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5 ADDRESS ON HEALTH CARE FRAUD
6 U.S. ATTORNEY GENERAL JANET RENO
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15 WORLD TRADE CENTER
16 BOSTON, MASSACHUSETTS
17 THURSDAY, JUNE 6, 1996, 3:30 P.M.
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1 P R O C E E D I N G S

2 ATTORNEY GENERAL RENO: Thank you,
3 Scott.

4 I met you a long time ago. And I
5 never thought I'd have the chance to deal with
6 you in this working relationship, but it has
7 been great.

8 And I so much appreciate the working
9 relationship that you and Don have. Don has
10 been a model for other U.S. Attorneys. And the
11 working relationship that you two have
12 developed is what I point to when I say "See,
13 that's the way you should do it."

14 I just want to tell you all how much
15 I appreciate your being here. I think it's
16 very important that we come together. And I
17 would just like -- because we make allusions to
18 the cost of health care fraud -- and I'd like

19 to just describe, from our perspective, the
20 impact that it's had.

21 Health care fraud and abuse not only
22 adds enormous financial costs to the system,

3
1 but I think so many of us are here today
2 because we recognize that it also impairs the
3 quality of health care for so many Americans.

4 No one knows for sure -- and I'm not
5 one to cite figures easily -- but of the
6 approximately \$1 trillion spent on U.S. health
7 care in 1995, we can to some extent quantify
8 what we have recovered in fraud cases. The
9 numbers are staggering.

10 Recoveries from just four cases in
11 the past three years exceed \$700 million. We
12 certainly don't catch everyone. The amount of
13 the fraud is obviously much more.

14 Everyone pays the price.
15 Beneficiaries of government health insurance
16 such as Medicare pay more for medical services
17 and equipment. Taxpayers pay more to cover
18 health care expenditures. And consumers of
19 private insurance pay higher premiums.

20 But perhaps even more significant
21 than the huge financial loss caused by health
22 care fraud, it also endangers the health of

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1 patients by causing the rendering of
2 unnecessary or inappropriate treatment and by
3 corrupting, in some instances, the judgment of
4 medical professionals as to what care should be
5 provided.

6 It is painful to hear that some
7 health care providers are willing to subject
8 people to unnecessary care, to unnecessary
9 hospitalization, to unnecessary drugs, all
10 because these unscrupulous providers have put
11 profits before their patients' welfare.

12 We cannot allow this financial
13 inducement to corrupt the professional judgment
14 of professional medical providers, providers
15 who for so many years, the tradition of

16 Americans, we've been taught to trust these
17 people.

18 Decisions which physicians make day
19 in and day out -- whether and where to
20 hospitalize a patient, what laboratory tests to
21 order, what surgical procedures to perform,
22 what drug to prescribe and how long to keep a
5
1 patient in a facility -- affect the health and
2 well-being of all Americans. And allowing
3 these decisions to be corrupted is just plain
4 wrong.

5 Because of these concerns, because of
6 the tremendous impact of health care fraud, as
7 Scott has pointed out, I have made it one of
8 the highest priorities at the Department of
9 Justice since I have taken office. These cases
10 are very complex. They are very
11 time-consuming. They are very difficult to
12 prosecute.

13 And for that reason, we have made a
14 concentrated effort, along with the Department
15 of Health and Human Services, to make sure that
16 our U.S. Attorneys and our criminal division
17 are provided with the resources necessary to do
18 the job.

19 We have, at the same time, recognized
20 that the state Attorneys General and state
21 Medicaid units are on the front line and that
22 they are an extraordinarily effective ally in
6
1 our effort.

2 And so what we have tried to do is
3 build a partnership that Scott described,
4 working with state and local officials, to make
5 sure that we don't duplicate our efforts and
6 that we blend our efforts together so that
7 they're utilized in the most effective manner
8 possible. And I think that Massachusetts is an
9 example.

10 But I think it's important that we
11 work together to look at how we can prevent the
12 crime, whether it be youth violence or Medicare

13 or health care fraud. I want to do everything
14 I can to prevent the crime. I've never met
15 anybody that was the victim of a crime that
16 would have not preferred it to be prevented in
17 the first place.

