Criminal Division

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***REMARKS TO THE**
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*Mr. Wray frequently speaks from notes and may depart from the speech as prepared.

Thank you for that kind introduction and for the invitation to be here. This is an exciting time to be engaged in the fight against corporate fraud – a fight in which we're making great progress and that's so important to the country on so many levels.

I thought I'd take my allotted time to talk with you about the President's Corporate Fraud Task Force, what it is, what it does, and so on. I'd also like to talk about how the Government's approach to criminal investigations of corporations has evolved since the announcement of the President's Corporate Fraud Initiative only two years ago. In particular, I want to focus on two closely related issues: the increased importance we're placing on companies cooperating with government investigations, and how we evaluate the authenticity of that cooperation, areas in which we're seeing encouraging developments. I also want to offer you some quick observations about three other areas we're trying to give renewed emphasis: aggressive response to efforts to obstruct criminal or administrative investigations; greater attention to the complicity of professionals (accountants and lawyers, for example) where appropriate; and vigorous pursuit of financial investigations, asset forfeiture, and the like.

The President's Corporate Fraud Task Force

Just over two years ago, in establishing the Corporate Fraud Task Force, President Bush energetically called on its members to clean up corruption in the board room, restore investor confidence in our financial markets, and send a loud and clear message that corporate wrongdoing won't be tolerated. From the Enron scandal that surfaced in late 2001, through the WorldCom and Adelphia prosecutions announced in the summer of 2002, a series of high-profile acts of deception in corporate America had shaken the public's trust in corporations, the financial markets, and the economy. A few dishonest individuals hurt the reputations of many honest companies and executives. They hurt workers who had committed their lives to building the companies that hired them. They hurt investors and retirees, who had entrusted their savings and their faith in the companies' promises of growth and integrity.

The Corporate Fraud Task Force was a response to this crisis of confidence. The Task Force is chaired by the Deputy Attorney General, and, in addition to me and the head of the Department's Tax Division, includes several key U.S. Attorneys as members. It also includes a whole slew of law enforcement and regulatory agencies, including the FBI, the Postal Inspection Service, the SEC, the CFTC, the IRS, the Department of Labor, and quite a few others. At the leadership level, we

meet periodically in D.C., mapping out strategy, best practices, ways to leverage each other's resources and expertise, and so on. At the working level, of course, our offices are in daily contact with each other on individual matters.

By marshaling the enormous resources of those agencies, we've been able to conduct thorough but swift investigations – what we've been calling "real-time enforcement" – in even the most sophisticated cases. In this way, we've met the President's charge: We're cleaning up board rooms, we're sending the loud message that corporate wrongdoing won't be tolerated, and importantly, the confidence of the American public in our financial markets is returning.

Successes of the Task Force's First Two Years

Since the Task Force's start through June 30 of this year, Justice Department prosecutors, working hand-in-hand with regulatory Task Force members and criminal investigators from the FBI, the IRS, and the U.S. Postal Inspection Service have:

(1) Obtained over 500 corporate fraud convictions – up from 250 at this time last year; and
(2) Charged over 900 defendants – and over 60 corporate CEOs and presidents – with some type of corporate fraud crime in connection with over 400 charged cases.

In the Enron matter alone, the hard-working members of our Enron Task Force have charged 32 defendants, including the former Chief Accounting Officer, Rick Causey, the former Chief Financial Officer, Andy Fastow, the former CEO, Jeff Skilling, and most recently the former Chairman, Ken Lay, along with a bevy of other former Enron executives. We've also seized a whopping $161 million plus for the benefit of victims of the Enron frauds.

During the Task Force's second year, our prosecutors began to try a number of the high-profile cases, winning important convictions in the Adelphia, Craig Consumer Electronics, Dynegy, Martha Stewart, Frank Quattrone, Unify, Graham-Field Health Products, and U.S. Technologies matters.

On the civil enforcement side, the SEC obtained a $2.25 billion penalty, the largest in SEC history, against WorldCom, and settled significant financial fraud, reporting, and disclosure cases with companies including Gemstar-TV Guide International, Lucent Technologies, and Vivendi Universal. The SEC also brought and settled significant cases against mutual funds and their executives, financial

services providers, and brokers for alleged fraudulent conduct relating to market timing and late trading in fund shares.

