporate headquarters in Washington, D.C. It was in this capacity that Kemble and Kujas approved the products of Prim while concurrently affiliated with Prim.

B. Methods of Operation

All complaints alleging "White Collar" crime are funneled through the Investigations Bureau to the ECS, which are processed through our Central File system.

Each complaint file is reviewed by the Project Director, or other assigned Deputy Attorney General. Based on established criteria, a determination is made whether to conduct an investigation for Grand Jury presentation, close the file, or refer it to another agency for criminal, civil or administrative disposition.

Investigations are assigned on a team basis comprised of an attorney, field investigator and, as needed, an accountant. Their combined expertise is used to analyze the complex financial transactions involved in "White Collar" crime and secure sufficient documentary evidence and witnesses to obtain an indictment and sustain a subsequent plea or verdict of guilt. For the entire duration of the investigation, the attorney and all assigned investigators work together in carrying out an audit program that is best suited for the given facts and circumstances.

2. CRITERIA ACHIEVEMENT

A. Goal Achievement

1(a) *Organization of Professional Staff.*—As it was previously stated, the Economic Crime Section was initially staffed with three (3) attorneys, five (5) investigator-accountants, one (1) field investigator, and two (2) secretaries. Their experience was described in the Project Summary. Because of the tremendous workload encountered, it was necessary to detail additional attorneys, investigators and secretaries to the Section. These additional personnel possessed similar backgrounds. This enabled the ECS to function on a professional level from the inception of the federal discretionary grant.

Upon refunding, the original staff was not expanded. However, a major problem in the illegal disposal of toxic waste had been detected by the Project Director. In order to deal with this problem, a Toxic Waste Unit was formed within the Economic Crime Section. This unit has been staffed with one (1) attorney, three (3) investigators and one (1) secretary. Because this entire area of toxic waste is a serious and potentially explosive concern, and until recently a non-prosecuted criminal activity, the personnel assigned possessed experience from prior ECS investigations and had extensive prosecutorial and investigative backgrounds.

In addition, during the course of several investigations, information was disclosed which, if further developed in the from of "intelligence," could more accurately define and identify potential involvement of organized crime figures in legitimate businesses. Also, representatives of the New Jersey State Police had advised that they possessed information which subsequently revealed evidence of such organized crime involvement in legitimate businesses. Because this information could not be developed in a satisfactory manner utilizing current members of the Section, two (2) Intelligent Analysts were hired with federal funds. Intelligence from all sources will be funneled thorugh these new positions and further developed. Their primary activity at this time will relate to toxic waste investigations.

In addition, as part of a re-organization plan, the staff of the Employment Security Unit (four (4) attorneys, one (1) investigator and two (2) secretaries) transferred to the ECS. Their primary function is to prosecute those charged with Unemployment Fraud.

1(b) *State Agency Awareness.*—It is obvious that an important step in the success of any project is to inform potential sources of your existence. Being a statewide law enforcement project brings distinct advantages in this area because of the many agencies that exist in state government. Accordingly, one of the primary goals of the ECS was to contact such state regulating agencies, inform them of the existence of the ECS, and educate them to the many areas of criminal activity within their jurisdiction. At the same time, an effective referral system was established with each agency so that once a potential criminal violation was uncovered, this would be brought to the attention of the ECS without unreasonable delay.

The successful result of the ECS efforts is reflected in the attachment entitled "Information Sources." Of a total of 296 complaint/information assigned for investigation, 210 were initiated by State Agencies. Prior to the ECS, this flow of information was minimal.

In addition, it was recognized that private, non-governmental entities were also a great source of similar information. Therefore, contracts were developed with Public Service Electric & Gas Company, Insurance Crime Prevention Institute, the New York Stock Exchange, the SEC, and the New Jersey Bankers Association, among others.

1(c) *Investigations/Prosecution.*—All the initial efforts to organize a professional staff and to develop efficient and valuable information sources resulted in the investigations conducted and the prosecutions brought. A discussion of some of these significant investigations and prosecutions was mentioned in the Project Summary.

1(d) *Inhibit Growth of OC in Legitimate Business.*—Many of the ECS investigations fall within the LEAA definition of organized crime. (See State v. Manzo, page 6; State v. Stier, et al, page 8; State v. Cox, et al, page 3; State v. Pritchard and Baird, page 7; State v. Joseph Bowman, page 4; State v. Kelley and Mercy, page 5; State v. Chemical Control Corporation, page 5; State v. Kemble, et al, (Amtrak investigation), page 10; Unemployment Insurance Fraud, page 7).

Each of the investigations disclosed either: targets having ties, or involvement, with organized crime figures or activities; or conspiracies of individuals, in small or large groups, banding together to violate criminal laws for illegal profits. The subjects of the investigations would not normally be disclosed as the "conventional racketeer" but rather as "professionals," "business executives," etc.

At this time it would be difficult to establish what effect ECS investigations have had to diminish organized crime activity. However, upon filling the two Intelligence Analysts positions, and initiation of their activities to develop such data, it is anticipated such an analysis can be made.

Recent intelligence received from a confidential source indicates complete awareness by targets and other violators of the ECS investigative activities in illegal toxic waste disposals.

1(e) *Benefit the General Public.*—The ECS has identified, investigated and prosecuted thirty three (33) cases involving energy theft, insurance fraud, chemical dumping, land fraud and other illegal activities with an estimated cost to the public of over $15 million.

Civil actions through suits, repayments and fines have recovered approximately $400,000. Significant legislation has been proposed, as a result of the "Pritchard and Baird case," aimed at more stringent regulation of the reinsurance industry. State, County and Municipal contracts for road construction and repair will be closely monitored as a result of the Manzo investigation and indictment. The energy theft investigations identified an extensive area of revenue loss and a means of reducing it. The two major power companies in New Jersey have increased their security force and are working closely with the ECS in the detection and prevention of energy theft. Extensive publicity on all of the ECS indictments has impact on potential violators as a deterrent effect. Increased surveillance and enforcement of New Jersey statutes by ECS and in cooperation with, or independently by, other law enforcement agencies, trained by ECS, should decrease pollution of land and water areas.

Although the Section's intensive probe into the area of chemical dumping is fairly recent, it is hoped that a direct result will be the improved environment for future generations of Americans.

Success of Project vs. other projects addressing the same problem: It is difficult to compare the success of the ECS with other similar projects. Initially it is to be noted that this project operates on a statewide basis, having jurisdiction within the boundaries of the entire State of New Jersey. This is unlike other agencies which operate only on a county-wide basis.

However, one measure of the success of the ECS is the number of referrals to it, especially from other state agencies. This is indicative not only of the success of this Section, but also is due to the fact that the agency remedies are not always sufficient for the illegal activities which are encountered.

In the area of toxic waste, Newark Fire Director Caulfield has publicly stated that he credits the ECS for successful prosecution of violators in his area. And further, that he had not been able to generate other law enforcement agencies to prosecute this activity in the past. The ECS investigations/prosecutions are "firsts" in the State.

B. Replicability

From the experience and knowledge gained during the past twenty three (23) months, it is our opinion that this ECS operation is replicable and adaptable by any state attorney general or prosecutor's office of similar size or larger. Each file will easily reflect the initiation of the case and all of the investigative steps taken resulting in a successful prosecution.

The basic concept of establishing an experienced, knowledgeable and effective team of attorneys, accountants and investigators appears to be the primary requisite for success. Individuals assigned to ECS fit into these categories and were able to immediately assume complete responsibility of any type investigation to its successful conclusion. The team approach utilized in our Economic Crime Section is applicable to all types of projects, not just those dealing with economic crime.

"White Collar" crimes occur in all walks of life and are not limited to any size or type of community. No community is immune from the effects of such activity, even if it is not directly affected.

C. Measureability

The ECS has been in existence for more than twenty three (23) months. David Twain, Ph.D., Rutgers, The State University of New Jersey, School of Criminal Justice, evaluated our initial fifteen (15) month operation. He completed his report (copy attached) on February 8, 1978.

Quantitative monthly or quarterly projections of the accomplishments of a program of this nature cannot, in the usual sense, be made. Records are maintained with regard to the number of investigations undertaken, arrests made, indictments, and convictions obtained. LEAA has been requested to consider utilizing the resources of the National Institute to conduct an indepth evaluation of this program. The following items of data will be available to access impact of the project and attainment of objectives:

1. Use of project resources;
2. Complaints received by nature;
3. Sources of complaint;
4. Major intelligence developed by nature;
5. Case screening and disposition, opened, referred or closed;
6. Types of cases by nature, dollars involved, scope, impact on public, and possible organized crime involvement;
7. Investigation, number opened, type, and resources required;
8. Grand Jury outcome;
9. Number of indictments;
10. Number of arrests;
11. Disposition by type;
12. Outcome of prosecution.

D. Efficiency

Approximately 80% of the operating budget relates to personnel salaries. Diversion of currently employed attorneys, investigators, and clerical help, to this type of project, will not drastically effect operating budgets of agencies considering this type of activity.

Considering the $15 million in fraud—identified through indictments—compared to an approximate cost of $600,000, this project is benefitting at a ratio of $50.00 to $2.00.

In addition, the *State* v. *Cow* investigation stopped a seven year theft of electrical energy; the *State* v. *J. A. Dominick & Sons, Inc.* investigation halted a five year theft of railroad diesel fuel averaging 4,500 gallons per week; the *State* v. *Joseph Bowman* and *State* v. *National Fuel Oil, Inc.* investigations ended

a fuel delivery shortage to school districts and municipalities which had continued for years; the *State* v. *Chemical Control Corp.* investigation has initiated more law enforcement activity and State agency regulations in a previously loosely controlled; the Unemployment Insurance Fraud investigation eliminated a ring netting a $1½ million fraud; and each of the other indictments have identified other fraud areas. Through extensive investigative activity, publicity, and establishment of further regulatory controls, deterrence in each of these fraudulent areas in increasing.

E. Accessability

The Economic Crime Section will give its complete support and its full cooperation for evaluation, publicity and visitation to all law enforcement and criminal justice personnel who may be interested in continuing or establishing a similar program. This project is expected to continue beyond the expiration date of the present grant.

3. OUTSTANDING FEATURES

The two most impressive features of the Economic Crime Section are:

1. The team approach, which is utilized on all investigations;
2. The results which the project has attained in its twenty-two (22) months of existence.

The team concepts allows the investigator, auditor, and attorney to function as one from the beginning, thus allowing those with diverse areas of experience and training to contribute from the inception of the investigation. Such an approach allows for an orderly and well structured investigation and an effective grand jury presentation and trial. Each member of the team contributes as to his expertise. The result of this is that problems, often encountered at trial, are anticipated and thus remedied at an early stage of the investigation.

The second feature that is most impressive is the results that have been attained. Some of the more significant cases have been discussed in the project summary. Not only have the dollar amounts been signified, but the areas of prosecution have been diverse, with many being unique in criminal areas.

4. WEAKNESSES

The one weakness of the Economic Crime Section is a direct result of the success of the project. Because of results that have been attained, the referrals to the ECS have increased. This has caused a drain on the limited manpower, thus necessitating referrals of some cases to other law enforcement offices.

Information Sources

N.J. State Government:	
Department of Agriculture	1
Department of Banking (Bank)	46
Department of Community Affairs	2
Department of Education	1
Department of Environmental Protection (DEP)	12
Department of Higher Education	5
Department of Human Services (Hum. Serv.)	25
Department of Insurance (Ins.)	23
Judiciary (Jud.)	6
Department of Labor and Industry	12
Legislature	7
Department of Public Utilities	2
Department of Transportation	5
Department of Treasury	18
Department of Law and Public Safety:	
State Law Enforcement Planning Office	1
Office of Weights and Measures (Wts. & Mes.)	8
Bureau of Securities (Secur.)	14
Division of Consumer Affairs	5
Division of Alcoholic Beverage Control	1
Charities Registration	2
Division of Criminal Justice—medicaid investigation section; special prosecution section; white collar crime investigation unit; professional and occupational board	3, 2, 1, 1
Division of State Police	7
Subtotal	210

N.J. State Law Enforcement Agencies:	
County Prosecutor's Office	6
Municipal Police Department (Pol.)	6
Municipal Fire Department (Fire)	4
Federal Agencies:	
U.S. Attorney	5
Public:	
Citizen complaint (Citz.)	55
Newspaper article	4
National Law Enforcement Agencies:	
Attorney General—Rhode Island	1
Waterfront Commission—NYC	1
Attorney General—Delaware	1
Attorney General—Illinois	2
District Attorney—Philadelphia	1
Total	296

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY,
SCHOOL OF CRIMINAL JUSTICE,
Newark, N.J., February 8, 1978.

Mr. ROBERT T. WINTER,
Deputy Attorney General, Chief, State Enforcement Bureau, Division of Criminal Justice, Princeton, N.J.

DEAR MR. WINTER: Attached find a copy of the completed Evaluation Report on the WCCIU as per our contract. I hope the various readers find it useful.

Sincerely,

DAVID TWAIN, Ph. D.

Enclosure.

EVALUATION REPORT

Project: White Collar Investigation Unit. Subgrant No. 11320-105-218-500.
Evaluator: David Twain, Ph. D.
Date: February 3, 1978.

The project evaluated in the present report is of 18 months duration and funded by LEAA. Total project budget for this period is $416,667. While initially scheduled to begin July 1, 1976 the project became operational in October, 1976. The evaluation was conducted by the writer in November–December of 1977 and is therefore responsive to the first 15 months of project activity.

The nature of the evaluation effort called for the participation and cooperation of senior project staff. The evaluator would like to express his appreciation to senior project staff for their help and especially to Mr. Vincent J. Carbone, Supervisor Accountant, who provided the primary contact with the project and who supplied the basic data on which the present evaluation is based.

DEFINITION OF THE PROBLEM

White collar crime is defined by the current project as "non-violent crime involving deceit, corruption or breach of trust; criminal economic offenses; and professional and sophisticated people cloaking their schemes in legitimacy."

The "need" or problem statement of the White Collar Crime Investigative Unit (WCCIU) proposal emphasizes the following points:

(*a*) That organized crime involvement in legitimate business is on the increase in New Jersey.

(*b*) That white collar crime has received relatively little attention in New Jersey.

(*c*) That there is a need and a desire in New Jersey "to mount an aggressive and determined drive against white collar criminals with a view to reducing the incidence of such crimes and organized crime's influence in legitimate business."

(*d*) That the complexities of white collar crime requires the development of staff with special skills in this area.

The WCCIU proposal makes it clear that while there are a number of investigative units in the State Enforcement Bureau of the Division of Criminal Justice, these units do not have the resources to effectively deal with what is regarded as an increasing white collar crime problem.

PROJECT GOAL

As stated in the proposal, the goal of the WCCIU is "to investigate and prosecute white collar criminals as part of the activities of the State Enforcement Bureau and to provide the technical expertise which is presently lacking within the Division of Criminal Justice to effectively penetrate deeply into the more complex and potentially sinister white collar offenses engaged in by the elements of organized crime, and by vigorous prosecution inhibit the growth of organized crime involvement with legitimate business."

PROJECT OBJECTIVES

The WCCIU proposal does not establish specific, measurable objectives. Interviews with WCCIU staff produced the understanding that a major task for the project, as a new endeavor for the State of New Jersey, was the development of a base of information that would be useful for the establishment of specific objectives for WCCIU in its later phases.

EVALUATION

The following statement is taken from the WCCIU proposal and in the single statement is the proposal addressed to the issue of project evaluation:

"Quantitative monthly or quarterly projections of the accomplishments of the program cannot, in the usual sense, be made. Although, statistical records will be maintained with regard to the number of investigations undertaken, arrests made, indictments and convictions obtained, the many unique aspects of this program, require that funds be specifically requested to permit contracting for the independent evaluation of the project based on a plan designed by the contractor."

The present evaluation was initiated with a series of meetings with senior project staff with the objective of identifying the type of information that would be viewed as valuable and illustrative of project activities, both to the funding agencies and to the Division of Criminal Justice.

As a result of these meetings, categories of desirable information were developed and the relevant data that could be generated within the resources and time constraints was supplied by project staff to the evaluator.

THE WCCIU AS A SYSTEM

The following is a brief summary of the staff resources and operations of the WCCIU. The operations will be diagrammed and analyzed. Categories of information will be indicated and WCCIU operations data will be presented.

It is hoped that the following presentation will accomplish two purposes: (1) an indication of the type of data which would be useful to project management and which could feasibly be generated by a project such as WCCIU and (2) analysis of the actual data generated by the present evaluation effort.

PROJECT ORGANIZATION AND STAFF RESOURCES

The WCCIU is one of five investigative units of the State Enforcement Bureau (SEB) of the New Jersey Division of Criminal Justice. The four counterpart units investigate a variety of matters including those related to medicaid, drugs and employment security. The Division also maintains Bureau level organizations which investigate matters involving possible political corruption and organized crime. Special Prosecutions Section is the unit in the Division responsible for investigation and prosecution, on a statewide basis, of "organized crime," e.g. gambling, loansharking, narcotics, highjacking, etc. The Corruption Control Bureau is the Division responsible for the investigation and prosecution of corrupt activity involving public officials. Responsibilities and staffing of each of these units are based on the areas of criminal activity described above. The WCCIU then is one of several Division units investigating alleged criminal practices and WCCIU personnel have numerous counterparts in the Division.

There are eleven persons funded under the WCCIU including three deputy attorney generals, a supervisor accountant, four accountants, one field investigator and two secretarial staff.

The attorneys which staff the unit have broad law enforcement experience in both the investigative and trial area of the law. The project director was formerly an assistant County Prosecutor, and subsequently a member of the Division of Criminal Justice trial section. The assistant project director and the attorney likewise, have broad investigative and trial experience.

The supervising investigator and one investigator-accountant retired as Group Managers with the Intelligence Division, Internal Revenue Service. Another investigator-accountant retired as a Special Agent with the same activity. Each brought to the unit an average of 22 years experience in criminal financial investigations. A third investigator-accountant has prior audit experience with IRS, three years as an audit-supervisor with SLEPA and passed the State Securities examination as a "Principal" which qualifies him as a Securities Specialist. The fourth investigator-accountant has three years experience as a Senior Auditor (Team leader) with the Chase Manhattan Bank which included specialized and complete bank audits. The field investigator has four years of combined experience with the New Jersey Public Defender's Office and Essex County Prosecutor investigating organized crime, fraud and other criminal offenses. The third investigator-accountant and the field investigator also have approximately three years experience each as investigators with the State Enforcement Bureau. Their assignments in SEB also included cases relating to financial investigations of a substantial nature.

Prior to the organization of the WCCIU, all cases of fraud and misapplication of funds were assigned to an investigator and an attorney. Although the SEB did employ several accountants and auditors they were assigned exclusively to medicaid fraud investigations and were not available for other assignments. While this investigator-attorney team could conduct investigations of small scale and unsophisticated frauds, complex cases involving substantial monetary losses were beyond their capabilities.

The addition of experienced investigative accountants, through the funding of the WCCIU, has provided the skills necessary to investigate and prosecute major fraud cases.

WCCIU: DESCRIPTION OF OPERATIONS

Receipt and procession of complaints

Filing Procedures—When a complaint or information is received, the data is given an "EW" number which is kept in chronological order by date. A separate administrative file folder is prepared, with all of the identifying data, and this becomes the central file. This file is maintained in one cabinet in a specified area. All original documentation relating to this investigation are filed in this folder. A separate card file is also maintained by "EW" number, and alphabetically, on which is recorded all data pertaining to the receipt, assignment, and disposition of the investigation.

This central file is then reviewed by the Project Director and/or Assistant Project Director in order to make a determination as to whether an investigation is to be initiated; the matter is to be referred to another investigative agency or a local County Prosecutor; or the file is to be closed because of insufficient allegations or criminal violations.

One or more of the following criteria are used in determining whether or not an investigation in initiated by the WCCIU.

1. *Amount involved in the offense or fraud.*—It has been the experience to date, that the larger the amount of money involved, the more complicated the investigation will be and also the greater the social harm.

2. *Scope and Complexity.*—Many of the investigations involve activity which goes beyond the lines of any one particular county. In order to successfully investigate these matters, it is imperative that investigators have State-wide jurisdiction. The local County Prosecutors have to consider their priorities based on crimes which are taking place only in their particular county. Consequently, it is necessary to have an investigative agency which has an interest in all 21 New Jersey counties. Certain financial investigations involve analysis and audit of business, bank and outside records which can only be accomplished by an accountant with experience in that type of investigation.

3. *Nature of the offense.*—Often a particular offense reflects a higher degree of social harm than those that merely involve high monetary amounts. One such example is corporate conspiraces to dump toxic wastes. These too require unusually sophisticated investigative personnel.

4. *Target Involved.*—Often the investigative targets involve individuals operating businesses or enterprises on a State-wide basis; sometimes on a nationwide basis. In addition, some cases have revealed the presence of organized crime.

5. *Deterrent Value.*—Investigations may involve crimes which previously were undetected and unprosecuted. The aim is to contribute to a new public awareness and to possibly provide a deterrent to prospective lawbreakers.

6. *Travel.*—Investigations may make it necessary for staff to travel throughout all areas in the State as well as inter-state. As previously stated, a unit with State-wide jurisdiction is required.

7. *Resources Required.*—The majority of cases referred to the WCCIU involve financial transactions. In order to properly analyze these transactions and obtain the proper evidence for Grand Jury and trial purposes, the experience of an accountant has been a necessity. Many local prosecutors offices do not have this type of specialized experience available to them. If they do, such staff is usually very limited.

Investigative assignment

Once a case is opened for investigation, an attorney is assigned to thoroughly review the facts contained in the file. The attorney then prepares an investigative request outlining the potential crimes committed and the targets of the investigation. The attorney then meets with the Supervising Invesigator and they decide on the personnel who will be needed to investigate the matter.

During the first year of WCCIU operation, most cases have manifested the need for an attorney, accountant and field investigator, who must function as a team if they are to successfully investigate the charges. The Deputy Attorney General is needed to monitor the investigation and identify problems and directions of pursuit. The accountant is necessary—in that these files contain complicated financial transactions which need to be analyzed—to determine the extent of the crime as well as to present the findings in an understandable manner to a Grand Jury. The accountant may also be involved in the reconstruction of an entire record-keeping system in order to identify the crime which may be hidden within the record-keeping system. The field investigator is needed to contact the numerous witnesses necessary to successfully conclude an investigation.

Investigative procedure

Once a case is beyond the initial stages of review, the team consisting of attorney, accountant, and investigator then have to prepare the case for the Grand Jury. This matter is a time consuming process for all personnel involved in that all evidence has to be reviewed and prepared for presentation in a form that is understandable to the Grand Jurors.

The Deputy Attorney General assigned to the investigation determines the targets and general evidence required to present his case before the Grand Jury. Subpoenas are drawn up and served by the field investigators in order to secure records and other information. The accountant audits all available records to identify evidence of the receipt and disposition of the funds involved. The field investigator will also testify as to any pertinent findings discovered through his field contacts which include interview of witnesses. In addition, a number of cases, particularly those involving clandestine operations, will require the use of various surveillance techniques which are conducted primarily by the field investigator. The Deputy Attorney General will then summarize all of the testimony of the investigator and witnesses for the final determination by the Grand Jury.

WCCIU: ANALYSIS OF OPERATIONS

Activity	Data categories	Analysis
Information input	Information sources	Input times allegations.
	Allegations.	Input times source.
Evaluation	WCC classification	Dispositions times WCC class.
	Screening criteria.	Dispositions times criteria.
	Screening dispositions.	
Investigation	Local agencies	
	Organized crime activity.	Investigation times WCCIU.
		Investigation times local agency.
		Investigation times type.
		Investigation times technical assistance.
		Investigation times organized crime.
Prosecution: Grand jury stage	Organizations	Cases times grand jury jurisdiction.
	Individuals.	Cases times type.
	County grand juries.	Indictments times grand jurisdiction.
		Indictments times type.
Prosecution: Trial stage	Trial stage activities	Trial stage activities times type.
	Trial stage dispositions.	Trial stage dispositions times type.

The WCCIU operations diagram indicates five stages of activity. In the initial or "Information Input" stage the source of information (complaint or allegation) and type of information can be classified. If this is accomplished it is possible to identify the volume of complaints and which sources generate which type of complaint as well as which actual and potential sources generate few or no complaints.

During the "Evaluation" stage, decisions are made as to which files merit development as "cases". Case acceptance (screening) criteria are applied and it is possible to group or classify primary allegations into white collar crime "types". Analysis at this stage could provide an understanding of which "type" or files are opened, not opened, referred to other jurisdictions, etc. It would also be possible to see which criteria are employed in reaching these various decisions.

During the "Investigation" stage personnel are assigned to cases and other (local) jurisdictions are informed of cases they might pursue. The influence of "organized crime" might be detected at this time. Technical assistance to local level and other agencies might be provided. Analysis at this stage could reveal which type of cases are retained by WCCIU as compared with those referred; the type and locus of technical assistance; the role of technical assistance in local agency activity; the interaction of "organized" and "white collar" crime.

At the "Grand Jury" stage of prosecution it has been decided which cases merit the seeking of indictment and evidence is presented accordingly. It is possible to identify at this stage which County Grand Juries, which organizations, which individuals (as individuals or the roles they play in organizations)—are involved. Analysis at this stage could reveal those cases in which indictments are obtained in terms of the jurisdiction involved or in terms of any of the factors identified in the discussion to this point.

"Trial Stage" activity involves the identification of pleas, convictions, acquitals, sentencing, pending cases and the like. Analysis at this stage could reveal not only the simple, though extremely important, facts as to the sentencing results (e.g. fines levied) but could also trace the WCCIU decision process from original information input to conviction or acquital.