18 Accordingly, the Justice Department
19 has tried to reach out to industry and to
20 develop means of preventing the crime in the
21 first place.

22 I have been so impressed, in the over
7
1 three years that I've been in office, by the
2 vast majority in the health care community that
3 has stood for good, sound health care, that
4 wants to develop the best standards, that wants
5 to do everything they can to avoid fraud, to
6 prevent fraud, and to hold those responsible
7 for it accountable.

8 And thus, I think it's so important
9 to see all of you coming together to see what
10 we can do to identify what caused the problem
11 in the first place.

12 I think it's important for us to look
13 at these fraud cases, see how it occurred, see
14 how it was permitted to occur, see what checks
15 and balances could be placed within your
16 systems to prevent its occurrence, and then to
17 work with state and local law enforcement and
18 to work with the federal government in
19 identifying those who do commit the fraud and
20 in holding them accountable in the most
21 cost-effective manner possible.

22 These partnerships are so important
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1 if we are to succeed together. I want to thank
2 you therefore for being here today and for
3 participating. It is, to me, an example of the
4 private sector at its best -- committed,
5 involved, and determined to make a difference.

6 You all probably know more about
7 health care fraud than I do, but, again, I
8 think I have found, in the three years that
9 I've been in Washington, that people talk in

10 shorthand. And they think in terms of just
11 issues without really thinking about the impact
12 of the issues. So I'd like to describe to you
13 briefly what type of fraud we have seen in most
14 instances around the country.

15 You know as well as I that numerous
16 fraudulent schemes are perpetuated every day by
17 every different type of provider: Individual
18 physicians, multistate publicly traded
19 companies, medical equipment dealers, ambulance
20 companies, laboratories, nursing homes, health
21 care agencies they serve and those who provide
22 no health care at all but are really creative

9
1 in some of the scams that they can develop to
2 generate health care fraud.

3 Our findings indicate that false
4 billing is the most common fraud. Examples
5 include the submission of billings for services
6 that were never rendered or which were not
7 medically necessary and double billing for the
8 same service or equipment.

9 Other examples include up-coding --
10 describing the service as more complicated and
11 thus more expensive -- and unbundling, which
12 consists of billing a single service as if it
13 were many services.

14 The department has pursued cases in
15 which large, respected hospitals submitted
16 duplicate and misleading bills for the same
17 services. We've pursued cases in which durable
18 medical equipment dealers use heavy-handed
19 telemarketing to offer ostensibly free braces
20 and wheelchairs to senior citizens who neither
21 wanted or needed the equipment, and cases in
22 which ambulance companies substantially

10
1 overbilled government programs and private
2 insurers for intensive care ambulances to
3 transport fully ambulatory patients to routine
4 follow-up medical appointments.

5 Another common scheme is the payment
6 of PIP effects for those patients. These are

7 pernicious for they corrupt the medical
8 provider's decision-making, often replacing
9 patient welfare for profit.

10 Kickbacks can lead to grossly
11 inappropriate medical care, including
12 unnecessary hospitalization, surgery, tests and
13 equipment. Kickbacks call into question the
14 exercise of medical judgment. Did the patient
15 get the care provided because she needed that
16 care or simply because someone made money? We
17 shouldn't have to ask that question.

18 Certain business arrangements, such
19 as self-referrals, also give rise to health
20 care fraud. Self-referrals occur, of course,
21 when doctors order tests from laboratories in
22 which the doctor has a financial interest.

11
1 Several studies, including one done
2 by the Government Accounting Office, have shown
3 that doctors refer patients for laboratory
4 tests 45 percent more often if they owned an
5 interest in a lab. This could mean unnecessary
6 medical care at great cost to us all.

7 Other health care fraud schemes
8 involve providing services by untrained
9 personnel, failure to supervise unlicensed
10 personnel, the distribution of unapproved
11 devices or drugs, and creating phony health
12 insurance companies or employment benefit plans
13 such as fraudulent multiple employer welfare
14 arrangements.