These kinds of successes reflect how much better government agencies are getting at coordinating appropriately but aggressively and effectively. Coordination is more than just a way to keep from tripping over each other; it ensures priority and focus and maximizes our combined impact.

"Real-Time Enforcement"

A major benefit of this aggressive, team-oriented approach is the ability to conduct "real-time enforcement" – in other words, getting and punishing the bad guys promptly after they commit their crimes. Simply put, speed matters in corporate fraud investigations. The days of three-, four-, or five-year investigations, of agreement after agreement tolling the statute of limitations – while ill-gotten gains are frittered away and investor confidence sinks – need to be as much as possible a thing of the past.

One of our principal aims in these cases is to disgorge ill-gotten gains from the guilty parties and restore them to investors and other victims, before they can be dissipated or stashed in some offshore account. Where executives have committed fraud, protecting the corporation and the public often requires quick action to remove wrongdoers from their positions so they can't run the company further into the ground. Sophisticated financial crimes take a long time to investigate thoroughly, but the public simply can't wait years for law enforcement to take action. A rapid, real-time response to allegations of fraud is critical to maintaining confidence in the markets and the economy as a whole.

Working together, Task Force members have demonstrated our commitment to taking decisive but swift action against corporate fraud. As a guy who's seen these sorts of investigations from both the line prosecutor and defense attorney sides of the table, I can tell you – and those of you who've been working in this field for a long time can attest – that the impact of this commitment has been truly dramatic, when compared to the fairly recent past: Criminal charges are often now brought months, instead of years, after investigations begin.

Our new strategy of "segmenting" investigations is a perfect illustration of this major shift. Because these cases are so complicated, we could easily spend years investigating them. But we don't have years to assemble the "perfect" case, where every possible defendant and all wrongdoing are compiled into a single mother-of-all indictments or enforcement action. Rather, agents and prosecutors

should be working to take action as swiftly as the evidence will allow. This is one example of "real-time enforcement" in action: identifying distinct cases, which may comprise separate segments of conduct involved in a larger investigation, and bringing them as soon as they're ready and as quickly as possible. Folks start recognizing that we're serious, that we're moving, that we're on the offensive. People who need to be brought to justice find it harder to play the waiting games of the past; people start "flipping" and helping to advance our investigations more quickly and in new directions; it creates a "snowballing" effect, as we build momentum – a promising momentum for the victims and an ominous one for the bad guys.

For example, in the Enron investigation, we've systematically unraveled the most complicated corporate scandal in history. As I mentioned earlier, 32 defendants have been charged so far – but not, as might have occurred a few years ago, in one enormous case. We peeled off the Arthur Andersen firm and quickly tried and convicted it in a one-count conspiracy case. A whole bunch of Enron executives, including the CFO, have already pled guilty to participating in parts of the massive fraud that destroyed the company. That step-by-step approach led to the indictments of Skilling and Lay earlier this year. Although the investigation has been going on for about two years now – and remains active and ongoing – those kinds of results are lightning-fast compared to the way such investigations used to proceed.

In the case of Adelphia, one of the country's largest cable operators, investigators began looking into allegations of accounting fraud in April 2002, just days after the allegations first surfaced. They quickly uncovered a management scheme to deceive the public about the company's performance. Within only four months, from April to July, the CEO and four other top executives were in handcuffs. And the CEO and CFO were convicted this past July.

In the WorldCom investigation, the SEC filed its civil enforcement action the day after WorldCom revealed its improper accounting for billions in expenses. Prosecutors immediately began an intensive criminal investigation. Although it soon became clear that accounting irregularities extended to many aspects of WorldCom's financial reporting, the prosecutors stayed focused on the problems that appeared most likely to support criminal charges, and charged the CFO and Controller just five weeks after the revelation of fraud. The CFO pled guilty and agreed to cooperate with the Government. That cooperation helped secure the indictment of the CEO himself, Bernie Ebbers, who's now awaiting trial.

In the HealthSouth investigation, within the first seven months alone, the Department had charged 16 people – including 3 of its former CFOs and the CEO and Chairman himself, Richard Scrushy. Fourteen of them pled guilty in that same stretch.