WCCIU: OPERATIONS RESULTS

The following analysis is limited to the 164 cases opened by WCCIU at the time of this report. There is no information on unopened files, etc. Data were obtained and are reported for the Input, Grand Jury and Trial Stages of WCCIU activity.

Input stage

Table 1 presents an identification of primary allegations. For purposes of the present evaluation the list of primary allegations serves as a classification of "white collar" crime.

Table 2 reveals that the bulk of allegations stem from citizen complaints and certain New Jersey government agencies; notable the Departments of Banking, Human Services, and Insurance. At the outset, members of the WCCIU contacted various State regulatory agencies whose area of regulation might involve referrals pertaining to white collar crime allegations. In addition, contacts were made with the Public Service ESlectric & Gas, Insurance Crime Prevention Institute (I.C.P.I.), New York Stock Exchange, SEC, and the New Jersey Bankers Association, in order to advise them of the WCCIU and interest in receiving information related to any alleged criminal activity.

TABLE 1.—*White-collar crime allegations*[1]

Type:	
Obtaining money under false pretenses (OMUFP)	67
Embezzlement	29
Securities fraud	6
Bribery	2
Dumping without a license	16
Larceny	1
Employer theft	3
Tax evasion—excise	4
Charity fraud	3
Misappropriation	7
Misconduct in office	5
Conspiracy	1
Adoption violation	1
Alcohol board violation	1
Insufficient funds—checks issued	2
Forgery	11
Misrepresentation	4
Loansharking	1
Total cases	164

[1] Examples of WCCIU cases involving allegations of OMUFP, embezzlement and illegal dumping can be found in Appendix A.

As can readily be seen, the major categories of "white collar" crime, in respect of WCCIU opened files, are those of fraud (OMUFP, securities, etc.) embezzlement, illegal dumping, misappropriation of funds and corruption (misconduct). Table 2 identifies the primary information source for WCCIU.

TABLE 2.—*WCCIU: Information sources*

Source	
New Jersey State Government:	
Department of Agriculture	1
Department of Banking (Bank.)	32
Department of Civil Service	-----
Department of Community Affairs	1
Department of Defense	-----
Department of Education	1
Department of Environmental Protection (DEP)	6
Department of Health	-----
Department of Higher Education	2
Department of Human Services (Hum. Serv.)	22
Department of Corrections	-----
Department of Insurance (Ins.)	14
Judiciary (Jud.)	6
Department of Labor & Industry	2
Public Employment Relations Commission	-----
Legislature	3
Press Association	-----
Department of the Public Advocate	-----
Department of the Public Utilities	-----
Department of State	-----
Department of Transportation	1
Department of Treasury (Treas.)	8
Department of Law & Public Safety:	
State Law Enforcement Planning Office	1
Office of Weights & Measures (Wts. & Mes.)	5
Bureau of Securities (Secur.)	5
Division of Consumer Affairs	2
Division of Alcoholic Beverage Control	1
Charities Registration	1
Division of Criminal Justice:	
Medicaid Inv. Unit	1
Special Pros. Section	1
White Collar Crime Inv. Unit	1
Division of State Police	1
New Jersey State law enforcement agencies:	
County Prosecutor's Office	1
County Sheriff's Office	-----
Municipal Police Department (Pol.)	5
Municipal Fire Department (Fire)	4
Federal agencies:	
U.S. attorney	1
Public:	
Citizen complaint (Citz.)	29
Newspaper article	1
National law enforcement agencies:	
Attorney General—Rhode Island	1
Waterfront Commission—New York City	1
Attorney General—Delaware	1
Attorney General—Illinois	1
District Attorney—Philadelphia	1
Total	164

Table 3 compares selected types of crime by information source.

Type	Bank	Human service	Insurance	Treasury	Weights and measures	Security	Police and fire	DEP	Citizens	Judicial	Other	Total
CMUFP	6	18	7	1	3	1			18	6	10	70
Embezzlement	10		4		1	4			4		7	30
Securities											2	2
Dumping							9	5			2	16
Evasion				4								4
Misappropriation	4		1						2			7
Misconduct	1	1							2		1	5
Other	11	3	2	3	1			1	3		6	30
Total	32	22	14	8	5	5	9	6	29	6	28	164

An analysis of Table 3 reveals that very few agencies provide information input for certain alleged crimes such as illegal dumping, securities, fraud and tax evasion. OMUFP and embezzlement complaints, however, are raised by a wide variety of agencies and individual citizens.

Grand jury stage

Table 4 indicates those investigations closed by WCCIU and the reasons for closing.

TABLE 4.—CLOSED INVESTIGATIONS

Type	Reasons for Closing			Total
	Insufficient evidence	Intra-county	Federal prosecution	
OMUFP	9	3	4	16
Embezzlement	6	2	3	11
Securities	1		1	2
Dumping	4			4
Evasion	1			1
Misappropriation	3			3
Misconduct	2	1	1	4
Forgery	5	3		8
Other	5	3	3	11
Total	36	12	12	60

Table 4 indicates that a small percentage of total opened (164) cases have been referred to other levels of government for their attention. To date, 36 of 164, approximately 22 percent, have been closed for reasons of insufficient evidence.

Table 5 provides for a comparison between closed files and those in which an indictment has been obtained.

TABLE 5.—CRIME TYPE BY GRAND JURY STAGE ACTIVITY

Type	Indictment obtained		Total closed	Other	Total
	State grand jury	County grand jury			
OMUFP	6	1	16	44	67
Embezzlement	2	2	11	14	29
Securities				2	6
Dumping	3	1	4	8	16
Evasion			1	3	4
Misappropriation			3	4	7
Misconduct			4	1	5
Forgery			8	3	11
Other			11	8	19
Total	11	4	60	89	164

Analysis of Table 5 reveals that the majority of cases opened by WCCIU (89) are still under investigation or pending further action.

Indictments have been obtained in OMUFP, embezzlement and dumping cases and the majority of those indictments have been obtained from the State Grand Jury. Misconduct and forgery investigations have tended to be referred elsewhere (see Table 4) or be closed because of insufficient evidence. Other analysis reveals that the cases producing the 15 indictments indicated in Table 5 resulted in indictments obtained against 23 organizations and 34 individuals.

Trial stage

At the time of this report the majority of indictments are pending further action. WCCIU has been successful in obtaining guilty pleas in two fraud cases and one embezzlement case; and a guilty verdict against a corporation and four individuals. The pleas mentioned were obtained from two corporations and two individuals, wherein the individuals received prison sentences and the corporations were fined.

Viewing WCCIU as a "system", it is possible to regard some of the "system output" (e.g. indictments obtained, guilty pleas obtained, etc.) as "beneficial". The designers of the WCCIU were, in the project proposal, much more specific, however, as to the potential benefits to be derived from project activities—the "impact" of the project.

The following is a discussion of project benefits to this point in time. The "benefits" categories are those discussed in the project proposal. What follows is a summary discussion, the reader is referred to Appendix A for a case by case analysis of benefits.

Organized Crime

In the grant application, the Division of Criminal Justice discusses the existence of organized crime activity in legitimate businesses. WCCIU staff point out that LEAA has defined organized crime as any group of individuals whose primary activity involves violating criminal laws to seek illegal profits and power by engaging in racketeering activities and for intricate financial manipulations. The perpetrators of organized crime may include corrupt business executives, members of the professions, public officials, or members of any other occupational group, in addition to the conventional racketeer element. Referring to Appendix A, many of the current WCCIU investigations fall within that definition. (See State v. Manzo, p. 1; State v. Stier, et al., p. 2; State v. Cox, et al., p. 3; State v. Pritchard and Baird, p. 4; State v. Joseph Bowman, p. 5; State v. Shelby Ford and the First Provident Corporation, p. 6; State v. Kelley and Mercy, State v. Chemical Control Corporation, and State v. Keith, et al., p. 7.) It would be difficult to demonstrate, however, whether the present project has affected a "diminished organized crime activity" at this point in time.

New areas of investigation

Since this evaluator has not analyzed data relative to the total range of investigative activities of the Division of which WCCIU is but a part, this area cannot be definitively assessed. It is clear, however, that WCCIU has addressed itself to a wide range of white collar crime issues and has become "proactive", that is, has mounted self-initiated investigations in the fraud and meter-tampering crime areas. The WCCIU has returned an indictment charging a ring of individuals and corporations with energy theft. (See Appendix A, p. 3.) This is the first prosecution of this type in the State of New Jersey. This investigation was conducted with the cooperation of the Public Service Gas & Electric Company security force, which is a novel approach to law enforcement. As a result of the investigation, various power companies are directing their attention to this particular problem; and the WCCIU has been contracted by them to prosecute cases of this type.

An indictment was returned against a reinsurance firm involving $8 million in fraud. (See Appendix A, p. 4). This is the first prosecution of this industry in the State of New Jersey.

An indictment and guilty verdicts were returned, involving the illegal disposal of chemical waste by corporations and individuals. (See Appendix A, p. 7.) This activity has been conducted in the area of Newark for several years, without any prosecution. Newark Fire Director Danfield has publicly stated that he credits the WCCIU for this successful prosecution, and that he has not been able to generate other law enforcement agencies to prosecute this activity in the past.

Staff training

One (1) Investigator-Accountant completed the four-week F.B.I. course "Investigative Techniques of Computer-Related Crimes." The course furnished an indepth understanding of computer facilities, security measures and potential computer audit techniques.

The Project Director and Assistant Project Director attended the Annual Prosecutors Workshop on White Collar Crime. The Project Director attended numerous conferences of the National District Attorneys Association relating to economic crime (WCC) as well as meetings of local prosecutors on WCC oriented subjects.

The Supervising Investigator also attended a quarterly National District Attorneys Association seminar with the Project Director. The Assistant Project Director attended a one-week seminar for the Investigation and Prosecution of Organized Crime and Corrupt Activities held by the Cornell Institute on Organized Crime. The assigned Deputy Attorney General attended a one-week Sympo-

sium on White Collar Crime held by the Criminal Justice Division in Boston. Investigators assigned to the unit attend a two-week Economic Crime Institute conducted by the New Jersey Department of Law and Public Safety. An Investigator-Accountant represented the WCCIU at the White Collar Crime Seminar held by the Middlesex County Prosecutor's Office. Each of these conferences, seminars, etc. related to the investigation and prosecution of white collar crimes as well as opening lines of communication with other enforcement agencies and possible joint investigations.

An Investigator-Accountant is scheduled to attend the four-week Basic Training Course for County Detectives and Investigators conducted by the Prosecutors Supervisory Section of the Division of Criimnal Justice. Applications have been submitted to the I.R.S., Washington, D.C. for investigators to attend their Financial Investigation School. The Project Director is scheduled to attend a one-week course on Computer Frauds.

Saved taxpayer dollars

The WCCIU has identified and engaged in the investigation of at least nine cases involving energy theft, insurance fraud and other illegal activities which they estimate has cost the public over ten million dollars. Indictments obtained in such cases should result in direct taxpayer savings.

Money recovered

At this writing WCCIU has participated in actions which, through civil suit, repayments and fines, recovered some $86,000. In addition, there is an action pending amounting to $100,000.

New or proposed legislation

As a result of the "Pritchard and Baird" case, significant legislation has been proposed which is aimed at more appropriate regulation of the re-insurance industry.

Increased interest by local law enforcement

During the past 15 months, 12 investigations were referred to various County Prosecutor's offices. Each of these cases involved criminal allegations which did not meet the WCCIU criteria for acceptance. In one case, a WCCIU accountant was temporarily assigned to assist the County Prosecutor in the audit of records involved. The WCCIU has worked closely with local law enforcement activities in the chemical waste disposal investigations; and has expended time educating them in this pursuit. In addition, the WCCIU has worked closely with several power companies as to the detection and prevention of energy theft.

Other social benefits

The indictments resulting from the PSE&G investigation have identified an extensive area of revenue loss and a means of reducing it. Extensive publicity associated with WCCIU investigative activity, in this indictment and other indictments, may have impact in the form of a deterrent effect.

The indictments stemming from illegal chemical dumping cases have resulted in increased activity by local law enforcement officials using the investigative techniques learned through cooperation with WCCIU personnel. The increased surveillance and enforcement of New Jersey statutes should decrease pollution of land and water areas. Again, there is the possibility of a deterrent effect.

State contracts as well as County and Municipal contracts, for road construction and repair will be looked at closer as a result of the Manzo indictment.

CONCLUSIONS AND RECOMMENDATIONS

What can be fairly stated by way of conclusions concerning the WCCIU; that is, with proper regard for the constraints operating in this limited, retrospective scanning of the project?

1. One of the project goals referred to the inhibiting of the growth of organized crime in legitimate business. The WCCIU has identified and prosecuted organized crime in legitimate business, as organized crime is defined by LEAA. In addition, intelligence gathered during the course of several investigations, (State v. Cox et al. and State v. Chemical Control et al, Appendix B, p. 3, 7) has identified involvement by "conventional" or "traditional" organized crime figures. However, it is difficult to measure the impact of the cases upon the growth of organized crime in legitimate business.

2. WCCIU declared that specially trained staff were needed for its proposed activities and goals. Such a staff was sought out and hired. The WCCIU has taken advantage of formal and informal training in order to further develop the staff.

3. The proposal suggests the possibility of a "deterrent effect" on white collar criminals. As should be clear from the discussion to this point, it would be fair to state that the project has attempted to demonstrate such an effect. The real issue once again is whether acceptable criteria for such an effect can be established as well as a mechanism for providing this type of accountability.

4. The proposal stated that New Jersey is providing relatively little significant law enforcement attention to white collar crime, and that the WCCIU would provide major impetus to investigation of white collar crime, and in fact open new areas of investigation. WCCIU has initiated a number of investigations, 164 to date, and some of these investigations are in new areas.

5. As to efficiency, it is difficult to make a definite determination without an analyses of comparative data from other Division operations or from similar projects in other jurisdictions.

What can we conclude about benefits derived from WCCIU activities to this point in time?

1. The unit has been responsible for the initiation of 164 investigations related to white collar type of crime.

2. The unit has obviously altered and enlisted the assistance of a broad range of New Jersey governmental agencies, federal agencies and the citizenry in its pursuit of white collar criminality.

3. The unit has been successful in obtaining indictments and guilty pleas from both individuals and organizations.

4. Fines and prison sentences have been levied against white collar criminals through WCCIU activities.

5. WCCIU activities have resulted in a saving of public and private funds and have recovered funds.

6. White it cannot be stated conclusively, WCCIU has probably stimulated local jurisdiction interest in the pursuit of white collar crime.

The present evaluation obviously does not do justice to the potential program management and development information that could be generated by the WCCIU. A minimal indication of the type of useful information proposed is presented in the "Analysis" column in the digram of WCCIU operations (page 10). The Evaluator suggests that such information can be better obtained through initiation of evaluation activities early in the life of the action program.

APPENDIX A: SUMMARY OF REPRESENTATIVE INDICTMENTS

State v. *Manzo Contracting Co., Inc. and Michael J. Manzo.*—This investigation required the work of an attorney, an accountant and a field investigator in that thousands of documents had to be reviewed before the matter could be presented to a Grand Jury. The case involved approximately $100,000 in fraud in that the corporation was shortweighing the delivery of asphalt to various State, County and Municipal Governments. In addition, a civil suit has been brought against the corporation seeking $100,000 in damages. This investigation has been extended into other areas of the State wherein the same type of activities are alleged to have been perpetrated. The Manzo Contracting Co., Inc. is now blacklisted from doing any State work. The Manzo Contracting Co. has been stopped from continuing this type of fraudulent activity, which had been ongoing for the last five years. State, local and county governmental bodies are now closely scrutinizing this type of construction work as a result of the indictment. During the investigation, it was determined that the roads were being built in such a manner, not in accordance with the specifications, that they did not provide adequate road surfaces which would stand up to the required normal physical wear. WCCIU surfaced a particular area of fraud which appears to be widespread throughout the State.

State v. *James Dale.*—This case concerned the investigation of Mr. James Dale, C.P.A., and the accountant for a State and Federal Project which was designed to assist the disadvantaged by providing them with educational opportunities. Mr. Dale controlled the finances for a period of approximately four years and included more than $2 million in State and Federal grants. After an initial audit by the N.J. Department of Fiscal Affairs disclosed some irregularities, the case was referred to the White Collar Crime Investigative Unit for further in-

vestigation. The case required a very thorough analysis of the accounting records of this corporation in order to identify possible areas of fraud which could have been committed and were well disguised by this certified public accountant. Areas which were identified by our accountant included payments to possible fictitious consultants, repayments of loans through false bookkeeping entries, payments to fictitious consulting firms and payments to the defendant's wife through the issuance of checks in her maiden name. The assistance of a field investigator was necessary to trace all of the possible leads identified by our accountant. The defendant was indicted on 18 counts of embezzlement; entered a plea of guilty to six counts and was sentenced to two to three years, New Jersey State Prison. In addition, a judgement in the amount of $20,000 was obtained against Mr. Dale. The State has begun to receive some of the payments on this judgment.

State v. *Aaron Stier, et al.*—This investigation resulted in an indictment of an attorney and two real estate agents involving a scheme wherein they were submitting false contracts of sale to a bank which state an inflated purchase price. On the basis of these false contracts they would obtain mortgage money from the bank in excess of that which normally would be obtained; thereby allowing themselves to invest in large pieces of property without using any of their own financing. In order to successfully prosecute this matter, it was necessary that an attorney, an accountant and investigator be used in that the fraud was hidden within a complicated series of contracts and deeds and was then submitted to the bank. The defendants were successful in obtaining $2½ million in mortgage money in this fraudulent manner.

State v. *Cox, et al.*—This indictment involved a scheme wherein a ring of individuals devised a means of tampering with electrical meters allowing a vast number of businesses to cheat the electrical company of justified electrical billing. The indictment charges 12 individuals and 11 corporations with 291 counts in connections with this scheme to defraud PSE&G by tampering with the watt hour meters. The indictment charges in excess of $200,000 in fraud and it is believed that this ring actually defrauded PSE&G of several million dollars over a seven year period of time. To date, one individual has pleaded guilty and four corporations have also pleaded guilty.

As a result of this indictment, our investigation has reached the proactive state. We are now investigating similar rings throughout the State of New Jersey which are involving millions of dollars in fraud. Some of the business entities involved have known organized crime ties. Further, Public Service Electric & Gas and Jersey Central Power and Light, which are the two major power companies in New Jersey, have increased their security force and are working closely with the White Collar Crime Unit in identifying other violations.

Civil suits are being brought by these companies to recover the monies involved. Of the indicted corporations several have already indicated a desire to plead guilty and make restitution for the monies stolen. This is the first indictment of its kind in New Jersey and required expenditures of numerous manpower hours throughout several counties in Northern New Jersey.

State v. *Pritchard and Baird.*—Pritchard and Baird was a reinsurance brokerage firm located in Morristown, New Jersey. Its principal business was to accept insurance contracts from ceding insurance corporations and distribute the risk on these policies to reinsurance corporations. For this service, Pritchard and Baird received a percentage of the premium. In 1975, the company went into receivership and an investigation was referred to our office by the New Jersey Department of Insurance concerning possible misapplication of corporate funds by the principals of the company, Charles and William Pritchard. The corporation had gross revenues of approximately $100 million per year and it was necessary for accountants within the White Collar Crime Unit to analyze all of the books and records of this corporation relating to the receipt and disposition of funds for approximately a five year period. This case required the use of three accountants in the White Collar Crime Unit who worked almost full time for several months in order to identify possible areas of criminal misapplication of funds. Field interviews were then conducted through the use of White Collar Crime investigators, who were directed by the attorney in charge of the investigation. In addition, it was necessary to secure records from 18 insurance companies which were located throughout the Country. Representatives from these 18 corporation were intreviewed by the investigators and the attorney in charge and they testified before the State Grand Jury.

The investigation also required a complete analysis of computer print-outs from this corporation which detailed the disposition of premiums which they

received over a five year period. To conclude the investigation all three of the accountants presented their analysis and finding to the Grand Jury. The case would probably have been incomprehensable without such a detailed analysis and presentation by the accountants. The Grand Jury returned a 112 count indictment against the Pritchard brothers, charging them with misappropriating approximately $8 million from their wholly owned corporation. This was the first time that any principals in a reinsurance corporation had been indicted for such a large scale fraud. It resulted in proposed legislation by New York and New Jersey and may result in uniform regulations of the entire reinsurance industry which was heretofore completely unregulated by any governmental body.

State v. *Joseph Bowman.*—This investigation concerned the President of a fuel oil company which had contracts to deliver oil to municipalities and school districts and other commercial customers. The case was referred to the White Collar Crime Unit by the New Jersey Division of Weights and Measures who had received reports concerning alleged shortages in the delivery of oil. The investigation required extensive surveillance of fuel deliveries by the investigators and, subsequently, an in-depth analysis of the corporate records to determine the extent of possible short fuel deliveries to school districts and municipalities. The case resulted in a plea of guilty by the President of the corporation to a criminal accusation charging him with the short delivery of fuel oil. He was sentenced to one to three years in New Jersey State Prison and paid $66,000 to the State in full restitution for the shortages.

State v. *Shelby Ford and the First Provident Corporation.*—This case was referred to the White Collar Crime Unit by the New Jersey Department of Banking after bank examiners discovered that the bank had sustained a loss of approximately $500,000 in a mortgage agreement with a South Carolina corporation. The investigation required the execution of two interstate subpoenas to secure necessary records from a bank in South Carolina and from the target mortgage banking corporation. It was necessary for an accountant to review extensive accounting workpapers which were prepared by a National accounting firm. In addition, an extensive analysis of bank records and the mortgage bank records were required to determine the full extent of the fraud. Since the targets were located in South Carolina, it was also necessary to interview numerous witnesses who resided in the State of South Carolina and to require their appearance in New Jersey to testify. After the presentation of the evidence, which included the presentation of the audit work of the accountants, a 139 count indictment was returned against the corporation and its Assistant Treasurer. The amount of fraud involved was $339,000.

State v. *Kelly & Mercy, State* v. *Chemical Control Corporation, State* v. *Keith Industries, Jamco Corporation and L & J Drum Company.*—Separate indictments were returned as a result of a lengthy investigation by the White Collar Crime Unit. The subject of these indictments involves the illegal dumping of toxic chemicals throughout the northern region of the State of New Jersey. The indictments were returned against several corporations and a large chemical recycling plant in Elizabeth, New Jersey. These individuals are alleged to have organized crime ties. As a result of the initial indictment which was returned, the investigation became proactive and the subsequent indictments were returned against these corporations for dumps throughout Essex, Union and Hudson Counties. The White Collar Crime Unit educated and used various local police officers in order to successfully conduct this investigation. As a result of this education, local enforcement officers are now making arrests of individuals and charging them in accordance with the crimes charged in our indictments. These corporations are all subjected to $100,000 fines upon conviction. This prosecution is the first of its kind in New Jersey. It has been determined that 50 percent of all chemical waste throughout the Country is being disposed of in fashions similar to that which is the subject of the indictment. These investigations were conducted with the Newark Police Department, Newark Fire Department, and the same agencies in Jersey City, as well as Elizabeth, New Jersey. It has been determined that the chemicals that are being dumped are extremely flammable, toxic and highly explosive creating an extreme public hazard to the environment wherein they are being dumped. They also create a danger to humans in that they are often being dumped in a populated area.

State v. *Donald L. Graff.*—The subject was involved in the sale of insurance without a license, the premiums of which he embezzled for his own personal use. The resulting indictment involved a $10,000 fraud and was determined through

analysis of records and interviewing of witnesses who had been doing business with the defendant.

The *State* v. *Chemical Control et al.*, indictment recently went to trial. In the middle of the trial, two individuals and the corporation pleaded guilty, with exposure to lengthy jail terms and $127,000 in fines. The remaining defendants were found guilty by the jury and are subject to jail terms and $57,000 in fines; for a total of $184,000 in fines.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF CRIMINAL JUSTICE,
July 18, 1978.

MEMORANDUM

To: Robert T. Winter, Deputy Director.
From: Robert B. Sturges, Chief, Medicaid Fraud Section.
Subject: Medicaid Fraud Section—Accomplishments.

The Medicaid Fraud Section of the New Jersey Division of Criminal Justice was formed in April, 1975 for the purpose of establishing a specialized unit capable of effectively investigating and prosecuting Medicaid provider fraud. Prior to the establishment of this unit between 1972 and 1974, three providers were indicted for Medicaid fraud in New Jersey. Since the creation of this specialized unit, over 52 indictments have been returned involving all varieties of Medicaid fraud and the unit enjoys a conviction rate of approximately 95 percent. The amount of Medicaid fraud alleged in indictments returned by the Medicaid Fraud Section exceeds one million dollars.

The Medicaid Fraud Section presently consists of one Section Chief, one Supervising State Investigator, three Deputy Attorneys General, ten Accountant/Investigators and eleven Field Investigators. As a result of the federal funds made available through the passage of HR-3, the Section plans to expand to a total of six Deputy Attorneys General, fifteen Accountant/Investigators, eighteen Field Investigators, two document examiners in addition to the Section Chief and Supervising State Investigator.

The success of the New Jersey Medicaid Fraud Section is in part, a result of a clearly defined and successful relationship with the Division of Medical Assistance and Health Services, which is the agency responsible for administering the Medicaid program in New Jersey. The Division of Criminal Justice and the Division of Medical Assistance and Health Services have agreed to the establishment of specified criteria which mandate the referral of cases meeting those criteria to the Division of Criminal Justice. These cases are referred to the Division of Criminal Justice through the mechanism of the Legal Action Committee.