15 The scope and variety of health care
16 fraud simply cannot be underestimated. As a
17 local prosecutor for 15 years, I was constantly
18 amazed at people's creativity in terms of their
19 ability to create fraud. But after having
20 served in this office for three years and
21 seeing what people can do around this nation,
22 nothing surprises me anymore.

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1 And I think that's something that we
2 have got to think about as we consider what we
3 can do to prevent it. But what can we do? As

4 I've indicated, I have made this one of our top
5 priorities. And I'm very proud of our record.

6 But we can do more. What have we done to date?

7 In fiscal year 1995, the FBI expended
8 approximately 260 FBI agent work years on
9 health care fraud. This is up from 146 work
10 years at the end of fiscal year 1993. The FBI
11 had over 1,800 pending health care fraud cases
12 in fiscal year 1995, up from 1,000 in fiscal
13 year 1993.

14 Here in Massachusetts, the FBI has a
15 squad of 12 agents devoted just to the
16 investigation and prosecution of health care
17 fraud matters.

18 But I'm not satisfied with that. We
19 recently had a meeting of all of the criminal
20 chiefs from the 94 U.S. Attorneys' offices in
21 Washington.

22 One of their complaints --

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1 particularly those who worked in more rural
2 areas or were more remote from large urban
3 areas -- was the lack of FBI investigative
4 capacity to investigate these cases with
5 trained FBI personnel. We have immediately
6 moved to address that issue. Director Freed
7 met with the criminal chiefs. But we have got
8 to continue that effort.

9 And I see one gentleman shaking his
10 head. If you will let Don Stern know, we are
11 trying to fill those gaps to make sure that we
12 are as responsive as possible in this area.

13 To facilitate communication at the
14 local and state level, every United States
15 Attorney's office now has a criminal and civil
16 health care fraud coordinator.

17 Health care fraud working groups at
18 the national, regional, and local levels
19 coordinate the efforts of federal and state
20 prosecutors and investigators from the FBI, the
21 Health and Human Services office of the
22 Inspector General, the Defense Criminal
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1 Investigative Service, and numerous other
2 agencies.

3 The state Attorneys General have just
4 been superb, not just here in Massachusetts,
5 but around the nation. And the Medicaid fraud
6 control unit and other state agencies are
7 critical to this effort as well.

8 In these groups, the investigators
9 meet regularly to make sure that we exchange
10 information and that we utilize our efforts to
11 work together to avoid the fragmentation and
12 the duplication that often hampers or, up until
13 recently, hampered these efforts.

14 We've tried to develop a good working
15 relationship with HHS. Donna Shalala and I
16 meet regularly on this issue. And I have tried
17 to support her, every step of the way, in
18 building up a capacity on the part of the HHS
19 Inspector General to handling these cases.

20 And I'm very gratified to learn from
21 so many U.S. Attorneys that the HHS IGs are
22 doing an incredible job with difficult

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1 circumstances. And I expect that they will
2 have additional resources shortly.

3 Almost three years ago, we created an
4 interagency executive level health care fraud
5 policy group to develop national health care
6 fraud policy.

7 A year ago, the Department of HHS
8 initiated "Operation Restore Trust," an
9 intensified fraud and detection enforcement
10 effort targeting the home health care and
11 nursing home and durable medical equipment
12 industries in New York, Florida, Illinois,
13 Texas, and California.

14 The Department of Justice and the
15 U.S. Attorneys' offices in these states are
16 vigorously investigating and prosecuting these
17 cases.

18 And Don, what might be well is for
19 you and Scott to look to these states to see
20 what we can do to replicate any initiatives

21 that might be useful in the state of
22 Massachusetts as well.

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1 A recent effort by HHS should enhance
2 our collaborative effort even more. The
3 Inspector General, this month, created the
4 Office of Litigation and Coordination to
5 improve coordination between the Justice
6 Department and HHS investigators, auditors, and
7 other enforcement agents in the fight against
8 fraud.

9 I just want to commend the Department
10 of Health and Human Services on this
11 initiative. What I find in so many instances
12 is that an investigator who may not be used to
13 handling criminal cases doesn't know what is
14 necessary to prepare a case and to present a
15 case to the United States Attorney's office.

