

# WHITE-COLLAR CRIME

HEARINGS  
BEFORE THE  
SUBCOMMITTEE ON CRIME  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
NINETY-FIFTH CONGRESS  
SECOND SESSION  
ON  
WHITE-COLLAR CRIME

JUNE 21, JULY 12, AND 19, AND DECEMBER 1, 1978

Serial No. 69



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1979

62178-  
62178

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

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

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

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

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

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

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

[The prepared statement of Mr. Edelhertz follows:]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### WHAT IS WHITE-COLLAR CRIME?

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

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

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

These crimes fall into four general categories:

1. Ad Hoc Violations, committed for one's personal benefit on an episodic basis. Examples would be tax fraud or welfare frauds. The usual victim is local, state, or federal government.
2. Abuses of Trust, committed by a fiduciary, or trusted agent or employee. Examples would be embezzlement, or the receipt of a bribe or favor to confer a benefit. Individuals, businesses, or governments are all victims of such crimes.
3. Collateral Business Crimes, committed by businesses to further their primary (legitimate) purposes. Examples would be anti-trust violations, bribery of cus-

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

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

#### WHO COMMITS WHITE-COLLAR CRIMES?

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

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

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

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

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

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

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

- (a) Lack of adequate enforcement of existing laws;
- (b) making the same act the subject of optional criminal or civil action;
- (c) Treating white-collar offenders more leniently even after criminal prosecution and conviction; and
- (d) inadequate concern to provide remedies for the victims of white-collar crimes.

#### WHAT HARM IS BEING DONE BY WHITE-COLLAR CRIME?

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

Losses which can be characterized in dollar terms; and

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

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

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

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

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

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

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

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

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

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

#### WHAT IS BEING DONE ABOUT WHITE COLLAR CRIME?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### WHAT IS AN EFFECTIVE AND APPROPRIATE ROLE FOR THE FEDERAL GOVERNMENT IN COMBATING WHITE-COLLAR CRIME?

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

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

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



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

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

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

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

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

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

*2. Rationalization of functions within the Federal Government.*

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

*3. Administrative and legislative changes:*

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

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

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

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

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

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

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

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

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

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

Mr. EDELHERTZ. Thank you, Mr. Chairman.

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

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

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

**END**