The Legal Action Committee is comprised of representatives of the agencies responsible for criminal prosecution, civil litigation and professional licensing, as well as a member of the Division of Medical Assistance and Health Services. The purpose of this committee is to provide a mechanism for efficient and effective investigation and prosecution of providers involved in Medicaid fraud from both the civil and criminal point of view.

Currently, individual cases are brought to the attention of the committee by investigators working with the Medicaid program. In general, any matter potentially involving fraud is brought to the attention of the committee, in addition to those cases meeting the specific criteria mentioned above. Members of the committee question the individual investigator about the case, and ultimately decide whether the matter warrants further criminal investigation. At the same time, alternative remedies which can be administered through the other agencies represented on the committee are also discussed. Any State agency action concurrent with the criminal investigation can be effectively coordinated through the Legal Action Committee.

The types of fraudulent conduct which the Medicaid Fraud Section has unearthed are carried on cautiously and furtively in as many different ways and by as many conceivable methods as human ingenuity can devise. The most obvious, of course, is the submission of a claim for services not actually rendered. This may be possibly accomplished simply by having a patient sign several blank forms which the provider can subsequently complete at his leisure with a fictitious description of the patient's diagnosis and treatment. The nine indictments returned by the Medicaid Fraud Section against physicians basically

involved the submission of claims for services not actually rendered. Most recently, Dr. Abraham Chaplain, an Englewood, New Jersey psychiatrist, was convicted of 104 counts of receiving Medicaid payments to which he was not entitled as a result of claiming a series of over 1500 individual one hour psychotherapy sessions when, in fact, short sessions, group sessions, or no sessions at all were provided. The amount of fraud alleged in this particular indictment involved approximately $70,000.

In the nursing home field, an increasingly prevalent scheme is to inflate nursing home costs through fictitious or exaggerated invoices. The vendors of these hypothertical or over priced items are inevitably expected to kickback a portion of the windfall profits to the nursing home operator. A variant of this fraudulent scheme involves what is known as a lease back arrangement. Pursuant to this device, a Medicaid nursing home operator may legitimately sell the home's furnishings and fixtures to a lease back corporation and lease the necessary items from the purchaser. The Medicaid program then pays the rental required by the lease. The fraud occurs under this scheme through the sale and subsequent leasing of non-existent items. Not infrequently, the lease back corporation never confirms the existence of the rented property, since the lease is promptly discounted to a financial institution. The public is thus bilked into supplying funds for completely fictitious expenses.

Through yet another guise, a nursing home may misuse Medicaid funds to absorb operating costs of other ineligible facilities. Because the New Jersey Medicaid program reimburses nursing homes for the actual costs of operation, rather than at a fixed rate, owners of a number of institutions may seek to shift the financial burden of less profitable health care facilities to the public through inflated Medicaid billings.

Finally, the most common variety of Medicaid fraud committed in connection with the operation of nursing homes, involves the inclusion of purely personal expenses on the nursing home cost studies. The New Jersey Medicaid Fraud Section has uncovered such personal items being charged on Medicaid cost studies as: $13,000 in landscaping expenses at the personal residence of the nursing home administrator; country club dues; repairs and maintenance at the summer residence of the nursing home administrator; Brooks Brothers suits; chlorine for swimming pool at the nursing home administrator's home; golf balls; tennis balls; yacht repairs; and personal travel and entertainment expenses.

Since the inception of the Medicaid Fraud Section, over 20 indictments have been returned involving the types of fraud detailed above in connection with the operation of nursing homes in the State. These indictments have alleged over $800,000 in ineligible items being charged to Medicaid on nursing home cost studies.

The New Jersey Medicaid Fraud Section has been involved in extensive investigations of pharmacies involved in the Medicaid system. The two major types of fraud revealed by these investigations are generic substitution and "thin air" prescriptions. In the generic substitution scheme, a cheap generic equivalent of a brand name drug is dispensed and the Medicaid system is billed for the more expensive brand name medication. In the latter type of fraud, the pharmacy bills Medicaid for a prescription which was nexer dispensed but rather pulled out of "thin air". The Medicaid Fraud Section has returned over 15 indictments involving these types of fraud committed by pharmacies and their employees.

The New Jersey Medicaid Fraud Section successfully prosecuted one of the first independent laboratory indictments for Medicaid fraud in the country. This case involved the billing of Medicaid for each individual component of a unitary series of laboratory tests in order to obtain greater reimbursement. Approximately $160,000 of fraud was involved in this case and the three business entities and two individuals indicted were all convicted.

Many courts in New Jersey have taken a strong position with respect to the appropriate sentence to be imposed after a conviction for Medicaid fraud. At present, any individual convicted of Medicaid fraud in connection with the operation of a nursing home has received a custodial sentence. In the independent laboratory prosecution mentioned in the previous paragraph, one individual involved in this scheme was sentenced to a prison term of six to nine years. In the physician cases where a significant amount of fraud was involved, courts have sentenced physicians to custodial terms.

In addition to the criminal prosecutions which have been initiated in New Jersey for Medicaid fraud, stiff administrative penalties are available as an adjunct or as an alternative to criminal prosecution. Under a statute enacted

in September, 1976, a Medicaid provider who submits willfully false claim forms can receive administrative penalties up to $2,000 per each false claim form. Additionally, when a provider has willfully received Medicaid payments to which he is not entitled, an administrative proceeding can result in the imposition of treble damages plus interest.

The New Jersey Medicaid Fraud Section has attempted to initiate reciprocal training programs with the various State agencies with which it is concerned. For instance, supervising auditors from the Division of Medical Assistance and Health Services have conducted seminars for our Medicaid Fraud Section auditors in an effort to educate these individuals on some of the finer points of the Medicaid system. Reciprocally, Medicaid Fraud Section field investigators have provided training sessions for field investigators in the Division of Medical Assistance and Health Services, in report writing and interviewing techniques. Similar reciprocal programs are being developed in conjunction with the New Jersey Department of Health.

As a result of the passage of HR-3, many states who have never formed Medicaid Fraud units are in the process of creating such entities. Over a half dozen states have visited the New Jersey Medicaid Fraud Section in an effort to become familiar with the operation of an on-going unit. New Jersey has decided to formalize the guidance it has been providing to other states, by planning a national training conference for Medicaid Fraud investigators to be held in cooperation with the New York Hynes Commission. Discussions are now under way with the Department of Health, Education and Welfare, to receive their approval for funding this training conference. It is anticipated that this conference will be held in the fall.

I have attached hereto a copy of an article written by former Attorney General William F. Hyland and former Director Robert J. Del Tufo concerning New Jersey's experience in combating Medicaid fraud. Portions of this memo have been extracted from this article.

NEW JERSEY FEDERAL-STATE LAW ENFORCEMENT COMMITTEE

Toxic Chemical Waste Disposal Program

PREAMBLE

While the industrialized nature of our society provides many benefits it has also created a situation in which vast quantities of wastes largely hazardous to humans and the environment, must be disposed of as a necessary part of the industrialization.

The safe disposal of these wastes, in particularly toxic and hazardous chemical wastes, has become a growing public concern. As a result Federal, State and local governments have promulgated numerous regulations and laws to control the disposal process. It has become apparent from prior investigations that violations of these laws and regulations can be better investigated, prosecuted and, more importantly, prevented, by closer cooperation between federal, state and local authorities.

The Federal-State Law Enforcement Committee has accordingly created a Toxic Chemical Waste Committee to implement a program:

(1) To coordinate the investigative and regulatory responsibilities in order to maximize the efforts against illicit disposition of chemical wastes, in partciularly toxic and hazardous chemical wastes;

(2) to allocate litigative responsibilities in an effective way;

(3) to fashion and create effective civil remedies as an adjunct and supplement to criminal action in order to prevent the continuation of such practices and to seek recovery from wrongdoers; and

(4) to recommend and encourage remedial legislation and administrative action where such additional regulations could prevent a recurrence of the problem.

PROGRAM

I. The Toxic Chemical Waste Committee will be composed of representatives of the Attorney General's Office (Deputy Director for Investigations, Division of Criminal Justice and Chief of Environmental Protection Section, Division of Law), the County Prosecutors' Association, the United States Attorney's Office

(Chief of Environmental Protection Division) as well as the Enforcement Division of the United States Environmental Protection Agency and the New Jersey Department of Environmental Protection.

II. The Toxic Chemical Waste Committee will meet periodically to regularly discuss and coordinate investigative and prosecutorial efforts with regard to illegal carting and disposal of toxic and hazardous chemical wastes. The Committee shall make specific prosecutorial allocations of investigations involving such activities. Investigations and prosecutions in these areas will be coordinated in such a way as to maximize available and prosecutorial manpower and will include joint undertakings.

III. The Committee will establish procedures to insure that documents and investigative experts available in the federal and state agencies will be available to the designated investigative body on particular investigations.

IV. The Committee will cordinate the activities and seek full participation and cooperation of the various regulatory agencies involved including among others, U.S. Environmental Protection Agency, the New Jersey Department of Environmental Protection, the New Jersey State Police, the Public Utilities Commission, and county and local enforcement agencies.

V. The Committee will establish training sessions for investigative personnel of all federal, state and local agencies participating in an effort to more fully educate the participants in the various investigative nd prosecutive techniques invloved.

VI. The Committee will endeavor through multiple agency interaction to promptly identify, investigate and prosecute apparent criminal activity. In addition, the Committee will endeavor to develop an organized and efficient use of the various civil remedies available under the applicable law.

VII. The Committee will coordinate, where appropriate the transmittal of information from law enforcement authorities to the various regulatory agencies and legislative bodies which regulate and/or review the disposal of chemical wastes in an effort to curtail improper practices and procedures, and to develop more efficient and effective laws regulating the industry.

Federal-State Cooperation in the Investigation and Prosecution of Fraud Against the HEW Medicare and Medicaid Program

PREAMBLE

Program fraud is a major social concern. No where is this more apparent than in the Medicare and Medicaid programs. New Jersey is fortunate in having skilled federal and state investigative and prosecutorial resources available to deal with this problem area. The prosecutorial record to date is among the best in the nation. Joint cooperative efforts in the past have been of significance in achieving this record. In order to insure that this cooperation continues, both in a more structured form and in a manner conducive to the most advantageous, economic use of available resources, the Law Enforcement Committee has devised a specific, formalized coordinated federal-state program to supplement existing informal contacts.

PROGRAM

I. The United States Attorney's Office (Chief of the Fraud Division) and the Division of Criminal Justice (Deputy Director for Investigations) will meet on a monthly basis in order to review specific allocations of criminal investigations involving Medicare and Medicaid fraud. Investigations in this area will be coordinated in such a way as to maximize the use of investigative and prosecutive manpower and can include joint investigations. Once allocation is made, significant cases will be discussed to insure proper coordination subject to appropriate court orders.

II. Procedures will be established to insure, subject to statute, that documents in the possession of the Department of Health, Education and Welfare and the New Jersey Department of Human Services and other necessary agencies will be made available to the designated investigative body. The respective agencies will designated appropriate officials to brief the investigators with regard to these documents. These efforts will be coordinated by the United States Attorney's Office and the New Jersey Division of Criminal Justice.

III. The United States Attorney's Office and the Division of Criminal Justice will coordinate, where appropriate, the bringing of civil actions for damages and forfeitures under applicable Federal and State statutes in cases which have been investigated. These actions might be brought concurrently with criminal charges

or might follow criminal charges already brought. Coordination will also include discussions with the New Jersey Department of Human Services.

IV. The United States Attorney's Office and the Division of Criminal Justice will coordinate and disseminate, subject to statutes, information which was developed as a result of investigations to State licensing boards and licensing agencies, where appropriate.

V. Periodic meetings of all State and Federal law enforcement and regulatory agencies with jurisdiction of varying aspects of the Medicare and Medicaid program, including the Federal Bureau of Investigation, Internal Revenue Service, Health, Education and Welfare and New Jersey Division of Criminal Justice, New Jersey Department of Human Services and others will be held:

1. To improve coordination of multi-agency efforts.
2. To develop training programs for early detection of fraudulent conduct, including computer screens, and
3. To share experience in an effort to improve examination and prosecution techniques.

VI. Personnel of the United States Attorney's Office and the New Jersey Division of Criminal Justice will organize and coordinate periodic seminars designed to further educate participating agency personnel in improved methods of investigation and prosecution.

NEW JERSEY FEDERAL—STATE LAW ENFORCEMENT COMMITTEE

"Federal-State Bank Fraud Program"

PREAMBLE

Commercial banks, savings and loan associations and other thrift institutions have significant impact on all aspects of our Nation's economic life and certainly affect all business entities and individuals in the State of New Jersey. Previous investigations have demonstrated that fraud against these quasi public institutions can result in significant losses to the Federal and State Governments, to businesses and to individual citizens.

Commercial banks, savings and loan associations and other thrift institutions are regulated by myriad Governmental agencies at the Federal and State level. Similarly, investigative and prosecutorial authority with espect to this industy is diffused among Federal, State and local prosecutors and investigative agencies. This dispersion of responsibility can result in duplication of effort and in some instances can prevent the early detention of significant fraudulent activity.

The Federal-State Law Enforcement Committee has accordingly designed a program: 1) to improve coordination between Federal and State agencies having regulatory and investigative responsibilities concerning the banking industry; 2) to allocate prosecutorial responsibilities in an effective way; 3) to seek civil recovery from wrongdoers; and 4) to encourage remedial legislative or administrative action when such additional regulatory attention would assist in preventing the commission of fraudulent and like acts in the first place.

These formal initiatives, together with continued day-to-day contact on an informal basis, should materially serve the interests of law enforcement, of the banking industry and of the public. They should also serve to assure the public that an effort is being made to bring Federal and State resources to bear in a coordinated and effective way upon the problems of fraud in this sensitive industry.

PROGRAM

I. Federal and State law enforcement agencies will share information concerning bank misapplications and frauds. The United States Attorney's Office will serve as a clearing house for such information from federal agencies, including the Federal Bureau of Investigation (FBI), the Internal Revenue Service (IRS), and banking regulatory agencies. The New Jersey Attorney General, through the Division of Criminal Justice, will serve as a clearing house for such information from State agencies, including the New Jersey State Police and the Department of Banking, as well as from the County Prosecutors and other law enforcement entities.

In addition to day-to-day informal contacts, this information will be periodically reviewed by the Bank Fraud Review Committee, a group to be composed of a representative of the United States Attorney's Office (Chief of Bank Fraud Unit), a representative of the Division of Criminal Justice (Deputy Director

for Investigations) and a representative of the County Prosecutors Association. The Committee shall review specific prosecutorial allocations of investigations involving fraud against banking institutions as well as in those cases where banking institutions are used as a means to commit fraud or other related crimes. Investigations and prosecutions in these areas will be coordinated in such a way as to maximize investigative and prosecutive manpower and can include joint investigations. The Division of Criminal Justice shall establish appropriate liaison with the County Prosecutors. Once allocation is made, significant cases will be discussed to insure proper coordination subject to the appropriate court orders.

II. Procedures will be established to insure, subject to statute and regulation, that documents in the possession of the federal regulatory agencies, the New Jersey Department of Banking and other agencies will be made available to the designated investigative body. It is the intention of the United States Attorney's Office and the Division of Criminal Justice to request and expedite subject to statute and/or regulation, the provision of the reports of all Federal and State bank examiners and other documents be made available to the designated investigative body.

III. The United States Attorney's Office and the New Jersey Division of Criminal Justice will encourage each of these Federal and State agencies to designate appropriate officials to brief investigators with regard to these reports and all supporting documents. These efforts will be coordinated by the United States Attorney's Office and the New Jersey Division of Criminal Justice.

IV. The United States Attorney's Office will endeavor to create a Federal bank law enforcement committee composed of representatives of all Federal regulatory and investigative agencies with jurisdiction in the banking area in an effort to obtain expeditiously reports of potential criminal conduct and to insure maximum coordination at the Federal level. Subject to approval by these regulatory bodies and subject to statute and/or regulation, the United States Attorney's Office will represent these agencies and present their views at the periodic meetings of the Bank Fraud Review Committee.

V. The Bank Fraud Review Committee will coordinate its efforts with the Civil Remedies units of both the United States Attorney's Office and the Division of Criminal Justice in order to insure that the civil ramifications of fraudulent conduct receive appropriate attention and thus to attempt to prevent a wrongdoer from benefiting in any way from his or her conduct by, among other things, forcing such a wrongdoer to disgorge any ill-gotten gains.

VI. The Bank Fraud Review Committee, together with the Division of Law of the Attorney General's Office, will, as and when appropriate, provide information to Federal and State legislative and regulatory bodies, including the New Jersey Department of Banking, so that legislative and regulatory changes for improved banking practices and procedures may be evaluated and pursued.

VII. Periodic meetings of State and Federal law enforcement and regulatory agencies with jurisdiction of varying aspects of the baking industry will be held:

(*a*) To improve coordination of multi-agency efforts;

(*b*) to develop training programs for early detection of fraudulent conduct; and

(*c*) to share experiences in an effort to improve examination and prosecution techniques.

VIII. Personnel of the United States Attorney's Office and the New Jersey Division of Criminal Justice will, on an as needed basis, organize and coordinate periodic seminars designed to further educate participating agency personnel in improved methods of investigation and prosecution.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF CRIMINAL JUSTICE,
ANTITRUST SECTION,
Princeton, N.J.

Re Civil Investigative Demand.
Attention: Municipal Purchasing Director or School Board Purchasing Director.

The Antitrust Section of the Attorney General's office has begun an inquiry into the solid waste industry to determine whether restraints of trade of monopolistic activities have taken or are taking place in violation of N.J.S.A. 56:9-3,4.

As part of that inquiry, we are requiring that you or some public official or employee with knowledge of the information requested supervise the answering of the civil investigative demand (C.I.D.) attached to this letter and have his (her) signature verified by a notary public. This C.I.D. is being sent to you pursuant to N.J.S.A. 56:9-9 which authorizes the Attorney General "to require a person to file with him a statement in writing under oath" concerning "subject matter which he believes is to be the public interest to investigate." Additionally, N.J.S.A. 56:9-9(c) imposes a duty upon all public officers and employees to "furnish to the Attorney General . . . all information and assistance in their possession or within their power." The C.I.D. requires compliance as does a subpoena and it is enforceable through court order; the violation of such an order being punishable by contempt.

All answers to the C.I.D. must be typed or legibly printed. If a particular question is not applicable to you, answer "not applicable" rather than leave the answer blank. If the space provided is not sufficient for a complete answer, you may continue the answer on a separate sheet of paper and attach the same to your responses. The answers must be served upon the undersigned within twenty (20) days from the time the C.I.D. is served upon you.

The information contined in your completed C.I.D. will be kept confidential and not disclosed to third parties except where such disclosure is deemed necessary in the interests of enforcement of the laws of the State of New Jersey. Moreover, you are required to keep this inquiry confidential and any unauthorized disclosure or discussion may constitute a misdemeanor pursuant to N.J.S.A. 56:9-9(c). Therefore, you may not discuss you questionnaire with third parties other than your lawyer or those employees or parties who are assisting you in completing the document.

Your C.I.D. has been assigned the number ——. Refer to this number in any future discussions with this office. If you have any problem interpreting a question on the C.I.D., you may obtain guidance by telephoning John K. Enright at (609) 452-9500, Ext. 385.

Very truly yours,

WILLIAM F. HYLAND,
Attorney General of New Jersey.
By ALFRED J. LUCIANI,
Chief, Antitrust-Civil Remedies Section.

STATE OF NEW JERSEY, EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. 34

Whereas, it is essential that all persons supplying goods or services to the State of New Jersey, or performing contracts or otherwise executing public works with the assistance of and subject to the approval of the State, must meet a standard of responsibility which assures the State and its citizens that such persons will both compete and perform honestly in their dealings with the State and avoid secret or illicit dealing; and

Whereas, it is essential that such persons be fully informed of policies of the State in this regard, and be afforded procedural safeguards appropriate to circumstances which such policies may occasion; and

Whereas, the courts have affirmed the duty and obligation of State officials to develop and effectuate such policies; and

Whereas, it is essential that such policies be uniformly applied by the various agencies of the Executive Branch, and that uniform procedures be adopted to implement them,

Now, therefore, I, Brendan Byrne, Governor of the State of New Jersey, do hereby order and direct that:

I. Debarment, suspension and disqualification are measures which shall be invoked by the State to exclude or render ineligible certain persons from participation in contracts and subcontracts with the State, or in projects or contracts performed with the assistance of and subject to the approval of the State, on the basis of a lack of responsibility. These measures shall be used for the purpose of protecting the interests of the State and not for punishment. To assure the State the benefits to be derived from the full and free competition between and among such persons and to maximize the opportunity for honest competition and performance, these measures shall not be invoked for any time longer than deemed necessary to protect the interests of the State.

2. As used in this Order,

(*a*) "Debarment" means an exclusion from State contracting, on the basis of a lack of responsibility evidenced by an offense, failure, or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

(*b*) "Suspension" means an exclusion from State contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

(*c*) "Disqualification" means a debarment or a suspension which denies or revokes a qualification to bid or otherwise engage in State contracting which has been granted or applied for pursuant to statute, or rules and regulations.

(*d*) "State" means the State of New Jersey, or any of the departments or agencies in the Executive Branch of government with the lawful authority to engage in contracting.

(*e*) "Person" means any natural person, company, firm, association, corporation, or other entity.

(*f*) "State Contracting" means any arrangement giving rise to an obligation to supply any thing to or perform any service for the State, other than by virtue of state employment, or to supply any thing to or perform any service for a private person where the State provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or service or the persons who may supply or perform the same.

(*g*) "Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

3. The executive head of each department or agency in the Executive Branch, with the lawful authority to engage in state contracting, shall, within ninety days of the date of this Order and in accordance with the provisions of the Administrative Procedures Act (Public Law 1968, c. 410, C.52:14B–1 *et seq.*), promulgate rules and regulations governing the causes, conditions and procedures applicable to determinations of debarment, suspension and disqualification by that department or agency. Such rules and regulations shall to the extent consistent with existing law conform to the minimum standards hereinafter set forth, but need not be limited to such standards. In addition to any other filing required by law to be made, each Executive Head shall file with the Attorney General and the Treasurer a copy of such rules and regulations as may be promulgated.

4. Subject to the conditions hereinafter described, the rules and regulations referred to in Section 3 supra, shall authorize the department or agency to debar a person in the public interest for any of the following causes:

(*a*) Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

(*b*) Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty.

(c) Violation of the Federal or State Antitrust Statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276 b, c).

(*d*) Violations of any of the laws governing the conduct of elections of the State of New Jersey or of its political subdivisions.

(e) Violation of the "Law Against Discrimination" Public Law 1945, c. 169, C.10:5–1 *et seq.*, as supplemented by Public Law 1975, c. 127), or of the act banning discrimination in public works employment (C.10:2–1 *et seq.*), or of the "Act prohibiting discrimination by industries engaged in defense work in the employment of persons therein (C.114. L.1942, C.10:1–10 *et seq.*).

(*f*) Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor.

(*g*) Violations of any laws governing the conduct of occupations or professions or regulated industries.

(*h*) Willful failure to perform in accordance with contract specifications or within contractual time limits.

(*i*) A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such fail-

ure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred.

(*j*) Violation of contractual or statutory provisions regulating contingent fees.

(*k*) Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by the department or agency to warrant debarment, including such conduct as may be prescribed by the laws or contracts enumerated in this paragraph even if such conduct has not been or may not be prosecuted as violations of such laws or contracts.

(*l*) Debarment by some other department or agency in the Executive Branch.

5. The rules and regulations concerning debarment required herein shall include in substance the following conditions:

(*a*) Debarment shall be made only upon approval of the executive head of the department or agency, except as otherwise provided by law.

(*b*) The existence of any of the causes set forth in paragraph 4 of this Order shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the head of the department or agency unless otherwise required by law, and shall be rendered in the best interests of the State.

(*c*) All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance and in deciding whether debarment is warranted.

(*d*) The existence of a cause set forth in subparagraphs (a), (b), (c), (d), (e), (f), and (g) of paragraph 4 of this Order shall be established upon the rendering of a final judgment or conviction by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

(*e*) The existence of a cause set forth in subparagraphs (h), (i), (j), and (k) of paragraph 4 of this Order shall be established by evidence which the department or agency determines to be clear and convincing in nature.

(*f*) Debarment for the cause set forth in subparagraph (l) of paragraph 4 of this Order shall be proper provided that one of the causes set forth in subparagraph 4(a) through 4(k) was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

6. The rules and regulations concerning debarment required by this Order shall include in substance the following provisions regarding procedures, period of debarment and scope of debarment:

(*a*) A department or agency seeking to debar a person or his affiliates shall furnish such party with a written notice: (i) stating that debarment is being considered, (ii) setting forth the reasons for the proposed debarment, and (iii) indicating that such party will be accorded an opportunity for hearing if he so requests within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedures Act. However, where one department or agency has imposed debarment upon a party, a second department or agency may also impose a similar debarment without according an opportunity for a hearing, provided that the second agency furnishes notice of the proposed similar debarment to that party, and accords that party an opportunity to present information in his behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(*b*) Debarment shall be for a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is accorded an opportunity to present information in his behalf to explain why the additional period of debarment should not be imposed.

(*c*) Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of the debarring agency upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate

grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the causes for which the debarment was imposed.

(*d*) A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effected by him with the knowledge or approval of such person.

7. Subject to the conditions hereinafter described, the rules and regulations required by this Order shall authorize the department or agency to suspend a person in the public interest for any cause specified in paragraph 4 of this Order, or upon a reasonable suspicion that such cause exists.