16 And the United States Attorney's
17 office doesn't understand the problem that an
18 investigator in the field may be facing. If we
19 develop these collaborative efforts, we can do
20 so much to enhance what we're doing.

21 Thanks to increased resources,
22 targeted investigations and audits and the

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1 better coordination among law enforcement, the
2 department's health care fraud enforcement
3 initiative has yielded some impressive results.

4 Since 1992, there has been a 210
5 percent increase in the number of defendants
6 convicted of health care fraud and a 205
7 percent increase in the number of criminal
8 cases filed. But we have got to do more. And
9 we're dedicated to making sure we have the
10 prosecutors and investigative capacity to
11 pursue all cases in the appropriate manner.

12 But we have formulated strategies not
13 just to investigate and prosecute health care
14 offenders, but to stop ongoing fraud and to
15 cease the proceeds of those activities before
16 additional harm can be inflicted on the health
17 care system.

18 The department's coordinated program
19 involves use of all available sanctions;
20 criminal, civil, and administrative. Civil
21 fraud cases as part of parallel proceedings
22 ensure that perpetrators of health care fraud

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1 not only are punished for their wrongdoing but
2 also are forced to disclose their profits.

3 And when criminal prosecution is
4 defined, similar law actions ensure that law
5 enforcement addresses fraudulent schemes which
6 do not rise to the level of criminal
7 wrongdoing.

8 This is extremely important. In my
9 first visits to a number of the state and
10 federal task forces that were under way in the
11 country, one of the complaints was that the FBI
12 agents took the case just up to the point where
13 everyone concluded that the evidence was
14 insufficient to prosecute, but that there was
15 clearly sufficient wrongdoing to authorize a
16 civil proceeding.

17 We have been working with the FBI to
18 make sure that the FBI's capacity follows
19 through to the civil case so that we can follow
20 up with appropriate enforcement.

21 The number of civil health care fraud
22 cases filed has increased 114 percent between

19
1 1992 and 1995. And many civil health care
2 fraud cases have been resolved without the need
3 of litigation.

4 An increasing component of our health
5 care fraud initiative involves Qui Tam cases.
6 These are the suits filed by a private party or
7 a whistle blower on behalf of the United States
8 under the False Claims Act. It permits the
9 whistle blower to obtain up to 30 percent of
10 the recovery.

11 The number of Qui Tam cases involving
12 allegations of health care fraud increased from
13 37 in fiscal year 1993 to 100 in fiscal year
14 1995.

15 Now, I must make an admission. When
16 I was suddenly nominated and found myself
17 preparing for my confirmation hearing -- and
18 confirmation under my circumstances was done in
19 a very compressed time, a lot different these
20 days -- I had never heard of a Qui Tam action.

21 And I said "What's that?" I quickly
22 learned what it was. I quickly learned that it

20
1 had not been used very often. And quickly
2 resolved that we wanted to utilize it in the
3 most appropriate manner possible, ensuring
4 fairness, but ensuring that there was a check
5 and balance on the system. And I think we have
6 made progress. And we will continue this
7 effort.

8 In addition to our civil and criminal
9 enforcement, we coordinate with various
10 administrative remedies through HHS. In the
11 administrative proceedings, HHS can recover
12 double damages and impose a civil penalty of
13 \$2,000 per false claim. It also has the power
14 to exclude providers from the Medicare and/or
15 Medicaid programs.

16 And in 1994, the department approved
17 a memorandum of understanding to permit HCFA to
18 initiate civil monetary penalty proceedings
19 administratively against nursing homes for
20 violation of the health and safety regulation.

21 This MOU accommodates HCFA's interest
22 in obtaining speedy compliance and the interest

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1 of law enforcement in ensuring that a case that
2 may be appropriate for criminal or civil
3 prosecution is not compromised by a precipitous
4 administrative action.

5 Again, it's the hallmark of what
6 happens when people work together to make sure
7 they coordinate their efforts together. And I
8 think it has had a very fine effect.