These "real-time enforcement" successes, and many others like them, wouldn't be possible without the powerful combination of resources and expertise that the Corporate Fraud Task Force brings. And we're encouraged that confidence in corporate America seems to be returning and the economy recovering.

Expecting Corporate Cooperation

To conduct these complex investigations quickly and thoroughly, we've simply got to secure the companies' true cooperation, where appropriate. There will be instances where we choose to prosecute only the guilty employees and executives, but there will also be those where we seriously consider prosecuting the company itself. The message we're sending to Corporate America on this point is two-fold: Number one, you'll get a lot of credit if you cooperate, and that credit will sometimes make the difference between life and death for a corporation. Number two, if you want to ensure that credit, your cooperation needs to be authentic: you have to get all the way on board and do your best to assist the Government. These messages seem to be getting through.

On the one hand, that doesn't mean we automatically prosecute companies that don't cooperate. And on the other hand, in some rare cases, the conduct may be so outrageous that no amount of cooperation will persuade us not to bring criminal charges. But in most cases, cooperation is an extremely important factor, and getting credit for that cooperation can make a huge difference in our charging decision.

What I find especially encouraging – and a credit to a number of companies and their executives – is that we are, in fact, seeing more and more cooperation. Maybe more companies recognize the resources we've devoted to corporate fraud and understand that we mean business. Maybe more companies see that when we talk about "real-time enforcement," we expect these cases to be investigated and prosecuted in weeks or months instead of years. Maybe they realize that adopting a new ethical standard is really in everyone's long-term economic interest. Whatever the reason, those companies that have actually weathered a corporate crisis are almost invariably the ones that have shown that they understand cooperation means a lot more than doing the bare minimum necessary to comply with our subpoenas.

Those companies are raising the bar. They want to make sure they get appropriate credit for cooperation, and they're working hard to demonstrate their commitment to it. In other words, they're not just looking for a passing grade, they're shooting for an A+. The companies who are ringing up the most credit for cooperation are being proactive. They call us, rather than waiting for us to call them. All too often, management decides to lay low and hope the crisis will blow over. But when the company sits quietly instead of coming forward to offer assistance, it's not only a red flag that something may be seriously wrong at the corporation, it also makes it less likely that the company will get credit for prompt cooperation. In contrast, a company that steps up and initiates a dialogue makes a good first impression, and that may inevitably color our assessment of the other factors.

I wanted to mention some examples because they show, I think, some of the concrete and innovative ways that companies are coming up with to show they're serious about cooperation. Now, there's no magic formula. And let me be clear: None of the examples I'm going to mention is either a requirement on one extreme or a safe harbor on the other:

A growing number of companies have made witnesses available whenever and wherever we want to interview them, without subpoenas. That's important, because it helps us investigate more quickly and more efficiently.

A number of companies have taken swift disciplinary action, not only by replacing managers who are accountable for the underlying problems, but by terminating employees who refuse to cooperate with the investigation. That kind of decisive action is a strong reflection of the corporation's culture.

Many companies have turned over interview memoranda and other materials generated in their internal investigations, notwithstanding any claim of privilege they might have.

- Now, I want to pause for a second to be very clear on this point because I hear a lot of grumbling and misunderstanding from the defense bar on this: Waiving the privilege is not a requirement or a litmus test for cooperation. But it's a very valuable and helpful action by the company that goes a long way toward persuading us that its cooperation is authentic. It's a big step, and we try to credit it as one.

Companies have directed professionals working for them, including outside auditors and counsel, to meet with the Government and give us prompt access to their workpapers and other records.

In some cases, companies have postponed or adjusted their internal investigations to suit our needs. Instead of working at cross-purposes, companies are coordinating with us to contribute their own resources to the investigation in the most efficient way. That type of coordination can be critical – for example, it may be important to avoid creating additional statements from cooperators or other potential trial witnesses.

Several companies have agreed to retain attorneys and accountants of our choice to evaluate their business practices, and have agreed to accept the recommendations of those professionals. That kind of commitment can produce real and substantial reform in a corporation with a culture problem.

In a few particularly dramatic cases, the company's most senior management has actually worked directly and regularly with the prosecutors and agents handling the investigation, and directed the appropriate employees to get them whatever information they need on pain of being terminated. Needless to say, that kind of personal involvement of senior management can be a very impressive demonstration of a company's commitment to cooperation, and can send a powerful message throughout the company.

