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**REMARKS BY LANNY A. BREUER, ASSISTANT ATTORNEY GENERAL FOR THE
CRIMINAL DIVISION,**

**AT THE AMERICAN BAR ASSOCIATION NATIONAL INSTITUTE ON WHITE
COLLAR CRIME**

MIAMI, FLA.

Thank you for that very kind introduction.

It is a pleasure to be with you and to see so many friends and former colleagues in the audience today. As always, the ABA has put together a terrific program for this 24th National Institute on White Collar Crime, and I am honored to be here.

In April 2009, I was confirmed by the Senate to what truly is my dream job. As the Assistant Attorney General for the Criminal Division, I have the honor and privilege of representing the Department of Justice and leading a Division of more than 400 dedicated and exceptional attorneys. Each day, the Criminal Division's lawyers come to work with the singular purpose of combating our nation's most serious criminal threats. They do so not for glory or riches, but because they believe to their core in the cause of justice and in serving the American people. Across a broad range of areas – from international organized crime and drug trafficking conspiracies to complex computer crime, financial fraud, and corruption – our prosecutors routinely disrupt and dismantle the most sophisticated criminal conduct. And they do so with limited resources, making their efforts and accomplishments all the more worthy of our thanks and admiration.

Many of you were former prosecutors yourselves, and so you, like me, know what it means to work alongside these public servants. You, like me, know what it means to walk into the RFK Main Justice Building or a United States Attorney's Office knowing that your duty, above all else, is to seek firm and fair justice. It is a remarkable and humbling responsibility.

What do I mean by "firm and fair" justice?

Well, I mean that tough and certain penalties are necessary to punish criminal conduct, deter future criminal conduct, and make society safer and more prosperous, all of which serve the interests of justice. I also mean that our prosecutors are committed to a fair process in which the defendant's rights are protected throughout criminal proceedings. Not only is this necessary to ensure actual fairness, but it is critical so that the public perceives our laws and our system of justice as fundamentally fair.

These notions of “firm and fair justice” inform all that we do in the area of white collar crime.

Financial Fraud

As you know, in the wake of the economic crisis, pursuing financial fraud is one of the Department’s top priorities. That means stepped up resources and focus on financial fraud in all its forms – corporate, securities, and commodities fraud; mortgage fraud; health care fraud; foreign bribery; and fraud in connection with the massive amounts of taxpayer funds that have been devoted to the rescue and recovery of our economy from the brink of economic collapse.

In tackling financial fraud, we are not on a witch hunt. We are – as I said a moment ago – seeking fairly but firmly to go after criminal conduct where it exists. We also are striving to innovate in how we do business. That could mean utilizing data and intelligence more strategically, or it could mean – as we’ve seen in a couple of prominent cases recently – going undercover. However we do it, we will be more targeted, more creative, and more strategic in where and how we look for criminal conduct.

By now, many of you are aware of the new, inter-agency Financial Fraud Enforcement Task Force, which was established by Executive Order of the President in November 2009. The Task Force really is the spearhead of the Obama Administration’s financial fraud enforcement strategy. It is chaired by the Attorney General and includes among its senior leadership the Secretary of the Treasury, the Chairwoman of the SEC, and the Secretary of Housing and Urban Development.

The mission of the Task Force is simple: to strengthen our collective efforts to combat financial crime and to prevent fraudulent practices from contributing to a future financial meltdown. Through education and training, information sharing, and coordinated enforcement strategies, the Task Force is well positioned to achieve this mission. Indeed, in the enforcement realm, the various working groups focused on securities and commodities, mortgage, rescue, and Recovery Act fraud are already hard at work and already are improving coordination and cooperation across the law enforcement community.

Luckily, even though it is relatively new, the Task Force is building on a very solid foundation – indeed, one could say that it began with a head start.

The U.S. Attorney community has successfully prosecuted numerous billion-dollar-plus frauds, including the Rothstein case here in the Southern District of Florida, the well-known Madoff and Dreier cases in the Southern District of New York, and the Petters case in the District of Minnesota.