9 Statistics or MOUs -- again, I never
10 really understood what an MOU was before I came
11 to Washington -- but I discovered that you

12 can't -- in some instances, you can't work
13 together unless you have an MOU. I said, "Why
14 can't you just talk together and work
15 together?" which is what we're trying to do.
16 And they don't convey the full intention of
17 what we're trying to do.

18 Our current caseload includes cases
19 and investigations of every type of provider,
20 including sole practitioners, as well as a
21 Fortune 500 corporation.

22 Let me highlight a few cases which
22
1 illustrate our multipronged strategy for
2 punishing wrongdoers, recovering losses and
3 preventing future frauds:

4 One recent case prosecuted here in
5 Boston involved a Fortune 500 corporation, the
6 C.R. Bard, Inc. This case involved the sale
7 and distribution of heart catheters which had
8 not been approved for human use.

9 Such experimental testing in humans
10 was without either the patients' or doctors'
11 knowledge for the purpose of disaster checking,
12 trying out as-yet-unapproved catheters in
13 humans to see if they would experience any
14 unforeseen complications.

15 The corporation pleaded guilty to a
16 391-count criminal indictment charging it with
17 numerous federal crimes in the sale and
18 distribution of unapproved catheters, and paid
19 \$61 million to the government in criminal fines
20 and civil settlement.

21 Last year, three former senior
22 executives were convicted of conspiring to
23
1 defraud the Food and Drug Administration in
2 connection with this fraud.

3 We have brought a similar
4 multipronged approach to other health care
5 fraud cases across the country.

6 For example, CareMark, Inc.,
7 illustrates the dramatic results possible with
8 the coordinated efforts of federal and state

9 investigative agencies.

10 CareMark engaged in a broad pattern
11 of illegal activities in the form of infusion,
12 oncology, hemophilia, and human growth hormone
13 businesses. These activities included making
14 improper payments to doctors and others to
15 induce referrals, the submission of inflated
16 claims to Medicaid programs, and waiver of
17 co-payments.

18 As part of a global criminal and
19 civil settlement filed in Minnesota and Ohio,
20 CareMark pled guilty and paid \$161 million in
21 fines, restitution, damages, and penalties for
22 the harm it caused to federal and state

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1 insurance programs.

2 The amount paid by CareMark is one of
3 the largest ever obtained in a health care
4 fraud case. In addition, the government has
5 prosecuted individuals involved in CareMark's
6 fraud.

7 And as we try to define these
8 sentences, I want to make it clear to people
9 that there is going to be a significant cost
10 involved in perpetrating this fraud against the
11 American people. I think a significant
12 sentence in terms of dollars, in terms of
13 fines, can send a very critical message.

14 Some other recent cases that involve
15 companies which offer billing services to
16 health care providers: One such company was
17 Handle With Care, a billing service which
18 processed claims for nursing homes. They
19 systematically billed Medicare for services
20 that were not provided and expenses that were
21 not incurred. The government convicted the
22 operators of the company.

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1 We then began the process of
2 recovering the money from the nursing homes
3 that submitted inflated claims which had been
4 prepared by the company. Within the past few
5 months, we have settled claims against three

6 facilities for over \$2 million. And we are
7 continuing our efforts with other nursing
8 homes.

9 One final example of another recent
10 civil case involved clinical practices of the
11 University of Pennsylvania. As many of you
12 know firsthand, Part A of Medicare pays
13 teaching hospitals for the care provided to
14 Medicare recipients by residents.

15 Hospital attending physicians can
16 charge Part B in Medicare for services provided
17 to patients including when they are providing
18 close supervision of residents.

19 In the Penn case, we believe that
20 attending physicians routinely were billing
21 Medicare for services which were actually
22 provided by unsupervised residents.

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1 The government also alleged that it
2 was harmed by doctors billing the Medicare
3 program for a higher and usually more expensive
4 level of services than were actually provided.
5 The Philadelphia U.S. Attorney's office
6 recently settled this case for over \$30
7 million.

8 In addition, Penn implemented a
9 compliance program which requires a corporate
10 reorganization, five years of outside audits,
11 and a mandatory education program.

12 But because we suspect that this type
13 of mischarging is taking place at many teaching
14 hospitals, the government will be examining the
15 billing practices of other teaching hospitals.