Other companies talk the talk, but don't really walk the walk. Companies that find themselves under investigation almost always tell us – and invariably tell the public – that they're "cooperating." We're now taking a harder look at whether the company is really cooperating with our investigation, or just paying lip service to doing so. When a corporation acts responsibly – and promptly – to help us, it can make an enormous contribution to the fair and speedy resolution of the investigation. All too often, though, the company's actions, even if they don't amount to downright obstruction, can delay and impede the investigation.

And cooperation means a heck of a lot more than not obstructing. If a company wants its cooperation recognized by the government, wants it reflected in our prosecutorial decisions – if a company doesn't want its public claims of cooperation to run the risk of being badly undermined by how we proceed – then they'll take more and more pages out of some of these other companies' playbooks.

The Sarbanes-Oxley legislation was an important component of the response to corporate fraud. But instead of relying only on new rules, we've responded with the massive and rapid enforcement effort that I've described. When you stop and think about it, good corporate citizens should welcome our enforcement-based approach because – unlike regulation – it targets the bad apples, not the whole barrel. Our efforts also help shore up confidence in the markets. By continuing to work with the Government to develop innovative ways to police themselves, companies can tamp down the call for even more stringent regulation and improve their own financial prospects by helping to restore confidence in our markets.

Assuring integrity in American business can't be done by the Government alone. We don't have enough agents and prosecutors to single-handedly eradicate all corporate fraud. So, we're grateful for and encourage the efforts of many in corporate America, including many in this room, to set higher ethical standards, to help identify corporate wrongdoers, and to protect shareholders' interests. We recognize that having a company's significant resources – hordes of lawyers, paralegals, analysts, and the like – working *for* us can serve as a force multiplier, breaking a case wide open very quickly, helping us to go after more of the culpable individuals and hopefully recover some of the proceeds of the fraud. Conversely, having those same formidable corporate resources working *against* us can be a distraction and drain on our own resources. And even if we ultimately get to the bottom of the facts, the company's failure to cooperate can seriously delay our investigation.

Alternative Resolutions

Just as companies can demonstrate good faith and true cooperation in a wide range of ways, we're encouraging prosecutors to develop flexible and innovative approaches to ensure that companies accept responsibility and cooperate with us. In certain cases, an alternative resolution, like a deferred prosecution or a nonprosecution agreement, can strike that balance.

One option we've used in several recent cases is the deferred prosecution agreement, which is sometimes referred to as pretrial diversion. The basic mechanics are that we go ahead and file charges, but agree to defer the prosecution for a period of time, which might be a year, two years or even longer. In return, the defendant company typically agrees to cooperate fully, and makes a public statement admitting the essential facts of its misconduct. It also typically makes a payment, which can be structured as a fine, restitution, forfeiture, or some other category. We can also require the company to take any number of remedial actions to make sure the conduct doesn't happen in the future. If the company complies

with the agreement, the charges are dismissed at the end of the term. If not, we proceed to trial, then armed with the company's admission, and all the evidence obtained from its cooperation. In other words, if the company violates the agreement, it's really a foregone conclusion that it will be convicted.

The DP structure has many of the same benefits as a conviction. In terms of remedies, anything that the judge could impose under the organizational sentencing guidelines can be required under a DP agreement. Now, the DP won't result in a criminal conviction if the defendant company complies with the agreement, but filing charges sends a message to the public that condemns the company's conduct.

Last year, the Criminal Division's Fraud Section entered into a DP agreement with PNC Financial, the 7th largest bank holding company in the U.S. PNC, through a subsidiary, had engaged in some bogus off-balance-sheet transactions that shifted $762 million in troubled loans off of its books. We filed a criminal complaint charging the subsidiary with conspiracy to commit securities fraud. Simultaneously, we entered into DP agreements with both the parent and the sub. We negotiated a very detailed statement of facts in which PNC admitted the underlying conduct, and that statement was filed with the court. One of the terms of the agreement is that PNC cannot contradict that statement in any way. On the monetary side, PNC was required to pay a total of $115 million in restitution and penalties. It's also required to cooperate completely with the continuing investigation. Among other things, PNC agreed not to assert any privilege over the results of its internal investigation. At the end of 12 months, so long as the Government is satisfied that PNC has complied with the agreement, we'll move to dismiss the complaint.

