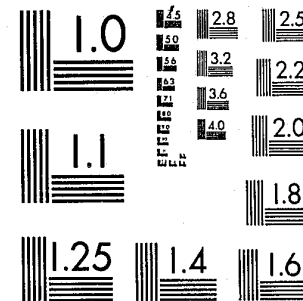


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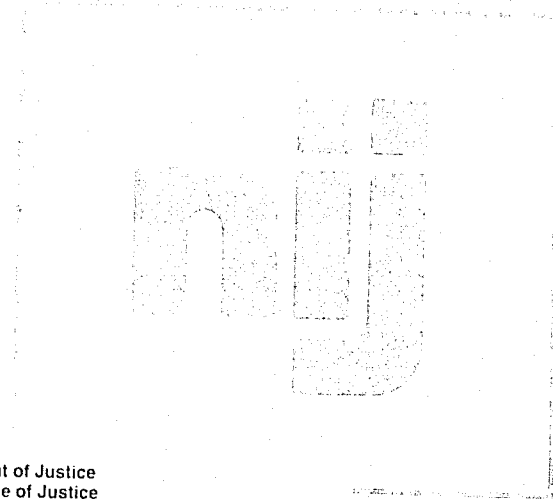
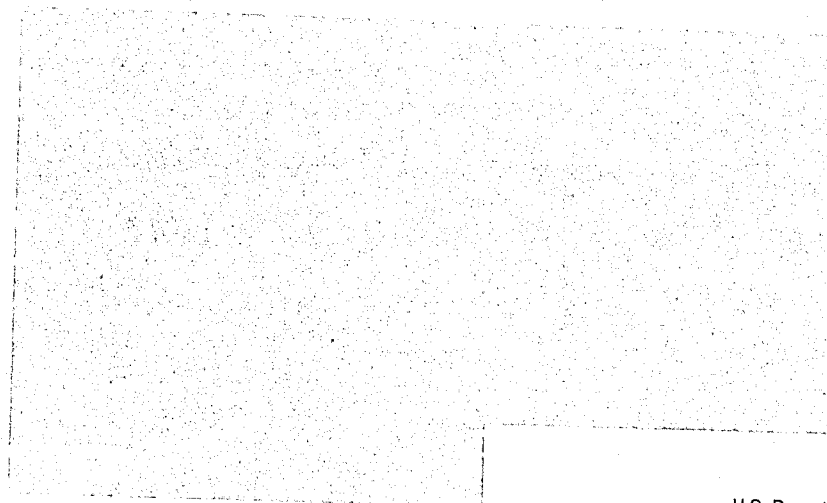
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**Crime and the Abuse of Power:
Offenses and Offenders
Beyond the Reach of Law?**

United States Discussion Paper
for the Sixth United Nations Congress
on the Prevention of Crime
and the Treatment of Offenders

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PREFACE

This paper for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was prepared by Bernard Auchter, Jonathan Katz and Mary Graham of the National Institute of Justice.

The National Institute of Justice is the research funding agency of the United States Department of Justice, and continues to provide support for research on the topic presented: "Crime and the Abuse of Power: Offenses and Offenders Beyond the Reach of the Law?" While these research efforts have been ongoing for a number of years, recent legislation pertaining to the National Institute of Justice includes a specific focus on these problems of white-collar crime and public corruption.

The opinions and views expressed in the paper are those of the contributors and do not necessarily represent the official policies or positions of the U.S. Department of Justice.

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PAPER OF THE UNITED STATES FOR THE SIXTH UNITED NATIONS
CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT
OF OFFENDERS

TOPIC III

Crime and the Abuse of Power: Offenses and Offenders Beyond the
Reach of the Law?

I. INTRODUCTION

Crime and the abuse of power are no longer solely the domestic concerns of individual nations. The problem clearly affects citizens of all countries and challenges the cooperative capabilities of the world community.

By including this topic on the agenda, the United Nations has demonstrated again its foresight and leadership. Increasingly, crime and the abuse of power are transnational as well as domestic in scope, making this United Nations Congress a uniquely appropriate forum for exploration and discussion of the topic. The United States welcomes this opportunity to present a perspective on crime and the abuse of power, to outline some of the key issues as we see them, and to describe briefly our efforts to combat this form of criminal activity.

Abuses of power have an enormous impact on the economic, social and political affairs of a nation. When these abuses are perpetrated on an international scale by criminals, syndicates, cartels or government officials, the repercussions can be devastating to individuals, societies, entire governments and international relations. The United States' commitment to controlling the problem stems in part from our recognition of the serious consequences that flow from abuses of power.

Our emphasis on combatting these crimes is triggered by another concern, one voiced by the United Nations. As noted in the Report of the Interregional Meeting of Experts on the abuse of power, criminology traditionally has focused on the offenses of the disadvantaged. Similarly, there is a widespread perception that the justice system treats white collar and blue collar offenses differently. Our goal is to achieve greater equity in both these areas. We agree with the U.N. that it is "indeed time to focus on the offenses of those who enjoyed often unchecked power which could lead to economic or political abuses or collusion between them." 1

II. ABUSE OF POWER: SOME KEY ISSUES

Responding intelligently to a problem requires first that we understand it. As a prelude to discussing United States efforts to confront and contain the problem, it is useful to detail some issues that are central to understanding the abuse of power. These include:

- the definition of the topic;
- differing terminology and language used to describe abuses of power;
- the nature and impact of these abuses;
- cultural and legal differences among and within nations regarding such crimes;
- the setting in which these abuses occur and societal responses to them.

What do we mean by "abuse of power?" As the term suggests, a simple definition is: misuse of a position of power to take unjust advantage of individuals, organizations, or governments.

An incident involving the abuse of power can be one or several of a very broad range of abuses. It can be a complex international scheme carried out through various legal and illegal means by companies; laundering of illegally-gained currencies by an organized criminal network; or tampering with a country's economic or political structure for personal gain or advantage. The abuse of power also can be a single and simple dishonest transaction such as the sale of worthless securities, bribery of a public official, or a fraud against a government program.

