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## **Attorney General Merrick B. Garland Delivers Remarks to the ABA Institute on White Collar Crime**

Washington, DC ~ Thursday, March 3, 2022

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### ***Remarks as Delivered***

Good morning. Thank you, Ray, for that kind introduction and for inviting me to join you today. It is, as you said, nice to be back at the Institute – if only virtually.

Looking over the list of speakers and attendees, I see lawyers I tried cases with, and against. Lawyers I supervised, and was supervised by. And lawyers with whom I spent many years attending monthly meetings on corporate criminal practice at the Edward Bennett Williams Inn of Court.

Now I want to remember for a moment a lawyer who is no longer with us – a friend to whom the Institute has dedicated this lecture: E. Lawrence Barcella Jr.

Larry and I became friends the old-fashioned way – we spent more than three weeks trying a case against each other.

Larry was already a legend of the bar at the time. As an Assistant U.S. Attorney, he had worked on legendary terrorism cases, including the Orlando Letelier assassination and the Achille Lauro hijacking – among many others. He had relatively recently left the U.S. Attorney's Office for a corporate criminal practice.

Larry had had scores of trials. This was only my second, but he took a liking to me. On several days, for a few minutes after trial adjourned, we would sit together on a bench in Judge Flannery's courtroom. Larry would give me friendly pointers on trial practice. I needed them.

Larry Barcella was a superb lawyer, a skilled trial tactician, and a friend of many who are watching this address. To me, he was a most generous soul who embodied our profession's ideal of civility. I miss him, especially today.

And now, let me say a few words about corporate criminal law enforcement.

It will not surprise you to hear that the prosecution of corporate crime is a Justice Department priority. Nor does anyone need to tell this audience why that is so.

Fraud, theft, corruption, bribery, environmental crime, market manipulation, and anticompetitive agreements threaten the free and fair markets upon which our economy is based. They decimate the assets of individuals, organizations, and governments alike. And they increase costs for every American.

Corporate crime weakens our economic institutions by undermining public trust in the fairness of those institutions.

Failing to aggressively prosecute such crimes weakens our democratic institutions by undermining public trust in the rule of law.

The essence of the rule of law is that like cases are treated alike; that there is not one rule for the powerful and another for the powerless; one rule for the rich and another for the poor.

To fail to aggressively prosecute corporate crime leads citizens to doubt that their government adheres to this principle. The Justice Department does not intend to fail.

Last fall, Deputy Attorney General Monaco spoke to the 36th National Institute. Her speech covered the waterfront of the changes the Justice Department has made and is considering making with respect to our corporate criminal enforcement policies, as they relate to both companies and individuals.

We will, of course, continue to hold companies accountable for their criminal conduct. Today, I want to focus on individual defendants.

As the Deputy Attorney General noted, I have made it clear that the Department's first priority in corporate criminal cases is to prosecute the individuals who commit and profit from corporate malfeasance.

It is our first priority because corporations only act through individuals.

It is our first priority because penalties imposed on individual wrongdoers are felt by those wrongdoers, rather than by shareholders or inanimate organizations.

It is our first priority because – as everyone who has counseled individual corporate officers know – the prospect of personal liability has an uncanny ability to focus the mind. That prospect is the best deterrent to corporate crime. And deterrence – after all – is what we are after.

But most important, the prosecution of individuals is our first priority because it is essential to Americans' trust in the rule of law. As I said a moment ago: the rule of law requires that there not be one rule for the powerful and another for the powerless; one rule for the rich and another for the poor.

When people see individuals walk while their companies pay the fines, they cannot help but think that essential principle has been violated.

Indeed, as Attorney General Edward Levi noted in a 1975 speech, the very term "white collar crime" is itself "unfortunate since it suggests a distinction in law enforcement based upon social class."

Having tried and supervised corporate criminal cases, I know full well that obtaining individual convictions rather than accepting big-dollar corporate dispositions is a difficult and resource-intensive road for the Justice Department. Accordingly, the Department is marshaling its resources to enable us to successfully take that road.

In that regard, the President's FY22 budget seeks increases for the Justice Department's corporate criminal enforcement efforts. These increases extend to our 94 U.S. Attorneys' Offices, as well as to the Criminal, Antitrust, Tax, and Environment Divisions.

They include an additional \$36.5 million for the U.S. Attorneys' Offices and the Criminal Division to bolster efforts to combat pandemic-related fraud.

These additional funds will allow the Department to hire 120 additional attorneys to execute that important mission. And this is on top of 34 attorneys the Criminal Division's Fraud Section hired in 2021.

The FY22 budget also seeks \$325 million to fund more than 900 FBI agents to support the FBI's White Collar-Crime Program.

We are also bolstering our resources by adding force-multipliers to our prosecutors and agents. I want to highlight three of those force-multipliers.

The first force-multipliers are our partnerships at every level of government and around the world.

As the President noted in his State of the Union Address on Tuesday, the Department has just launched an interagency taskforce to hold accountable Russian oligarchs and others who seek to evade U.S. sanctions or otherwise profit from corrupt conduct.

