

Testimony of
The Honorable Michael Chertoff

July 10, 2002

INTRODUCTION

Chairman Biden, Senator Grassley, and Members of the Subcommittee:

We thank you for the invitation and very much welcome the opportunity to appear before this Subcommittee today to discuss what this Administration has done, is doing, and intends to do to detect, punish and ultimately deter white collar crime.

Just yesterday, President Bush called for a new ethic of corporate responsibility. Although most businesspeople play by the rules, some do not, and we are now seeing the serious damage to people's trust and confidence in our economy that this type of wrongdoing fosters. The President's initiative gives prosecutors important new weapons in the fight against white-collar crime and, as noted below, establishes a new Corporate Fraud Task Force within the Department of Justice. As you know, we have not hesitated to proceed with criminal cases against corporate executives, accountants, and others who have abused their positions of trust and authority for personal gain or for other improper purposes by breaking the existing laws. Some have called us too aggressive, but those voices seem to be growing more faint as ever more egregious business practices are exposed to public scrutiny. We are proud of the work we have done, and continue to do, both here in Washington and at the many United States Attorney's offices around the country where Justice Department prosecutors are going after corporate criminals every day. We have made considerable progress, but we have much yet to do.

In the meantime, this Administration has sent a very clear message: that fraud, obstruction of justice, and other types of criminal activity in the business world will not go unpunished or receive merely a slap on the wrist, a nominal fine, and an admonition to "go forth and sin no more." To the contrary, robust enforcement of the law gives people both on Wall Street and Main Street confidence that the financial marketplace, and our economy in general, will continue to operate under principles of honesty, integrity, and trust. This message is one that most honest, hardworking people in the business community have welcomed, and it is one that we hope will give the American people a renewed faith in both our economic system and in our criminal justice system.

Strong enforcement of our laws against white collar crime, and tough penalties for those who commit such crimes, has been this Administration's policy, and these principles form the cornerstones of the President's proposal. We believe that strong enforcement and tough penalties are especially important in the context of white collar crimes, because business criminals act with calculation rather than in a fit of anger or compulsion. Because white collar criminals act more rationally than most other criminals, they can more easily be deterred. In our experience, one thing is crystal clear: businessmen and women want to avoid jail at any cost. If their calculus includes a reasonable likelihood that they will be caught, and if caught, a reasonable likelihood that they will go to jail rather than get probation, home detention, or some other "alternative to incarceration," they will be much less willing to roll the dice and commit a fraud. Of course, white collar criminals also count on their misdeeds being difficult both to detect in the first

instance and ultimately to prove in court beyond a reasonable doubt. Indeed, white collar cases are generally very complex, and take considerable time and resources to investigate and litigate. For that reason, it is all the more important that corporate criminals realize that meaningful punishment lies at the end of the road to conviction.

The President's Proposal: A New Ethic of Corporate Responsibility

The President's proposals would both increase the ability of federal agents and prosecutors to catch these types of criminals, and would stiffen the penalties for white collar offenders when they are convicted. Let me highlight some specific reforms, focusing on those most pertinent to federal criminal enforcement:

The Corporate Fraud Task Force

As noted previously, the President has ordered the Attorney General to form a Corporate Fraud Task Force within the Justice Department in order to strengthen the efforts of the federal government in its investigation and prosecution of financial crimes. The Task Force will provide direction for the investigation and prosecution of white collar crimes, including significant cases of securities fraud, accounting fraud, and other financial and white-collar crimes. The Task Force will actively work to improve cooperation among other federal agencies and state authorities, and recommend policy and legislative changes as appropriate. We believe that this Task Force will significantly enhance the Department's existing ability to tackle those increasingly common cases that involve large, complex businesses where questionable practices, transactions or other activities are nationwide or even international in scope. The Deputy Attorney General will chair this Task Force. The Assistant Attorneys General for the Criminal and Tax Divisions will be members. The other members will include the FBI Director and U.S. Attorneys from major financial centers, including New York, Chicago, San Francisco, Los Angeles, and Houston.

Increased White Collar Penalties, Including Prison Sentences

As U.S. Attorney James Comey of the Southern District of New York told this Subcommittee last month, this Administration recognizes that the swift and certain punishment of financial crimes is vital, both to the prosperity of the United States and to people's faith in the criminal justice system the greater social life. We have attached a copy of Mr. Comey's statement for your reference. For this reason, another cornerstone of the President's proposal is an increase in the available penalties for mail fraud and wire fraud -- two statutes that govern basic forms of white collar crime. Too often the public perception has been that we do not punish people who commit business-related crimes receive punishment not based on the gravity of their offense, but according to their social or economic stature. In some cases we think that those concerns have been warranted. Not only are the maximum statutory penalties for fraud and other white collar-type offenses substantially less overall than those for violent offenders or drug cases, but it appears that judges in some jurisdictions are overly willing to depart downward from the mandated federal sentencing guideline range to sentence such offenders to minimal (if any) jail time, home detention, or even probation.