Just as the specific crime may vary so too does the terminology used to describe abuses of power.² Two of the most widely-used terms are white collar crime and economic crime, which distinguish these crimes from common street crimes involving physical force or a threat of force. Other phrases such as organizational and occupational crime, public corruption, organized crime, and governmental and corporate deviance are applied as appropriate.

Whatever the label, the element common to all these crimes is deceit. The person guilty of abuse of power misuses a position of influence, deceives another individual or organization, and captures an unjust gain. The deceitful character of such crimes is reflected in the

working definition of economic crime used by the U.S. Department of Justice:

any non-violent criminal activity which principally involves traditional notions of deceit, deception, concealment, manipulation, breach of trust, subterfuge, or illegal circumvention.

In attempting to understand the nature of these crimes, it is important to keep in mind that abuse of power is not a recent phenomenon. Corruption of public officials and frauds in commercial transactions are alluded to in the Bible. The fact that such abuses have been with us for so long should not make us resigned. But their longevity is another factor to be fully considered in efforts to control these crimes.

Although such acts have been perpetrated for ages, certain aspects of contemporary society create a climate more conducive to economic crimes. The past few decades have witnessed extensive technological and societal changes, including the development of sophisticated computers and communications systems, the growth of multi-national corporations, increasing demand for the products of industry, and expansion of governmental intervention to remedy various social, economic and environmental ills. In this period of rapid change, the more traditional white collar crimes such as consumer fraud, tax evasion and public corruption continue to flourish. At the same time,

new technologies and changing attitudes permit new, and in some cases much more devastating, crimes to occur. The proliferation of computers, for example, has spawned sophisticated criminal techniques that can net their perpetrators far more than a traditional theft. The average loss from a computer-related crime in the U.S. is estimated to be about \$450,000, compared with \$9,000 for the average bank robbery and \$19,000 for embezzlement.

This new breed of criminals may go unnoticed or unpunished for several reasons. Their methods are secretive and elusive. They may have the backing of influential and powerful individuals and organizations. Because violence usually is absent from their scheme, they may when caught argue that no one suffered physical harm. Or, given the extensive media coverage typical of some cases, the criminal may be immortalized for his cleverness.

Victims often are unaware that a crime has occurred. In a price-fixing conspiracy, for example, the individual consumer may pay only a few cents more for a product, but in the aggregate the price-hike may reap millions. Or victims who realize they have been "taken" may be too embarrassed to admit to being swindled. Their silence permits the thief to prey upon others.

The economic impact of these crimes can be enormous--far greater than losses from street crimes. Precise figures are unavailable, and even estimates are difficult to develop. Although different

sources vary greatly in their estimates, the following suggest the magnitude of the impact of white-collar crime. The Senate Judiciary Subcommittee on Antitrust and Monopoly, for example, estimated that faulty goods, monopolistic practices and similar law violations cost consumers billions of dollars annually. One source estimates that a particularly large price-fixing case in the heavy electrical equipment area cost approximately \$2 billion, a sum far greater than the total lost through reported burglaries in the United States in a year.^{3/} In the U.S., crimes against business and consumer frauds have been estimated by another source at \$41 billion annually, with consumer frauds representing half that figure.^{4/}

But the financial costs represent only part of the impact of economic crimes. Physical violence may not be present at the time the crime is committed. In the aftermath, however, individuals may suffer emotional and physical harm. Sickness, injury and even death can result from the pollution of air and water and the sale of unsafe food, drugs, autos, tires, appliances and other products. Arson fires set to collect insurance can cause death and serious injuries. Hazardous working environments that violate safety and health regulations can cause serious injuries or death.

White collar crime also has an impact on the moral climate of a society. As the 1965 President's Commission on Law Enforcement and Administration^{5/} of Justice states:

It is reasonable to assume that prestigious companies that flout the law set an example for other business and influence individuals, particularly young people, to commit other kinds of crime on the grounds that everyone is taking what he can get. If businessmen who are respected as leaders of the community can do such things as break the antitrust laws or rent dilapidated houses to the poor at high rents, it is hard to convince the young that they should be honest.

Similarly, the moral climate of a nation is affected by the conduct of public officials. If those holding high office take bribes, evade income taxes, or misuse public funds--and such events are more than isolated cases--it also is reasonable to assume that citizens may become cynical and may justify their own dishonest behavior, considering these acts minor compared to those they witness through the media.

In short, the powerful in government and business affect the mores of the society just as they influence economic, political and social life. Their impact can be beneficial or it can erode public trust and ultimately weaken cohesion within the society.

Corruption of public officials and white collar crime also are related to organized crime. Bribery is a time-honored method employed by organized syndicates as they strive to maximize

profits in legitimate as well as illegal businesses. As organized criminals take over legitimate firms, they pervert business activities to forms of white collar crime.

Given the scope and complexity of the problem, how can the world community work together to curb such lawlessness? Certainly, attempts to control these crimes are bolstered by our shared concern, as evidenced by meetings such as this one. Realistically, however, we must acknowledge that cultural, political, and legal differences among nations can retard progress in combatting abuses of power. We can be sure that the modern transnational criminal recognizes these differences and exploits them for gain--in such schemes as dumping unsafe and illegal products in a country with fewer legal restrictions; or by hiding illegal gains through such techniques as laundering funds or establishing complex international financial trust arrangements.

Although national differences offer loopholes for white collar criminals, the different laws of individual nations must be respected, of course. Similarly, the differing values and attitudes within cultures--and subcultures--must be recognized and understood if attempts to prevent these abuses are to succeed. A nation, for example, may prohibit a given practice. But the abuse may nonetheless persist because it is traditionally accepted in a particular setting or business. Kickbacks to housing, fire or electrical inspectors are an example. Various consumer fraud tactics also fall within this category.

Consideration of the issues would be incomplete if we failed to deal with the question posed by our topic. Are these offenses "beyond the reach of the law?" The picture is mixed. Some of the abuses cited are crimes in most nations; other acts are sanctioned by some countries but not by others. As a result, some acts equal in seriousness to designated crimes escape sanction because the laws of any one nation do not apply. These offenses and offenders do move "beyond the reach of the law."

