

Address on White Collar Crime

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Tony, thank you for that kind introduction. And thank you for inviting me to speak at New York University's School of Law to address the issue of white collar crime. It is a real delight to be here.

I have been the U.S. Attorney for the Southern District of New York for a little over three months now. That's just the blink of an eye, but it has been quite an eventful blink.

I am honored beyond words to have the position, and I am humbled beyond measure to have the responsibility.

Ours is an office with a storied past, but I think also a history-making future. We are in the midst of investigating and prosecuting every conceivable type of significant crime and criminal – from Mexican drug cartels to Russian arms dealers to Somali pirates.

And now, along with prosecutors from the Eastern District of Virginia, we are charged with the awesome responsibility of bringing to justice those who allegedly planned the deadliest terrorist attacks in the history of our country.

At the same time, however, we have always been a leader and innovator in the fight against white collar crime, in all of its creative forms. And that work is as high a priority for our Office today as it has ever been.

Part of the reason for that traditional focus is geographic: we work only blocks from Wall Street. Our subpoenas, I suppose, don't have to travel very far. Sitting in the financial capital of the world also provides something of a window into the workings of the financial markets and contemporary corporate culture.

Beyond geography, however, our focus on white collar crime in general, and financial fraud in particular, flows from a commitment that long precedes me.

It is a commitment to certain principles and goals: That our free markets should be fair; that our playing fields should be level; and that our citizens' accounts should be secure.

In service of these goals, we have aggressively pursued fraud whenever and wherever we have found it. And we do not intend to stop – especially now, with the economy down, public frustration up, and epic frauds surfacing with increasing frequency.

We do so, however, knowing that with our subpoena and grand jury power comes the power to injure individual lives and destroy corporate reputations. So, we must always take care to exercise our discretion with great care and an even hand.

In the short time I have today, I want to talk generally about the current state and future of white collar crime prosecutions.

First, I will talk a little bit about what has been going on in our Office.

Second, I'll discuss what I think is the perfect storm of forces that render white collar crime an especially worrisome problem in these uncertain times.

Third, given the unprecedented challenges and high stakes we face, I will describe how and why we must be so aggressive in fighting white collar crime.

I. The Office

So, first, let me spend a couple of minutes on the particular goings-on in the Southern District of New York.

Our recent efforts, in the midst of the financial crisis, demonstrate our continued commitment to the aggressive enforcement of the various fraud statutes.

Achievements in the area of white collar crime enforcement, just in the last year, include of course:

- the conviction of Bernard Madoff, who is now serving a 150 year-sentence, and the guilty pleas of two of his associates, in connection with the largest Ponzi scheme in human history;
- the conviction of Marc Dreier – who is now serving a 20 year-sentence for perpetrating a dramatic fraud which resulted in approximately \$400 million in losses; and
- the conclusion of a massive insider trading case involving high-level employees at UBS and Morgan Stanley, which when taken down in 2007 was described as this generation's largest insider trading case, and which resulted in all twelve defendants pleading guilty.

In the last three months alone, since I became U.S. Attorney, we have announced several major financial fraud cases, including:

- a massive insider trading case, charging 20 individuals, including five who have already pleaded guilty, and alleges to date more than \$40 million in illegal profits;
- the arrest and indictment of a high-level political fundraiser for defrauding several major financial institutions in a \$292 million bank fraud scheme; and

- a series of wide-ranging mortgage fraud cases which charged 41 defendants, including lawyers, mortgage brokers, and loan officers, with engaging in a variety of mortgage fraud scams to fraudulently obtain more than \$64 million in residential mortgages.

I am particularly proud of the work of our asset forfeiture lawyers. Led by Sharon Cohen Levin, in the past five years, the Southern District has forfeited over \$2 billion, the vast majority of which comes from white collar cases. That represents more than 40 percent of the entire Asset Forfeiture Fund. This year alone we have forfeited more than \$450 million, once again making us the top District in the country.

As a measure of our commitment to white collar enforcement, we may be unique in the nation for having not one, not two, but three separate units dedicated to white collar prosecution – and that is in addition to our asset forfeiture folks: (1) the Securities and Commodities Fraud Task Force; (2) the Public Corruption Unit; and (3) the newly-formed Complex Frauds Unit. That represents several dozen prosecutors, working full time on white collar crime.

With respect to the Complex Frauds Unit, its mission is to focus on all of those types of crime that do not otherwise fall naturally into securities fraud or public corruption – namely, bank fraud, mortgage fraud, health care fraud, art fraud, cybercrime, and other offenses.

Its new chiefs are Anirudh Bansal, who cut his teeth on prosecuting drug cartels and narco-terrorism; and Jonathan Kolodner, who cut his teeth on prosecuting terrorists and the Italian mafia before heading up our mortgage fraud effort.

They are as seasoned, aggressive, and creative as any prosecutors we have in the Office, and it is not an accident that I chose people with those backgrounds to lead the complex frauds unit.

So, that's a little about what we've been up to. Before getting to the future, I want to address the current landscape of white collar crime. Is it a bigger problem today than it has been in the past? If so, why is that the case?