16 These are but a few examples of the
17 department's past health care fraud enforcement
18 efforts across this country.

19 As we look to the future, we see the
20 growth of managed care. Notwithstanding our
21 best efforts, there will be those who prey on
22 any health care system the market produces,

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1 fee-for-service or managed care.

2 Wherever there is money, unscrupulous

3 providers will shape schemes to fit the
4 particular form of reimbursement. To address
5 changing patterns of fraud, we established a
6 managed care and fraud working group. The
7 Department of Justice is committed to meeting
8 this challenge with vigorous enforcement. And
9 we will appreciate your suggestions and ideas.

10 As many of you know, Congress is
11 considering health care and health insurance
12 legislation. I hope that Congress will support
13 our fraud-fighting efforts by passing the
14 health care fraud provisions contained in those
15 bills. These provisions that strengthen our
16 criminal and civil tools by focusing them on
17 health care fraud, helping to streamline our
18 efforts and making them more efficient.

19 But no matter how successful the
20 department is in its efforts at enforcement
21 after the fraud has occurred, that will not
22 solve the problem. And we cannot do it alone.

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1 Together we must focus on prevention and what
2 can be done to stop it.

3 We must work together not only to
4 punish the perpetrators of health care fraud
5 and to recover the monetary losses, but also to
6 prevent the crime.

7 We want to work with you. We want to
8 work with more insurance companies as they
9 shoulder their responsibilities as partners to
10 make referral of potential fraud to law
11 enforcement.

12 Similarly, more health care providers
13 should establish their own corporate compliance
14 programs to effectively eliminate fraudulent
15 behavior before they are under scrutiny by the
16 government. Let me elaborate on each of these
17 roles:

18 Many U.S. Attorneys and FBI agents
19 are reaching out aggressively to private
20 insurance providers for help in detecting,
21 investigating, and prosecuting fraud. And
22 indeed, today's conference I think is as a

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1 result of that effort.

2 Let me also describe the effort of
3 another U.S. Attorney in which I think it gives
4 an example of what you can develop from here.

5 In 1994, he met with the chief
6 executive officers and other representatives of
7 the five leading health insurance companies in
8 Connecticut to discuss ways federal law
9 enforcement authorities can work with private
10 insurance companies to combat health care
11 fraud.

12 In 1995, that office sponsored a
13 health care fraud conference which included
14 participants from other law enforcement and the
15 private sector.

16 Over the past two years, the United
17 States Attorney and that district's FBI health
18 care fraud task force have met informally with
19 private insurers to facilitate the referral of
20 matters for investigation and prosecution.

21 These efforts have resulted in one
22 FBI agent assigned to work part-time out of

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1 Aetna which is headquartered in Connecticut.
2 This agent essentially works side by side with
3 Aetna fraud investigators reviewing potential
4 referrals not only for prosecution in
5 Connecticut but throughout the country.

6 Similarly, efforts are underway to
7 place an FBI agent part-time at United Health
8 Care, formerly MetroHealth. Our hope and
9 expectation is that having an agent physically
10 present on-site at these insurance companies
11 will help law enforcement gain insight into how
12 the operations work that will facilitate their
13 cooperation with the company.

14 It will increase the number of
15 criminal referrals and help insurance
16 investigators learn to identify those matters
17 that are important for enforcement and
18 prosecution and help them prepare the case for
19 referral so that they will know exactly what's

20 necessary in order for the United States
21 attorney to prosecute.

22 The success of these projects depends

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1 on private insurance companies reaffirming
2 their commitment to work with law enforcement.
3 And I feel confident, based on my conversations
4 with the industry representatives, that this is
5 going to happen.

6 Just as health insurers who pay for
7 health care services need to fight health care
8 fraud, so do health care providers. Compliance
9 programs produce major benefits for
10 corporations.

11 The principal benefit of successful
12 compliance programs is, of course, prevention
13 of violations altogether, thereby avoiding
14 entirely the possibility of fines,
15 imprisonment, damages, and debarment.