The complex world of international trade, of necessity, reflects the laws and standards of participating nations. Practices seen as illegal in one nation may be viewed as acceptable business practice in others. Or one nation may remove a commercial product from the marketplace because it is considered unsafe or toxic. Other nations, where similar standards do not prevail, may continue to permit the product. International cooperation and communication can help in distinguishing between those actions that should be illegal because of their negative impact on the public good and those that reflect national variations in business and trade practices.

Within nations, too, certain abuses may be effectively "beyond the reach of the law" until society as a whole is galvanized. These abuses affect the marketplace and society at large; they are felt by consumers, business and government. Our various institutions--educational, religious, commercial,

health, welfare, justice--can all be victims of fraud and abuse. They also can contribute to environments that may promote or constrain abuses of power. Moral suasion is a potent weapon.

Abuse of power and various white collar crimes will not be prevented simply by a law, an agency, a prosecutor, or a court. Although police enforce the law, citizens are the foundation of a peaceful, democratic society. They are responsible for establishing norms that help control all forms of deviant behavior, whether it be robbery or rape, embezzlement or environmental pollution. An alert and aware public and coordinated policies and actions by major societal institutions are essential, with the justice system appropriately spearheading the attack on such crimes.

In the United States, efforts to prevent and control economic crimes are carried out by all levels of the justice system-- Federal, State and local. These activities include development of statistical systems, research on economic crime, legislation, regulation, investigation, prosecution and sanctioning.

The United States Department of Justice provides national leadership in efforts to stem crime and corruption. In terms of its priorities, the Justice Department is committed to pursuing investigation and prosecutions in four major and interrelated areas: white collar crime, public corruption, narcotics trafficking and organized crime. As Attorney General Benjamin R. Civiletti has emphasized, the Department

will actively seek out areas that need investigation "so that we will be able not only to convict major offenders, but also to prevent future crimes in these key areas." To ensure that planning and policy are based on sound information, the Justice Department is committed to strong data collection, research and demonstration programs, which are carried out by the Bureau of Justice Statistics and National Institute of Justice.

III. A SUMMARY OF EFFORTS IN THE UNITED STATES TO UNDERSTAND AND COMBAT WHITE COLLAR CRIME

A. Understanding the Problem

Useful statistics are a primary concern in developing a sound base of knowledge. Unfortunately, there is no information system for white collar crime comparable to those that exist for street crime: the Uniform Crime Reports and the victimization surveys that provide such data each year in the United States. As a result, many basic questions about cost, impact and trends are difficult to answer accurately. An effort to meet this need is planned by the Bureau of Justice Statistics.

In the meantime, a variety of individual data sources exist that do provide a rich vein of publicly-accessible information about specific aspects of white collar crime. Government agencies responsible for enforcing specific laws or regulating particular practices produce statistical reports on their activities and cases.^{6/} Other relevant information is provided by judicial offices, the media and private organizations.

A solid data base is crucial to understanding the dimensions of economic crime. It is equally important, however, to flesh out the statistical picture with the kind of knowledge generated through research and experimentation. During the past 5 years, the National Institute of Justice has awarded some \$5 million for studies that span the spectrum of economic crime issues. Some are exploratory, providing a framework for further research; others are keyed to a specific crime for which preventive strategies can be drawn. A number of successful efforts have been completed in a variety of white collar crime areas, including corporate crime; computer crime; consumer fraud; organized crime; the regulation, prosecution and sanctioning of white collar crime; fraud and abuse against government programs; corruption in government; and various types of internal theft. The results have been informative and useful, as the following examples show.

A study conducted through the Bureau of Justice Statistics shed light on the American citizen's perspective on the comparative seriousness of various crimes, including a number of white collar crimes.^{7/} White collar crime was not expected to be ranked high on the scale of seriousness, since immediate physical harm may be absent and the impact of the crime often dispersed over many victims. The study revealed the growing public awareness of the impact of white collar crime. Such crimes as bank embezzlement and illegal retail price fixing, for example, were considered

quite serious. Factory pollution of a city's water supply, resulting in only one person's illness, is considered by a sample of the American public to be more than twice as serious as a burglary in which \$100 is stolen from a household. The results of this project can help policymakers, legislators and law enforcers gauge public concern about various crimes--useful information in allocating the limited resources available to fight crime.

Another project analyzed the incidence, characteristics and impact of computer-assisted crimes and developed materials describing the nature and legal implications of such crimes. A handbook for investigators and prosecutors was published to assist them in the detection and prosecution of computer-related crimes.^{8/}

Questionable corporate activities were the focus of an empirical investigation of the 582 largest publicly-owned corporations in the United States. Data included in the study covered all obtainable information about enforcement actions--that is, actions initiated or imposed by 24 Federal agencies during 1975 and 1976. The study focused on manufacturing corporations whose 1975 annual sales ranged from \$300 million to more than \$45 billion. The study also analyzed the methodological problems inherent in studying corporate crime.

Other significant research includes:

A study of fraud and abuse in 15 government benefit programs summarized the state-of-the-art of enforcement of this white collar crime. A related project assessed the types of computer techniques being used to control fraud in government-supported public assistance programs.10/

A sentencing study examined how judges arrived at a sentence in white collar crime cases and their relative reliance on imprisonment, fines and other forms of sanctioning. The judges' conceptions of the goals of sentencing in white collar cases were analyzed.11/

A study of corruption in local government regulatory agencies resulted in recommendations for detection, prevention and enforcement measures to combat this problem.12/ The research also provided information for the development of training workshops on maintaining municipal integrity for municipal officials nationwide.

A study in the related area of organized crime surveyed how investigation and prosecution of these crimes is organized at the State and local level. A report on "racket bureaus," as such units are called, reviews their structure and operation and recommends general operating

standards.13/ In addition to individual studies of this type, comprehensive, long-term research on organized crime is now in the planning stages.

These are just some examples of relevant research; others have been completed or are in progress. All seek to obtain accurate, systematic knowledge that can contribute to development of more effective methods for preventing and controlling economic crime and public corruption. With this foundation, our strategies and tactics will be based on knowledge rather than assumptions.