8. The rules and regulations concerning suspension required by this Order shall include in substance the following conditions:

(*a*) Suspension shall be imposed only upon approval of the executive head of the department or agency and upon approval of the Attorney General, except as otherwise provided by law.

(*b*) The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the executive head of the department and of the Attorney General, and shall be rendered in the best interests of the State.

(*c*) Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.

(*d*) In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.

(*e*) Reasonable suspicion of the existence of a cause described in subparagraphs (a), (b), (c), (d), (e), (f), and (g) of paragraph 4 of this Order may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur.

(*f*) A suspension invoked by an agency for any of the causes described in subparagraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) of paragraph 4 of this Order may be the basis for the imposition of a concurrent suspension by another agency, which may impose such suspension without the approval of the Attorney General.

9. The rules and regulations concerning suspension required by this Order shall include in substance the following provisions regarding procedures, period of suspension and scope of suspension:

(*a*) A department or agency may suspend a person or his affiliates, provided that within ten days after the effective date of the suspension, the agency provides such party with a written notice: (i) stating that a suspension has been imposed and its effective date, (ii) setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed, (iii) stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue, and (iv) indicating that, if such legal proceedings are not commenced or the suspension removed within sixty days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if he so requests, or a statement declining to give such reasons and setting forth the agency's position regarding the continuation of the suspension. Where a suspension by one agency has been the basis for suspension by another agency, the latter shall note that fact as a reason for its suspension.

(*b*) A suspension shall not continue beyond eighteen months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initi-

nated, the suspension may continue until the legal proceedings are completed.

(c) A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effectuated by him with the knowledge or approval of such person.

10. The rules and regulations required by this Order shall contain such provisions as may be necessary to conform existing practices and procedures under any relevant prequalification statutes to the procedures governing debarment and suspension required herein, to the extent that such existing practices and procedures may concern the disqualification of any person from State contracting.

11. The rules and regulations required by this Order shall provide that the exclusion from State contracting by virtue of debarment, suspension or disqualification shall extend to all state contracting and subcontracting within the control or jurisdiction of the department or agency which imposes the exclusion. However, when it is determined essential to the public interest by the head of the department or agency, and upon filing of a finding thereof with the Attorney General, an exception from total exclusion may be made with respect to a particular State contract.

12. Insofar as practicable, prior notice shall be given to the Attorney General and the Treasurer of any proposed debarment or suspension.

13. The Treasurer shall maintain a current list of the names of all persons suspended or debarred, the effective date and term if any thereof, and the agency or agencies which imposed same. Such list shall be available for public inspection.

14. Departments and agencies required by this Order to promulgate rules and regulations governing debarment and suspension are hereby authorized in connection with any proceeding thereunder to receive such information regarding the criminal conduct or criminal record of any person to the extent that such disclosure is deemed appropriate by the Attorney General, consistent with existing federal and state law.

15. Nothing required by this Order shall be construed to limit the authority of any department or agency to refrain from contracting within the discretion allowed by law.

Given, under my hand and seal this —— day of —— in the year of our Lord, one thousand nine hundred and seventy-six, and the Independence of the United States, the two hundredth.

BRENDAN BYRNE,
Governor.

[SEAL]
Attest:

JOHN J. DEGNAN,
Executive Secretary to the Governor.

[State of New Jersey Official News Release, December 14, 1977]

Attached are agency lists of firms and individuals that have been debarred, suspended or disqualified from bidding on, award of, working on or providing service and/or materials on State contracts. Under Executive Order #34, this list is maintained and distributed by the State Treasurer.

Questions about individual actions should be directed to the Department which has taken action:

Department of Transportation, Division of Engineering, Joseph Oswald—292–3940.

Department of Labor & Industry, Supervisor of Public Contracts, Augustine R. Lombardo—292–2259.

Department of Treasury, Division of Building and Construction, S. Leonard DiDonato—292–2117.

Department of Treasury, Division of Purchase & Property, Earl Josephson—292–4886.

Department of Human Services, Division of Medical Assistance and Health Services, Joseph J. Plazza—292–8152.

Attachments.

RECORD OF SUSPENSIONS, DEBARMENTS, AND DISQUALIFICATIONS AS OF NOVEMBER 1977

[Key to symbols: DB—Debarred; SP—Suspended; DISQ—Disqualified L—Legal; P—Performance; F—Financial; O—Other; PW—Prevailing wage.]

Name and address	Trade	Status	Reason	Expiration Date	Department/Division
INDUSTRIES					
Allied Maintenance Corp., New York, N.Y	Building maintenance	SP	Federal indictment (L)	Until indictment is cleared	Treasury/Purchase and Property.
American Building Maintenance Corp., Newark, N.J	do	SP	do	do	Do.
American Equipment Rental, Cornwells Heights, Pa	Crane rental contract	DB	PW	Feb. 10, 1978	Labor and Industry Workplace Standards.
American Underground & Construction Co., Union, N.J	Sewer line contractor	DB	PW	May 7, 1979	Do.
Audio & Electronics Consulting Services, Kinnelon, N.J	Audio and electronic equipment and services.	DB	Failure to make deliveries (P)	Apr. 30, 1978	Treasury/Purchase and Property.
Ralph Barone & Sons, Kenilworth, N.J	General construction site work	SP	Mercer County grand jury indictment (L).	Pending hearing	Transportation/Building and construction.
Blazer Corp., East Rutherford, N.J	HVAC/manufacturer	SP	P	do	Treasury/Building and construction.
Broadway Family Medical Group, PA, Paterson, N.J	Medical group	SP	L	Indefinite	Human Services/Medical Assistance and Health Services.
Brunetti Construction,[1] Delanco, N.J	General construction	DB	P	Nov. 10, 1980	Labor and Industry Workplace Standards.
Brunswick Engineering, East Brunswick, N.J	Engineering	SP	L	Nov. 1, 1977	Treasury/Building and Construction.
J. Catanese & Sons, Inc., Lyndhurst, N.J	Mason contractor	DB	PW	Dec. 23, 1978	Labor and Industry Workplace Standards.
Cherry Hill Chiropractic Center, Cherry Hill, N.J	Chiropractic services	SP	L	Indefinite	H.S.—Medical Assistance and Health Services.
Victor Coolidge Co., Morrisville, Pa	Erection of steel fabricated buildings.	DB	PW	Feb. 7, 1978	Labor and Industry Workplace Standards.
Commercial Cleaning Corp., Trenton, N.J	Cleaning	DB	P	Sept. 13, 1978	Treasury/Purchase and Property.
Corporation Security Systems, Nutley, N.J	Building maintenance	SP	Federal indictment (L)	Until indictment is cleared	Do.
Decorator Showcase, Inc., Mountainside, N.J	Drapery installer	DB	Overcharged; poor workmanship.	Pending hearing	Do.
Environmental Control [2], East Orange, N.J	General construction	DB	P	Nov. 29, 1980	Labor and Industry Workplace Standards.
Family Floor Covering, Inc., Burlington Township, N.J	Carpet laying	DB	PW	Feb. 20, 1979	Do.
Ferco Inc, Old Bridge, N.J	Sewer line contractor	DB	PW	Sept. 24, 2979	Do.
J. G. Fineran, Englishtown, N.J	Electrical	DB	P	Apr. 5, 1979	Treasury/Building and Construction.
Garden State Ambulance Service, Shrewsbury, N.J	Ambulance service	SP	L	Indefinite	H.S.—Medical Assistance and Health Services.
Gecker's Pharmacy, Jersey City, N.J	Pharmacy	SP	L	do	Do.

[1] General Electric Construction Co., Inc., has been deleted from the list.

RECORD OF SUSPENSIONS, DEBARMENTS, AND DISQUALIFICATIONS AS OF NOVEMBER 1977

[Key to symbols: DB—Debarred; SP—Suspended; DISQ—Disqualified L—Legal; P—Performance; F—Financial; O—Other; PW—Prevailing wage.]—Continued

Name and address	Trade	Status	Reason	Expiration Date	Department/Division
Hartman-Saunders, Inc., Trenton, N.J.	General construction	DB	PW	Nov. 8, 1979	Labor and Industry Workplace Standards.
Heller Pharmacy, Maplewood, N.J.	Pharmacy	DB	L	May 31, 1982	H.S.—Medical Assistance and Health Services.
Milton Hesse, Jr. & Sons, River Plaza, N.J.	Sewer line contractor	DB	PW	Sept. 1, 1979	Labor and Industry Workplace Standards.
Hudik-Ross, Hackensack, N.J.	Mechanical	SP	P	May 1, 1979	Treasury/Building and construction.
Industrial Sand & Gravel Co., Newark, N.J.	Sand and gravel	SP	Indictment, U.S. district court (L).	Hearing	Transportation/Engineering.
International Services, Inc., Irvington, N.J.	Building maintenance	SP	Federal indictment (L)	Until indictment is cleared	Treasury/Purchase and Property.
Jerome Drugs, Ventnor, N. J.	Pharmacy	SP	L	Indefinite	H.S.—Medical Assistance and Health Services.
Jersey Analytical Service, Inc.,[3] Andover, N.J.	Analytical chemists and consultants.	DB	P	Dec. 1, 1980	Treasury/Building and Construction.
Kasar Laboratories, Niles, Ill.	Laboratory	SP	L	Until indictment is cleared	Treasury/Purchase and Property.
Labequipoo, New York, N.Y.	Lab equipment	DB	P	Jan. 1, 1982	Treasury/Building and Construction.
Michael LaMorgese & Sons, Inc. Short Hills, N.J.	Grading & Paving	SP/BD	Mercer County Grand Jury Indictment	Hearing Dec. 8, 1979	Transportation/Engineering.
C. W. Lauman Co., Bethpage, N.Y.	Well drilling contractor	DB	PW	Dec. 4, 1978	Labor and Industry Workplace Standards.
Lin-Mar Builders, Port Monmouth, N.J.	General construction	DB	PW	Feb. 24, 1979	Do.
Lombardi Striping Corp., South Plainfield, N.J.	Pavement marking	SP	State indictment (L)	Until indictment is cleared	Transportation/Engineering.
Louria Air Conditioning, Levittown, Pa.	Air-conditioning	DB	PW	May 13, 1978	Labor and Industry Workplace Standards.
Charles Luckman, New York, N.Y.	Architects	SP	P	Sept 1, 1978	Treasury/Building and Construction.
Major Construction Co., South Toms River, N.J.	General construction	DB	PW	Mar 24, 198	Labor and Industry Workplace Standards.
Manzo Contracting Co., Matawan, N.J.	Road paving and maintenance materials	SP	State indictment (L)	Until indictment is cleared	DOT/Treasury/Engineering/Purchase and Property.
Rocky Marciano Construction Co., Inc., Cliffside Park, N.J.	General construction	SP	F	Apr 1, 1979	Treasury/Building and Construction.
James W. McCormick, Inc., Mansfield, Ohio	Pavement marking	SP	State indictment (L)	Until indictment is cleared	Transportation/Engineering
John F. Meade, Inc., Camden, N.J.	Electrical	SP	Indictment, U.S. district court (L)	Hearing	Do
Mendham Pharmacy, Mendham, N.J.	Pharmacy	SP	L	Indefinite	H.S.—Medical Assistance and Health Services.
Meridian Engineering, Inc., Philadelphia, Pa.	Engineers	DB	L	July 1, 1978	Treasury/Building and Construction.
Middlesex Building Services, New Brunswick, N.J.	Building maintenance	SP	Federal indictment (L)	Until indictment is cleared	Treasury/Purchase and Property.

Montefusco Excavating Co., Inc., West Long Branch, N.J; a.k.a. Montefusco Excavating & Contracting Co., Inc.	General construction	DB	PW	Jan. 13, 1980	Labor and Industry Workplace Standards.
George Mueller Construction Co., Manasquan, N.J	Excavating, paving, grading, sewers, piping.	DB	PW	Mar. 22, 1980	Do.
Nassau Traffic Control, Inc., Farmingdale, N.Y	Pavement marking	SP	State indictment (L)	Until indictment is cleared	Transportation/Engineering.
Noble Optics, Inc., Fairfield, N.J. (Paterson store only)	Optics	SP	L	Indefinite	H.S.—Medical Assistance and Health Services.
Overton-Hilton Corp., Philadelphia, Pa	Sheet rocking	DB	PW	Dec. 24, 1977	Labor and Industry Workplace Standards.
Paterson Urban Medical Group, PA, Paterson, N.J	Medical group	SP	L	Indefinite	H.S.—Medical Assistance and Health Services.
Peshine Drugs, Newark, N.J	Pharmacy	DISQ	L	Permanently	Do.
Pioneer Maintenance Corp., Elizabeth, N.J	Building maintenance	SP	Federal indictment (L)	Until indictment is cleared	Treasury/Purchase and property.
Power Electric Co., Inc. Belleville, N.J	Electrical	SP	L	Indefinite	Treasury/Building and Construction.
PT. & L. Construction Co., Inc., Paramus, N.J	Heavy highway construction	SP	State grand jury indictment (L)	Dec. 27, 1979, or review by committee after resolution of criminal proceedings.	Transportation/Engineering.
R.D.C. Construction Corp., Jersey City, N.J	General construction	DB	PW	Sept. 2, 1979	Labor and Industry Workplace Standards.
Sagal Electronics, Inc., Roselle Park, N.J	Electronics supply	DB	P	Jan. 26, 1979	Treasury/Purchase and Property.
Shaara Construction Co., Inc., Jersey City N.J	Heavy highway paving, bridge work.	SP	Indictment Federal grand jury (L).	Filing of a petition	Transportation/Engineering.
Simflex Partitions Installation & Service Inc., Oreland, Pa.	Partitions	SP	P	Aug. 5, 1978	Treasury/Purchase and Property.
Simonye Construction Co., Inc., Lambertville, N.J	General construction	DB	PW	Nov. 24, 1979	Labor and Industry Workplace Standards.
South Jersey Construction Co., Glendora, N.J	Grading and paving	SP	Indictment grand jury (L)	Hearing	Transportation/Engineering.
Wesley A. Staats Association, College Park, Md., a.k.a. S. & S. Fence Co.	Fence construction	DB	PW	Nov. 17, 1979	Labor and Industry Workplace Standards.
Superior Consolidated Contractors, Burlington, N.J	General construction	SP	P	Pending hearing	Treasury/Building and construction.
Temco Services Industries, Inc. of New Jersey, Newark, N.J.	Building maintenance	SP	Federal indictment (L)	Until indictment is cleared	Treasury/Purchase and Property.
Traffic Marking Co., Inc., Roselle, N.J	Pavement marking	SP	State indictment (L)	do	Transportation/Engineering.
Triangle Maintenance Corp., Wayne, N.J	Building maintenance	SP	Federal indictment (L)	do	Treasury/Purchase and Property.
INDIVIDUALS					
Anthony V. Ammirata, D.D.S., Trenton, N.J	Dentist	SP	L	Indefinite	H.S.—Medical Assistanc and Health Services.
Allan Gerson Beck, M.D., Succasuna, N.J	Medical doctor	DB	L	May 31, 1982	Do.
Armand Bedikian, M.D., Holmdel, N.J	do	SP	L	Indefinite	Do.
Sylvester H. Blubaugh, Mansfield, Ohio	Vice president, James W. McCormick, Inc.	SP	State indictment	Until indictment is cleared	Transportation/Engineering.
John A. Bonacoorsi, M.D., Vineland, N.J	Medical doctor	DB	L	June 23, 1982	H.S.—Medical Assistance and Health Services.
John H. Bossong, Rosselle, N.J	President, Traffic Marking Co., Inc.	SP	State indictment	Until indictment is cleared	Transportation/Engineering.

Samuel Braen, Jr., has been deleted from the list.

RECORD OF SUSPENSIONS, DEBARMENTS, AND DISQUALIFICATIONS AS OF NOVEMBER 1977

[Key to symbols: DB—Debarred; SP—Suspended; DISQ—Disqualified. L—Legal; P—Performance; F—Financial; O—Other; PW—Prevailing wage.]—Continued

Name and address	Trade	Status	Reason	Expiration Date	Department/Division
Elliot P. Brahms, D.D.S., Newark, N.J.	Dentist	SP	L	Indefinite	H.S.—Medical Assistance and Health Services.
Nick Brunetti,[4] Philadelphia, Pa.	Brunetti Construction	DB	P	Nov. 10, 1980	Labor and Industry Workplace Standards.
Mildred Brunetti,[4] Philadelphia, Pa.	do	DB	P	do	Do.
Roger J. Buckalew, Spring Lake, N.J.	Administrator, nursing homes	SP	L	Indefinite	H.S.—Medical Assistance and Health Services.
Leonard G. Carusi, M.D., Parsippany, N.J.	Medical doctor	SP	L	do	Do.
R. Dean Cavalli, M.D., Camden, N.J.	do	SP	L	do	Do.
Kyong Suk Chai, M.D., Voorhees, N.J.	do	SP	L	do	Do.
Abraham Chaplan, M.D., Englewood, N.J.	do	SP	L	do	Do.
George J. Coplin, M.D.,[5] Elizabeth, N.J.	do	SP	L	do	Do.
Susan L. Crisafi,[6] East Orange, N.J.	Environmental control	DB	P	Nov. 29, 1980	Labor and Industry Workplace Standards.
Leroy Curtis, M.D., Fairlawn, N.J.	Medical doctor	DISQ	L	Until license restored	H.S.—Medical Assistance and Health Services.
Benjamin Danzis, R.P., Peshine Drugs, Newark, N.J.	Registered pharmacist	DISQ	L	Permanently	Do.
Peregrina C. Delarosa, M.D., Millville, N.J.	Medical doctor	SP	L	Indefinite	Do.
Joseph K. DeLuca, Mountainside, N.J.	Vice president, Ralph Barone & Sons.	SP	Mercer County grand jury indictment.	Hearing	Transportation/Engineering.
Paul Falcone, Jr., Farmingdale, N.Y.	President, Nassau Traffic Control, Inc.	SP	State indictment	Until indictment is cleared	Do.
Ira Feinberg, Paramus, N.J.	Administrator, nursing home	DISQ	L	Permanently	H.S.—Medical Assistance and Health Services.
Juan Fiks, M.D., Tenafly, N.J.	Medical doctor	SP	L	Indefinite	Do.
Jerome Fishman, D.P.M., Bridgeton, N.J.	D.P.M.	SP	L	do	Do.
Daniel Lewis Forte, M.D., Orange, N.J.	Medical doctor	DISQ	L	Permanently	Do.
Stuart Joel Friedman, M.D., Plainfield, N.J.	do	SP	L	Indefinite	Do.
Bernard Gecker, R.P., Gecker's Pharmacy, Jersey City, N.J.	Registered pharmacist	SP	L	do	Do.
Eric R. Getson, D.C., Cherry Hill Chiropractic Center, Cherry Hill, N.J.	Chiropractor	SP	L	do	Do.
Edward J. Gibney, clinical laboratory director, Denville, N.J.	Clinical laboratory director	SP	L	do	Do.
Jerome Giltman, R.P., Jerome Drugs, Ventnor, N.J.	Registered pharmacist	SP	L	do	Do.
Bernard Greenspan, D.O., Paterson, N.J.	D.O.	SP	L	do	Do.
Fred F. Heller, d.b.a. Heller Pharmacy, Maplewood, N.J.	Registered pharmacist	SP	L	do	Do.
Mario E. Jascalevich, M.D., Englewood Cliffs, N.J.	Medical doctor	DISQ	L	Until license restored	Do.
Herbert Kallen, N.H.A., St. James, Long Island, N.Y.	Administrator, nursing home	SP	L	Indefinite	Do.
George Kemeny, M.D.,[6] Elizabeth, N.J.	Medical doctor	SP	L	do	Do.
Abdolali Khajavi, M.D., Newark, N.J.	do	SP	L	do	Do.
Nicholas Laganella, Wyckoff, N.J.	PT. & L. Construction Co., Inc.	SP	State grand jury indictment	Dec. 27, 1979	Transportation/Engineering.

Michael LaMorgese, Jr., Short Hills, N.J.	President of M. LaMorgese & Son, Inc.	SP	Mercer County grand jury indictment.	Hearing		Do.
Samuel Lee, R.P., Samuel Lee Apothecary, Inc., Camden, N.J.	Registered pharmacist	SP	L	Indefinite		H.S.—Medical Assistance and Health Services.
Milton Levin, D.O., P.A., Vineland, N.J.	D.O.	SP	L	do		Do.
Robert N. Linder, M.D., Union City, N.J.	Medical doctor	DISQ	L	Until license restored		Do.
Alan Lombardi, South Plainfield, N.J.	President Lombardi Stripping Co.	SP	State indictment	Until indictment is cleared		Transportation/Engineering.
Leonard Ludwig, D.D.S., Jersey City, N.J.	Dentist	DB	L	June 23, 1982		H.S.—Medical Assistance and Health Services.
Jerome Lurie, M.D., Toms River, N.J.	Medical doctor	SP	L	Indefinite		Do.
Michael J Manzo	Manzo Contracting Co., Inc.	SP	Indictment Federal grand jury	Pending completion of criminal proceedings.		Transportation/Engineering.
Anthony F. Marrazzo	Partner in South Jersey Construction Co.	(7)	Nov. 13, 1972, Nov. 22, 1972			Do.
Gaetano A. Mascara, M.D., Vineland, N.J.	Medical doctor	SP	L	Indefinite		H.S.—Medical Assistance and Health Services.
Daniel Meyers, D.C., Newark, N.J.	D.O.	SP	L	do		Do.
Calvin Morris, D.C., Cherry Hill Chiropractic Center, Cherry hill, N.J.	Chiropractor	SP	L	do		Do.
Pasquale J. Nalbone, Trenton, N.J.	S. Nalbone Trucking Co., Inc.	SP	Guilty plea U.S. district court	None		Transportation/Engineering.
Peter Penico, M.D., Millville, N.J.	Medical doctor	SP	L	Indefinite		H.S.—Medical Assistance and Health Services.
Aronold Ritter, D.C., Trenton, N.J.	D.O.	SP	L	do		Do.
Anne Robbins, M.D., Ossining, N.Y.	Medical doctor	SP	L	do		Do.
George John Schejbal, M.D., Fords, N.J.	do	DISQ	L	Permanently		Do.
Joseph Shaara, Sr., Jersey City, N.J.	Shaara Construction Co., Inc.	SP	Indictment Federal grand jury	Filing of a petition		Transportation/Engineering.
Murray M. Shear, M.D., Trenton, N.J.	Medical doctor	SP	L	Indefinite		H.S.—Medical Assistance and Health Services.
A. Silberman, D.P.M., Newark, N.J.	D.P.M.	SP	L	do		Do.
Abraham Silverstein, East Orange, N.J.[8]	Environmental control	DB	P	Nov. 29, 1970		Labor and Industry Workplace Standards.
Philip Snell, M.D., Passaic, N.J.	Medical doctor	DISQ	L	Permanently		H.S.—Medical Assistance and Health Services.
Jo-Ann Stafford,[9] East Orange, N.J.	Environmental control	DB	P	Nov. 29, 1980		Labor and Industry Workplace Standards.
Henry J. Vaccaro, M.D., Asbury Park, N.J.	Medical doctor	DISQ	L	Indefinite		H.S.—Medical Assistance and Health Services.
Murray Weiss, C.P.A., White Plains, N.Y.	C.P.A.	SP	L	do		Do.
Gerald R. Wolfe, D.O., Seaside Park, N.J.	D.O.	SP	L	do		Do.
Joseph Wolfe, R.P., d.b.a. Mendham Pharmacy, Mendham, N.J.	Registered pharmacist	SP	L	do		Do.
Bernard Yanowitz, M.D., Jersey City, N.J.	Medical doctor	DB	L	July 8, 1982		Do.

[1] Brunetti Construction has been added to the list.
[2] Environmental Control has been added to the list.
[3] *Jersey Analytical Services, Inc., has been added to the list.*
[4] Nick and Mildred Brunetti have been added to the list.
[5] George J. Coplin, M.D., and Susan Crisofi have been added to the list.
[6] George Kemeny, M.D., has been added to the list.
[7] Abandoned project, declared in default.
[8] Abraham Silverstein has been added to the list.
[9] Jo-Ann Stafford has been added to the list.

CHAPTER 214—LAWS OF N.J. 1977

Approved September 13, 1977

[Second Official Copy Reprint]

SENATE, NO. S16

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1976 SESSION

By Senators Skevin, Ammond and Menza

AN ACT concerning certain crimes, amending sections 2A:85-6, 2A:93-4, 2A:93-5, 2A:93-6, 2A:97-1, 2A:105-1, 2A:105-2 and 2A:105-3 and supplementing Title 2A, of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. N. J. S. 2A:85-6 is amended to read as follows:

2A:85-6. *a.* Any person found guilty of a crime which by statute is declared to be a high misdemeanor, and for which no punishment is specifically provided, shall be punished by a fine of not more than [$2,000.00] *[*$25,000.00*]* *$100,000.00* or by imprisonment for not more than 7 years, or both.

b. Any corporation found guilty of a crime which by statute is declared to be a high misdemeanor, and for which no punishment is specifically provided, shall be punished by a fine of not more than $100,000.00.

2. N. J. S. 2A:93-4 is amended to read as follows:

2A:93-4. Any member or officer of any State, county or municipal government, or member of any public authority, board, association, commission or committee, who solicits or receives, directly or indirectly, any money or valuable thing, reward or commission for his vote as a member thereof, is guilty of a *misdemeanor, if the amount of money, or value of the thing, reward or commission* is **[*under*]** *$200.00* **or* less**, *and if the amount of money, or value of the thing, reward or commission is over $200.00, such person is guilty of a* high misdemeanor.

EXPLANATION—Matter enclosed in boldfaced [thus] in the above bill is not enacted and is intended to be omitted in the law.