16 Another important benefit is the
17 early detection of the violation. Early
18 detection affords an organization the
19 opportunity to consider self-reporting and
20 cooperation with the government at a time in
21 the enforcement process far in advance of
22 conviction and sentencing, when actions have

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1 potential for very favorable treatment.

2 When a corporation discloses
3 wrongdoing, makes full restitution, and takes
4 swift disciplinary action against the employees
5 engaged in misconduct, the federal interest in
6 prosecuting the corporation is significantly
7 influenced.

8 In the C. R. Bard case that I
9 mentioned earlier, a compliance program was
10 imposed as part of the settlement agreement.
11 Under this compliance agreement, the
12 corporation agreed to create a new upper-level
13 management position, a compliance office with
14 the direct report to the CEO, agreed to hire a
15 consultant to monitor compliance, and to
16 provide, for a number of years, unlimited

17 access to government regulators the compliance
18 officer's reports.

19 Another example of compliance
20 agreement imposed as part of a national global
21 settlement is the National Medical Enterprise
22 case. Here, the company settled health care
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1 fraud charges arising out of activities at its
2 facilities.

3 In this settlement, it resulted in
4 payments of \$379 million in criminal fines,
5 civil damages, and restitution. Significantly,
6 as part of the settlement, NME must file an
7 annual compliance report with HHS for a period
8 of five years. Sanctions such as these should
9 remind us as well that an ounce of prevention
10 can be worth so very much.

11 As many of you know, the sentencing
12 guidelines create further clear incentives for
13 corporations to establish strong self-policing
14 and disclosure programs. The guidelines
15 provide lower fines for companies that develop
16 effective compliance programs, report
17 misconduct, and provide corporate assistance to
18 government investigators.

19 The guidelines also require courts to
20 impose a compliance program where one does not
21 exist. A judge's compliance program may be far
22 more stringent and costly than the program a
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1 company develops on its own and may involve
2 substantial government or court monitoring.

3 Bear this in mind: If you are the
4 officer of a corporation, if you design and run
5 your own compliance program and if it is
6 effective, if you have a few employees who
7 commit fraud and your corporation gets
8 prosecuted, the compliance program that you
9 have may be what gives you an advantage -- if
10 it's effective.

11 The system that is imposed may be far
12 more onerous. If you do not have an effective
13 program, then a compliance program will be

14 imposed by the court or by the department as
15 part of a plea agreement.

16 A corporation can't be put in jail,
17 but its liberty can be restricted. And it can
18 be subject to a compliance program that you
19 might not prefer. And you might be able to
20 develop early on, one that is far more
21 effective for your interests. We look forward
22 to working with you in every way possible to

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1 prevent the problem in the first place.

2 HHS is also putting renewed emphasis
3 on corporate compliance programs in recognition
4 that exclusion from program participation is
5 not always appropriate or necessary.

6 As part of "Operation Restore Trust,"
7 a formal voluntary disclosure program was
8 instituted to encourage certain providers to
9 report activities that could constitute
10 potential fraud to the government. This HHS
11 program rewards self-compliance measures taken
12 by providers in those industries.

13 Although Massachusetts is not one of
14 the five states within "Operation Restore
15 Trust," the concept can still apply. And as
16 I've indicated, Don and Scott may be able to
17 learn much from the examples of the five states
18 where this program has been in place.

19 Where a company is aware that some of
20 its employees has committed fraud, it should
21 come forward to disclose, make amends with the
22 government and proceed forward.

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1 We understand that it is hard for an
2 organization to step up and acknowledge prior
3 wrongdoing, yet doing so can, in fact, help
4 ensure the continued health of the organization
5 and participation as a provider to persons
6 insured by government and health insurance
7 programs.

8 Making a voluntary disclosure should
9 be part of your calculus as an executive if you
10 discover one or more of your employees has

11 engaged in criminal conduct.

12 And let me give you another example.
13 I don't know whether it's true in this
14 industry, but in most of the industries that I
15 have been involved in where I have prosecuted
16 an employee who stole from a company or who
17 committed fraud, that company -- embarrassed to
18 report the case -- just fired the employee and
19 went on about its business.