B. Legislative Developments

A recurring theme in discussions of white collar crime is the difficulty of applying existing criminal laws and prohibitions to the more sophisticated crimes now being committed--crimes in which both the identity of the suspect and the facts of the crime are in doubt. These crimes may involve complex financial transactions or efforts to gain subtle political or competitive advantages from individuals in a position of trust. In some cases the crime is designed expressly to circumvent existing restrictive laws not originally intended to cover such transactions. Specific types of problems generated by inappropriate or inapplicable legislation include: jurisdiction over both the individual and the event; culpability of a specific identifiable individual; identification of the actual

transaction or criminal event; establishment of the requisite amount and form of evidence to prove the crime; and existence of appropriate sanctions that will punish the offender and, ideally, serve as a general deterrent. Legislation alone is never sufficient to solve these problems. Rather it must act as the foundation for a concerted law enforcement effort. In recent years, the United States has undertaken a number of legal initiatives that are intended to supply the necessary authority for increased efforts to combat such problems. These include:

1. Foreign Corrupt Practices Act of 1977

The Foreign Corrupt Practices Act of 1977 ^{14/} represents an attempt by the United States to regulate certain types of corrupt international practices of American citizens and companies. The statute makes illegal any attempt by an organization to corruptly influence foreign government officials or foreign political parties, officials or candidates, in order to obtain or retain business. The law provides penalties up to \$1 million for corporations and \$10,000 and 5 years imprisonment for individuals.^{15/} Additionally, the government is empowered to seek civil injunctive relief against any organization engaged, or about to engage, in an illegal act.

Recognizing the complex and indirect nature of corrupt payments, the law specifically covers the U.S. organization itself, all officers, directors, employees, agents and stockholders, and any third parties acting on its behalf. The foreign officials that may not be corruptly influenced include officers or employees of the foreign government, or any department, agency or instrumentality, or those acting in an official capacity on behalf of the foreign government. Excluded are those foreign employees "whose duties are essentially ministerial or clerical."^{16/}

The law is a first step toward regulating certain corrupt dealings of multinational corporations that in the past have been considered beyond the jurisdictional purview of the firm's home country. At the same time, the United States is sensitive to the legitimate business needs of multinational corporations who obviously must conform to the laws and customs of their host countries. The Department of Justice provides assistance to American individuals and companies by reviewing, at their request, proposed overseas transactions in order to avoid uncertainty under the Foreign Corrupt Practices Act.

The United States also supports efforts to forge a multilateral treaty on illicit payments, as President Carter stressed at the Venice summit. In the summit communique, the participating governments expressed their commitment to work in the United Nations to fashion such an agree-

ment. If that effort falters, the communique stated, then the Venice conferees "will seek to conclude an agreement among our countries, but open to all" with the objective of further strengthening the international trading system.

2. Racketeer Influenced and Corrupt Organizations Act (R.I.C.O.)

In response to long-standing public concern over the problem of organized crime activity and its infiltration of legitimate enterprises, the United States Congress enacted and added as Title IX of the Organized Crime Control Act of 1970, "Racketeer Influenced and Corrupt Organizations," which is referred to as R.I.C.O. The act makes it a specific Federal offense to use or invest income derived from "a pattern of racketeering activity" into any enterprise engaged in interstate or foreign commerce. The law defines racketeering activity to include a wide range of 32 existing state and Federal criminal offenses--from crimes of violence such as murder and kidnapping to extortion, bribery and such specific offenses as unlawful welfare fund payments. Included in this range are the various offenses traditionally considered white collar crimes.^{17/} A "pattern of racketeering activity" is defined as "at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within 10 years (excluding any period

of imprisonment) after the commission of a prior act of racketeering activity."^{18/} Thus, the statute may be appropriate in a wide range of white collar offenses.

In fact, the statute has been used in a number of situations that extend beyond organized crime, with results that demonstrate its effectiveness in combatting white collar crime and political corruption. For example, R.I.C.O. was used to convict an influential state legislator who had been accepting bribes in exchange for placements in state medical and veterinary schools.^{19/} It should be noted, however, that the statute must be used with discretion. If the net is cast too widely, for example, a R.I.C.O. prosecution could entail a complex case whose very intricacy and length may in themselves cast "reasonable doubt" about the merits of the case in the minds of the jury.

R.I.C.O. has two additional provisions of note: civil remedies^{20/} and authorization for general criminal investigations prior to institution of criminal proceedings.^{21/} Under the civil penalties section, the United States may seek court orders requiring divestiture of property or interest, prohibiting future activities of the same type, or ordering dissolution or reorganization of any enterprise. Furthermore any individual injured by the R.I.C.O. violation may initiate a civil action and is eligible to recover triple damages.

The civil investigative demand provision^{22/} is modeled after antitrust legislation and allows a prosecutor to obtain "any documentary materials relevant to a racketeering investigation...prior to the initiation of a civil or criminal proceeding."^{23/} Unlike a subpoena, the civil investigative demand does not entail court supervision.

Penalties for violation of R.I.C.O. are substantial. The maximum fine is \$25,000 and maximum prison term is 20 years. Additionally, those convicted must forfeit any interest "acquired or maintained in violation of section 1962."^{24/}

C. Pending Legislation

1. Federal Criminal Code

Presently undergoing Congressional review is the long-awaited revision of the Federal Criminal Code. The purpose of this revision is to organize, structure, clarify, and update existing Federal criminal laws into one unified body of law. In the course of this massive undertaking, several issues important to white collar crime are being addressed. The Code unifies and improves existing provisions governing fraud and theft; adds new offenses concerning political corruption and endangering life by industrial misconduct; specifically considers the intertwined issues of corporate, employee, and agent responsibility for criminal acts; and improves the sentencing options for white collar crime.