3. N. J. S. 2A:93-5 is amended to read as follows:

2A:93-5. *a.* Any person convicted of an offense under sections 2A:93-2, [or] 2A:93-4, *2A:93-6, 2A:97-1, 2A:105-1. or 2A:105-2* of this Title, or any judge or magistrate who receives or accepts a bribe, present or reward in violation of section 2A:93-1 of this Title, shall, in addition to the punishment prescribed for such offense, be forever disqualified from holding any office or position of honor, trust or profit under this State.

b. Except as may otherwise be ordered by the Attorney General as the public need may require, any person convicted of an offense under sections 2A:93-2, 2A:93-6, or 2A:97-1 of this Title shall be ineligible**, either directly or indirectly,*** to submit a bid, enter into any contract, or to conduct any business with any board, agency, authority, department, commission, public corporation, or other body of this State, of this or one or more other states, or of one or more political subdivisions of this State for a period of, but not more than, 5 years from the date of conviction. ***It is the purpose of this section to bar any individual convicted of any of the above enumerated offenses and any business, including any corporation, partnership, association or proprietorship in which such individual is a principal, or with respect to which such individual owns, directly or indirectly, or controls 5% or more of the stock or other equity interest of such business, from conducting business with public entities pursuant to the provisions of this section.****

*The Secretary of State shall keep and maintain a list of all corporations barred from conducting such business pursuant to this section.**

4. N. J. S. 2A:93-6 is amended to read as follows:

2A:93-6. Any person who directly or indirectly gives or receives, offers to give or receive, or promises to give or receive any money, real estate, service or thing of value as a bribe, present or reward to obtain, secure or procure any work, service, license, permission, approval or disapproval, or any other act or thing connected with or appertaining to any office or department of the government of the

State or of any county, municipality or other political subdivision thereof, or of any public authority, is guilty of a **misdemeanor if the amount of money or value of the real estate, service or thing is **[under]** $200.00 or less**, and if the amount of money or value of the real estate, service or thing is over $200.00, such person is guilty of a* high* misdemeanor.

5. N. J. S. 2A:97–1 is amended to read as follows:

2A:97–1. Any person who takes any money real estate, service, thing or other reward, or promise thereof, to compound, or upon agreement to compound, any offense indictable under the laws of this State, is guilty of a **misdemeanor if the amount of money or value of the real estate, service, thing, or reward is **[under]** $200.00 **or less**, and if the amount of money or value of the real estate, service, thing or reward is over $200.00, such person is guilty of a* high* misdemeanor, but in no case shall his punishment be greater than is provided for the offense compounded.

6. N. J. S. 2A:105–1 is amended to read as follows:

2A:105–1. Any judge, magistrate or public officer who, by color of his office, receives or takes any fee or reward not allowed by law for performing his duties, is guilty of a **misdemeanor if the amount of the fee or reward is **[under]** $200.00 **or less**, and if the amount of the fee or reward is over $200.00, such person is guilty of a* high* misdemeanor.

7. N. J. S. 2A:105–2 is amended to read as follows:

2A:105–2. Any public officer or employee, judge or magistrate who asks, demands or receives from any person, directly or indirectly, any fee or reward for the performance of any service in a criminal case, is guilty of a **misdemeanor if the amount of the fee or reward is **[under]** $200.00 **or less**, and if the amount of the fee or reward is over $200,00, such person is guilty of a* high* misdemeanor.

8. N. J. E. 2A:159–3 is amended to read as follows:

2A:159–3. Any person holding or having held, or who may hereafter hold, any public office, position or employment, either under this State or under any political subdivision or agency thereof, whether elective or appointive, or any person being or having been, or who may hereafter be, an executor, administrator, guardian, trustee or receiver, or any officer or director holding or having held, or who may hereafter hold, office, position or employment with any public, quasi-public or public quasi corporation or with any charitable, religious or fraternal organization or with any mutual benefit society or association for nonpecuniary benefit or with any bank or building and loan association or savings and loan association or with any trust, insurance, mortgage, guaranty, title or investment company, may be prosecuted, tried and punished for any [forgery, larceny or embezzlement, or conspiracy to commit forgery, larceny or embezzlement, or conspiracy to defraud, committed while in such office, position or employment] *offense committed in the exercise of the duties of such office, position or employment or while acting under color of such office, position or employment,* where the indictment has been or may be found within [5] *[7]* ***[*5*]*** ***7*** years from the time of committing such offense. This section shall not apply to any person fleeing from justice.

9. (New section) A person who has been convicted of a violation of N. J. S. 2A:93–4, 2A:93–6, 2A:97–1, 2A:105–1 or 2A:105–2 from which there has occurred pecuniary gain to the offender or pecuniary loss to the victim may be ordered by the court to make restitution to the victim, in addition to paying any fine. In such a case the court shall**, *without a jury,*** conduct such hearing as is necessary to make findings as to the monetary amount of the pecuniary gain or pecuniary loss. For the purposes of this section, the term "gain" means the amount of money or the value of property derived by the offender, the term "loss" means the amount of money or the value of property separted from the victim, and the term "victim" includes the State or any of its political or administrative subdivisions. No restitution ordered paid to the victim shall exceed the victim's loss.

10. (New section) If any section, subsection, pargaraph, sentence or other part of this act is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of this act directly involved in the controversy in which said judgment shall have been rendered.

11. This act shall take effect immediately, but shall not affect any violation occurring before the effective date.

TESTIMONY OF JOHN J. DEGNAN, ATTORNEY GENERAL, STATE OF NEW JERSEY

Introduction

At the outset I wish to express my appreciation for the opportunity to present this statement concerning the proposed Right to Financial Privacy Act.[1] The purpose of S. 2096 is to protect the private interests of bank customers. The Act seeks to achieve this goal by restricting the right of law enforcement agencies to obtain financial records by subpoena directed to a bank. The proposed legislation would prohibit financial institutions from disclosing a customer's financial records to governmental agencies unless one of the following conditions are met: (1) the customer authorizes such disclosure, (2) an administrative subpoena, a summons or a judicial subpoena is issued to the bank and a copy is served upon or mailed to the customer and neither the bank nor the customer object within fourteen days, or (3) a search warrant is issued. I strongly oppose enactment of this bill.

We in New Jersey are acutely aware of the concern for the privacy of personal records.[2] An individual's right to privacy in bank records, however, must be weighed against government's obligation to protect the public from the pernicious effects of white collar crime. Stated somewhat differently, the interest of the customer must be balanced against government's obligation to prevent and detect crime which may only be discovered or proven through financial records. In my view, the public's right to be protected against criminal conduct far outweighs the limited interest of the customer in this regard.

No one currently disputes the fact that white collar crimes are extremely damaging to the public. The societal harm resulting from such offenses is immeasurable. Indeed, in one year alone the cost of economic crime was conservatively estimated at forty billion dollars.[3] In order to combat this type of crime, my office has established various investigative units with special expertise designed to detect and prosecute economic offenses.[4] Suffice it to say here, our efforts would be seriously impaired by enactment of the Right to Financial Privacy Act.

I

It is against this backdrop that my comments regarding the bill presently being reviewed by this Committee must be considered. Succinctly stated, I believe that the Right to Financial Privacy Act constitutes unnecessary legislation and will prove to be a mammoth obstacle to the discovery and prosecution of white collar crimes. Initially, I am constrained to observe that S. 2096 tends to reveal an unfortunate lack of confidence in the executive officers entrusted with the enforcement of the criminal laws. The inference seems to be that prosecutors commonly abuse their right of access to banking records. In this context, it would be well to note that it is as much the prosecutor's obligation to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just result. These obligations are not mere theoretical concepts or idealistic abstractions. They are responsibilities imposed on prosecutors as a matter of law. Further, we should not ignore existing judicial safeguards which insure that an errant prosecutor will be denied access to bank records in appropriate cases.

The Act also appears to be premised upon the erroneous assumption that an individual's privacy is not sufficiently safeguarded. Concern that the privacy

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[1] S. 2900, 95th Cong., 1st sess. (1977).

[2] See, *e.g.*, *United States* v. *Miller:* "Without a Right to Informational Privacy, Who Will Watch the Watchers?" 10 J. Marsh. J. of Prac. & Pro. 629, 647–650 (1977); "IRS Access to Bank Records," 28 Hasting L. Rev. 247, 251–252 (1976); "Government Access to Bank Records," 83 Yale L. J. 1439 (1974).

[3] White Collar Justice, "A BNA Special Report on White Collar Crime," 44 U.S.L.W. 2, 3 (Part 11, April 13, 1976).

Despite these astounding results of white collar crime, the public is ill-informed about its effects. One reason for this lack of knowledge is that an individual rarely knows when he has been defrauded. Only 121 persons per 100,000 throughout the United States have reported being victimized by consumer frauds. "a figure very far below what all evidence would indicate to be a true rate." "Criminal Penalties For Corporate Criminals," 8 Crim. L. Bull. 377, 390 (1973).

[4] For example, the Special Prosecutions Section in the New Jersey Division of Criminal Justice is concerned with the investigation and prosecution of syndicated crime and official corruption. Additionally, we have established an Anti-Trust Section, a White Collar Crime Unit, a Medicaid Investigation Unit, an Employment Security Unit and a Corruption Control Unit to combat economic crime.

rights of individuals are not adequately protected may have been spawned in part by the recent Supreme Court ruling in *United States* v. *Miller*.[5] The Court in *Miller* held that the customer had no Fourth Amendment right to privacy with regard to banking documents in the possession of the bank. In reaching this conclusion, the Court ruled that such financial records constitute the property of the bank, not the customer. Furthermore, the information contained in the records is voluntarily provided by the customer to the bank, therefore, the customer has no reasonable expectation of privacy.[6]

It must be emphasized that the Supreme Court's decision in *Miller* did not grant prosecutors license to seek banking information at will. Nor did the decision enunciate new constitutional principles or doctrines. Rather, the Court's holding was based upon settled judicial precedent and sound public policy.[7] More importantly, the decision did not abrogate significant judicial safeguards protecting the privacy rights of the individual. The decision holds unequivocally that bank records must be obtained by "existing legal process." Administrative subpoenas and search warrants are two procedures commonly utilized in this regard. It is thus significant to note that the right of the prosecutor to obtain banking records is appropriately circumscribed. The prosecutor must establish probable cause[8] as a prerequisite to the issuance of a search warrant by a judicial officer. In a similar vein, the issuance of administrative subpoenas and summonses is not unlimited. This type of legal process is restricted in part by the requirements that the material sought must be particularly described and the subject must be given a reasonable time to comply.

S. 2096 completely annuls the ruling in *Miller* by bestowing upon the banking customer a right of privacy which is not premised on any established constitutional theory. We believe that this legislation is unwise and counter-productive. In short, the proposed bill, if adopted, will only impede and delay discovery of unlawful acts. Many criminals will be afforded the opportunity to escape detection by the provisions of S. 2096, while the law-abiding public will gain nothing.

II

At the outset, we note that the lack of any legitimate expectation of privacy concerning the information maintained in bank records was assumed by Congress in enacting the Bank Secrecy Act. Indeed, one of the expressed purposes of that statutory scheme is to require records to be kept because they "have a high degree of usefulness in criminal tax and regulatory investigations and proceedings."[9] The Act thus requires the retention of records by insured banks,[10] savings and loan institutions insured by FSLIC,[11] all non-insured financial institutions,[12] and the reporting of all domestic and foreign currency transactions.[13] Financial institutions are required to maintain the depositor's social security number or taxpayer identification and copies of signature cards. Additionally, checks must be copied and the copy retained by the bank with few exceptions.[14]

It is our view that the investigative benefits which attend the Bank Secrecy Act would be severly impaired by enactment of S. 2096. In short, the public policy underlying the statute would be subverted were the Right to Financial Privacy

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[5] 425 U.S. 435 (1976), *Miller* and its two companion cases, *Andresen* v. *Maryland*, 427 U.S. 463 (1976) and *United States* v. *Fisher*, 425 U.S. 435 (1976), abrogated the previous court ruling which prohibited the search and seizure of private papers when utilized as mere evidence of criminal wrongdoing.

[6] 425 U.S. at 442. The Court relied upon *Katz* v. *United States*, 389 U.S. 347, 353 (1967) which excepted what a person "knowingly exposes to the public" from Fourth Amendment protection.

[7] See, *e.g.*, *Galbraith* v. *United States*, 387 F. 2d 617, 618 (10 Cir. 1968); *DeMasters* v. *Arend*, 313 F. 2d 79, 85 (9 Cir. 1963), cert. denied, 375 U.S. 936 (1963); *Foster* v. *United States*, 265 F. 2d 183, 187–88 (2 Cir. 1959), cert. denied, 360 U.S. 912 (1959); *United States* v. *Gerhart*, 275 F. Supp. 443, 462–63 (S.D.W.Va. 1967).

[8] *United States* v. *United States District Court*, 407 U.S. 297 (1972).

[9] 12 U.S.C. § 1829b(a)(1). See generally Comment, "Government Access to Bank Records," 83 *Yale L.J.* 1439, 1447 (1974); Comment, "Privacy Papers and Fourth and Fifth Amendments: A Constitutional Analysis," 69 N.W.U.L. Rev. 626 (1974); Note, "The Bank Secrecy Act, the Fourth Amendment & Standing," 36 La. L. Rep. 834 (1976); Note, "I.R.S. Access to Bank Records: Proposed Modifications in Administrative Subpoena Procedure," 28 Hastings L.J. 247 (1976).

[10] 12 U.S.C. § 1829(b) (1970).

[11] 12 U.S.C. § 1730(d) (1970).

[12] U.S.C. § 1051 (1970).

[13] 12 U.S.C. §§ 1951–1959 (1970).

[14] 31 C.F.R. § 103 (1970).

Act to be adopted. Enactment of the proposed bill would encourage the commission of white collar crimes without any compensating gain to be accorded to the law-abiding public. We will now review specific provisions of the Act and describe what we perceive to be their detrimental effect upon the ability of government to ferret out criminal conduct.

One of the most serious problems which we anticipate concerns S. 2096's notice provisions which present a radical and an unnecessary modification of present law. Pursuant to the provisions of the Act, bank records may not be procured by administrative or judicial subpoena absent compliance with stringent notice requirements. Government officials may not obtain a bank customer's financial records pursuant to administrative or judicial subpoena unless notice has been personally received by the customer or mailed to his known address. The Act requires that this notification identify the agency seeking the information, the statutory purpose for which the data is being sought and the customer's rights under the Act. The customer's records may be made available only after the expiration of the fourteen day period, provided that neither the bank nor the customer has objected. In the event that an objection is lodged, the government must seek redress in the courts. Judicial subpoenas may be served without notice to the customer only when a court order has been obtained.

Such an order will not issue, however, unless the government can affirmatively establish that notification will seriously jeopardize a continuing investigation of a felony. If after taking evidence, the Court makes such a finding, the notification may be delayed for a period not to exceed ninety days. Additional extensions may be obtained in accordance with this Section. At the conclusion of this period the customer must be notified that his banking records have been obtained and that prior notification of the subpoena would have seriously jeopardized the investigation.

In our view, the notification requirements set forth in the bill would severely jeopardize and unduly hinder proper investigation of white collar and organized crime. There can be no doubt but that a person served with notice under the bill would be alerted to both the existence and nature of the investigation. To syndicated crime, pledged to a code of silence, flight or the destruction of evidence would often be the favored route. Further, it is not unreasonable to assume that the suspect might seek to intimidate others who possess highly incriminating information pertaining to his or her criminal transgressions.

The delay which would inevitably result by virtue of the notice provisions would also be a great hindrance to legitimate criminal investigations. The notice requirements would halt the orderly progress of investigations and might necessitate extended litigation of issues only tangentially related to the primary thrust of the government's inquiry. The inevitable result would be protracted interruptions of legitimate and appropriate governmental investigations, effectively transforming them into preliminary "mini-trials." In some cases, the delay might be fatal to the enforcement of the criminal law. The power of government to embark upon appropriate investigations would be rendered feeble and impotent, impending and in some instances, precluding the apprehension of the criminal culprit.

As noted, the bill significantly affects administrative subpoenas and summonses.[15] Here, we are dealing with the critical power of government to gather evidence of possible criminality. It bears repeating in this context that the power to investigate is basic. It has thus been recognized that an administrative agency may on its own initiative, investigate to insure compliance with the law within the ambit of its responsibility.[16] Yet, the notice provision in the bill would seriously impair the ability of such agencies to fulfill their mission.

We recognize that the bill authorizes the government to obtain what amounts to a protective order permitting the delay of notice to the customer for a period no to exceed 90 days.[17] We point out, however, that his provision is only applicable to judicial subpoenas. The bill does not contain a similar provision with regard to administrative subpoenas or summonses. Moreover, the government must establish as a prerequisite to obtaining such an order that service within the ninety-day period would "seriously jeopardize a continuing investigation of any felony."[18] In our view, this standard is unduly restrictive and would impose an

[15] The Act excludes the grand jury subpoena from its provisions. Section 10(2).
[16] See, e.g., *United States* v. *Powell*, 379 *U.S.* 48, 57 (1964).
[17] Section 9(a)(3).
[18] Id.

unnecessary burden on government. Protective orders would be available only with respect to investigations pertaining to felonies. We note in this context that the nature of the potential charge often becomes known at a later date. Further, we can perceive of no valid reason why protective orders should not be available with regard to investigations pertaining to misdemeanors. In sum, we believe that the notice requirements, if adopted, would seriously impair the ability of government to embark upon appropriate investigations and would constitute an unnecessary impediment to the bar and effective enforcement of the law.

III

We now turn to an examination of New Jersey's experience regarding affirmative steps taken to insure the rights of individuals consistent with government's obligation to protect the public against criminal attack. New Jersey is one of the most densely populated and highly urbanized states in the nation. Therefore, it is not surprising that our law enforcement officials are continually combatting the harsh realities of crime. Yet, despite the difficulties of this task, we have maintained a high level of respect for the rights of those accused or suspected of criminal wrongdoing. This tradition has been manifested by the safeguards provided those who have been the focus of a criminal investigation.

In New Jersey, prosecutors and investigators utilize two procedures for obtaining evidence of criminal conduct, which are the subjects of this bill. These are the administrative subpoena and the search warrant. The power of law enforcement officers to employ these evidence gathering devices is highly circumscribed by statute, court rule and case law. Supplementing these legal restraints are administrative standards, regulations and guidelines that have been developed by the New Jersey Attorney General's office and the County Prosecutor's Association.

These guidelines have been adopted pertaining to the utilization of administrative subpoenas. In general, administrative subpoenas must (1) describe the material to be produced with specificity, and (2) proscribe a return date which will provide a reasonable time within which the documents demanded may be assembled made available for inspection, or copied. Further, the administrative summons may not contain any information which would be held to be unreasonable if set forth in a subpoena duces tecum in aid of a grand jury investigation. Nor may such a subpoena require the production of documentary evidence which would be privileged. Also significant are safeguards pertaining to the material produced pursuant to an administrative subpoena. For example, when the Attorney General has obtained documents pursuant to an administrative subpoena, such information is not to be divulged to any other agency. Finally, documents produced by virtue of an administrative subpoena must be promptly returned upon completion of the investigation.

Additionally, the use of search warrants is closely regulated in New Jersey. Needless to say, search warrants are subject to judicial authorization. Nevertheless, in most counties the prosecutor must review the supporting affidavit and approve of the application prior to submission to a judicial officer.

In sum, we in New Jersey have developed standards, guidelines and regulations confining the parameters of prosecutorial and investigative discretion in seeking evidence of criminal wrongdoing. We believe that these mechanisms more than adequately safeguard the privacy rights of individuals. Adoption of S. 2096 would hamstring legitimate law enforcement efforts to combat crime with no corresponding benefit to society.

IV

In conclusion, we strongly oppose enactment of S. 2096 as presently written. The bill appears to be based upon the erroneous premise that the citizen's right to privacy is not adequately protected and that the powers of law enforcement officials are not sufficiently circumscribed with respect to their authority to obtain financial records.

We agree that every intrusion by government upon the privacy of the individual, whatever the means employed, must comport with common notions of decency and fairness. However, the issue whether the right to privacy should be expanded to encompass a personal property interest in banking records must be considered within the context of the social values involved. It bears repeating that all the competing values belong to the citizens. The State enjoys none—it has only duties, and powers with which to discharge them. In short, the contest is not between the rights of the State and those of the individual. Rather, the question must be

considered against the backdrop of the mutually competing rights of the individual which are at issue. Paramount in the hierarchy of governmental goals is the obligation of government to protect the citizen against criminal attack. In order to properly fulfill government's principal function a delicate balancing process must be employed, juxtaposing this obligation against the responsibility for protecting individual rights. In our view, the precious right to privacy must be reconciled with the need to assure that our citizens can enjoy that right, and all others, free from criminal intrusion. Thus, while some may discern perils in present procedures permitting the gathering of evidence of criminality, we perceive that it would be folly to deny government on that account the authority it must have to fulfill its mission. In brief, procedures presently required to be utilized by law enforcement officials in obtaining bank records sufficiently safeguard the rights of our citizens.

We also reject the unfounded assumption that executive officials charged with the responsibility of enforcing the law will not abide by its commands. We reiterate that under present law prosecutors are duty bound to serve the public with the highest fidelity. In discharging the duties of their office, presecutors must act reasonably and not arbitrarily. Above all, they must display good faith, honesty and integrity. Enactment of broad legislation to ameliorate the effect of specific and isolated instances of abuse surely is not the answer. Legislation will only breed further mistrust and skepticism.

It is our view that the public is better served by returning the present safeguards. Little or no benefit will accrue from this Act by granting a right to privacy which is neither based upon the Constitution nor necessary to correct a present abuse or inadequacy of the law. Therefore, we vigorously oppose the enactment of S. 2096.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF CRIMINAL JUSTICE,
February 15, 1978.

MEMORANDUM

To: D.A.G. Alfred J. Luciani, Chief, Antitrust/Civil Remedies Sections.
From: D.A.G. Robert T. Winter, Chief, State Enforcement Bureau.
Subject: H.R. 9600, Title XI, Right to Financial Privacy Act.

In response to your memo to me on the above matter, attached you will find procedural history of two cases in which our subpoena for documents was contested under present standards. As you can see in the first case, Lakewood House, we did not receive the documents until at least six months after the original service. This resulted in the loss of some counts because of the statute of limitations. In the second case, Nor-Lin Pharmacy, it was approximately one year after the original service of the subpoena until we received the documents. A substantial number of counts were lost as a result of the statute of limitations, and, in effect, this case was not prosecuted.

One of the major problems we face in investigating economic crime is the fact that the crimes are designed to go undetected for a substantial period of time. When this factor is combined with the potential of lengthy delays in the receipt of documents necessary to conduct the investigation, it might very well result in total frustration of effective law enforcement in the area of economic crime.

One of the initial steps in a financial investigation is the obtaining of relevant bank records. To allow the subject party to contest subpoenas to third parties at this state of the investigation might very well frustrate any continued investigation of the subject. I note H.R. 9600 requires notification to the subject. This might very well result in a loss of other evidence relevant to an investigation which would become apparent after a review of the bank records. I do not regard this as much a danger as that mentioned in reference to long delays resulting from the right to contest the third party subpoena.

I note also that H.R. 9600 requires notification upon execution of the search warrant. This, in effect, might also lead to extended court proceedings contesting the validity of the search warrant and in some cases, its execution. In a number of cases involving search warrants we have had the experience where the attorney for the subject has immediately moved to suppress or limit the warrant. Needless to say, when there is sufficient probable cause for the execution of the

warrant it is apparent that evidence of crime is present and any unnecessary delay could result in its loss or destruction.

A more serious question is whether or not H.R. 9600 allows access to affidavits pertaining to the validity of the search warrant. The problems with this are obvious.

H.R. 9600 puts defined time constraints on notification of subpoena. Often cases involving large scale economic crime need substantial review and audit in order to determine what steps to follow for a continuation of the investigation. In addition, time constraints place an undue burden on usually undermanned investigative units, the shorter the time period the larger the burden.

H.R. 9600 will obviously produce protracted litigation which will further delay the actual investigation of the subject in light of required court appearances and brief writing which will obviously be necessary.

I think it extremely important that we oppose as vigorously as possible the passage of this act in its present form. There is no question that it will deliver a serious blow to effective investigation of economic crime.

R.T.W.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF CRIMINAL JUSTICE,
February 16, 1978.

MEMORANDUM

To: Robert T. Winter, Chief, State Enforcement Bureau.
From: Stewart D. Warren, Deputy Attorney General.
Subject: Delay in obtaining materials called for by grand jury subpoenas.

LAKEWOOD HOUSE NURSING HOME

On July 10, 1975, a Grand Jury Subpoena Duces Tecum was served on the Custodian of Records of Lakewood House calling for production of books and records before the Burlington County Grand Jury on July 14, 1975. A motion to quash was filed and was argued on July 17, 1975, at which time additional subpoenas were served on the target of the investigation who appeared at the Court House to watch oral argument. On July 22, 1975, a motion was filed to quash the new subpoenas, and argument was heard on that motion on August 7, 1975. An order was signed August 25, 1975 denying the motion to quash the subpoena and ordering that the documents called for in the subpoena be produced in sealed cartons to be retained in the custody of the Court pending appeal. A notice of motion for leave to appeal was filed, briefs were submitted and oral argument was scheduled. On November 3, 1975, the Appellate Division issued a published opinion affirming the County Court denial of the motion to quash the subpoena and also at that time issued an order empowering the State to open the sealed cartons in the custody of the Court and present the contents thereof to the Grand Jury. On November 5, 1975, the evidence in sealed cartons was transferred from the custody of the Burlington County Court to the custody of the Division of Criminal Justice, however, before an audit could begin, the State was served with a notice of motion for leave to appeal which had been filed with the Supreme Court of New Jersey. The documents remained sealed pending decision by the Supreme Court until December, 1975, when the State was notified that the motion for leave to appeal had been denied by the Supreme Court. Following the unsealing of the cartons, it was then determined that certain documents were missing and it was not until June 1976 that all documents were obtained by the State. As a result of the delay, between service of the subpoena and the turning over of sealed cartons to the custody of the County Court, the targets of the investigation had two months to review the documents and possibly either remove or alter incriminating documents included therein.