We also have been very busy in the Criminal Division. For example, working closely with the Manhattan DA’s office, we recently resolved a long-running investigation of Credit Suisse AG for its efforts to help sanctioned countries avoid U.S. banking regulations. The bank ultimately forfeited \$536 million, representing the largest forfeiture ever entered against an entity for violations of what’s known as the International Emergency Economic Powers Act, or

IEEPA. We also have indicted defendants involved in a massive, \$8 billion Ponzi scheme allegedly perpetrated by Allan Stanford.

As I alluded a few moments ago, in pursuing financial fraud, we are aggressively using all of the tools at our disposal, including tools not often seen in white collar cases.

There has been much discussion, for example, of the Galleon case brought by the U.S. Attorney's Office in the Southern District of New York, the FBI, and the SEC. Through the use of court-authorized wiretaps, the Department uncovered an alleged insider trading scheme netting more than \$20 million – believed to be the largest hedge fund insider trading case ever charged by the Department.

And, as I'm sure many of you are aware, in a recent FCPA investigation, the Criminal Division's Fraud Section used undercover law enforcement techniques to uncover what we allege to be widespread fraud and corruption. As a result, 22 executives and employees of companies in the military and law enforcement products industry were indicted for their involvement in schemes to bribe foreign government officials. This investigation involved the most expansive use ever of undercover techniques to uncover FCPA violations.

Taken together, these two cases reflect a new chapter in white collar criminal enforcement – one that I'm confident has not gone unnoticed by many of you, or by your clients. Out are the days of resting easy in the belief that only self-reporting or tipsters will bring criminality to light. In are the days of proactive and innovative white collar enforcement.

FCPA

Let me say a few more words about our very robust FCPA program, because it, in many ways, typifies how we are approaching crime in corporate America.

The FCPA investigation I just referenced is the largest single prosecution of individuals in the history of DOJ's enforcement of the FCPA. It thus vividly illustrates one cornerstone of our FCPA enforcement policy: the aggressive prosecution of individuals. Put simply, the prospect of significant prison sentences for individuals should make clear to every corporate executive, every board member, and every sales agent that we will seek to hold you personally accountable for FCPA violations. As we focus on the prosecution of individuals, we will not shy away from tough prosecutions, and we will not shy away from trials. We are ready, willing, and able to try FCPA cases in any district in the country—as we demonstrated with our three FCPA trial victories just last year.

To be sure, we are not focusing on individuals to the exclusion of corporations. We will continue to insist on corporate guilty pleas or to bring criminal charges against corporations in appropriate cases – when the criminal conduct is egregious, pervasive and systemic, or when the corporation fails to implement compliance reforms, changes to its corporate culture, and undertake other measures designed to prevent a recurrence of the criminal conduct. We will continue to insist on appropriately stiff corporate fines, applying a consistent, principled

approach that considers the facts and circumstances within the Department's established framework and that is guided by the Sentencing Guidelines in arriving at an appropriate sanction.

I also want to assure you that the Department's commitment to meaningfully reward voluntary disclosures and full and complete corporate cooperation will continue to be honored in both letter and spirit. I know that many of you often grapple with the difficult question of whether to advise your client to make a voluntary disclosure. I strongly urge any corporation that discovers an FCPA violation – or any other criminal violation, for that matter – to seriously consider making a voluntary disclosure and to cooperate with the Department. The Sentencing Guidelines and the Principles of Federal Prosecution of Business Organizations obviously encourage such conduct, and your clients will receive meaningful credit for that disclosure and cooperation.

Health Care Fraud

Our efforts at fraud prevention are not limited to corporate America or protecting the financial markets. By now, the expression is well worn, but the focus really is on combating fraud from Wall Street to Main Street.