The issue of corporate-agent responsibility is critical to many types of white collar crime prosecutions, particularly regulatory violations, price-fixing frauds, and corruption. Proposed sections 402 and 403 of the Code^{25/} are specifically designed to codify and clarify the extensive body of case law that has developed.^{26/}

Section 402, which pertains to liability of the organization, would hold the organization responsible for conduct of the agent that (1) occurs within the scope of the agent's employment or the agent's actual, implied or apparent authority, and is intended to benefit the organization; or (2) is thereafter ratified or adopted

by the organization. The section also would cover failures "to discharge a specific duty of conduct imposed on an organization by law."^{27/} Section 403 would hold an individual liable for acts he engaged in for an organization "to the same extent as if he engaged in or caused the conduct in his own name or on his own behalf."^{28/}

The substantive improvements in the law governing white collar crime are enhanced by improvements relating to the sentencing of white collar offenders. The maximum fines are substantially increased so that fines will be viewed by the offender as more than just a cost of doing business. Two new sanctions with special application in white collar crime cases are created: an individual or organization convicted of an offense involving fraud or other intentionally deceptive practices may be ordered to give notice of the conviction to the victims of the offense to facilitate recovery of losses, and an individual or organization convicted of almost any Code offense may be ordered to pay restitution to the victims of the offense for bodily injury or for the value of property that was unlawfully obtained, damaged, or destroyed in the course of the offense. The Code also specifically permits an organization to be placed on probation to assure compliance with judicial requirements specified as conditions of probation, and it adds to the specific probation conditions that may be imposed on a convicted defendant

restrictions on the manner of doing business if the restrictions are related to the offense.

2. Federal Computer Systems Protection Act

The impact of computers on crime has grown in recent years, paralleling the dramatic increase in computer usage. Annual losses due to computer crime have been estimated in the millions, although as previously noted exact amounts are difficult to calculate because data are lacking and organizations often are hesitant to reveal victimization. Efforts to confront the problem have been frequently thwarted because existing criminal sanctions are inapplicable. Although some computer-related offenses fit easily into such existing crime categories as larceny, extortion or vandalism, other crimes such as unauthorized accessing of data and destruction of information are perceived as being beyond the scope of traditional criminal definitions. Hence, justice often is frustrated.

To relieve the problem, the United States presently is considering a bill^{30/} that would establish specific offenses of fraud by computer or damage to computers. The language of the legislation is broadly drafted to incorporate any use of a computer for purposes of "(1) devising or executing any scheme or artifice to defraud, or (2) obtaining money, property, or services, for themselves or another, by means of false pretense, representatives or promises."

Penalties under the Act would include a fine of up to twice any gain received or \$50,000, whichever is higher and/or up to 5 years in prison.31/

D. Civil Liberty Constraints

Unlike investigation of crimes of violence, which focus upon identification of the suspect, economic crimes often require that the investigation begin by ascertaining whether a crime has, in fact, occurred. To accomplish this often requires access to documentary evidence and materials maintained by the organization or individual in question (financial records, for example) or by an independent third party such as a bank (as with cancelled checks and account balances) or a telephone company (records of phone calls including dates, time and numbers called), or by the government itself (tax records or descriptions of assets and resources). While indiscriminate law enforcement access to such information at a preliminary stage conflicts with Constitutional safeguards, law enforcement agencies would argue that, without access, it may be impossible to pursue an investigation, or that the necessary documents may be destroyed if access is delayed.

The unique needs of economic and political investigators highlight the continuing tension between law enforcement and individual civil liberties and rights to privacy. The nature of the conflict and the concerns it raises are best demonstrated by the uncertainty in the law today regarding access to such information. On the one hand, bank records and other materials maintained by a third party may be obtained. Yet income tax records generally are not available at a preliminary stage for offenses unrelated to tax laws.

In an analogous area, concern about lack of access to governmental records resulted in passage of the 1967 Freedom of Information Act,³² which established as a general policy public access to governmental records. The act has had a distinct impact on efforts to curb economic crime and the abuse of power. On the one hand, free access to government records has facilitated the public's ability to oversee the governmental decisionmaking process and thus limit the potential for corruption and abuse of power. On the other hand, the ability of suspects (notably organized crime figures) to obtain sensitive government records related to criminal justice is considered by some to have had a negative impact upon the criminal justice community's ability to gather sensitive information and to develop reliable sources of intelligence. These dual and conflicting effects highlight the inevitable tension between civil liberties and effective law enforcement.

E. Federal Efforts

1. Department of Justice

Federal efforts to address the problems of economic crime have steadily increased in recent years. Today, white collar crime is designated as one of the four priority areas of the Department of Justice. Efforts to contain the problem include research (both basic and applied), increased allocation of personnel, and a heavy emphasis on training and development of model programs that can be used by various jurisdictions.

Under our Federal system of government, crime investigation and prosecution is primarily the responsibility of state and local governments. Accordingly, Federal efforts focus on crimes of an interstate or international nature (a category that includes organized crime), crimes related to problems of fraud, waste and abuse in Federally-sponsored social welfare and procurement programs, and crimes involving political corruption. Highlights of current efforts in each area are as follows:

To control interstate economic crime, the Justice Department in 1979 established a special Office of Economic Crime Enforcement within the Department's Criminal Division. Thirteen Economic Crime Field Units exist throughout the country, with another 17 to be established in the near future. With a total staff of 150 prosecutors, the units have authority to establish local prosecution priorities, coordinate efforts with state and local enforcement units, and initiate "quality"

prosecutions. Concurrently, the Federal Bureau of Investigation is reallocating personnel to increase the Bureau's investigative capabilities in white collar crime areas.

To be effective, however, personnel assigned to these areas must be adequately trained. The Attorney General's Advocacy Institute conducts training programs twice a year for staff prosecutors and FBI agents. In addition to addressing emerging legal trends and providing training in finance, accounting and auditing, the sessions serve as a forum for development of a national strategy. The FBI also conducts its own program, which provides introductory and refresher training to its agents in the areas of fraud, financial investigations, and computer-related crime.

The economic crime units are modeled after the Organized Crime Strike Forces, which are part of the Department's Organized Crime and Racketeering Section. Established in 1954, the section coordinates Federal law enforcement activities against syndicated crime, formulates general prosecutive policies, collects and correlates data, initiates and supervises investigations, and provides assistance to all Federal prosecuting attorneys. Over the past 2 years the program has made a substantial impact on some of organized crime's most insidious activities. Prosecutions have been concentrated in areas that are priorities for enforcement in the Department of Justice: infiltration of legitimate business, labor racketeering, official corruption and narcotics. The prosecution and lengthy incarceration of most of the

defendants should immobilize criminal enterprises that have cost Americans millions in overcharges on goods shipped through certain ports, in massive bankruptcy frauds, in truckloads of stolen freight, in lost cigarette tax revenues and in increased construction costs.