In addition, as a result of the loss of time to the investigators resulting from the litigation over the legitimacy of the subpoenas, the State was barred by the statute of limitations from prosecuting the violations of fraud in the 1970 and 1971 cost studies. It has been determined that the statute of limiations barred three counts of an indictment which would have charged receiving of funds in 1970 and false filing and receiving of funds in 1971.

NOR-LIN PHARMACY

A Subpoena Duces Tecum was served on the aforesaid Medicaid Provider on April 2, 1976 calling for production of records before the Atlantic County Grand Jury. A motion was filed on April 19, 1976 to quash the aforementioned subpoena and was argued before the County Court. The Atlantic County Court issued an opinion on August 4, 1976 denying the application to quash and further ordering a hearing at which time the target would be required to show which records, if any, were necessary to carry on the normal operation of his pharmacy. The State filed a motion on November 15, 1976 to order the target to comply with the subpoena. That argument was continued to December 6, 1976 as a result of which an order was signed on January 24, 1977 requiring compliance with the subpoena upon notice to the target. The records were eventually obtained by the Division of Criminal Justice on March 29, 1977. The delay of one year in obtaining the books and records of Nor-Lin Pharmacy resulted in the State being barred by the statute of limitations from prosecuting countless violations of the Medicaid Fraud Statute which occurred during the period of July, 1971 through July, 1972. The matter of *State* v. *Nor-Lin Pharmacy* was subsequently closed and referred to the Division of Medical Assistance and Health Services for civil action.

S. D. W.

APPENDIX 2

FINAL REPORT

RECOMMENDATIONS OF THE AMERICAN BAR ASSOCIATION SECTION ON CRIMINAL JUSTICE, COMMITTEE ON ECONOMIC OFFENSES

AMERICAN BAR ASSOCIATION,
Washington, D.C., March 1977.

DEAR READERS: Economic offenses are now costing our nation some $40 billion a year, according to the latest federal estimates, and it seems clear the price will continue to soar. To help map out actions which can be taken to lessen the impact of "white-collar crime," as it is usually called, those of us in the American Bar Assocation Section of Criminal Justice have worked closely with the U.S. Department of Justice Law Enforcement Assistance Administration to come up with ten specific suggestions that we believe can have a real impact if implemented. Those suggestions are capsulized on pages i and ii and explained at length thereafter.

We invite you to read those suggestions carefully, and if you agree that they are among the actions that can be taken to mitigate the impact of economic offenses, we urge you to join with us in our efforts. If you are an attorney, we extend a special invitation for you to become a member of our Section which is now actively involved in over 30 areas of criminal justice improvement. Membership applications for both the ABA and the Criminal Justice Section are included among the materials at the end of this booklet.

Your observations about the recommendations included in this Report and suggestions for new avenues for the Section's Committee on Economic Offenses to explore are welcomed.

Sincerely,

ALAN Y. COLE,
Section Chairman.

RECOMMENDATIONS OF THE AMERICAN BAR ASSOCIATION SECTION OF CRIMINAL JUSTICE COMMITTEE ON ECONOMIC OFFENSES

This Project was supported by Purchase Order Number 6-0418-J-LEAA, awarded by the Law Enforcement Assistance Administration of the United State Department of Justice to the Criminal Justice Section of the American Bar Association. No recommendations or conclusions presented herein represent the policy of the American Bar Association until it shall have been approved by the House of Delegates. Informational reports, comments and supporting data are not approved by the House in its voting and represent only the views of the Section or Committee submitting them, nor does it represent approved action of the governing Council of the Section of Criminal Justice.

be obtained from the copyright owner, except that the Federal grantor agency reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to publish and use this work for Government purposes.

RECOMMENDATIONS

1. The Committee recommends that the federal government collect data from all federal agencies with jurisdiction in the detection, investigation, or prosecution of economic crime offenses, and that following the establishment of such data collection system appropriate consideration be given to the establishment of a case-weighing system in which predetermined factors as to the importance of cases can be counted.

2. The Committee recommends that the Congress undertake an evaluation of the federal effort against economic crime, and that the Congress review the enforcement priorities for the detection, investigation and prosecution of economic crime offenses.

3. The Committee recommends that all federal agencies with either a law enforcement or law inspection function be required to issue annual compliance reports. The Committee recommends that all state agencies with either a law enforcement or law inspection function be required to issue annual compliance reports.

4. The Committee recommends that in the future, all federal social programs (excluding revenue-sharing funds) be designed so as to diminish the likelihood of abuse, and that the design of any social program specifically recognize the potential for fraud.

5. The Committee recommends that both recruitment and manpower training become priority items for every agency with economic crime enforcement responsibilities.

6. The Committee recommends that such projects as the Economic Crime Project receive continued and substantial funding. In addition, the Committee recommends to the Law Enforcement Assistance Administration that it consider economic crime as a major factor in overall crime in this country, and that this consideration be a factor in the Administration's discretionary grant fund priorities.

7. The Committee recommends the expansion to other jurisdictions of the extant pilot project underway in San Diego, California, whereby an assistant United States Attorney is also an assistant district attorney, and an assistant district attorney has been designated as an assistant United States attorney.

8. The Committee recommends that pretrial, reciprocal discovery in economic crime cases should be increased.

9. The Committee recommends that a greater emphasis be placed on punishing economic crime offenders following their conviction.

10. The Committee recommends that the American Bar Association have a continuing committee on economic crime within the Criminal Justice Section.

I. INTRODUCTION

The primary emphasis of law enforcement has traditionally been on crimes of violence, which unlike economic offenses, seem to have a much more immediate and frightening impact. However, events over the past several years, including the disclosure of political corruption at our highest level of government and widespread bribery and manipulations by various business entities, have focused attention on what appears to be a pervasiveness of "white collar" crime. Prosecution of this type of crime has so far been inadequate, largely because of inadequate resources but also because of law enforcement's historical inattention to economic crime.[1]

At the 1975 annual convention of the American Bar Association, representatives of the Law Enforcement Assistance Administration (LEAA) and various Justice Department officials asked the Criminal Justice Section to create a committee to establish a dialogue and mount an effective national front to combat economic crime offenses. The Criminal Justice Section was selected because it was in the unique position of being able to bring together all of the elements of the criminal justice system, including judges, prosecutors, defense attorneys, academicians and others with expertise in this area. The Criminal Justice Section agreed to undertake this study and established an Economic

[1] See Address by the Hon. Harold R. Tyler, Jr., Deputy Attorney General of the United States, before the American Society of Criminology (Oct. 31, 1975). See also Testimony of Judge Tyler before Subcom. on Oversight of the House Ways and Means Comm. (Sept. 22, 1975).

Crime Committee composed of representatives of all of the above elements. The members are as follows:

Paul K. Rooney, Chairman, Attorney in Private Practice, New York, N.Y.

Gordon F. Bowley, Vice Chairman, Supervising Deputy District Attorney, Fraud Division, Sacramento, Calif.

Hon. James G. Exum, Jr., Associate Justice, Supreme Court, State of North Carolina, Raleigh, N.C.

Seymour Glanzer, Attorney in Private Practice, Washington, D.C.

Hon. William L. Hungate (D-Mo.), Member, U.S. House of Representatives, Washington, D.C.

Hon. Charles W. Joiner, Judge, U.S. District Court, Eastern District, Michigan, Detroit, Mich.

George R. Fusner, Jr., Law Student, Nashville, Tenn.

Alan Y. Cole,[2] Attorney in Private Practice, Washington, D.C.

John C. Kenney, Deputy Assistant Attorney General, U.S. Department of Justice, Washington, D.C.

Prof. Herbert S. Miller, Georgetown University Law Center, Washington, D.C.

George C. Smith, Prosecuting Attorney, Columbus, Ohio (former Chairman of the National District Attorneys Association, Economic Crime Project).

Hon. Richard C. Turner, Attorney General of Iowa, Des Moines, Iowa.

John Wing, Assistant U.S. Attorney, New York, N.Y.

In addition, seven persons were named ex-officio members of the Committee based on their responsibilities in the organizations they represent or based on specific expertise in selected areas. Those ex-officio members of the Committee are:

Robert M. Ervin, Chairman, Criminal Justice Section, 1975–76, Attorney in Private Practice, Tallahassee, Fla.

Richard P. Lynch, Director, National District Attorney's Association, Washington, D.C. Offices.

James C. Swain, Director, Judication Division, LEAA, Government Project Monitor, Washington, D.C.

H. Lynn Edwards, Staff Director, Criminal Justice Section, American Bar Association, Washington, D.C.

Laurie Robinson, Assistant Staff Director, Criminal Justice Section, American Bar Association, Washington, D.C.

Frank A. Ray, Chief Counsel, Civil Division, Prosecuting Attorney's Office, Columbus, Ohio (former Project Director, National District Attorneys Association, Economic Crime Project).

Mark M. Richard, Chief, Fraud Section, Criminal Division, U.S. Department of Justice, Washington, D.C.

David T. Austern, an attorney in private practice in Washington, D.C., was selected as Reporter for the Committee.

The Law Enforcement Assistance Administration grant specifically described the Committee's responsibilities:

"To review the area of political, business, white collar and/or economic offenses; to define the problem; to consider means of combatting such conduct; to consider methods of protecting or compensating victims of such offenses; to consider the special problems such offenses create for law enforcement agencies, prosecutors, defense lawyers, courts and correctional officials, both state and federal; and to make recommendations with respect to the foregoing."

An LEAA grant of $10,000 was provided to defray the expenses of four meetings. The Committee's work at these meetings was devoted to the formulation of a working definition, a study of the overall federal and state prosecutorial effort, a review of attendant problems involving such area as sentencing and victimization, and recommendation of steps to be taken to confront what has been described as a "cancer on our society." Time and budgetary constraints made it impossible for the Committee to do more.

In general, the methodology employed by the Committee in identifying problem areas was to invite individuals with experience in the economic crime area to present to the Committee statements concerning specific problems. In addition, Committee Members were assigned problem areas to investigate and report to the Committee as a whole. The members were instrumental in identifying ex-

[2] Mr. Cole was the first Committee chairman when the Committee was formed but relinquished this position in August 1976, when he assumed the Chairmanship of the ABA Section of Criminal Justice.

perts in the economic crime area to appear before the Committee. In the interest of time and because the overall Committee membership was intentionally kept small, division into subcommittees was rejected.

The Committee was fortunate to receive cooperation from federal and state officials, as well as from individuals in the private sector, in both testifying before the Committee and in providing the Committee with information. Federal and state officials who appeared before the Committee included Theodore Sonde, Association Director, Division of Enforcement, Securities and Exchange Commission; Richard J. Gallagher, Assistant Director, Federal Bureau of Investigation; C. W. Wilson, Postal Inspector, United States Postal Service; John Walsh, Director, Office of Investigations, Department of Health, Education and Welfare; Robert J. Potrykus, Acting Assistant Director, Intelligence Division, Internal Revenue Service; John McCavley, Chief, Operations Branch, Intelligence Division, Internal Revenue Service; Meade Emery, Assistant to the Commissioner of Internal Revenue; Bruce B. Wilson, Deputy Assistant Attorney General, Antitrust Division, United States Department of Justice; Robert Serino, Office of the Comptroller of the Currency; Robert Levinson, Federal Bureau of Prisons; and Peter Andreoli, Chief, Fraud Division, New York County District Attorney's Office. Private sector individuals who appeared before the Committee included James V. Bennett, former Director, Federal Bureau of Prisons; Ralph Nader and Mark Green, Center for Study of Responsive Law; Robert D. Carnaghan, Vice President, Fidelity and Deposit Company; Frank Le Munyon, Security Associates of America; and Otto Obermaier, an attorney in private practice in New York City.

An extensive bibliography of the literature in the Economic Crime area was assembled to guide the Committee's discussions. All of the materials contained in the bibliography were read by Committee members or the Reporter. Appendix A of this Report lists the bibliography.

II. FINDINGS AND RECOMMENDATIONS

1. The Committee recommends that the federal government collect data from all federal agencies with jurisdiction in the detection, investigation, or prosecution of economic crime offenses, and that following the establishment of such data collection system appropriate consideration be given to the establishment of a case-weighing system in which predetermined factors as to the importance of cases can be counted.

Based on the material and information received from all sources (as well as the Committee members' own experiences and knowledge), the Committee concluded that the federal government does not possess the mechanisms to measure accurately its own efforts against economic crime, nor the mechanisms to assess the impact of economic crime on the country as a whole.

Little data in the area of economic crime have been collected by the federal government; the data which have been gathered are of questionable validity in that there are no uniform standards for collecting economic crime data as among the relevant agencies. Accurately evaluating the efforts and effectiveness of the enforcement agencies is virtually impossible because comparisons simply cannot be made; without uniform data, comparisons are futile. Effective data collection should, in the first instance, provide the government with the cost of law enforcement activities in the economic area.[3]

The Department of Justice is planning the implementation of a first step in the collection of data. When referring cases to the Department, federal agencies will complete a form which includes information as to amount of provable loss, amount of suspected loss, number of identified and suspected victims, number of defendants, etc.

Collecting statistics not infrequently leads to an attempt to have a higher number of cases, investigations, known losses, manpower assigned, etc., as between agencies. In order to minimize competition among enforcement agencies based solely on numbers of cases, the Committee is in favor of a case weighing system designed to favor more important cases. The Committee concluded that the number of investigators or prosecutors is far less important in collecting data than a measure of the impact of cases which are investigated or brought against a part.

2. The Committee recommends that the Congress undertake an evaluation of the federal effort against economic crime, and that the Congress review the

[3] The Federal Government does not have a uniform codification of economic crime offenses. Not all Federal agencies consider the same violations to be economic crime offenses.

enforcement priorities for the detection, investigation and prosecution of economic crime offenses.

A summary of the efforts in the economic crime area of nine federal agencies appears, ante. The agencies report to a number of different congressional committees. Other federal agencies with economic crime responsibilities not described below report to other congressional committees. There is no centralized congressional oversight responsibility for the federal effort against economic crime.

The Committee concludes that the total federal effort against economic crime is underfunded, undirected, and uncoordinated, and is in need of the development of priorities.

The Committee discussed at some length the question of whether the Congress should make this evaluation. Some Committee members suggested that the Department of Justice undertake this responsibility, or that the task be assigned to some other agency. It was the consensus of the Committee, however, that no federal agency could be completely impartial in this effort. The Committee also discussed the possibility of private consulting firms undertaking this project; this idea was unanimously rejected. The Committee concluded that the task be assigned to the place where the Constitution mandates it to be assigned—to the Congress.

The Committee concluded that for the most part, within the federal agencies with direct responsibility in the economic crime offenses area, available resources are unequal to the task of combating economic crime. Examples are abundant. The Department of Health, Education and Welfare has inadequate manpower to audit and monitor the enormous number of agency programs, and practically no manpower for the detection and investigation of economic crime offenses within these programs. Even today, with a vastly expanded audit and investigation capability within HEW, the manpower assigned is inadequate.

The Committee has learned of some instances in which seemingly adequate resources to combat economic crime exist, but are poorly deployed, underutilized, or frustrated by jurisdictional considerations. Among the federal banking agencies, there is multiple jurisdiction, with three separate auditing and investigatory agencies with responsibility as a function of the bank charter, rather than location, type of depositor, or type of bank business. Although the Committee has been told that competition among the agencies in terms of their investigatory responsibilities leads to healthy competition, the Committee is forced to speculate that the trichotomous investigatory responsibilities of the Federal banking agencies result in ineffective, inefficient and improvident investigations of bank fraud. In addition, the Committee notes that one of the federal banking agencies is resorting to computer model audits in order to detect bank irregularities, while another agency has resigned from auditing of banks altogether in favor of auditing, at least in selected locations, by state banking agencies.

3. The Committee recommends that all federal agencies with either a law enforcement or law inspection function be required to issue annual compliance reports. The Committee recommends that all state agencies with either a law enforcement or law inspection function be required to issue annual compliance reports.

The compliance report would include the nature of the compliance population (how many individuals, corporations, dealers); an estimate of the level of violations; the cost of such violations; the extent of the resources to prevent, detect, or prosecute such violations; the conviction rate for such violations; the remedies that are available, including an evaluation of how well the available remedies were working; and a list of those violations established. A compliance report should also include suggestions for legislative changes which would enhance the law enforcement or law inspection function of the agency concerned.

As one witness who appeared before the Committee noted, if an agency does not have a compliance reporting function, it is not serious about enforcing the law, nor is it serious about developing a constituency for greater resources that may be needed.

4. The Committee recommends that in the future, all federal social programs (excluding revenue-sharing funds) be designed so as to diminish the likelihood of abuse, and that the design of any social program specifically recognize the potential for fraud.

The Committee has been presented with evidence to indicate that certain government programs have been inadvertently designed and operated so as to contribute to their own victimization. Indeed, many of the problems associated

with economic crime appear to be the result of improvident design and/or inadequate auditing procedures in a number of social programs.

In addition, executive agencies should promulgate rules and regulations designed to protect the funds given to the agency for ultimate distribution to others. In such rules and regulations there must be a clear delineation as to whether the state agency, the federal agency, or both have jurisdiction to investigate abuses; it is the responsibility of Congress to determine which agency has primary jurisdiction in this area.

The congressional responsibility is not limited to a determination of such jurisdictional priorities however. Congressional oversight responsibilities in this area are broader and should be seriously pursued. Accountability to the Congress from both the Federal enforcement agencies and the program agencies is exceedingly weak. There is some reason to believe that if the public were aware of the extent of economic crime violations in the program agencies which remain unaffected by the enforcement agencies, it would reflect badly on the agencies and on the officials charged with the responsibilities within those agencies to prevent or detect violations of law.

5. The Committee recommends that both recruitment and manpower training become priority items for every agency with economic crime enforcement responsibilities.

The lack of resources in the economic crime area at the federal and local level is, to a great extent, a function of insufficient manpower and inadequately trained personnel. Included in this recommendation are: (1) the establishment of experienced economic crime prosecution specialists in every United States Attorney's office and every local district attorney's office; (2) a direct exchange between personnel in the Department of Justice and other Federal agencies in order that the personnel exchanged will acquire knowledge in a particular program area; (3) an increase in the salaries of experienced prosecutors in the economic crime area in order to retain them in continued public service; and (4) the recruitment of trained auditors[4] in all agencies with program responsibilities.

6. The Committee recommends that such projects as the Economic Crime Project receive continued and substantial funding. In addition, the Committee recommends to the Law Enforcement Assistance Administration that it consider economic crime as a major factor in overall crime in this country, and that this consideration be a factor in the Administration's discretionary grant fund priorities.

To no small extent, deployment of resources at the local level in the economic crime area is a function of the Economic Crime Project of the National District Attorneys Association.

Although there was a measurable effort of economic crime prosecution at the local level prior to establishment of the Project, unquestionably the Project has materially benefited even those jurisdictions in which economic crime prosecution predated its existence.

The Committee commends LEAA for having funded the Economic Crime Project.

It is nonetheless disappointing to report that funding for the Economic Crime Project is being dramatically reduced. Although the funding cycle from LEAA is typically three years, and although the project has now operated more than three years, the Project is clearly an undertaking that should continue.

Under no circumstances should the states and other units of local governments rely on the federal government to fund forever economic crime prosecution projects. It is the responsibility of local government to assume the financial responsibility for such offices.

Those who have studied antitrust violations in this country generally believe that the great majority of antitrust conspiracies occur locally, within commerce which operates at the county or state level. Despite this fact, most states and smaller units of local government have failed to enforce the antitrust laws either through criminal complaints or civil complaints. With the limited resources of the Antitrust Division of the Justice Department, and with the prevalence of antitrust violations at the local level, it is particularly important that units of local government devote greater resources to antitrust enforcement.

The Commitee understands that if the NDAA Economic Crime Project continues, there are plans to increase the capabilities of local prosecutors to prosecute antitrust violations.

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[4] By trained auditors, the Committee intends the recruitment and training of auditors who can detect criminal offenses.

7. The Committee recommends the expansion of other jurisdictions of the extant pilot project underway in San Diego, California, whereby an assistant United States Attorney is also an assistant district attorney, and an assistant district attorney has been designated as an assistant United States attorney.

Joint investigations similar to the Strike Force concept may be needed between the Fraud Division of the Department of Justice and the Securities and Exchange Commission; in addition, joint investigation and prosecution efforts between federal agencies and local agencies are needed.

The Committee concludes that effective economic crime prosecution requires a national policy of enforcement, as well as stronger federal-state cooperation. Local District Attorneys, Attorneys General, and the Department of Justice should actively encourage the establishment of Federal-State Law Enforcement Committees in every state.[5] In addition to other responsibilities in the area of coordinating economic prosecution, the sharing of intelligence among the enforcement and prosecuting agencies should be a function of these committees.

The lack of resources in economic crime enforcement at the federal level as well as the ubiquitous nature of economic crime have resulted in federal enforcement agencies becoming extremely selective in the types of cases that are investigated. The case selection priorities in the Federal agencies do not necessarily reflect the case prosecution priorities in the Department of Justice, which is charged with the prosecution of cases referred to it by other agencies. Although there is increasing coordination as to case priority between the Justice Department and other federal agencies, such coordination should be expanded.

Although selective enforcement of the law is generally recognized as a legitimate law enforcement procedure, in the absence of coordination among the Federal agencies, the legitimacy of the procedure gives way to undirected and unguided enforcement. The Department of Justice has limited manpower assigned to the prosecution of economic crime offenses, and the limitations of the Department must be fully understood by those agencies which refer criminal prosecutions to the Department.

8. The Committee recommends that pretrial, reciprocal discovery in economic crime cases should be increased. The Committee notes that enhanced discovery procedure would probably result in the obtaining of pleas in many more economic crime cases, as well as many more stipulations in those cases which do not go to trial.

Although not all economic crime cases require many weeks or even months of trial, many do require extensive commitments of time and resources on the part of the defense, the prosecution, and the courts. Some criminal and civil cases in the economic crime area are interminable and end up as a test of the perseverance and stamina of the parties. The Committee heard from one witness concerning a case which resulted in a nine-month trial, and a number of cases in which defense expenses exceeded $1 million.

The prime factor in the length of a trial in an economic crime case is not necessarily the complexity of the subject matter. The prime factor is sometimes the combination of (1) the number of counts in the indictment, (2) the extent of the proof the prosecutor presents, particularly as to similar transactions, and (3) deliberate or inadvertent delaying tactics during trial on the part of the defense.

From the prosecution point of view, even the most simple charge of an intent to defraud requires an exceedingly complex and time-consuming presentation of the fraudulent scheme, even in those cases in which the only count is a definitive one as to intent. A scheme or pattern of a fraud with one or more defendants is not quickly demonstrated to a trial jury.

From both the defense and prosecution point of view there is an immediate impact on the projected length of the trial in terms of the type of jury that will ultimately be selected. It is unlikely that a cross-section of the community will be selected when the presiding judge instructs the venireman that the trial may last several months. Under such circumstances, many people are justified in asking to be excused.

The lengthy trial also diminishes the ability of many defendants to defend themselves, frequently because of the expenses involved. One witness who appeared before the Committee suggested that a successful defendant be permitted to recover the costs of his defense from the prosecution.

The Committee discussed the number of counts that should be contained in indictments returned in economic crime cases. The Committee found it difficult to

[5] Eighteen such Committees now exist.

reach a consensus as to the number of counts, but agreed that, at least in the typical case, the number of counts in the indictment should not exceed 15.

In addition, the Committee notes that trial judges have the major responsibility of insuring broader discovery by both sides, as well as the responsibility to expedite longer trials. This is not a recommendation to the effect that trial judges should necessarily participate in the examination of witnesses or the presentation of evidence, nor is it a recommendation that judges interfere with the presentation by the respective attorneys. It is, however, a recommendation that trial judges be far more conscious of their role as an expeditor of issues in a lengthy trial.

There is no consensus within the Committee as to the advantages of Omnibus Hearings, which are employed in a number of United States District Courts, or the advantages that might be achieved by the elimination or curtailment of the Jencks Act (18 U.S.C. 3500) in economic crime cases as a means of pretrial discovery.

The Committee notes that the advent of the final stages of the Speedy Trial Act may have a severe impact on economic crime cases, particularly if courts do not grant extensions to either side for complex litigation.

9. The Committee recommends that a greater emphasis be placed on punishing economic crime offenders following their conviction.

It is the consensus of the Committee that the most effective punishment for the economic crime offender is incarceration. Whereas the Committee does not recommend the elimination of fines or restitution to victims where possible and appropriate, the Committee finds that incarceration of economic crime offenders results in equal justice, as well as both special and general deterrence. The Committee recognizes the value of social sentences for economic crime offenders, as well as the value of permitting victims to address the court at the time of sentence. "Social sentences" refer to sentences that require the offender to contribute to society through community or rehabilitative employment.