The taskforce will be led by veteran SDNY prosecutor Andrew Adams and overseen by the Deputy Attorney General.

It will complement the work of a transatlantic task force announced by the President and European leaders on Feb. 26.

Together with our federal and international partners, we will leave no stone unturned in our efforts to investigate, arrest, and prosecute those whose criminal acts enable the Russian government to continue its unjust war against Ukraine.

As the President also noted in his address, I will soon be naming a chief prosecutor to lead specialized teams dedicated to combatting pandemic fraud. This will build on the existing work of the COVID-19 Fraud Enforcement Task Force that I established last May.

That task force, led by the Deputy Attorney General, includes nearly 30 agencies that administer and oversee pandemic relief funding, including the Labor Department, the Treasury Department, the Small Business Administration, the U.S. Postal Inspection Service, and the Pandemic Response Accountability Committee.

The Justice Department is also working more closely than ever with Inspectors General across the federal government to identify perpetrators of health care fraud, procurement fraud, and every other kind of government-program fraud.

And, of course, the Department continues to work in parallel with the SEC on everything from securities fraud to violations of the Foreign Corrupt Practices Act.

Other important partners include the Commodity Futures Trading Commission, the Centers for Medicare & Medicaid Services, the Defense Criminal Investigative Service, and the Internal Revenue Service.

Our federal partnerships are further reinforced by our partnerships with state, local, Tribal, and territorial law enforcement agencies. These partnerships are operationalized by numerous joint task forces and strike forces dedicated to a wide range of corporate crimes.

A second important force-multiplier is data analytics. We are using big data – our own, and the data of other departments and agencies – to identify payment anomalies that are indicative of fraud.

And we have provided the Criminal Division's Fraud Section with a new, embedded squad of FBI agents to further strengthen our ability to bring data-driven corporate crime cases nationwide.

This represents an enormous expansion of the data analytic work we first applied to health care fraud when I supervised the Fraud Section as a Deputy Assistant Attorney General.

The third force-multiplier are the defense counsel in this audience – or at least those of you who represent corporations and their boards of directors.

As the Deputy Attorney General reported when she spoke with you last fall, we have restored prior Department guidance making clear that, to be eligible for any cooperation credit, companies must provide the Justice Department with all non-privileged information about individuals involved in or responsible for the misconduct at issue.

This means all individuals, regardless of their position, status, or seniority, and regardless of whether a company deems their involvement as "substantial."

When the Justice Department offers a company the opportunity to enter into a resolution for its misconduct, it is in that company's best interest to provide us with a full picture of what happened and who was involved.

When we give a company the opportunity to come clean, it must come clean about everyone involved in the misconduct, at every level.

Over the past year, our U.S. Attorneys' Offices, Main Justice divisions, and law enforcement agencies have successfully investigated and prosecuted cases against a wide range of company executives.

In FY21, the U.S. Attorneys' Offices charged 5,521 individuals with white collar crimes – a 10% increase over the previous year.

2021 was also one of the busiest trial years on record for the Criminal Division's Fraud Section. In 2021, Fraud Section prosecutors publicly charged 333 individuals, convicted 296 individuals by plea, tried 23 cases in 18 districts, and secured convictions of 30 individuals at trial.

Among many other things, these cases reflect a major crackdown on all forms of pandemic-related fraud, particularly as related to CARES Act programs like the Paycheck Protection Program and the Provider Relief Fund.

The Department's Antitrust Division has also been busy investigating and prosecuting price-fixing and other criminal violations of the antitrust laws. It ended the last fiscal year having brought 25 criminal cases against 29 individual and 14 corporate defendants, and with 146 open grand jury investigations — the most in 30 years.

The Antitrust Division is now trying or preparing to try 18 indicted cases against 10 companies and 42 individuals, including 8 current or former CEOs or company presidents.

Our Environment and Natural Resources Division is also prioritizing the investigation and prosecution of individuals who commit and profit from corporate environmental malfeasance.

The Division is currently trying or preparing to try 11 indicted cases against 11 companies and 34 individuals – including 14 current or former company executives – for a wide range of criminal environmental offenses.

The achievements of all of these Justice Department components are all the more remarkable because they were accomplished in the midst of a pandemic that disrupted everyone's lives – agents and prosecutors included.

We expect that our enforcement activity will only accelerate as we come out of the pandemic.

Thank you so much for inviting me to speak with you.

I know that relations between the defense bar and prosecutors have waxed and waned over the years.

I would like very much to return to the era when a defense lawyer like Larry Barcella could sit with a young prosecutor and offer some pointers – after the pointers were too late to affect his client, of course.

As a defense attorney, prosecutor, and judge, I have also seen the Justice Department's interest in prosecuting corporate crime wax and wane over time.

Today, it is waxing again.

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**Speaker:**

Attorney General Merrick B. Garland

**Component(s):**

Office of the Attorney General

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