II. Perfect Storm of Forces

In many ways financial fraud has been with us through the ages – wherever there has been greed, gullibility, and money, there has been fraud. Greed, gullibility, and things of value are the basic elements of financial fraud.

History tells us that these ingredients have existed for millenia. Unscrupulous cavemen no doubt fleeced unsuspecting Neanderthals out of clubs and animal skins when the opportunity arose.

Much more recently, in the earlier part of this decade, the country was taken aback by the accounting fraud scandals at Worldcom and Enron.

So what, if anything, is different today?

One can identify, I think, at least three factors that – in combination – suggest a crisis greater in potential and magnitude than anything we have seen so far:

1. **First**, the sheer scale of the frauds exposed in recent weeks and months has dwarfed anything we have ever seen. Indeed, the size and scope of many recent fraud schemes would make even the original Mr. Ponzi blush.

It has caused commentators to search in vain for superlatives that capture the enormity of the financial loss to innocent victims – that caused by the likes of Bernie Madoff and, allegedly, Allan Stanford.

It has correctly caused people to ask not only why they weren't discovered earlier, but also what else is out there, as yet unknown?

2. **Second**, the current environment provides rich and historic opportunities for continuing fraud.

One might have thought that the massive scams recently discovered were possible only in the go-go days before the financial meltdown – when the economy was lifting all boats, people were exercising less due diligence, and schemes were easier to get away with.

Unfortunately, white collar crime has managed to thrive whether the economy is going up or going down.

Right now, even though the economy is struggling, there appear to be unprecedented opportunities for the unscrupulous.

One, through the Troubled Asset Relief Program (or “TARP”), the federal government has released \$700 billion in funds to purchase assets and equity from financial institutions. That's 700 billion opportunities for fraud.

In fact, Congress was so worried about potential misbehavior that it created a Special Inspector General of the TARP whose whole purpose in life is to police those funds.

Similarly, the President's \$787 billion stimulus program puts even more money on the table, which goes directly to federal agencies and state governments. The opportunity for fraud there is, likewise, enormous.

Those opportunities for the unscrupulous, moreover, do not even take into account the possibilities that would arise if and when health care reform passes. What some estimate would mean a restructuring of some 20 percent of the economy will require extraordinary vigilance in protecting against new and creative types of health care fraud.

So, given the sheer amount of cash floating around (much of it still on the way), investigators and watchdogs have their hands more than full.

On top of all of that enticing cash, consider that in a down economy, people sometimes become more gullible, out of desperation. Investors, desperate for a quick buck after seeing their retirement accounts depleted, are more susceptible to stock scams. Homeowners, desperate to avoid losing out on the American dream, are more vulnerable to mortgage fraud schemes. We have seen this time and time again, and we recently charged a number of individuals with fraud for preying on the fear of foreclosure on the part of middle class homeowners who were prepared to believe anything if it meant they could keep their homes.

As with natural disasters like Hurricane Katrina, the financial meltdown has spawned a particularly low form of predator.

3. **Third**, beyond the unprecedented scope of recent fraud and apparently limitless opportunities for more, there is a third factor that makes current times different for white collar crime as well.

That changing circumstance is the increasing difficulty in detecting fraud. Part of that is due to the growing complexity of financial systems and instruments; part of it is due to the march of technology; and part of it is due to the increasingly devious and clever methods that fraudsters are using to conceal their crimes.

With respect to burgeoning complexity, businesses organizations resort to increasingly complicated structures of interlocking and unclear ownership; financial institutions continue to conjure up maddeningly complex and indecipherable financial products; and both individuals and corporations do business and maintain accounts in other countries – beyond our ordinary subpoena power and enforcement capabilities.

All of this makes it difficult for prosecutors and regulators to separate the legitimate from the illicit – such enforcement thus requires extraordinary amounts

of time, energy, patience, expertise, and resources, all of which are in short supply.

And that short supply is in part because we are in an economic slump – which, of course as I already mentioned, further exacerbates the underlying problem. So, there is something of a vicious cycle phenomenon here.

Also aiding criminals is the proliferation of certain computer and hacking technologies. As alleged in recent high-profile cases, massive and costly fraud is possible in this country with the mere click of a button, from the comfort of one's home thousands of miles away, and with virtual anonymity.

Credit card or debit card accounts can be accessed from Russia or Romania or Estonia, by someone who can only be identified by a screen name, and then millions of dollars withdrawn from unsuspecting Americans' accounts, in a matter of minutes.

This is no longer the stuff of fanciful fiction; it is fact.

Computer skimming, phishing, and other schemes, launched from abroad, threaten to cost us untold amounts in the future.

It remains to be seen, but the threat presented by hacking to our financial system, our citizens' accounts, and even our infrastructure may be one of the most dire we face today.

And you will see my Office focusing on this threat more seriously than we ever have before.

Beyond the lack of transparency due to the way institutions do business and the challenges posed by computers, there is also evidence that white collar criminals are increasingly resorting to the techniques of their street and organized crime peers in trying to avoid the long arm of the law.