We strongly disagree with this kind of lenient treatment for white collar criminals. The bottom line is that white collar criminals are just as much criminals as those who steal with a gun or knife. They do real harm to real people. They ruin lives. Jail time performs two functions: it holds white collar criminals accountable for their past misdeeds, and it prevents future misbehavior by those executives who might toy with the idea of beating the system. Greed will ultimately overcome reason in some cases - after all, no criminal ever starts out with the intention of getting caught -- but deterrence always works best at the margins of criminal

behavior. The President believes in making the penalties for white collar crime tougher and especially in making real jail time more meaningful in business cases.

Enhanced Investigative Tools

The Administration's proposal also recognizes the considerable challenges that regulators, investigators and prosecutors face in detecting white collar crimes and preparing these cases for trial. Many, if not most, white collar crimes initially appear to be normal business transactions. Indeed, most of the names in the headlines in recent months have been those of legitimate, well-regarded corporations. The smart corporate criminal will conduct his affairs in a manner that seems perfectly above-board and legitimate. Like termites infesting a house, everything appears fine until the first shingle is pried loose. Then the task becomes even more difficult - assessing the extent of the activity, determining who was responsible, and preparing a case for indictment and trial. Here, too, the nature of the beast works against us - the very essence of these crimes is deception, conspiracy, and coverup.

Thus, the President's proposal would give us an important new tool to fight obstruction of justice, particularly document shredding. As some courts have interpreted one of the current statutes, the government can only charge someone for persuading others to engage in obstruction of an anticipated official proceeding; if a person acts alone, no matter how egregiously, he or she cannot be prosecuted unless a proceeding has actually begun. The President has asked Congress to amend a different obstruction of justice statute - not subject these court-imposed limitations - to clarify unambiguously the government's ability to prosecute all individuals involved in obstructing justice in these circumstances.

White Collar Enforcement

As we mentioned before, this Administration is rightly proud of its record of vigorous enforcement of the laws against white collar criminals. We are sure the Subcommittee will understand that we are precluded from discussing pending cases in detail, and of course we cannot reveal information about any investigations which have not been publicly acknowledged by the Department. However, we are currently pursuing several investigations involving major corporations, as well as indictments and trials. We would like briefly to describe a few:

? WorldCom: The Department is reviewing the facts behind WorldCom's June 25 disclosure that it had improperly accounted for \$3.9 billion in expenses. The SEC has formally charged WorldCom with defrauding investors.

? Enron: In January, the Department set up a Task Force to investigate the circumstances behind the collapse of Enron Corp. The Task Force is led by Leslie Caldwell, an experienced federal prosecutor from the San Francisco U.S. Attorney's Office. The investigation has so far led to the conviction of Arthur Andersen in June, and the filing of wire fraud charges on June 27 against three British bankers who engaged in transactions with Enron officials. The Enron Task Force's investigation is active and ongoing.

? Arthur Andersen: On June 15, a federal jury in Houston convicted the accounting firm Arthur Andersen LLP of obstruction of justice, in a case arising out of the Enron investigation. The indictment charged, and the jury found, that Andersen obstructed an SEC investigation into the Enron collapse. David Duncan, the Global Managing Partner at Andersen in charge of the Enron Engagement Team, pled guilty to obstruction of justice in April.

? AllFirst: On June 5, the U.S. Attorney for Maryland announced a seven-count indictment against a former AllFirst Bank currency trader, alleging bank fraud and making a false entry in bank records which resulted in the bank's losing more than \$691 million.

? ImClone: The U.S. Attorney in Manhattan is investigating allegations of insider trading with

regard to ImClone Systems, Inc. Former ImClone Chief Executive Samuel Waksal was charged in June with insider trading for allegedly tipping off other investors about the FDA's pending rejection of the company's application for approval of a cancer drug.

? Rite Aid: On June 21, the U.S. Attorney for the Middle District of Pennsylvania announced criminal charges including mail and wire fraud against five former and current officers of Rite Aid Corporation, the drug chain. One defendant has pled guilty. The charges involve an accounting scheme that led to a \$1.6 billion restatement of income, one of the largest in U.S. history.

? Republic Securities Corp.: In December 2001, Republic entered a guilty plea in the Southern District of New York to securities fraud and conspiracy, and agreed to pay \$606 million in restitution to victims of the fraud. A Republic trader, Martin Armstrong, was indicted in 1999, and those charges are still pending.

Conclusion

In closing, we thank you, Mr. Chairman, Senator Grassley, and the Subcommittee, for your leadership and the spirit of bipartisan cooperation that you have brought to addressing the challenges of rooting out, punishing, and preventing white collar crime. The President's proposals in this area will greatly enhance the Department's ability to enforce fraud, obstruction, and other important statutes, and ensure that criminals who operate in the business community face stiff penalties which include jail time. We look forward to working with you as we enforce the laws and encourage a new ethic of corporate responsibility in this country.

Mr. Chairman, that concludes our prepared remarks. We would be glad to answer any questions the Subcommittee may have.