Some Committee members believe that where presumptive sentences are employed, there are some economic crime offenses for which the presumption should include some period of incarceration. As a factor for either increasing or decreasing the presumptive sentence, a sentencing judge should consider the extent of the harm to the victim or victims.[6]

There is significant evidence that individuals convicted of economic crime offenses are not incarcerated to the same extent as individuals convicted of other offenses. For instance, in the federal courts, statistics are available which underscore the disparity of sentencing policies.[7]

In Fiscal Year 1976, 40,112 defendants were sentenced, of which 46 percent were sentenced to imprisonment for an average term per sentenced defendant of 47.2 months. Eighty-nine percent of those defendants sentenced for robbery were sentenced to prison, while 91 percent of those convicted of bank robbery were sentenced to prison. The average monthly term for total robbery and bank robbery sentences were 134.3 and 136.7 months respectively. Seventy percent of robbery defendants imprisoned received sentences of five years or more.

By contrast, only 17 percent of those defendants sentenced for embezzlement of bank funds received a prison term (for an average of 22.6 months). Thirty-one percent of those defendants who were convicted of fraud committed against lending institutions received prison terms (for an average of 18.4 months). Only one of the 175 defendants convicted of antitrust violations received a prison term.

In summary, nearly three times as many defendants received a prison term for a crime of violence committed in a lending institution as those defendants who committed an economic crime in such institutions. In addition, the length of the incarceration imposed was nearly eight times longer following conviction for the crimes of violence. It is interesting to note that even for a nonviolent criminal offense, violation of the federal narcotic laws, the sentences imposed resulted in twice as many (63 percent) prison terms as fraud committed in lending institutions (31 percent).

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[6] This Report does not address, although the Committee did consider, the question of whether sentences should be in writing and whether there should be a right of appeal by either the prosecution or defense.

[7] The statistics cited are taken from the 1976 Annual Report of the Director of the Administrative Office of the United States Courts. Percentages are rounded off to two decimal places.

The Committee was informed by a representative of the Federal Bureau of Prisons that the impact of lighter sentences for economic crime offenders on the rest of the prison population is invidious. This problem is exacerbated, at least in state prison systems, by the fact that frequently persons sentenced following a conviction for a crime of violence are members of low income and racial minorities, while those sentenced following conviction for economic crime offenses are generally not members of a racial minority or from an economically disadvantaged background.

There are conflicting views of the extent of recidivism in economic crime cases. While a representative of the Federal Bureau of Prisons informed the Committee that economic crime offenders are unlikely to repeat their criminal conduct, a yet-to-be published study by the Economic Crime Project will present data to the effect that there is a very significant recidivism rate among economic crime offenders.

Any comparison of sentences between economic crime offenders and persons convicted of violent crimes must start with a consideration of whether persons convicted of crimes of violence should be sentenced to prison. This consideration exceeds the mandate of the Committee. We note that two other Committees of the American Bar Association are reviewing sentencing standards, while the National Conference of Commissioners on Uniform State Laws will soon propose a Uniform Corrections Act, advocating a major sentencing philosophy.

Finally, as to the issue of incarceration, assuming that some incarceration acts as a deterrent for some people, to what extent does the length of a prison term maximate the deterrent effect? Specifically, if some economic crime offenders should be given prison terms, for what period of time should the terms run?

10. The Committee recommends that the American Bar Association have a continuing committee on economic crime within the Criminal Justice Section.

Among other responsibilities, the Committee could examine pending legislation in the economic crime area, review the ABA Standards for Criminal Justice with a view to determining their impact on economic crime prosecutions, and make recommendations for further action by the ABA House of Delegates. The Committee could serve as the constituency for federal enforcement agencies before the Congress, following requests by the agencies for additional resources with which to combat economic crime. Because it would be representative of all facets of the Bar, the Committee would be in a uniquely unbiased position to comment on funding requests from enforcement agencies

The Committee could also serve as a planning and research group in order to determine resources which are necessary to combat newly emerging types of economic crimes. All too frequently enforcement agencies at both the federal and state level are in a reactive posture to new kinds of economic crime, rather than planning appropriate responses to kinds of economic crime that can be anticipated. The stealing of information from computers is an example of an economic offense that might have been anticipated, but was not.

Law enforcement agencies have a duty to prevent the commission of crimes. In the economic crime area, the most effective crime-prevention tool is public education. Frequently, victims of economic crime are unaware of the fact that they are victims or that they can receive assistance at the local prosecutor's office.

The Committee concludes that it would be useful for a study to be undertaken whereby the mechanisms available to assist the victims of economic crimes would be evaluated.

By way of example, courts are frequently insensitive to the fact that the acceptance of a nolo contendere plea in an economic crime case is potentially of great harm to the victim(s), as such plea is not admissible in a civil proceeding brought by the victim(s).

Local prosecutors' offices should not, however, become collection agencies to assist individual victims. There should be at least a "class" of victims before a prosecutor invokes whatever civil remedies are available to assist victims.

III. DEFINITION

At the first meeting the Committee decided that an agreed-upon definition of economic crime would have to form the basis for all future Committee work; members concluded that without a working definition there was great risk that individuals would talk past each other about problems and concepts.

In addition to more traditional economic crimes, the Committee decided that any definition must include corruption, tax fraud, and antitrust violations. Members discussed whether the definition of economic crime decided upon should be the broadest one possible or should focus more narrowly on crimes with a nexus to the economics of society. It was the consensus of the Committee that the broadest definition should be employed.

A study group of the United States Department of Justice had employed a working definition of economic crime as follows:

"Economic crime constitutes any non-violent criminal activity which principally involves traditional notions of deceit, deception, concealment, manipulation, breach of trust, subterfuge or illegal circumvention."

Concern was expressed that the Justice Department definition does not include consumer fraud. Although it was agreed that it was the intent of the study group to include consumer fraud, it was suggested that the work "misrepresentation" should be added in the Justice Department definition after the word, "deceit." The Committee intended that consumer fraud would include misrepresentations negligent in character, as distinguished from deceit, which suggests an intentional misrepresentation. The Justice Department definition, it was agreed, envisioned only intentional acts. It was noted that many states have adopted legislation which makes it unlawful to make a misrepresentation concerning goods or services where the declarant knows or should have known the statement was false or misleading. Although some members expressed concern about imposing criminal sanctions on unintentional conduct, it was agreed that the word "misrepresentation" was a necessary addition to the definition.

The Committee agreed that criminal conduct in the environmental pollution and product safety areas was encompassed by the decision.

Finally, the Committee agreed that the word "criminal" in the Justice Department definition should be stricken in favor of the word "illegal," in order to include conduct and behavior in which civil remedies might prove to be a more appropriate—as well as effective—remedy. The Committee adopted this change, noting that in order to construe a meaningful definition of economic crime it is useful to look at the conduct which should be prohibited, as well as at the mechanisms required to uncover such conduct.

There was extensive discussion as to whether the definition of economic crime was intended to include conduct which is not based on a desire for economic gain; it was agreed that economic gain is not a necessary element for conduct that is included in the definition.

The Committee also decided at the first meeting that a review of the working definition should be the last item on the agenda for the Committee's last meeting, in order to reevaluate the definition in light of what the Committee had heard from witnesses and had concluded from its discussions. At the last meeting, this reevaluation was undertaken. The Committee concluded that certain changes in the definition were necessary.

Definitions prepared by earlier authors who considered the problems of economic crime tended to focus on a description of the offender, rather than the elements of the offense, which forms the basis for this Committee's definition. The Committee concluded that such focus was the proper one in that, while the Committee's definition is a broader one than others have preferred, it has far greater validity for law enforcement. See Edelhertz, "The Nature, Impact and Prosecution of White-Collar Crime" (as cited in Appendix A); D. C. Gibbons, "Society, Crime, and Criminal Careers: An Introduction to Criminology," (as cited in Appendix A).

The final definition of economic crime by the Committee is as follows:

"An economic offense is any nonviolent,[8] illegal activity which principally involves deceit, misrepresentation, concealment, manipulation, breach of trust, subterfuge, or illegal circumvention."[9]

This definition of economic crime is subject to change as the nature of the offense changes. The Committee's definition is almost certain to change as different types of economic crimes emerge in future years.

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[8] "Non-violent" refers to the means by which the crime is committed. It is not intended to describe the harm that is caused to the victim, which is frequently excessively violent in that it may involve the loss of one's home, life savings, or quite literally all of one's property. In addition, particularly in those many instances of economic crime in which hundreds or thousands of people are affected, the harm to society can frequently be described as violent.

[9] Among the offenses included in "illegal circumvention" are auto repair fraud, bait and switch schemes, land fraud, home improvement fraud, and job opportunity schemes.

1. Securities and Exchange Commission

Securities and Exchange Commission, according to information provided to the Committee by an SEC official, takes the position that it can neither detect nor prosecute every violation of the federal securities laws. Therefore, the Commission controls access points to the marketplace and imposes on the accounting, legal, and brokerage professions strict codes of conduct and the knowledge that when individuals from such professions are found to be engaged in illegal activities, they will be vigorously prosecuted. The Commission does not have authority to proceed criminally, but can bring civil proceedings against individuals and organizations and can refer cases to the Department of Justice for criminal prosecution. Both civil and criminal actions have been brought against professionals who through negligence and lack of professional care have unwittingly aided criminal activity.[10]

There is some concern in the Commission that the Code of Professional Responsibility and the disciplinary process established by and administered by the organized bar in each state has not responded as effectively as it might to attorney misconduct—particularly in the securities fraud area. This is particularly true in cases (and standards of conduct) in which attorney misconduct is based on negligence, rather than an intent to defraud. The Commission staff finds particularly onerous those jurisdictions in which injunctions have been issued, following a Commission petition, against attorneys who were later successfully criminally prosecuted for a violation of the securities law, without even an attempt to bring the attorney before the local disciplinary process.

Commission staff provided the Committee with statistics describing injunctive actions and criminal referrals for the past five fiscal years.[11]

[10] The courts have generally sustained the Commission in imposing high standards (and in the case of the legal community, standards which may exceed the Code of Professional responsibility) on professionals, and have applauded the Commission's policy of policing professionals at the access points to the marketplace in order to deter economic crime. The Commission takes the position that particularly in the securities field, it is almost impossible to commit an economic crime without the assistance of an attorney.

[11] See following table:

Fiscal year	Cases instituted	Injunctions ordered	Defendants enjoined
I. Injunctive actions:			
1972	119	113	511
1973	178	145	654
1974	148	289	613
1975	174	453	749
1976	158	435	722

	Number of cases referred to Justice Department	Number of indictments	Defendants indicted	Convictions
II. Criminal referrals:				
1972	38	28	67	75
1973	49	40	178	83
1974	67	40	165	81
1975	88	53	199	116
1976	114	23	118	97

Generally, the Commission finds its authority and legislative purpose adequate. Staffing problems at the Commission appear to be in a less satisfactory condition. Until early 1975, the Commission had operated for 30 years with a smaller staff than it had employed immediately following World War II. Even today, with 2,000 employees in Washington, D.C. and in regional offices throughout the country, the Commission's staff is inadequate for the task that is legislatively mandated. Civil complaints brought by the Commission require an enormous commitment of economic and manpower resources; in the National Student Marketing case, over 40,000 pages of depositions have been taken and over 4,000 exhibits marked during pretrial discovery. Agencies have found that this early warning system has for the most part resulted in earlier consideration of Commission cases from a criminal prosecutorial standpoint and has reduced the number of problems caused by the running of the Statute of Limitations.

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In order to fully understand the statistics provided in Chart II, entitled "Criminal Referrals," certain additional factors should be taken into consideration. In recent years, the Commission reports, the majority of the cases that comprise the figures in the column captioned "No. of Cases Referred to Justice Dept." have been referrals which are made pursuant to a request for the case from a United States Attorney's Office, Strike Force, or from the Department of Justice itself, rather than a referral initiated by the Commission. With these request-type referrals, the Commission generally makes no specific recommendation for criminal prosecution. For example, in 1975, 73 of the 88 referrals were made pursuant to requests from one of the aforementioned parties and in 1976, 107 of the 114 referrals were made pursuant to such requests.

In the past, principally because of the complexity of Commission cases, statute of limitations problems would often arise. In an effort to deal with this problem, the Commission and the Department of Justice within the last few years have worked out a program designed to apprise the Department at a very early stage of the Commission's enforcement actions.

There is a jurisdictional aspect of SEC authority that presents problems. The Commission does not have the authority to improve civil fines or penalties as do other administrative agencies. The most common procedure for the Commission to employ in the economic crime area is to seek an injunction; this is a frequently cumbersome procedure to use in the pursuit of economic crime offenses.

According to information provided to the Committee, it would seem that the civil sanctions which can be imposed in response to a Commission complaint are adequate, for deterrent purposes, ot cover most conduct investigated by the Commission.

Prevention and public education in the economic crime area occupy a substantial amount of the SEC's annual $40 million budget. Activities of the Commission's Market Surveillance Unit and the Market Regulation Division are almost exclusively preventive. Over the years the Commission has attempted to insure that the industries directly regulated have guidelines and internal procedures to prevent attempts by individuals to commit illegal acts.

In the public education area, the Commission has published a number of brochures which describe types of stock fraud. Press releases highlighting Commission activity against illegal activities are regularly issued. The Commission has recently established an Office of Consumer Affairs to expand its public education program.

On a regular and continuing basis, the Commission has assigned staff accountants and attorneys to local district attorneys who request assistance.

2. *Federal Bureau of Investigation*

In the past 5 years, the FBI, in both resources and training of personnel, has increased its efforts in the economic crime area. Statistics are not available which reflect the number of cases referred to United States Attorneys' offices, but almost

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For all the above reasons, as well as for other reasons to be discussed below, the reader cannot subtract the column "Number of Indictments" from "Number of Cases Referred to Justice Dept." and expect the difference to be the number of cases where the Department of Justice has declined to follow the Commission's recommendations. One reason, referred to above, is that the Commission does not in the request-type referrals make specific recommendations for criminal prosecution. Another reason is that the figures listed in "Number of Indictments" refers to the indictments returned in that particular fiscal year. In fact, the indictments that will be returned from the referrals made in 1976 will probably be reflected in upcoming fiscal years.

Another variable that must be taken into account in interpreting Chart II is that the number of cases referred does not necessarily bear a statistical relationship to the number of indictments. For instance, one case referred several years ago by the Commission to the Department of Justice resulted in the return of more than ten indictments. Conversely, it may take the referral of more than one case to result in one indictment. This situation arises, for example, where a broker illegally manipulates the price, in four separate issues of securities. Each one of these four stock manipulations may be carried as separate cases on the Commission's records, and when they are referred to the Department of Justice, will result in four referrals (for purposes of the figures in Chart II). When the Department of Justice presents the case to the grand jury in some instances, one indictment will be returned.

The Department of Justice does, in a small number of cases, decline to follow the Commission's recommendations where specific recommendations have been made in a criminal reference report. The reasons vary. For example, in the case cited above where one defendant manipulates four issues, the Department of Justice may determine that proceeding for more than one of these manipulations might be unnecessary and, therefore, may decline prosecution on the remaining cases.

every Bureau investigation results in either an acceptance or declination for prosecution by the local United States Attorney. Some cases investigated by Bureau personnel involve relatively small sums of money and in these cases the victims are referred to the civil courts, or restitution is made. Since the Bureau has a "quality-versus-quantity" policy, in cases involving small amounts of money or in which criminal intent cannot be proven, the matter is resolved as rapidly as possible in order that major cases may be more completely staffed.

An important indication of the economic crime effort from the FBI's view is the actual number of convictions in the economic crime area based on FBI investigations. The Bureau reports the number of convictions are as follows:

Fiscal year:	*Number*
1972	2,380
1973	2,711
1974	3,201
1975	3,753
1976	4,610

The Bureau believes that for many reasons statistics in the economic crime area are misleading. For instance, because the Bureau has commenced many investigations wherein the "victim" of an economic crime did not even realize a crime had been committed, the Bureau believes that reported economic offenses are not an accurate barometer of the incidents of economic crime.

The FBI has found that many economic crime offenses do not come to the attention of law enforcement authorities.[12] In addition, the Bureau believes that there are no accurate statistics to measure losses from economic crime.[13] Finally, long-range consequences of an economic crime offense, particularly in the bank fraud and antitrust areas, cannot be accurately measured at all.[14]

Approximately 10 percent of the FBI's annual budget of $500 million is devoted to the detection and investigation of economic crime offenses. The Bureau employs 8,500 agents and approximately 12,500 non-agent personnel. In recent years, partly as a response to the increase in economic crime cases, the Bureau has recruited as agents far more accountants than attorneys. During Fiscal Year 1977, 1,225 agents and 700 support personnel will be assigned to economic crime offenses.

Particularly in the economic crime area, the FBI's quality-versus-quantity case policy is important. As an example, scores of accountants had to be temporarily assigned to New Orleans, Louisiana in order to investigate the grain fraud cases in that jurisdiction. Generally, in complex fraud cases, the Bureau finds that manpower demands are enormous.

The Bureau has dramatically increased its public education and prevention efforts in the economic crime area. For instance, in cooperation with the United States Department of Commerce and the Chamber of Commerce, the Bureau has been holding business crime seminars throughout the country. The Bureau has also met with representatives of major industries in order to ascertain what the industry concerns are in the economic crime area.

The Bureau is undergoing a review of its jurisdiction in the economic crime area. By way of example, the Department of Justice has established guidelines whereby agents can be assigned to the Departments of Housing and Urban Development and Health, Education and Welfare on an ongoing basis in housing and medicaid fraud investigations.

3. Postal Inspection Service

The area of investigation within the Inspectional Services jurisdiction having the greatest financial impact on the public is mail fraud, an ever-increasing component of economic crime. The mail fraud and false representation statutes have proven to be flexible and effective vehicles for the prosection of many schemes to defraud the public.

The prevalence of economic crime by mail can be ascertained from the fact that the Inspection Service received over 127,000 complaints in Fiscal Year 1975 from postal customers alleging mail fraud. In the first 9 months of Fiscal 1976, 106,000 complaints of all types were received. Over 7,000 investigations of mail fraud

[12] A view which is unanimously shared by the Economic Crime Comm.
[13] See, Comm. recommendations on page 10 of this report.
[14] Ibid.

were concluded in 1976. The Service devotes approximately 15 percent of its investigative hours to economic crime complaints and investigations.[15]

Criminal prosecution is not the only enforcement tool used by the Service. The administrative provisions of 39 U.S.C. 3005 and 3007 to withhold delivery of mail operators who attempt to obtain money or property by means of false representations can be employed. In Fiscal Year 1975 the administrative remedies were employed on over 100 occasions. In many instances, the use of these administrative remedies was frustrated—in that when a court issued a mail stop order against a company, it would go out of business immediately, only to reopen under a different name at a different address.

According to information provided to the Committee, the Service takes the position that in all of its investigations—but particularly in complex cases in the economic crime area—close cooperation between its field investigators and the local United States Attorney or Justice Department officials is essential. The Service can cite many cases in which this close cooperation was directly responsible for an ultimately successful prosecution.

The total operating budget for the Inspection Service for Fiscal Year 1976 is $126,994,000, of which approximately $52,802,000 is earmarked for criminal investigations of all types. (The remaining funds are used to fulfill the Inspection Service's internal audit and security functions.) Although no specific portion of the Service's budget has been allocated to prevention and public education, in the course of their regular duties inspectors make presentations concerning mail fraud to civic groups, business organizations, and members of the law enforcement community. In addition, a portion of the operating budgets of such Postal Service elements as the Law Department, Customer Services, and Communications Departments are used for consumer protection.

The Economic Crime Committee was particularly impressed with the statistical gathering capabilities of the Inspection Service. The Service not only has an unusual breadth of statistics in the economic crime area, but it has up-to-date statistics; the Committee was provided with statistics of investigations less than one month old. The Committee received information from the Service regarding the basis for these statistics.[16]

The Service believes the statutory authority under which it operates is sufficient. The present manpower—some 1,600 agents throughout the country—is not sufficient.

4. Department of Health, Education, and Welfare

The Department of Health, Education and Welfare employs some 135,000 people, with an annual budget of nearly $140 billion. The agency has some difficulty in determining exactly how many programs it has (definition of "program" is at least partly responsible for the difficulty), but the number is around 300.

Many of the programs which HEW has been given responsibility to manage were authorized under tense or emergency conditions, with pressure from Con-

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[15] This is a growing area for the Service, as a comparison between Fiscal Years 1970 and 1975 shows an increase of approximately 40 percent in arrests and 49 percent in investigative manhours devoted to economic crime cases. During 1975 the mail fraud statute was used increasingly as a means of prosecuting insurance fraud cases, many of which victimized doctors and lawyers. Other types of mail fraud investigations in the economic crime area investigated in 1975 included advance-fee correspondence schools, franchises, work-at-home promotions, and land fraud offerings. According to the Service, the known loss from fraudulent mail promotions in Fiscal 1974 was $184 million, while the loss in Fiscal 1975 from the same operations was over $395 million.

[16] Each inspector is required to complete data processing source forms which concern all phases of his activities on either a monthly or case basis. At the close of each month, inspectors report their current case load, the number of cases closed during that month, the number of arrests, convictions or discontinued promotions attained in all their cases during that month, and a specific accounting for their time. When a case is closed, inspectors submit a report concerning sentencing, restitutions, recoveries and the estimated public loss and/or savings related to that case. When a case is open, arrests and prosecutive information are reported on a separate form as these developments occur. The data contained on the various forms are entered into a computer and reconstituted in the form of printouts used for management purposes. These printouts are compiled for the 20 field Divisions or on the basis of numerical codes which relate to specific types of investigations. For instance, within the general category of fraud investigations, there are 66 three-digit subject codes to facilitate the retrieval of data relative to specific schemes to defraud.

In the area of mail fraud investigations, additional statistical reports are required of inspectors. On a monthly basis, each inspector must submit a report, broken down according to subject codes, concerning precisely the number of complaints received and their dollar value, the time devoted to fraud investigations and the results of those investigations and the estimated public losses, savings, or restitutions occasioned.

gress and the public to get the programs started immediately. The implementation of controls and audit procedures was to be accomplished later. It is now "later," and attempts are being made to implement the controls in the middle of the program. The Department reports it is proving to be a difficult task.

Before 1973, HEW had no formal investigation department. In 1973, an Office of Investigations and Security was established. The Committee was told by an HEW representative that partly as a result of congressional apprehension the office's jurisdiction was too broad; adequate staff was never provided. By June of 1975, the Committee was told, the number of investigators assigned to handle complaints of fraud in the various programs throughout the country was seven.

The Committee was told that in the past year, under new leadership, the Office of Investigations and Security has been dramatically changed in a number of ways. First, authorization for 60 investigators and additional support personnel has been approved. Second, a close working relationship between this office and the HEW audit staff has been developed. HEW employs 800 auditors, 10 percent of whom are now working under the direction of the Office of Investigations and Security. Finally, the director of the office was placed directly under an Assistant Secretary with direct access to the agency Secretary.

In addition to audit and investigations, an HEW representative reported to the Committee that the agency has a large staff in the program area whose function it is to examine programs, establish controls, screen payments, and determine eligibility under the diffierent programs. On occasion, these personnel will detect fraudulent activity, a report of which is forwarded to investigations.

An HEW representative has told the Committee that there is a free exchange of information between the Office of Investigations and Security and other federal enforcement agencies. The office works closely with the United States Attorney's offices throughout the country.

Although the increased staff and operational capabilities of the office are relatively new, Investigations and Security has begun to investigate cases in three primary areas. The first is the Guaranteed Student Loan Program within the Office of Education. In this program a student can secure a loan from a lending institution to pay for school expenses, with the government acting as an insurer on the loan in the event of a default on the part of the student. Widespread abuse has been detected in this program, including loans to individuals who were not students. The default rate in the program is close to 50 percent.

A second area of concentration is in the Medicaid program, through which disadvantaged persons are able to obtain medical benefits. Although the primary responsibility for the prevention and detection of fraud in this program lies with the states (through which payments are made), HEW will now directly enter and initiate the investigations.

The third major program of concern is Medicare, a program which provides medical benefits to elderly persons.

According to an HEW official, the Office of Investigations and Security plans to provide suggestions to alter programs in order to prevent economic crime. In each investigation in which some form of economic crime has been discovered, the method used to commit the offense is detailed; a report on this activity is forwarded to the program officers, with a recommendation that the program be changed or altered so as to eliminate the opportunity for crime.

In many cases, through the efforts of the Civil Division of the Justice Department, civil actions are filed against individuals who have received funds from HEW in violation of the law. Civil sanctions are also employed in those cases in which violations are discovered in the performance of HEW contracts and grants.

Some HEW officials support legislation to fix primary responsibility on the ultimate recipient of HEW funds—the school, the hospital, the doctor—to insure that the recipient of services for which the government will pay is in fact eligible for the program and not otherwise in violation of the law. It is possible that such responsibility could be arranged through regulations; however, regulations could not provide for civil or criminal penalties in the event of violation.

5. Internal Revenue Service

The Internal Revenue Service Intelligence Division is the criminal investigation arm of the Service, and the division most directly involved in the detection of economic crime offenses. The primary responsibility of the Division is to enforce the revenue laws and to prosecute tax evaders. Clearly, of economic crimes, tax evasion is among the most prevalent.

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The Intelligence Division currently has approximately 2,500 investigators, including supervisory personnel, organized in 7 regional and 58 district offices. In 1975 the Service received over 125 million tax returns; the Intelligence Division thus ordinarily cannot detect every person who has illegally avoided taxes in any year. The Division's approach to detecting tax evasion is based on the assumption that prosecution of a representative number of tax evaders will have the maximum impact on voluntary compliance with the tax laws. As a result, the Division looks to certain factors in selecting cases for prosecution.