Another scheme often perpetrated by organized criminals is "arson for profit," in which buildings are torched to collect insurance on a property. One of the most rapidly growing crimes in the United States, arson exacts a heavy toll. In some cities, entire neighborhoods become the prey of arsonists. People lose their homes--or their jobs if businesses are burned out--and often suffer injury or even death. The impact extends beyond the immediate victims, however, posing economic consequences for the community as a whole. Insurance premiums go up to cover losses inflicted by arson, and higher taxes may be levied to support increased fire and police protection.

To help States and local communities with the threat of arson, the Federal Government provides financial and technical assistance and investigative and prosecutorial expertise. This national strategy for arson control assistance was devised by the Department of Justice in conjunction with the U.S. Fire Administration.

Another major Federal effort is directed at the problem of fraud, waste and abuse in Federally-supported benefit and

procurement programs. These programs total roughly \$250 billion annually. Accurate figures are difficult to derive, but if fraud amounts to even 1 to 10 percent of program expenditures, the extent and critical nature of such abuses are apparent.

A key weapon in countering these crimes was created in 1978 with the passage of the Inspector General Act. The legislation establishes an Office of Inspector General in 12 major government agencies (2 Federal agencies already had such offices). The legislation envisions the independence of Inspectors General and their offices from the agency for which they are responsible.

To coordinate and ensure effective implementation of the Act the President in early 1979 established the Executive Group to Combat Fraud and Waste in Government. The group, under the direction of the Attorney General and chaired by the Deputy Attorney General, includes the 14 Inspectors General and representatives from other major Federal agencies concerned with the problem. The four areas of interest under consideration are: audit and information systems; enforcement and investigation; legislation and Congressional relations; and organization, management, staff and training.

The intent of the program is to support vigorous, innovative and effective efforts to deal with fraud, waste and abuse. One such example is the use of computerized screening to

identify illegal or ineligible recipients of Federal payments. The approach entails two principal techniques. One matches lists of payment recipients with lists of individuals statutorily ineligible to receive such funds. The other technique is predictive and seeks to pinpoint fraud by comparing recipients with a composite profile of "typical fraudulent recipients." This more speculative approach requires extensive correlative data on offenders. Currently, efforts to apply the technique are under way in the health care field, with the emphasis on providers of services.

Another relevant legislative initiative is the 1978 Ethics in Government Act, empowering the Attorney General to appoint a special investigator to consider and pursue allegations of political misconduct or malfeasance. Passage of the law stemmed from the series of abuses referred to as "Watergate," which pointed out the importance of institutionalizing the "special prosecutor" capacity for such cases. The Attorney General has exercised the authority.

In addition, the Department's Public Integrity Section is responsible for investigating public corruption cases on a continuing basis. The Section investigates and prosecutes cases involving public corruption at the Federal, State and local level and entailing a range of abuses. In 1979, for example, the Section obtained convictions against a sitting Congressman, a former Ambassador, a special assistant

to a State Governor, and a former Assistant Director of the United States Bureau of Printing and Engraving, among others. In all, 284 public officials were convicted of offenses during 1979, as well as 252 other involved parties.^{33/} This represents a dramatic increase in prosecution during the past 10 years. As recently as 1970, Department statistics indicated that only 9 Federal officials (35 public officials in toto) were convicted of public corruption-related offenses.^{34/} With continuing high-priority attention and increasing sophistication in prosecutorial techniques, even greater success is anticipated in the near future.

2. Federal Regulatory Agency Efforts

Although the American justice system spearheads the attack on white collar crime, with the regular involvement of various other Executive Departments, the regulatory agencies of the United States also are essential in the effort to control these illegalities.

Since the establishment of the Interstate Commerce Commission in 1887, various regulatory agencies have been created to address particular problems in segments of the economy--the environment, commercial transactions, and public safety. These agencies have regulatory and rule-making authority as delegated by Congress in specific complex areas that require highly technical expertise. In addition to assuring compliance with Congressional mandates through regulation and oversight, each of these agencies has the capacity to

investigate violations of its standards and to pursue appropriate remedies. The results of an investigation are referred to the appropriate regulatory commission and may result in administrative action, civil prosecution, or a referral to the Justice Department for criminal prosecution.

The regulatory agencies have farreaching goals, as can be seen in the following.

- . Environmental Protection Agency: helps protect and enhance the environment today and for future generations to the fullest extent possible under the laws enacted by Congress.
- . Securities and Exchange Commission: provides the fullest possible disclosure to the investing public and works to protect the interests of the public and investors against malpractices in the securities and financial markets.
- . Federal Trade Commission: helps prevent the free enterprise system from being stifled, substantially lessened or fettered by monopoly or restraint on trade, or corrupted by unfair or deceptive trade practices.
- . Consumer Product Safety Commission: aids in protecting the public against unreasonable risks of injury from consumer products.

The degree to which these agencies can achieve such goals depends in part upon their congressionally-approved budgets,

which translate into numbers of staff and level of effort. The industry being regulated also can affect the effort of the agency by bringing pressure to bear on the development of regulations and by the rotation of personnel between industry and agency that regulates it.

Opinion polls indicate strong public support for government-enforced regulations to protect the health of workers, product safety and the environment.^{35/} Despite this, some argue that regulation is an unnecessary interference in the free enterprise system, creates excessive paperwork or is too costly. The pros and cons of regulation will no doubt continue to be debated. At the same time specific regulations that are clearly warranted are developed in the day-to-day open and democratic process of the regulatory agency.

Many of the abuses and violations of law that can be committed in the United States are not violations of criminal laws. Rather, they may be civil or regulatory infractions, or they may represent thoughtless or unwise exercise of power. Nonetheless, their impact may be damaging in terms of lives, injuries and economic harm. Thus, many of the various regulatory activities are important to our overall efforts to prevent and combat various forms of white collar crime and abuses of power.