In other cases, we've used nonprosecution agreements with cooperating companies. Unlike the DP agreement, the nonpros doesn't involve the filing of an actual charging instrument. We would still typically require the company to make a written statement admitting its conduct. We still have enormous leverage over the company, because we reserve the right to prosecute it if it fails to comply with the agreement. And we can still include virtually any combination of payments and remedial measures in a nonpros, just as you can with a DP.

In the Enron investigation, we entered into nonpros agreements with two financial institutions, Merrill Lynch and CIBC, a large Canadian bank, both of which had facilitated fraudulent transactions involving Enron. In those cases, the banks cooperated quickly and fully, and agreed to some very substantial and innovative remedial measures. They also agreed to make public statements admitting their roles in the Enron meltdown. Getting cooperation like that has been

a huge help in moving as quickly and extensively as we have in that case – charging more than 30 major executives, including virtually all of Enron's top leadership, in about two years.

Those kinds of alternative resolutions will sometimes make a lot of sense – in the right investigation, where the company has responded particularly responsively. But in other cases, despite our emphasis on cooperation, we will insist on an outright guilty plea by the company. For example, in the Guidant investigation, the Northern District of California required the company to plead guilty as part of the cooperation agreement. And, of course, companies need to understand that we will not hesitate to indict and vigorously pursue companies themselves, not just their executives, where it's warranted. This past April, for example, we indicted not only four officers but Reliant Energy Services itself, in investigations into the manipulation of the California energy markets.

Obstruction of Justice

Just as we're looking harder at the extent of a company's cooperation, we're also taking obstructive conduct more seriously, and not just in our own investigations. Folks who lie in SEC depositions or obstruct SEC investigations should know that we won't hesitate to prosecute them. The SEC does tremendous work in this area, and compliance with their investigations is important to all of us, especially as we coordinate more and more with each other and benefit on the criminal side more and more from that coordination. People who obstruct the SEC are hiding the truth from all the members of the Corporate Fraud Task Force. The point is the same – lying to government investigators, obstructing our investigations, should be understood as one of the surest paths to severe consequences. That message should be coming through loud and clear with the convictions of Martha Stewart and First Boston's Frank Quattrone in New York, and, of course, the conviction of the Arthur Andersen firm in the Enron investigation.

And executives don't have to lie directly to a government agency in order to be prosecuted for obstruction. In 2002, the FBI and the SEC began investigating the accounting practices at Computer Associates, a huge software company. In response, Computer Associates publicly promised to cooperate with the government and hired a law firm to conduct an internal investigation.

As part of the investigation, the attorneys interviewed various executives of the company. During the interviews, three executives lied by denying they had used improper accounting practices to meet earnings estimates. The company later

waived all privileges and provided the results of the internal investigation to federal investigators. As a result, the executives' false statements to their company's attorneys were passed on to the government.

Although there was no allegation that the executives had lied directly to federal investigators or a grand jury, the Brooklyn U.S. Attorney's Office charged them with obstruction of justice. Typically, obstruction charges punish conduct like document destruction or witness tampering. In this case, the Government accused the executives of trying to obstruct the investigation by misleading the company's lawyers. According to the charges, the executives knew full well that their statements would be passed on to federal investigators, yet they repeatedly and intentionally lied about the improper accounting practices to the attorneys conducting the internal investigation. Last April, each of the three executives pled guilty to obstructing justice and securities fraud. Two face up to 10 years in prison; the third could be jailed as long as 20 years.

These investigations are already hard enough – we simply cannot allow companies or executives to make them even harder by obstructing. When that happens, we will respond swiftly and severely.