Although the national office of the Intelligence Division gives guidance on certain types of cases, most of the factors which lead to prosecution are localized and are most easily made at the local level. In that regard, the Division is the only completely decentralized government enforcement agency. By way of example, the Chief of the Intelligence Division in Los Angeles reports to the District Director of the Service in Los Angeles—not to the Chief of Intelligence in Washington, D.C.

All of the investigations are, of course, financial in nature. These range from simple investigations of a sole proprietorship's books, to the books and records of a multinational corporation in which millions of transactions are computerized in a maze of journals and ledgers. Notwithstanding the decentralized enforcement functions, once a case is recommended for prosecution the normal journey to prosecution begins with the investigating agent's Division Chief, moves from there to IRS Regional Counsel for an in-depth legal review, then to the Department of Justice Tax Division for further review, and finally to the local United States Attorney for a final review and prosecution. This process can take anywhere up to eighteen months.[17]

The Service attempts to investigate and prosecute those cases which will have the greatest impact—geographically, by profession, and by industry. The Intelligence Division's efforts are on the criminal side of enforcement and are separate from civil actions commenced on behalf of the government by the Department of Justice against taxpayers in which the government seeks to recover tax due, but not paid.

The caseload of the Intelligence Division has increased in recent years and is continuing to rise.[18]

A representative of the Intelligence Division told the Committee that there is a trend throughout the courts to impose lighter penalties on individuals convicted of tax evasion. Convictions have also declined slightly—1,253 in Fiscal Year 1974 to 1,219 in Fiscal Year 1975. In Fiscal Year 1975, 40 percent of the convictions were followed by sentences which included a prison term, down from 42 percent the year before. However, the average prison term of 14 months in Fiscal Year 1975 was down substantially from an 18-month average in Fiscal Year 1973.

Although the Intelligence Division and the Service generally cooperate with other enforcement agencies, except under specific and restricted guidelines, the Service is unwilling to disclose the information contained in taxpayers' returns. The Service takes the position that its primary responsibility is to en-

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[17] Prosecution standards generally are based on the following, according to a statement made to the Committee by an Intelligence Division official:

"Criminal prosecution will be recommended in every case developed by the Intelligence activities involving an offense against the Internal Revenue laws where: (1) the evidence is sufficient to indicate guilt beyond a reasonable doubt, and (2) a reasonable probability of conviction exists. All the factors and circumstances of each case will be considered in an administrative determination of whether the case is properly one for disposition on the basis of civil liability, or warrant a recommendation of criminal prosecution. The following factors may be significant in this determination: (1) a nominal tax deficiency; (2) voluntary disclosure of the violation by the proposed defendant; or (3) serious state of ill-health of the proposed defendant. Judgment will be exercised in the determination to insure that such a factor will not likely imperil successful prosecution. The Service policy does not necessarily preclude prosecution when one of the above factors is present in the case.

"Unless compelling reasons exist, prosecution will not be recommended in any tax cases wherein the proposed defendant has been convicted and has received a sentence by federal or state court on substantially the same facts that would be used for the federal tax charge."

In addition, it is Service policy not to prosecute in those cases in which the putative defendant is serving a long prison sentence.

[18] In Fiscal Year 1974 there were 8,078 new investigations and in 1975, 9,268 new investigations. In the first three-quarters of Fiscal Year 1976, there were 6,715 new investigations. The number of prosecutions recommended by the Division has also increased in the past fiscal years. This has resulted in a substantial increase in the number of cases pending in the Tax Division of the Department of Justice. In 1974, at the end of the fiscal year, there were 741 cases pending, and at the same time in 1975, 972 cases were pending.

courage voluntary compliance with the tax laws, and almost any disclosure would interfere with such compliance for the reason that taxpayers could be reluctant to file returns knowing that the information contained therein might be turned over to others.

6. *Department of Justice—Antitrust Division*

Although the Antitrust Division concerns itself with noncriminal activities—including anti-merger statutes, interventions before regulatory agencies, and enforcement of the Clayton Act—its principal focus is enforcement of the criminal provisions of the Sherman Act. The Sherman Act contains two criminal sections, one of which prohibits every contract, combination or conspiracy in restraint of trade, and the other of which prohibits monopolies or attempts to monopolize or conspiracy to monopolize any part of a trade or commerce.[19]

The extent of economic crime in this area is incalculable. The Justice Department is unable to determine how much trade and commerce is affected by anticompetitive practices, nor how much the public pays yearly in illegal overcharges. In 1968 the Division estimated that between $35 and $40 billion was affected annually by illegal practices under the Sherman Act. However, these figures represent no more than an educated guess.

The difficulty in determining the economic crime loss in the antitrust area is exacerbated, at least in part, by the very large dollar figure alleged in the complaints. For example, recent price fixing indictments filed by the Division in the gypsum industry resulted in the defendant companies paying some $71 million in damage settlements. Early this year, an indictment was filed which alleged gasoline price-fixing in a six-state, east coast area over a 6-year period. In the area, during the period of time noted in the indictment, gross sales of gasoline amounted to $4 billion. Complaints filed in the test cycling industry have resulted in over $280 million paid in settlements.

At any given time, the Division has between 650 and 800 investigations pending.[20] Criminal complaints filed average between 60 and 70 a year. The man-

Calendar year:	*Investigations*
1967	644
1968	692
1969	710
1970	678
1971	758
1972	773
1973	776
1974	715
1975	701

power of the Division has risen substantially in the past few years, due in part to certain cases which require huge commitments of professional personnel. In the past seven years the Division has grown from 270 to 500 attorneys.

The Division has found that the best technique for uncovering hard core antitrust violations is the grand jury. As a result, the Division has expressed concern at the legislative attempts in the last Congress to limit the use of the grand jury as an investigative tool.

According to a Department of Justice official who appeared before the Committee, among the most difficult problems facing the Division is retaining good attorneys to try the cases that are brought. The salary structure in the government, particularly when compared to the fees paid in the private sector to an experienced antitrust litigator, results in a very heavy turnover in the Division. This problem is particularly serious because the government antitrust prosecutor is frequently trying the case against a highly skilled defense attorney.

The Division has also been perplexed by the growing and seemingly insoluble problem of how to try the complex case. The Division has cases pending in which there are literally millions of exhibits. Years—rather than days or weeks—is the projected length of the trials. The Division has been forced to employ computerized litigation support systems merely to keep track of exhibits and witnesses.

Private enforcement in the antitrust area has sometimes been an effective remedy. The Division reports that plaintiffs' attorneys complain that the Division does not provide them with enough support in their cases, while defendants' attorneys complain that too much support is provided.

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[19] The two criminal sections of the Sherman Act have engendered countless books, articles, and judicial opinions to the extent that they compose one of the larger bodies of specialized law in the country.

[20] The statistics (as provided by the Division) for the past 9 years are as follows:

The Division would like to see a greater effort by state enforcement agencies in antitrust. Cooperation between the states and the Division is good.

7. Banking enforcement agencies

Three separate government agencies investigate violations of the banking laws. The Comptroller of the Currency audits and investigates the activities of approximately 4,500 national banks throughout the United States. The Federal Deposit Insurance Corporation insures almost all banks and audits and investigates the activities of state banks which are not members of the Federal Reserve System; there are approximately 9,000 such banks. The Federal Reserve audits and investigates the activities of approximately 1,000 banks, all of which are part of the Federal Reserve System.[21]

The FDIC has a policy of listing "problem banks" based on the results of audits. Two and one-half percent of all of the banks in the United States were listed during 1975 as "problem banks"; however, two-thirds of them were from the FDIC's least serious problem bank category.

Thirteen insured banks, with aggregate deposits of $342.4 millions, failed in 1975, the largest number of bank failures since 1942. In the two previous years, 1974 and 1973, the two largest bank failures in the history of this country took place—the Franklin National Bank failure in New York and the United States National Bank failure in San Diego. In each case there were violations of the criminal laws of the United States that were directly responsible for the failures of the banks.

All three Federal banking agencies conduct audit examinations of the banks under their jurisdiction. However, in no case are the audits complete examinations of the bank records except when the audits or other information suggest bank irregularities. Examinations of the bank records are intended "to determine the bank's current condition, to evaluate bank management and to discover and to obtain correction of unsafe and unsound practices for violations of laws and regulations." [22]

As far as national banks are concerned, the examinations are made by the Comptroller of the Currency two times a year. The examinations are on-site and on a surprise basis. The Comptroller of the Currency "examinations" are intended to evaluate the assets of the national banks and the creditworthiness of the assets.[23]

The Comptroller of the currency finds that on-site audits are extremely time-consuming, especially in larger banks. In addition, the Comptroller's Office finds that examinations are essentially after-the-fact matters: what the agency seeks in the books and records of the bank concern matters which affect the credit rating of the bank months or even years ago. The agency instead will, within the next year, rely on a "National Bank Surveillance System," whereby every quarter it will receive statements from the banks which in turn will be given to the computer. The theory of the surveillance is that by reviewing certain variables, the Comptroller's office will be able to ascertain the soundness of the bank and its practices.

In a recent test of the National Bank Surveillance System, quarterly statements from the Franklin National Bank were fed into the computer, and based on statements from the Franklin which reflected bank conditions as of six months before the bank failure, the computer accurately predicted the failure. The Comptroller's office candidly acknowledges that the problem with a computer

[21] The number of banks regulated is not necessarily the only way of describing the jurisdiction of these three agencies. For instance, those banks regulated by the Federal Deposit Insurance Corp. represent only about 32 percent of the total deposits of all banks insured by the FDIC. Most insured banks are relatively small, and many of the banks regulated by the FDIC have substantially smaller deposits than those banks regulated by the Federal Reserve Board of the Comptroller of the Currency. Only 11 of the commercial banks regulated by the FDIC have deposits of greater than $1 billion as compared with 73 national banks and 26 Federal Reserve Member banks with assets of greater than $1 billion.

[22] "Highlights of Operations—1975," Federal Deposit Insurance Corporation, March 15, 1976.

[23] Both the Comptroller of the Currency and the Federal Deposit Insurance Corp. are moving away from onsite examinations and audits. In 1975, the FDIC withdrew from its usual examination schedule of each insured state non-member bank in the States of Georgia, Iowa and Washington, and for a specified number of banks in each State, agreed to rely primarily upon examinations by the local state banking department. By the end of 1975, approximately 525 banks were affected by the selected withdrawal program. The FDIC reserves the right to examine any State non-member bank in the three states whether or not it is examined by the State banking department.

surveillance system is that it does not give auditors the opportunity to "dig around" in a bank, as auditors have done in the past.

All three banking agencies have the statutory power to place a bank into conservatorship or receivership. This is a drastic remedy and one which is rarely utilized. The agencies also have the power to commence administrative cease-and-desist proceedings pursuant to the Financial Institution Supervisory Act of 1966. This Act has essentially two aspects, one of which is the power to commence cease-and-desist proceedings, and the other which is to remove bank officials. Generally speaking, pursuant to the Act, it is more difficult to remove a bank official than it is to convict him of a criminal offense. The Act also gives the agency the power summarily to remove an individual from a bank if he has been indicted for a felony involving a breach of trust or a dishonest act.

All three federal agencies devote a great deal of time to educating bankers, particularly as to how to avoid or prevent unsound bank practices. In order to be a banker, training is not required. There is no licensing test or special training required. Although the chartering of a bank is carefully controlled, including close inspection of the individuals who will be responsible for the bank's management, there are very few controls over the sale of a bank once it has been chartered. The Comptroller of the Currency has publicly stated that although there are 4,700 national banks, there are not 4,700 bankers.

The banking agencies recognize that the vast majority of bank cases involve teller-embezzling from the bank. Some Department of Justice officials have stated that these cases should not be prosecuted by the Department in the Federal courts, but should be prosecuted on a local level in the State courts. However, economic crime cases involving large sums of money should be brought in the federal courts. By way of example, in the United States National Bank in San Diego, California, Comptroller of the Currency auditors discovered that C. Arnholdt Smith, who was the principal stockholder of a billion dollar bank, had directed $400 million in loans to himself through some 300 corporations which he also controlled. The Comptroller of the Currency believes that only a Federal effort, with its massive infusion of hundreds of auditors and investigators working throughout the country, could have uncovered a larceny of this dimension.

The Federal Deposit Insurance Corporation employs nearly 2,500 auditors, while the Comptroller of the Currency employs nearly 2,000 individuals.[24]

A banking agency official told the Committee he was appalled at some of the lenient sentences imposed on individuals directly responsible for bank failures. A 1971 bank failure of $60 million resulted in a 3-year probation and $5,000 fine to the official directly responsible, following his plea of guilty to two felony counts in the indictment. And C. Arnholdt Smith, directly responsible for the failure of a $1 billion bank due to the misappropriation of $400 million was permitted to enter a plea of nolo contendere over Justice Department objections to four counts of the indictment; he received a 5-year probation sentence and a $30,000 fine, to be paid over the next 30 years at the rate of $1,000 per year.

8. State and local effort

Two local prosecutors' officers were represented on the Economic Crime Committee, as was the office of a state Attorney General. In addition, the Economic Crime Project of the National District Attorneys Association was represented through an ex-officio member of the Committee. A number of witnesses told the Committee about local enforcement efforts against economic crime, and the Committee Reporter interviewed representatives from six local prosecutors' offices which are members of the Economic Crime Project.

A discussion of the State and local effort against economic crime must begin with a discussion of the Economic Crime Project of the National District Attorneys Association (NDAA). During the past 3 years, 53 separate prosecution offices from coast-to-coast in practically every state have participated in the Project. Funded by LEAA, 15 District Attorneys offices initially participated in the Project.

[24] In addition to the three federal agencies mentioned in this section, and the state banking agencies, ther are other regulatory agencies within the banking field, including the Home Loan Bank Board, the credit union regulatory agencies, and the farm bank regulatory agencies. The proliferation of these banking agencies has been justified to Congress on numerous occasions. As to their enforcement responsibilities, it has been argued that the competition among them is good. As for investigations of bank practices, a representative of the Comptroller of the Currency who appeared before the Committee stated that a consolidation of investigations might be in order.

The Project is run by the NDAA office in Washington, D.C. The office functions as national coordinator for the Project, and presently includes a legal staff of three attorneys. In addition the Washington, D.C. office provides technical assistance to the field offices, arranges quarterly conferences for field unit chiefs, coordinates nationwide investigations, publishes written materials, arranges liaison with Federal enforcement agencies, assists in public education programs, and assists in the establishment and maintenance of economic crime units in local district attorneys offices. Appendix B of this report contains a list of those offices which are members of the Economic Crime Project.

The scope of the activities in the District Attorneys offices that participate in the Economic Crime Project can be at least partially measured by the cumulative statistics which appear on the next page.

As of August 31, 1976, the LEAA-funded NDAA Economic Crime Project had compiled the following statistical evidence of its national scope impact:

Inquiries to project offices	362, 871
Complaints processed	104, 262
Special investigations conducted	8, 985
Civil actions against economic offenders:[1]	

[1] It should be noted that a substantial number of district attorneys' offices participating in the project do not have statutory authority to proceed civilly. This explains why fewer offices reported statistics as to civil actions.

Cases filed	386
Cases pending	193
Cases settled	45
Judgment for defendant	[2] 2

[2] While the project figures reflect only 2 judgments for defendants in a civil case, civil judgments, unlike criminal judgments, are often compromising in their final determination, making wins and losses more difficult to clearly assess.

Judgment for State	191
Misdemeanor actions against economic offenders:	
Cases filed	1, 206
Cases pending	179
Acquittals	33
Convictions	781
Felony actions against economic offenders:	
Cases filed	2, 135
Cases pending	695
Acquittals	39
Convictions	1, 177
Restitution and fines ordered	$24, 389, 529
Total convictions of economic offenders	2, 149

A more significant measure of the activities of the Economic Crime Project and its participating local prosecutors are the types of economic crime cases which were investigated and successfully prosecuted, either criminally or civilly. The following information, which was extrapolated from the Project's annual report to LEAA, notes only major coordinated investigations, and does not, of course, make mention of more routine economic crime investigations in the participating offices.

Beginning in the winter of 1973, and continuing to the present (and most likely, beyond), devices and gadgets guaranteed to improve gasoline mileage appeared in almost every jurisdiction in this country. In addition to the usual problems associated with proving the misleading nature of an advertising statement, proving the illegality in the advertising of the gas-saving devices was exacerbated by the national nature of the marketing schemes, as well as the problems of testing the devices and proving the falsity of the crimes. A district attorney's office in California which was a participant in the project had tested several devices and was preparing to proceed against several companies. Three other district attorneys' offices in the Project found similar devices in their jurisdictions. These four district attorneys' offices—located in California, Colorado, Washington and Vermont—formed a coordinated investigation team that shared information, results of testing and expertise. They not only planned the joint strategies to be used in their respective jurisdictions, but they shared the strategies with other participants in the Project to prevent distributors from starting new sales programs. In short, the Economic Crime Project provided coordination and resources which turned isolated local district attorneys' efforts into a national campaign.

Because the perpetrators of charitable frauds are often peripatetic, a coordinated investigation into the prevalence of charitable solicitation frauds is important. The Project coordinated an investigation into such frauds in all participating offices, and solicitations were in fact frustrated in certain jurisdictions because of information received from other offices.

A substantial number of individuals and companies travel from jurisdiction to jurisdiction offering opportunities to invest in businesses and franchises. Exorbitant profits are frequently promised. Some investment opportunities are legitimate, and some are not. Because individuals are frequently asked to invest funds immediately, it is usually very difficult either to detect criminal conduct or to prosecute the economic crime offenses after the fact; by the time the crime is discovered or reported, the perpetrator is in another jurisdiction, many miles away. The Economic Crime Project has coordinated intelligence on business opportunity schemes so that participating offices now have extensive data on companies and individuals against whom such complaints have been filed.

In addition, in those cases in which the business opportunity is not fraudulent—at least not in the criminal sense—but nonetheless fails in its advertising to note substantial risks that the investor may face, some jurisdictions have successfully sought court orders to require advertisers of business opportunities and franchises to alter their claims.

In several other areas, including economic crime offenses in the sale of gold and silver, rental locators, auto rebates and nursing homes, the Economic Crime Project has coordinated national efforts in which most or all of the participating offices have been active.

The Economic Crime Project staff, in addition to other activities noted above, provides four other services to the participants in the Project which probably could not be duplicated by any local prosecutor's office.

When the Project first commenced, a publication called Economic Crime Digest was started with a limited circulation of unreported cases and activities of general interest in the economic crime area. During the first year of the Project, six issues were distributed bi-monthly. Because the criminal justice community, both state and federal, expressed great interest in receiving the Digest, the circulation has increased, as has the scope and depth of the publication.

The Digest now prints over 1,700 copies of each edition.[25]

Among the original aims of the Project was to develop methods to overcome the insular nature of local prosecutors. Economic crime offenses do not honor state and local political boundaries. In addition to the coordinated investigations noted above, the Project developed a multijurisdictional telephone network which was supplemented by confidential bulletins. As the Project offices received intelligence from its participating members about on-going economic crime schemes and investigations, it disseminated the information in confidential bulletins to other offices. Disclosure was limited to the Project participants. During 1975, approximately 30 such bulletins were issued on subjects ranging from municipal bonds to assistance in locating fugitives.

The Project has always taken the position that citizen awareness, particularly in recognition of economic crime schemes, is critical. Many of the Project offices have developed manuals and handbooks for the general public on economic crime. In addition, the Project prepared a draft of a model citizens handbook on economic crime that can be distributed to all district attorneys' offices throughout the country.

Other Project publications include a book entitled "Economic Crime: A Prosecutor's Handbook." This book presents relevant criminal statutes and how they apply to economic crime schemes. Requests for the handbook required the Project to order three additional printings to fill the requests.

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[25] Circulation of the Digest includes:

District attorneys' offices unaffiliated with the project	520
Affiliated offices	80
Law libraries and law schools	250
Armed Forces	30
State attorney generals offices	66
Federal Bureau of Investigation	5
U.S. attorney offices	19
U.S. Department of Justice	6
U.S. Department of Commerce	4
Federal Trade Commission	5
Securities and Exchange Commission	5
Postal Inspection Service	8
Foreign law enforcement agencies	8
Congress	5
Private associations	20

In the development of new economic crime units throughout the country, a task which requires a measurable percentage of the efforts of the Project staff, the Project has developed criteria for the organization of economic crime units within units of local government. Although described in Project publications as "general observations" in summary form of the organization of an economic crime unit at the local level, the Committee believes that these observations are applicable to all prosecutors' offices.[20]

Over 28 percent of the United States population lives in the 50-plus District Attorneys' offices which participate in the Economic Crime Project. Although the Project newsletter reaches many more local enforcement agencies than that, the Project has continued to coordinate instructional sessions for prosecutors on the problems of economic crime prosecution at seminars throughout the country. Participating district attorneys have also travelled to other jurisdictions to provide technical assistance in the economic crime area.

9. The Private Sector

A number of organizations in the private sector are in a position to contribute to the federal and local effort against economic crime. The representatives of one such group, the fidelity and bonding companies, appeared before the Committee. In addition, the reporter spoke to representatives of a national society of certified public accountants.

Although many individuals and institutions in the private sector cooperate with enforcement agencies in the economic crime area, some private sector institutions prefer not to cooperate, and are unwilling even to report the commission of an economic offense for fear that it will adversely reflect on the institution-victim, or the industry it represents. In those cases in which the victim of the offense is insured for the loss, the victim may assume the loss without reporting it to the insurance carrier or an enforcement agency; adverse publicity and increased insurance premiums may, in the mind of the victim, be a more serious business consequence than a 100-percent reimbursement by the insurance carrier.

Some Committee members who are representatives of enforcement agencies have reported on a number of economic crime offenses involving employee dis-

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[20] The general observations are as follows:

"(1) Economic prosecutions cannot operate on an *ad hoc* basis. The prosecutor must first assess his capabilities and adopt an approach to economic crime that can be successful in his particular office. He should initially prioritize the service that his office will allocate to complaining consumers and the effort that his staff will expend on investigating major frauds. Some offices have concentrated on consumer complaints; others have emphasized investigation of major frauds; and others have combined their emphasis in varying proportions. The prosecutor must assess the role of his fraud unit in light of the needs of the community and resolve to make a policy determination as to the kind of efforts that his office will put forth.

"(2) Whatever course is adopted by the office in weighing priorities between consumer complaints or major economic frauds, the prosecutor must have one or more economic crime specialists. In medium size and larger prosecutor unit officers, the prosecutor would no doubt need to establish an economic unit that devotes full-time to economic crime cases. In smaller offices (the prosecutor should probably designate) at least one person to handle economic crime cases in addition to other duties.

"(3) Investigators and paralegals can be more efficiently used than lawyers in performing many standardized jobs required in economic crime prosecutions.

"(4) Every community contains a large reservoir of often ignored resources that can be tapped in developing economic crime cases. In every jurisdiction state and local regulatory agencies with trained investigators have the capability to investigate areas that directly or indirectly bear on economic crime. Unfortunately, many prosecutors unconnected with the project have not been greatly interested in cases developed by investigators from these agencies. Economic crime units within the Project who have extended an open hand to these agencies and have worked with them in assembling prosecutable cases have found a wealth of investigative talent at their disposal. In addition to governmental agencies, a number of private organizations and associations are willing to assist prosecutors. A number of offices in the Project enlisted volunteer students and citizens to process consumer complaints.

"(5) Keeping records and statistics is crucial. Basic records of investigations essentially differentiate the careless businessman from the criminal offender. In larger and medium size offices, case records and statistics are vital to setting prosecutor priorities. Records of results have been instrumental in obtaining funds for economic crime units. Upon review of the prosecutor's budget, many units within the Project have been able to demonstrate that restitution recovered for citizens and the amount of fines recovered for the local government exceeds the total operational budget of the fraud section. Such data has been of unquestionable value in obtaining necessary funding.

"(6) Prosecutors must establish priorities as to types of cases upon which their unit will concentrate. Attempts to prosecute cases without overall direction have usually resulted in a lack of significant impact on their communities. The most successful offices have been those that have fixed priorities and have concentrated their efforts in those areas."

honesty. In many of these cases it was subsequently discovered that other employers had been defrauded, but had failed to report the loss. As a result, the dishonest employee's record remained unblemished.

Although the Committee is sensitive to private sector concerns that reporting the commission of an economic crime may bring opprobrium to the victim, particularly when the victim is a business enterprise, the business community must be equally sensitive to the problem of economic crime's effect on society, and that the failure to report a crime frequently results in further criminal behavior by the perpetrator.

Appendix A

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Appendix B

National District Attorneys Association

Field Offices of Economic Crime Project

Jurisdiction:

Akron, Ohio
Baltimore, Maryland
Baton Rouge, Louisiana
Birmingham, Alabama
Boston, Massachusetts
Brooklyn, New York
Buffalo, New York
Burlington, Vermont
Chicago, Illinois
Clayton, Missouri
Colorado Springs, Colorado
Columbus, Ohio
State of Connecticut
Dallas, Texas
Denver, Colorado
Flint, Michigan
Helena, Montana
Houston, Texas
Jacksonville, Florida
Las Vegas, Nevada
Los Angeles, California
Louisville, Kentucky
Manhattan, New York
Miami, Florida
Milwaukee, Wisconsin
Mineola, New York
Minneapolis, Minnesota
Missoula, Montana
State of New Jersey
New Orleans, Louisiana
Olathe, Kansas
Omaha, Nebraska
Philadelphia, Pennsylvania
Reno, Nevada
Sacramento, California
Salt Lake City, Utah
San Antonio, Texas
San Francisco, California
San Diego, California
Seattle, Washington
Tucson, Arizona
Ventura, California
Washington, D.C.
Waukegan, Illinois
West Palm Beach, Florida
Wheaton, Illinois
White Plains, New York
Wichita, Kansas

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