Health care fraud is a perfect example. Our Medicare Strike Force prosecutors and agents are using billing data to target Medicare abuses and a range of fraudulent health care schemes in hot spots around the country. Since it began operating here in 2007, the Strike Force in Miami has charged more than 300 defendants in 200 cases totaling approximately \$860 million in fraud. All told to date, more than 230 defendants have been convicted, and nearly 200 have been sentenced to prison. The success of the Strike Force is not limited to prosecution, however. It also contributes to deterring health care fraud before it happens. Here in Miami-Dade County, for example, after the Strike Force began operation, we saw an estimated reduction of \$1.75 billion in fraudulent claims for durable medical equipment alone.

Because this is a model that works, we are devoting resources to expanding our Strike Force operations. The Strike Force, which started operations in Miami and Los Angeles, is now operating in Detroit, Houston, Brooklyn, Tampa, and Baton Rouge as part of the DOJ and HHS-led Healthcare Fraud Prevention & Enforcement Action Team, or "HEAT" as it is known. Nationwide, more than 500 defendants have been charged by the Strike Force in cases involving approximately \$1.1 billion in fraudulent claims submitted to Medicare.

Mortgage Fraud

Of course, no effort at tackling fraud on Main Street can overlook the very serious problem of mortgage fraud. Mortgage fraud has swept through housing and credit markets across the country in a variety of forms. Everyone from borrowers, to appraisers, to real estate professionals, to lawyers, have been implicated.

The United States Attorneys' Offices, the Criminal Division, the FBI, and our state and local partners have been hard at work in this area. Right here in Miami, representatives of the Financial Fraud Enforcement Task Force met yesterday with members of the community and

local industry representatives to discuss the impact of mortgage fraud locally, as part of our efforts to be even more proactive and targeted in combating mortgage fraud.

In addition, the Department has deployed an array of bold and innovative enforcement strategies to combat mortgage fraud. For example, as in the health care fraud arena, we are pursuing mortgage fraud enforcement strategies that are threat-based and intelligence-driven. The FBI has established a Financial Intelligence Center in order to provide tactical data-driven analysis that can be used to effectively target the most egregious mortgage fraudsters.

The Criminal Division intends to utilize the FBI's analytical products as part of its own new Mortgage Fraud Enforcement Initiative. Working closely with the FBI's National Mortgage Fraud Team and other federal, state, and local law enforcement agencies, the Initiative will focus Criminal Division resources on the prosecution of high-impact mortgage fraud cases where mortgage fraud is most acute. This focused effort by the Criminal Division should effectively complement the already outstanding work going on in United States Attorneys' Offices around the country.

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So, as you can see, there is much going on in financial fraud enforcement, and our efforts are only going to increase, as new resources are brought to bear. Music to your ears, I'm sure!

This stepped-up resource commitment is only one part of the equation, however. We realize that, to achieve "firm and fair" justice in the area of white collar crime, we must do more than simply bring successful prosecutions. We must tend to our own house – ensuring that we are constantly evaluating the Department's organization, policies, and practices.

Let me say a few words about this process of self-evaluation.

Changes within the Criminal Division

In the ten months since I took over at the helm of the Criminal Division, we have taken a hard look at the Criminal Division to make sure that we have the necessary focus, resources, talent, leadership, and structure to accomplish our ambitious goals. Whether that means changing policies to ensure, for example, that asset forfeiture is sought in every case in which it can be pursued, or re-organizing sections in the Division to better rationalize our approach in key programmatic areas, we are making those changes.

Right now, for example, we are looking closely at our white collar crime program. A new Chief of the Public Integrity Section will soon be selected, and we have begun searching for a new Chief of the Asset Forfeiture & Money Laundering Section, the Section that prosecuted the Credit Suisse case I mentioned earlier.