F. State Efforts

As noted earlier, criminal justice is primarily a State and local responsibility under our Federal system. But the complexity and scope of economic crimes and the attendant interstate and international issues made it difficult for States to respond aggressively to the problem. Among the roadblocks many States encountered were lack of staff resources and expertise, jurisdictional questions (crimes--and suspects--often transcended geographical and political boundaries), and the lack of appropriate State legislation. Many of these obstacles have been minimized in recent years. Increasingly, State and local agencies are expanding their efforts, paralleling in many cases the increasing Federal role.

Impetus for progress has come from several sources, notably the Law Enforcement Assistance Administration (LEAA),* the

* The LEAA program, begun in 1968, will be phased out in 1981. During its life, the LEAA channelled Federal funds to States and localities for a variety of criminal justice improvements. Budget constraints and the dominant role of States and localities in controlling crime dictated the end of massive Federal financial and technical aid, although Federal support for research and statistics will continue. Many of the innovative approaches begun with LEAA funds are expected to be continued at the State and local level.

National Institute of Justice, and the Bureau of Justice Statistics. These offices have supported coordination efforts, technical assistance and information exchange and clearinghouse functions, and developed model programs that have the potential for transfer to various jurisdictions.

An example of efforts to assist local agencies in the LEAA-sponsored Economic Crime Technical Assistance Program, conducted by the National District Attorneys Association. Under this program, district attorneys in approximately 70 jurisdictions have established special units to prosecute economic crime. With Federal funds NDAAs support these offices, providing financial assistance, direct technical assistance and a variety of coordination activities including quarterly meetings of unit chiefs, dissemination of key decisions advancing the law, and collection and distribution of statistics on economic crime based on data submitted by each unit.

Similar efforts also are underway in more narrowly focused areas. For example, 10 State attorneys general presently are planning a combined attack on toxic waste disposal, described by one attorney general as the "environmental issue of the 80's." It is a problem that is difficult to detect, expensive to prosecute and impossible to rectify. Furthermore, it highlights the difficulties that prosecutors face when they attempt individual prosecutions

of major economic crime. The violators are well organized, possibly with organized crime connections. Violations occur across State boundaries; often merely proving that the crime occurred is difficult. If prosecutions are initiated, they are complicated, expensive and require a wide range of expertise in the technical subject involved. Cooperation with other jurisdictions is often essential.

Another example of a coordinated State effort supported by the Federal government is Project Leviticus. This 7-State effort will investigate fraud and fencing connected with coal mine acquisitions and mining and coal transport and distribution. Fifteen law enforcement and regulatory agencies within the 7 States will participate and support the 90-member strike force.

Another example of an innovative joint Federal-State enforcement program is sponsored by the Environmental Protection Agency (E.P.A.). Under this program, 28 States have agreements with the agency to conduct enforcement activities under E.P.A. legislation, with the Agency underwriting costs with a 50 percent subsidy.

These examples of Federal assistance to State activities are by no means an exhaustive review of the extent of State activity to curb economic crime. State efforts are continually expanding. Most important, they are being generated by the States independently of Federal

efforts. Evidence of this trend can be seen in the increased State legislative activity typified by the passage of "little FTC" statutes--fair trade and anti-competitive practices statutes modeled after Federal Trade Commission legislation--in 49 of the 50 States. Antitrust legislation has been enacted in 45 States. The encouraging record and range of State efforts demonstrates the potential for increasing reliance upon State initiative in controlling economic crime.

G. Costs of Addressing the Problem

Along with the growing recognition of the extent of economic crime has come a reckoning of the costs involved in addressing the problem. These include increased costs to government to fight economic crime, increased costs to industry for security and prevention, and increased costs to society as a whole.

For criminal justice, the immediate costs relate to increasing and training staff. It must be stressed again that an adequate response to the complexity of economic crimes requires sophisticated and diversified talents. Knowledge of finance and accounting are key skills. Additionally, however, criminal investigations often require an understanding of computers, both in cases where they have been used to commit a crime and in cases where information critical to the investigation is maintained only in electronic form. In environmental cases, investigators may need experts in chemistry and engineering. Even with outside experts available, however, the law enforcement official must be conversant with the subject if the investigation is to succeed.

A number of successful training programs have been undertaken to provide such skills, as mentioned earlier. Examples include the White Collar Crime Training Program of the Federal Bureau of Investigation, the Economic Crime Technical Assistance program sponsored by the Law Enforcement Assistance Administration, and the Computer Crime Training Program of the Bureau of Justice Statistics.

The acknowledged need for increased personnel is reflected in the creation of special Economic Crime Units in 70 local prosecutors offices around the country. A similar example at the Federal level is the Justice Department's Office of Economic Crime Enforcement with its 13 field units now operating and the additional 17 planned. Extra resources to combat political corruption are available under the permanent authorization to the Attorney General to appoint independent special prosecutors to investigate any allegations of political corruption.

Inherent in the issue of the costs of increasing criminal justice capacity to deal with economic and political crime is another concern, one which relates to the limits of a government's capacity to deal with problems. Just as we must strive to balance the individual's civil liberties and rights to privacy with legitimate law enforcement investigative needs, so must we deal with the competing pressures on ever-scarcer resources.

Changing public attitudes toward the cost of government and its expanding size are significant obstacles to increasing criminal justice budgets and staff. As government and citizens continue to grapple with this issue, it is important to recognize that new legislation to deal with white collar crime cannot be fully exploited unless sufficient staff are available to enforce the laws and prosecute those who flout them.

IV. PROSPECTS FOR THE FUTURE

This review has covered some of the major issues relating the prevention and control of economic crime in the United States. What are the prospects for the future and how can we shape them?

While the United States is in the forefront in research, data systems, legislation and enforcement efforts to contain white collar crime, many problems remain. Continued emphasis on improving prevention, enforcement and prosecution is crucial. In these difficult economic times, such a focus is essential. With limited funds, knowing how to spend wisely permits us to maintain our strong commitment while striving for economies.

Political, social and economic changes and pressures are a fact of life throughout the world. Major changes can be caused by or can offer the opportunity for various abuses of power. As individual nations and as a world community it behooves us to be alert to changing conditions and their possible criminal repercussions: computer crimes, various frauds against governments, thefts of energy supplies or priceless art treasures, international schemes that bilk millions from legitimate organizations, unscrupulous but legitimate corporations that prey on host countries and their consumers, and organized criminal activities -- these and other concerns demand our vigilance.