As we have alleged in one insider trading case, there is evidence that suspects are using pre-paid, anonymous cellphones to avoid tracing and interception by authorities.

So, if correct, where does all this analysis leave us? The scope of recent fraud is breathtaking; the opportunities for even more chicanery are as plentiful as ever; and, at the same time, the difficulty in detecting that fraud is increasingly challenging.

Moreover, there is something of a crisis of confidence in our system.

There is a lack of faith in the economic system; a lack of belief in the markets; and a lack of trust that the playing field is level. That affects the credit market, the housing market, and the overall economy.

As Attorney General Holder put it just this week, we need to be vigilant, moreover, to prevent the next economic meltdown. So, the stakes could not be higher.

The investing public rightly wants to see us a step ahead of, rather than ten paces behind, the white collar criminals who are becoming smarter, bolder, and more sophisticated.

The public correctly wants us to use every tool in our arsenal to thwart criminals and prevent fraud.

And that is exactly what we are doing.

We will use every aggressive and innovative method available to address the unprecedented challenges that I have described.

When sophisticated business people begin to adopt the methods of common criminals, we have no choice but to treat them as such. To use tough tactics in these circumstances is not being heavy-handed; it is being even-handed.

It is not clear to me why alleged financial fraudsters deserve a milder approach just because they wear a white collar.

In undertaking these efforts, let me be clear: no one is trying to vilify Wall Street or demonize corporate America. And no one is trying to criminalize ordinary business.

But there are rules, and there are laws. And no one is above the law. If you cheat, there are consequences.

As I have said before, if you are a wealthy trader or a rich corporate executive, you are not special; you do not get to operate under a different set of rules.

But our business is not only about being tough. It is also about being smart. It is about using a combination of techniques and approaches that together can put us in the best position to catch criminals and deter the rest.

So, what are some of the methods and approaches you can expect to see more of?

- **Wiretaps**: Contrary to the views of some, court-authorized Title III wiretaps are not statutorily reserved for unsavory drug traffickers and mobsters. Why use

wiretaps to investigate insider trading, for example? Because it is an exceedingly difficult crime to prove – especially when it involves hedge funds, whose sheer volume of trading can be used to mask a sale or purchase of a security based on material non-public information.

Fundamentally, insider trading is a crime based on a communication. It does not take a rocket scientist to understand that it might be helpful to have that communication on tape.

The known use of wiretaps, moreover, also perhaps has a salutary deterrent effect on those who have too long thought that law enforcement doesn't bother to eavesdrop on them.

- **Good Old Fashioned Surveillance:** Traditional surveillance also works in white collar cases. Gone are the days where the only investigating that takes place is in a conference room with documents, a calculator, and green eyeshades. When suspected white collar criminals are believed to be making illicit cash payments or destroying evidence (like cell phone sim cards), we will have law enforcement agents watching them. That is only common sense.
- **Cooperating Witnesses and Informants:** In many areas of law enforcement, cooperating witnesses and confidential informants are used to great effect to investigate and prosecute crime. In many kinds of white collar fraud schemes – particularly in the public corruption context – the illegal deal, the illicit understanding, or the unlawful quid pro quo is not explicit: it is a wink and a nod. Sometimes it is only someone who was in the room and can describe the facts who can shine a persuasive light on the criminal activity.

It should also not be surprising that –in white collar cases – the Government will sometimes rely, in part, on the corroborated testimony of a witness who was himself or herself involved in the criminal activity and pled guilty to it. After all, that's a person who is likely to know the criminal enterprise inside and out. In drug and mob cases, we convict defendants day in and day out with the use of such cooperating witnesses.

- **International Cooperation:** As I mentioned, much of the difficulty in investigating financial fraud derives from the global nature of business and the economy.

But just as we in the Southern District have figured out how to make international terrorism cases and international narco-trafficking cases where the defendants and much of the evidence is abroad, we will be making efforts to do more of the same in our white collar cases.

We are committed to doing a better job of forging relationships and understandings, not only with nations who may have terrorists within their borders, but also with those who harbor hackers, fraudsters, and tax cheats. It can be complicated and slow going, but unless we push forward internationally, we will fall further behind in our battle against significant and sophisticated fraud.

- **Aggressive Computer Surveillance:** With the march of technology, computers are becoming more and more a principal instrumentality of financial crime.

Given what we have seen lately, the laptop and the modem are rapidly replacing the handgun and the ski mask as the preferred tools for robbing a bank.

So, as I mentioned, you can expect us to use, when warranted, all the legal authority available to monitor criminal activity taking place on the Internet, to trace and identify the perpetrators, and to keep our financial systems and accounts secure.

Generally speaking, these are just some of the ways I think we will be coping with the tremendous challenges we face in the white collar area.

Let me close by saying that we cannot do this alone.

One of the reasons I am so thrilled to be speaking to an audience of this esteemed pedigree and diversity is that this is the perfect mix of people to be considering the difficult legal and practical issues associated with white collar crime – practitioners and prosecutors, scholars and students.

We all have an interest in deterring crime, in maintaining the integrity of our markets, and in doing so with fairness and wisdom.