We also have seen some changes in our Fraud Section. After an extensive national search, Denis McInerney, a former deputy criminal chief in the Southern District of New York and partner at

Davis Polk & Wardwell, recently began as the Chief of the Section. And Greg Andres, the criminal chief in the Eastern District of New York, now serves as the Acting Deputy Assistant Attorney General supervising the Fraud Section, among others. Denis and Greg are already hard at work at the forefront of financial fraud enforcement, along with our colleagues at the United States Attorneys' Offices, the SEC, the FBI, and our many other law enforcement partners around the country, and, indeed, around the world. And, while we're on the topic, we expect in the near term to be advertising for other senior leadership positions in the Fraud Section, so stay tuned.

Sentencing and Corrections Policy

In addition to all that is going on in the Criminal Division, the Department is also hard at work on key issues of policy and practice.

One prominent example is the current effort to review sentencing and corrections policy and to identify areas for reform. As you may know, the Attorney General established a Sentencing and Corrections Working Group last year to take a fresh look at federal sentencing and charging practices, prisoner re-entry issues, alternatives to incarceration, and unwarranted disparities in federal sentencing. He cares deeply about such issues, as do I.

Our goal in this effort is a sentencing and corrections system that protects the public, is fair to both victims and defendants, eliminates unwarranted sentencing disparities, reduces recidivism, and controls the federal prison population. Low-hanging fruit, right? Well, the goals may be lofty, but I think we're up to the challenge. Indeed, in my experience, this Working Group has been remarkably effective, both in terms of its organization and its very thoughtful approach toward what are very complicated issues of law and policy.

Let me say a few more words in that regard.

As you know, the sentencing guidelines continue to provide us with a sentencing baseline in all federal criminal cases. However, Sentencing Commission data shows that the percentage of defendants sentenced within the guidelines has decreased in the wake of the Booker line of cases. Although the full impact of recent trends in sentencing jurisprudence is still unclear, these developments must be monitored carefully.

We are especially concerned about increased disparity in white-collar sentencing. It is not uncommon for a health care fraud defendant to be sentenced to 15 or more years in one district court, while, in the same week, another defendant in another court involved in a larger fraud is sentenced to a very short prison term. A few weeks ago, the Ninth Circuit affirmed a 25-year sentence for a fraudster involved in a \$40 million fraud just a few days after another defendant on the East Coast who had been involved in a \$1 billion fraud was sentenced to just five years.

We must determine the reasons for these disparities. Public trust and confidence are essential elements of an effective criminal justice system. Our laws and their enforcement must not only

be fair, they also must be perceived as fair. Accordingly, we must create a system where the factual basis for sentencing in a particular case is clear to all parties and to the public, and where the sentences themselves are truly commensurate with the crime committed.

The work of the Sentencing and Corrections Working Group is an important step in that direction.

Criminal Discovery Policy

Criminal discovery is, of course, another area that is absolutely essential to the fairness of the criminal justice system and to how the system is perceived.

To that end, last spring, the Attorney General convened a Discovery and Case Management Working Group, which I co-chaired along with Karen Immergut, the then-Chair of the Attorney General's Advisory Committee. The working group examined our discovery and case management practices from top to bottom, as well as our discovery resources and training. Based on our work and the input of groups across the Department, then-Deputy Attorney General David Ogden issued new guidance on discovery to all federal prosecutors.

The new guidance recognizes that our duty is to seek justice, and encourages broad discovery – above and beyond what is required under the Constitution and the Federal Rules. At the same time, the guidance recognizes that, because of longstanding differences in local practice, a one-size-fits-all approach is not appropriate; thus, it requires each U.S. Attorney's Office and Department litigating component to establish its own discovery policy that meets the standards established by the new guidance, but also takes into account controlling precedent, existing local practices, and judicial expectations. In addition, the new policy establishes a methodical approach to handling discovery, including providing guidance on where to look, what to review, how to conduct the review, and how best to make disclosures.

The new guidance is only one piece of our overall effort to further enhance our discovery practices. Beginning in 2009, every federal criminal prosecutor, new and old, was required to undergo several hours of discovery training. Going forward, every federal prosecutor is required to undertake annual refresher training on discovery obligations.