Internationally, there is the need to share information on common problems and to explore cooperative approaches to combating

transnational crimes. Various reports and papers published by the United Nations have made numerous recommendations--as have United States analyses and documents. These need to be given serious consideration. Meetings such as this one and other United Nations forums provide a much-needed vehicle for discussion and exchange of useful information.

As we plan for the future, we must be candid with ourselves and our publics. Individually and collectively, nations cannot eradicate white collar crime and other abuses of power. We can, however, understand it more deeply, and through greater cooperation, prevent and control it more effectively than we are now doing. Most important, we can work to convince the citizens of our respective countries that such crimes are not solely the province of the justice system. Each citizen needs to understand that white collar crimes and abuses of power exact more than an economic toll. Because these abuses undermine confidence and support in all institutions--both public and private--they erode the foundation of trust that is essential to democratic societies.

Each individual helps shape his or her nation's standards of integrity and adherence to justice. With strong public awareness and support, there is cause for optimism in the long-term battle against crime and the abuse of power.

FOOTNOTES

¹ Report of the Interregional Meeting of Experts on Topic III of the Provisional Agenda of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders: "Crime and the Abuse of Power: Offenses and Offenders Beyond the Reach of the Law?" (New York: United Nations, July 9-13, 1979), page 2.

² When first coined, the term "white collar" crime was more a social than a legal concept. Today, it embodies both ideas. Its definitions vary, focusing on the crime, the perpetrator or the means of committing the crime. In addition to the Department of Justice definition cited in the text, others include:

- a) a crime committed by a person of respectability and high social status in the course of his occupation (Edwin Sutherland in White Collar Crime)
- b) 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 (Herbert Edelhertz in The Nature, Impact and Prosecution of White Collar Crime)
- c) those violations of law to which penalties are attached that involve the use of a violator's position of significant power, influence, or trust in the legitimate economic or political institutional order for the purpose of illegal gain (or involving the protection or enhancement of gain derived from significant institutional position). (Albert Reiss and Albert Biderman in Data Sources on White Collar Law-Breaking)
- d) any non-violent*, illegal activity which principally involves deceit, misrepresentation, concealment, manipulation, breach or trust, subterfuge, or illegal circumvention.

*"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. (American Bar Association in Economic Offenses).

- ³ Clinard, Marshall B., et al., Illegal Corporate Behavior (Washington, D.C.: U.S. Government Printing Office, October 1979), page 16.
- ⁴ Chamber of Commerce of the United States, A Handbook on White Collar Crime: Everyone's Problem, Everyone's Loss (Washington, D.C., 1974), page 6.
- ⁵ The President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (Washington, D.C.: U.S. Government Printing Office, February 1967), page 48.
- ⁶ These reports include various statistical publications and annual reports, such as: Annual Report of the Commissioner, Internal Revenue Service; Tabulation of Data from National Electronic Injury Surveillance System (Consumer Product Safety Commission); Chartbook on Occupational Injuries and Illnesses (Bureau of Labor Statistics); Annual Reports of the regulatory commissions and executive departments; and annual reports of the various department Inspector General offices.
- ⁷ Wolfgang, Marvin. From contract J-LEAA-012-79, awarded to the University of Pennsylvania, Center for Studies in Criminology and Criminal Law.
- ⁸ Parker, Donn; Nycum, Susan; et alia; Computer Crime: Criminal Justice Resource Manual; (Washington, D.C.; U.S. Government Printing Office, November 1979). Prepared under LEAA grant 78-SS-AX-0031.
- ⁹ Clinard, Marshall B., et al., Illegal Corporate Behavior, op. cit.
- ¹⁰ Lange, Andrea G., Fraud and Abuse in Government Benefit Programs (Washington, D.C.: U.S. Government Printing Office, November 1979). Fischel, Michael; and Siegel, Lawrence; Computer-Aided Techniques Against Public Assistance Fraud: A Case Study of the Aid to Families with Dependent Children (AFDC) Program (McLean, Virginia: The Mitre Corporation, January 1980).

- ¹¹ Wheeler, Stanton. From grant 78-NI-AX-0017, awarded to Yale Law School.
- ¹² Lyman, Theodore R.; Fletcher, Thomas W.; and Gardiner, John A.; Prevention, Detection and Correction of Corruption in Local Government (Washington, D.C.: U.S. Government Printing Office, November 1978).
- ¹³ Blakey, G. Robert; Goldstock, Ronald; and Rogovin, Charles H.; Rackets Bureaus: Investigation and Prosecution of Organized Crime (Washington, D.C.: U.S. Government Printing Office, March 1978).
- ¹⁴ 15 USC 78dd
- ¹⁵ 15 USC 78dd-2 (b)(1)
- ¹⁶ 15 USC 78dd-1 (b)
- ¹⁷ 18 USC 1961 (1)
- ¹⁸ 18 USC 1961 (5)
- ¹⁹ United States v. Fineman, 434 F. Supp. 189 (E.D. Pa. 1977).
- ²⁰ 18 USC 1964
- ²¹ 18 USC 1968
- ²² 18 USC 1968
- ²³ 18 USC 1968(a)
- ²⁴ 18 USC 1963(a)
- ²⁵ Senate Bill 1722, as reported, 96th Congress, 2nd Session.

- 26 For a detailed discussion of this subject see Hauptley, Dennis; and Riley, Nancy: "The Proposed Federal Criminal Code and White-Collar Crime;" 47 G.W. Law Review 523; (March 1979).
- 27 Section 402, S. 1722, as reported
- 28 Section 403(a), S. 1722, as reported
- 29 Section 403(c), S. 1733, as reported
- 30 Senate Bill 240, 96th Congress
- 31 Section 1028(a), Senate Bill 240
- 32 5 USC 552
- 33 Report to Congress on the Activities and Operations of the Public Integrity Section for 1979; submitted by the U.S. Department of Justice, February, 1980.
- 34 ibid.
- 35 Clinard, Marshall B., et al., Illegal Corporate Behavior, op.cit., p. 37.

END