The Role of Professionals

As the Arthur Andersen prosecution illustrates, some of the people obstructing investigations or even committing the underlying criminal conduct, will be professionals – accountants, investment bankers, and lawyers. These folks cannot be off-limits to our investigations. Among the six top executives convicted in the Rite-Aid case in Pennsylvania, for example, was the company's general counsel, who lied and obstructed the SEC's investigation. Among the Enron defendants are a number of investment bankers at Merrill Lynch, indicted for assisting the fraud. In Brooklyn, after we indicted senior executives whose fraud led to the collapse of paper manufacturer American Tissue and cost banks and investors almost $300 million, we also arrested a former Arthur Andersen auditor who had shredded documents as the fraud scheme unraveled. In the McKesson HBOC case in San Francisco, one former general counsel has been indicted along with other top executives. In our Brooklyn prosecution of executives at Symbol Technologies, a leading maker of wireless and networking devices, we indicted the company's former general counsel along with other senior executives for allegedly exploiting Symbol's stock option plans to enrich the executives and illegally minimize their tax obligation at the company's expense. And in the Nicor Energy case in Chicago, we've indicted one of the company's outside lawyers for his role in the fraud. Even where criminal charges aren't warranted against professionals,

there may be administrative action – by the SEC, for example – that should apply.

You can expect to see more prosecutions of such professionals where it's warranted. We're asking now, in every corporate fraud investigation, "What about the professionals?" "Where were they?" "What was their role?"

Follow the Money

One last thing I want to mention is our increasingly aggressive pursuit of the ill-gotten gains along with the defendants themselves. For a number of reasons, we've simply got to follow the money – to preserve and recover it before it's frittered away and no longer available to make the victims whole. Asset forfeiture, of course, is also a way to increase the punishment for wrongdoers.

One good example of our use of asset forfeiture is the criminal prosecution of former executives at Adelphia. The company's founder, John Rigas, and his son, Timothy, were convicted of fraud charges in July; they and other executives had looted the company of hundreds of millions of dollars to pay for luxury condos and a golf course, and to cover personal investment losses. But in addition to their convictions, the government is also seeking forfeiture of $2.3 billion in ill-gotten gains. The defendants waived jury trial on this issue and we're still waiting for the judge to decide it, but we're hopeful that we can help repair some of the harm done to investors by the executives' fraud.

Another thing I'd mention in this area is something called the Justice Assets Forfeiture Fund, started in 1984, into which about $8 billion in net federal forfeiture proceeds have been deposited over the years. The Fund, which is made up of all amounts forfeited under any federal law administered by the Justice Department, can be used for a wide variety of law enforcement purposes. Particularly relevant to folks in this room, those purposes include contracting for services of experts and consultants needed by the Department for asset seizure and forfeiture. Corporate Fraud Task Force members have tapped into these funds to secure further convictions and successful forfeitures of ill-gotten gains.

One of these cases is the prosecution of Richard Scrushy, the former CEO of HealthSouth, for securities fraud, mail fraud, and money laundering, by the Criminal Division and the Birmingham U.S. Attorney's office. The Government has sought to recover hundreds of millions of dollars in assets that we contend represent the fruits of Scrushy's illegal activities. I don't want to say too much about that case here, because it's pending, but prosecutors and investigators have done an enormous amount of planning there to make sure that they could recover as many of these

assets as possible, in addition to building and preserving a strong criminal case against Scrushy himself. The complexity of the investigation required an effective team approach. The team included the Criminal Division's Asset Forfeiture and Money Laundering Section, the FBI, the IRS, and the U.S. Marshals Service. And, using funds from the Justice Assets Forfeiture Fund, the Department hired a team of forensic accountants to work with the IRS to comb through HealthSouth's books and trace the proceeds of fraud.

To further protect the assets, our prosecutors obtained a post-indictment restraining order to preserve those assets for forfeiture. We also got search warrants in four different judicial districts and writs of entry to permit FBI agents and U.S. Marshals to enter Scrushy's various properties in order to photograph and inventory the assets identified in the restraining order. All of these court orders were executed simultaneously with Scrushy's arrest. He's scheduled to stand trial this January.

With this kind of ingenuity, careful planning, and precise execution, we can make sure not only that corporate fraudsters are swiftly punished, but also that the damage done by guilty parties is repaired to the greatest extent possible.

Conclusion

To wrap up, I want to commend and thank all of you for your interest in this area. The more folks we have focused on fraud prevention, the better off we'll all be as a country. I hope that our combined efforts strengthen the integrity of the marketplace, protect the public, and restore confidence – confidence that the few bad apples in a much bigger basket of companies and executives are being ferreted out and dealt with severely, so that the remaining vast majority will be trusted the way we all want them to be.

Thank you.