The Department also has appointed a national coordinator for discovery issues – Andrew Goldsmith – as well as a discovery expert in each U.S. Attorney's Office and Main Justice litigating component. I know from working with Andrew on the Discovery and Case Management Working Group that he is deeply committed to ensuring the success of the Department's initiatives in this crucial area.

Along those lines, just to give you a preview, we are creating a discovery handbook similar to the Grand Jury Manual, so that prosecutors will have a one-stop resource relating to discovery obligations. We also are implementing a mandatory, comprehensive discovery curriculum for all federal prosecutors. Moreover, we already have implemented, among other things, specialized training for paralegals and law enforcement agents, as well as enhanced computer forensics, and we are exploring and testing available case management software.

We are confident that, through this comprehensive approach, we are equipped to meet our discovery obligations and minimize prosecutorial error.

Our Shared Responsibility To Do Justice

Now, I know there are skeptics among you, and that's fine. I'm realistic. But I also know what I have seen since joining the Department.

From my vantage point, I can tell you that, across the country, our line prosecutors are doing an outstanding job ensuring that the administration of justice is both firm and fair. Over the past ten months, I've worked with the Department's career lawyers around the country. And whether dealing with a seasoned trial lawyer or a rookie prosecutor, I have found our lawyers overwhelmingly to be bright in their understanding of the law, wise in their judgment, and unswerving in their desire to do their jobs faithfully and responsibly. In a word, they are faithful to our Nation's highest traditions of public service.

We all should think about what it means to be a federal prosecutor. The Department's career lawyers are on the front lines every day, conscientiously investigating and prosecuting all kinds of criminal wrongdoing on behalf of the American people. Each of our line prosecutors sacrifices a great deal in service to our country. Multi-defendant complex criminal cases can take years to build, and weeks or even months to try. Cases frequently take Department lawyers away from their families for extended periods of time. Violent crime and other cases can lead to death threats against our prosecutors – sadly, a chilling reality that is confronted more often than people realize. And all the while, these career lawyers earn a fraction of what they could in the private sector. They do a terrific job, and I commend their efforts and their sacrifices for the cause of justice.

Conclusion

None of this is to suggest that we don't occasionally make mistakes. We do, because just like defense attorneys, our prosecutors are human. But there is, of course, a big difference between honest mistakes and intentional misconduct.

Let me say a few words about this issue. Our continuing dialogue about criminal discovery is, to be sure, an incredibly valuable one. The Department benefits immeasurably from the thoughtful comments and perspectives of those in the defense bar, in academia, and on the bench.

My concern, though, is that there are a few in the defense bar who see blood in the water and are determined to attack the Department's prosecutors indiscriminately – and without any factual basis. Some think it is acceptable to use motions for sanctions, or threats of OPR referrals, as a way to gain some sort of strategic litigation advantage.

Now, I realize that such attacks are coming from only a very small number of you. But to those so inclined, I say that such tactics are not acceptable. They're just not. And as officers of the court, we must all come together to cry foul when we see such overreaching.

Remember, it was not so long ago that I was one of you. I was a defense lawyer, and an aggressive one at that. I know the meaning of zealous advocacy. And I know the stakes and stresses that come about when someone's liberty is on the line. But I also know the meaning of fair play. And I know the meaning of proportionality. And I know that no one benefits – not the defense bar, not the defendant, not the government, and certainly not the American people – when discovery violations by the government are pitched in legal briefs, in oral arguments, or in commentary as endemic. Nothing could be further from the truth – and those who engage in such tactics know it.

So, as we move forward in our dialogue, let's deliver on our shared responsibility not to distort the truth. Let's deliver on our shared responsibility not to suggest the sky is falling when it isn't. But above all else, let's deliver on our shared responsibility to serve the interests of justice.

Thank you for the privilege of being with you. It really is wonderful to see so many dear friends and colleagues here today. Enjoy the South Florida sunshine and the remainder of the conference. My best wishes to you all.

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