20 That employee then went to another
21 person in the same industry, got hired, and did
22 the same thing. If we turn our back on it, if
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1 we're too embarrassed to report it, if we're
2 too embarrassed to come forward, we're only
3 going to perpetuate this problem throughout the
4 entire industry to the disadvantage of
5 everybody concerned.

6 HHS is planning additional steps in
7 the future to promote corporate responsibility.
8 It plans to issue model compliance plans, each
9 tailored to specific health care provider types
10 and targeted use of permissive exclusion.

11 I know that the HHS Inspector General
12 is eager to work with the industry and to
13 develop industry best practices. And I have
14 pledged to support HHS efforts in every way.

15 Many of your companies have vigorous
16 antifraud programs. And I applaud you for
17 those efforts. When you detect the fraud, many
18 of you refer the matters. Without that
19 information, we could not do our job. I
20 continue to urge you to work with us in every
21 way possible. I would appreciate your
22 suggestions.

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1 I know Don Stern would appreciate any
2 suggestions as to what the federal government
3 can do to be more supportive, in terms of the
4 development of prevention policy and procedure
5 while, at the same time, making more effective
6 our enforcement efforts across Massachusetts
7 and throughout the country.

8 But the final point that I'd like to
9 throw out to you, and hope that we may generate
10 some ideas as to what we can do, was first
11 raised in a meeting with U.S. Attorneys and
12 industry representatives in Des Moines, Iowa, a
13 year and a half ago when everyone involved
14 pointed out to me that health care fraud can
15 balloon very quickly, that it is not something
16 that just climbs gradually, and that the moment
17 somebody learns how to do it, the fraud, the
18 dollars and the loss just rise dramatically.
19 So it is very, very important that we try our
20 best to prevent the fraud in the first place.

21 I would hope that the U.S. Attorney's
22 office working with all of you could share

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1 information about the type of fraud that we
2 have seen occur, sit down with your
3 professionals, with your compliance people,
4 look at how the fraud happened in the first
5 place, see what checks and balances were
6 missing that permitted it to happen, and then
7 what could be done to provide those checks and
8 balances to prevent it from happening.

9 As I mentioned earlier, people's
10 ability to defraud others boggles the
11 imagination. And nothing surprises me anymore.

12 What so often occurs is that we just
13 don't think something is possible. We don't
14 think somebody could be that avaricious. We
15 don't think somebody could prey on frail and
16 elderly people in so vile a manner. And so we
17 don't take steps to stop it.

18 I think my brother pointed out
19 once -- he had not been a poacher, but he had
20 liked to go out in the Everglades, in the
21 wilds. And he knew a little bit about poaching
22 habits. And he said, "It's good to watch a

40
1 poacher in action before you become a game
2 warden because you can then think like a
3 poacher."

4 We've got to have people in place

5 that can think like the people that defraud so
6 that we can develop the systems within our
7 companies that can prevent it and make these
8 people know that somebody is watching so that
9 they don't even try it in the first place.

10 I would look forward to hearing from
11 Don what we have been able to do in developing
12 an ability to analyze, so that we might share
13 with you that information and so that you may
14 utilize it to develop checks and balances
15 within the system, within your technology that
16 can prevent it from happening in the first
17 place.

18 This has been an extraordinary three
19 and a half years for me. The challenges of
20 this office have been many and they have been
21 complex. But after these three and a half
22 years, I have never, ever been so sure of my

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1 faith in this country, of the private sector
2 working with government at all levels to
3 effectively address the problems that we face.

4 We do this best when we communicate
5 together, when we work together, when we
6 realize that each of us has something to
7 contribute to the solution of the problem.

8 I come here today. But I would ask
9 you to consider something that Don Stern will
10 tell you I ask at each U.S. Attorney's office
11 when I go out to visit. And I will leave you
12 with one question. And I hope you will convey
13 the answer to Don or write to me: If you were
14 Attorney General of the United States, what
15 would you do to improve health care fraud
16 enforcement in this nation? What would you do
17 to support your efforts at prevention and
18 compliance? What would you do to make the
19 Justice Department's efforts more effective?

20 Thank you very much.

21 (Whereupon, the address was
22 concluded)