

Testimony of

The Honorable Bradley Skolnik

June 19, 2002

Mr. Chairman and Members of the Subcommittee,

I'm Brad Skolnik, Indiana Securities Commissioner and Chairman of the Enforcement Section for the North American Securities Administrators Association, Inc. (NASAA).¹ I commend you for holding this hearing, and thank you for the opportunity to appear today to present our views on Penalties for White Collar Crime.

The securities administrator in your state is responsible for the licensing of investment professionals and securities offerings, investor education and, most importantly, the enforcement of state and federal securities laws. We have been called the "local cops on the beat," and I believe that is an accurate characterization.

Our country has undergone a historic transformation. In the past generation we have become a nation of stockholders - half of all households are invested in the stock market. State securities regulators have an increased responsibility to make sure that Wall Street is a safe street for Main Street investors. Congress, regulators and the industry must act to restore confidence in the integrity of our markets and to hold those who defraud investors accountable for their crimes.

Investor education is an effective crime prevention tool but the strongest deterrent to crime, I believe is criminal prosecution and prison time. Prosecutors, juries and the media understand street crime like robbery, assault and murder. Somehow securities fraud seems sanitized, bloodless, technical. Many people, including some in law enforcement, view securities fraud as an essentially victimless crime that involves as much gullibility on the part of the victim as it does culpability on the part of the perpetrator.

But we know white collar crimes aren't victimless crimes. Just like street crime, securities fraud ruins lives, destroys families, steals hopes and kills dreams.

To protect investors, we need to make better use of the laws already on the books. This means bringing more criminal actions against white-collar crooks. States securities regulators obtain an average of 300 convictions a year, but we need to obtain more, many more. The truth is, most investment scams are nothing other than sophisticated criminal enterprises. They need to be treated as such.

One problem is, securities cases are complex, costly and time-consuming - deterrents to law enforcement agencies with limited personnel and budgets. The truth is some prosecutors shy away from them because the subject is complicated and difficult to understand. But from my perspective as a state securities regulator, white-collar criminals who commit securities fraud deserve prison time just like thieves, muggers and murderers.

There are other reasons why so many cases end up being handled administratively or civilly. A prosecutor's willingness to undertake a complicated and technical securities case depends on other cases competing for attention. Murders, terrorism, and drug-related crimes are sometimes easier to argue to a jury and don't require the vast amount of staffing often required for a criminal prosecution of a securities case.

There are some ways where my colleagues can help. State securities regulators can, and do, provide resources to prosecutors to assist with the investigation and prosecution of these cases. We can develop cases fully and hand them over to prosecutors, reducing this burden substantially.

We all need to make the extra effort to bring criminal cases to right wrongs and ensure justice is done, but also to send a message. Too many crooks think they can get away with securities fraud and frankly, too many get off easy.

Someone steals your car, they go to prison; some con artist steals the money your parents needed for retirement, they get fined. That's just not right.

NASAA believes educating juries is another key to getting convictions in securities fraud cases. We have distributed updated model jury instructions to our membership and have posted them on our web site at www.nasaa.org.

In addition, we have sent these model jury instructions to prosecuting attorneys across the country as well as other law enforcement organizations.

There is another way we are bringing this issue to the attention of our membership. Every year NASAA hosts an enforcement conference where state and federal securities regulators and other law enforcement officials meet and brainstorm ways to work together to fight securities fraud and bring more criminal prosecutions. This is an effective way to share ideas on bringing securities fraud cases to trial.

Also, we have to stop using euphemisms when we talk about white collar crime. White collar criminals are cold, calculating, and vicious. Many are serial violators, career criminals. It's time, it's past time, we called a crook a crook and put more of them in jail.

We need plain talk and tough action if we're going to protect our families, our friends, our neighbors and our fellow citizens who now look to financial products to secure their futures.

On the legislative front, NASAA supports the provisions in S. 2010, the Corporate and Criminal Fraud Accountability Act of 2002, and believe it sends a powerful message that wrongdoers in the securities markets will be punished.

As an aside, NASAA supports the provision in S. 2010 that would make debts from securities law violations non-dischargeable in bankruptcy. At the present time, the bankruptcy code enables defendants who are guilty of fraud and other securities violations to thwart enforcement of the judgments and other awards that are issued in these cases. Section three of the bill would protect

fraud victims by amending the Bankruptcy Code to make judgments and settlements based upon securities law violations non-dischargeable.

Unfortunately white-collar crime is not as high on our national agenda as it needs to be. However, the problems in this area can be successfully addressed if law enforcement officials, regulators, Congress and others work together on solutions. I thank you for holding this hearing and would be pleased to provide any additional information you may need.